

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Sri Raja Venkata Narasimha Appa Rao Bahadur, Zemindar Garu v. Sri Raja Sobhanadri Appa Rao Bahadur, Zemindar, and 16 others, from the High Court of Judicature at Madras; delivered the 15th November 1905.

Present at the Hearing :

LORD DAVEY.

SIR ANDREW SCOBLE.

SIR ARTHUR WILSON.

[*Delivered by Sir Andrew Scoble.*]

The zemindari of Nuzvid, in the Madras Presidency, after protracted litigation, into the history of which it is unnecessary to enter, was partitioned in the year 1882. At the partition a sixth share of the estate was allotted to the Plaintiff and Appellant, including the village of Hanumantunigudem, which is the subject of the present proceedings. Prior to the partition, the father of the first Respondent had obtained from the other sixteen Respondents or their predecessors in title, whom it will be convenient to designate as the Mokhasadars, leases for thirty years of the lands held by them in the village under Mokhasa tenure, and the term of these leases is still unexpired. The Appellant claims that the leases are invalid, and that he is entitled to resume the village. The Subordinate Judge decided in his favour, but the High Court, on appeal, reversed the decision. The sole question which their Lordships now have to determine is whether, having regard to the nature of the tenure, the village is resumable at the option of the Appellant, the Zemindar.

There is no doubt that Hanumantunigudem is what is known as a Mokhasa village. The learned Judges of the High Court say that "Mokhasa is "a well-known tenure in the Northern Circars; "and the term itself implies that it is a "tenure subject to service." In Wilson's Glossary, Mukhasa or Mokhasa is said to be irregularly derived from an Arabic word signifying "to have as one's own," and is defined as "a village or land assigned to an "individual, either rent-free, or at a low quit-rent, on condition of service." There is no deed or sanad containing the particulars of the grant in this case, but the evidence shows that the village has been held by the Mokhasadars and their ancestors on a quit rent of Rs. 144 per annum from a period antecedent to the introduction of the British Government, and that the service to be rendered was that of one Naik and fourteen peons, whose duty it was to guard the Zemindar's fort and treasury, to watch over the reaping and threshing of the crops, and to attend the Zemindar on his hunting or military expeditions. These services, it is clear from a Report of the Inam Commission, were rendered down to 1860, when a Mokhasadar represented that, "in consequence of the proximity of his "village to Nuzvid, the call for their service "was incessant"; and the obligation is recognized in the leases granted to the first Respondent's father by the Mokhasadars in 1881 in which there is a stipulation that they shall "render service to the Zemindar according to "custom." There has, therefore, been no breach of this condition on the part of the Respondents. Both Courts in India agree in holding that "the "Mokhasadars hold their lands conditional upon "the performance of the services," which have been already specified.

The question remains whether the Zemindar can dispense with the services and resume the

land; and upon this point the Courts below differed. The Subordinate Judge held that "in the absence of any evidence . . . as to an absolute grant, or as to a gift burdened only with a condition of service, the only conclusion that can be come to upon the evidence in the case is that the village was granted by the Zemindar before 1780 to an ancestor of the (Mokhasadar Defendants), for the purpose of rendering the services above mentioned"; and he found upon a specific issue that the grant was in lieu of wages.

The learned Judges of the High Court came to an opposite conclusion upon the facts. "In the first place," they say, "no office by any particular designation was conferred upon the original grantee, but an obligation of a feudal character was imposed upon him. He was simply to provide a specified number of men as custodians, so to speak, of the Zemindar's property, and their services appear to have been rendered intermittently and not continuously. Besides, they were paid in money when they actually performed such services . . . that is to say, batta was given to them when actually on duty. It is also certain that in later years their services were not in frequent requisition, because, as Mr. Taylor points out in his Report, the Zemindar would have had to pay in the shape of batta more than the services were worth. In the second place, the following circumstances indicated as plainly as possible a fixity of tenure. The Mokhasadars have paid a uniform rent of Rs. 144 a year for the last 120 years without alteration at any time, and the land has descended from father to son hereditarily. There has been no instance of resumption or even an attempt at resumption during all this

“ time. There has also been no attempt to
 “ enhance or to alter the rent, or to interfere
 “ with the devolution of the property from heir
 “ to heir.”

Without altogether adopting the further reasons adduced by the learned Judges in support of their view, their Lordships are of opinion that the considerations above stated are sufficient to establish that the grant in this case was a grant subject to a burden of service, and was not a mere grant in lieu of wages. This disposes of the case, for it is well settled that where lands are held upon such a grant, “ as
 “ long as the holders of those grants are willing
 “ and able to perform the services, the Zemindar
 “ has no right to put an end to the tenure
 “ whether the services are required or not” (*Rajah Leelanund Singh v. Thakoor Munoorunjun Singh*, L. R. I. A. Sup. Vol. 181, at page 185).

Great stress was laid in the Courts below upon a statement contained in a note to an “ Abstract
 “ of the Revenue Collections in the Noozed
 “ Zemindari,” prepared by the Circuit Committee in 1786, in which it is stated that
 “ the Mockawsaw villages and grants being
 “ immediately under the Zemindar, and given
 “ or resumed when he pleases, are included in
 “ Government collections.” The Circuit Committee was appointed by the Government “ to
 “ enquire into the state of the Northern Circars,” with a view *inter alia* to the settlement of the revenue, and their Lordships would have been disposed to attach importance to this piece of contemporary evidence as to the relations between the Mokhasadars and the Zemindar, were it not that it appears from the Fifth Report of the Select Committee on the affairs of the East India Company (Vol. II., p. 4 of the Madras

edition) that "few of the members of (the "Circuit Committee) appear to have been "acquainted with the native languages, and, as "it is stated by themselves, they depended "wholly for what intelligence they obtained on "those subjects, on the Zemindars and the "native officers in the villages, the very persons "most interested to conceal the truth, and to "impose upon them false information." Their Lordships agree with the learned Judges of the High Court that although the records of the Circuit Committee may be good evidence with reference to the system upon which the Government claimed to deal with the Zemindar's property, they cannot affect the rights of the Mokhasadars as against the Zemindar, with regard to which no independent enquiry appears to have been made.

Upon these considerations, their Lordships will humbly advise His Majesty that the Decree of the High Court of Madras ought to be confirmed, and this Appeal dismissed. The Appellant will pay the costs of the first Respondent who alone defended the Appeal.

