

Judgment of the Lords of the Judicial Committee of the Privy Council on the Consolidated Appeals of Bir Bikram Deo v. The Secretary of State for India in Council; and of The Secretary of State for India in Council v. Bir Bikram Deo; and of Thakur Umrao Singh v. The Secretary of State for India in Council; and of The Secretary of State for India in Council v. Thakur Umrao Singh; and of Lal Fatehsingh v. The Secretary of State for India in Council; and of The Secretary of State for India in Council v. Lal Fatehsingh; and of Same v. Thakur Manhar Singh; and of Same v. Bir Bikram Deo; and of Thakur Vishwanath Singh v. The Secretary of State for India in Council; and of The Secretary of State for India in Council v. Thakur Vishwanath Singh; and of Lal Jagmohan Singh v. The Secretary of State for India in Council; and of The Secretary of State for India in Council v. Lal Jagmohan Singh; and of Same v. Lal Phulsingh; and of Lal Chhatra Shah, since deceased (now represented by Lal Nagendra Shah, minor) v. The Secretary of State for India in Council; and of The Secretary of State for India in Council v. Lal Chhatra Shah, since deceased (now represented by Lal Nagendra Shah, minor), from the Court of the Judicial Commissioner, Central Provinces, India; delivered the 16th January 1912.

PRESENT AT THE HEARING :

LORD MACNAGHTEN.

LORD SHAW.

LORD MERSEY.

MR. AMEER ALI.

[DELIVERED BY LORD MACNAGHTEN.]

These are consolidated Appeals and Cross Appeals from judgments and decrees of the Judicial Commissioner of the Central Provinces in part affirming, in part varying, and in part reversing judgments and decrees of the District Judge of Raipur.

The Zamindar of Khariar in the district of Raipur, and other Zamindars in that district, proprietors of estates varying in extent and importance, have sued the Secretary of State for India in Council, complaining that they have been illegally deprived of rights to which they were indefeasibly entitled from time immemorial, and that by the requirement of Government officials they have been compelled to execute Wajib-ul-arz or administration papers containing provisions in derogation of their undoubted privileges. Their contention is that the provisions of which they complain are illegal and ought to be expunged or annulled, and that the rights of which as they allege they have been improperly deprived ought to be restored by the Civil Court.

It was agreed between the parties to this group of litigation that decisions in the suit brought by the Zamindar of Khariar should govern all the rest of the cases.

The status of the Zamindar of Khariar and the Plaintiffs in the other suits is simply the status of an ordinary British subject. That

matter was determined by the Government in 1864 after an exhaustive enquiry into the position of the petty chiefs of the Central Provinces. A few were recognised as feudatories having some of the attributes of sovereignty. The rest were classed as non-feudatories and declared to be ordinary British subjects.

Before these petty chiefs came under British rule they held their possessions at the will and pleasure of the ruler for the time being in power. When their country became British territory, whether by conquest and cession as in the case of Khariar and in the case of Bindra Nawagurh in Chattisgurh, or by lapse as in the case of the other Zamindars in Chattisgurh, they were left much in the position they occupied before. The district was wild and for the most part uncultivated, thinly populated, and very difficult of access. They paid to the paramount Government the tribute they had been in the habit of paying to their native rulers reduced in some cases on account of the poverty of the district. They managed their estates as best they could, binding themselves to use rightly the judicial and administrative powers entrusted to them or left in their hands as a matter of convenience or economy of administration. In no case were they recognised as entitled to independent power or as possessing any sovereign rights.

In 1867 the Government determined to confer upon the non-feudatory Zamindars in an adjoining district known as the Chanda District proprietary rights in the soil on certain terms and conditions which were embodied in a document referred to in these proceedings as the Chanda Patent. It was the intention of the Government at that time that sanads should be granted to other non-feudatory Zamindars, in the Central Provinces, including the Raipur Zamindars, framed on the

model of the Chanda Patent, with such variations as the circumstances of the case might require. However, it seems that when sanads were issued to the Raipur Zamindars in the year 1874 the matter was overlooked or forgotten, and proprietary rights in the soil were vested in them, expressed in the sanad to be "subject to the payment of such Land Revenue and other cesses as may, from time to time be assessed according to the terms of Settlement and to the conditions specified in the Administration Paper and other Settlement Records." In point of fact these sanads were not accompanied by any Administration Papers or any other record. This mistake or omission has given rise to much argument. The Government contended that the Plaintiffs had recognised and were bound by the terms of the Chanda Patent. The Plaintiffs, while relying on the terms of the Chanda Patent which were to their advantage, maintained that the terms of the Chanda Patent in their entirety, and so far as they tended to their disadvantage, were not binding upon them. In the result both Courts below have held that the Chanda Patent is not to be treated as embodied in or affecting the sanads granted to the Raipur Zamindars. In this conclusion their Lordships agree. For the purposes of these cases they think that the Chanda Patent may be disregarded.

In 1888 the Government decided that police administration in the non-feudatory Zamindaris in the Chattisgarh Division including those belonging to the Plaintiffs other than the Zamindars of Khariar and Bindra Nawagarh should be withdrawn from the Zamindars, and that an addition should be made to the takolis or revenue payable by the Zamindar when thus relieved of police duties.

In March 1891 the Zamindar of Khariar accepted a fresh assessment of the takoli or

revenue payable by him to Government under Section 54 of the Central Provinces Land Revenue Act (XVIII. of 1881), for 11 years from the 1st of July 1890 to the 30th of June 1901, or until a fresh settlement should be made. He then agreed to be bound by all the conditions laid down in the Wajib-ul-arz of his Zamindari and duly executed that document.

In September 1892 the police administration of the Zamindaris of Khariar and Bindra Nawagurh was assumed by the Government, and on that account an addition was made to the takolis of the two Zamindaris.

In November 1892, a new form of Wajib-ul-arz applicable to the case of the non-feudatory Zamindars was approved by the Government. It was not, however, brought into use until some years later.

In 1893 the Chief Commissioner, with the sanction of the Government, determined to assume the administration of Excise. At the same time it was proposed to pay compensation for loss of income and for the present to farm out to the Zamindars the Excise Administration, the takolis to run with their Land Settlements.

Some of the Zamindars accepted compensation and took farms of the Excise. Some, including the Zamindar of Khariar, and others of the Plaintiffs refused both offers.

In May 1903 the Chief Commissioner of the Central Provinces decided to assume the administration of cattle pounds in the case of the non-feudatory Zamindars in the Chattisgurh Division, including the Plaintiffs, paying compensation for the withdrawal of this source of revenue.

In 1903 in connection with the new assessment, the non-feudatory Zamindars in the Chattisgurh Division, including the Plaintiffs, were required to execute Wajib-ul-arz in the

form sanctioned by Government in November 1892 with some further amendments.

The proposed Wajib-ul-arz was executed by the Zamindar of Khariar and the other Plaintiffs in compliance with the requirement of the Government. It was however executed under protest. It bears date the 6th of August 1903. After an ineffectual appeal to Government this litigation was commenced.

The principal ground of complaint relates to the withdrawal of police and Excise administration. That head of complaint in the case of the Zamindar of Khariar is the subject of Suit No. 27 of 1904.

The withdrawal of cattle pounds is the subject of complaint in Suit No. 31 of 1905.

The clauses in the Wajib-ul-arz of the 6th of August 1903, to which objection is taken are the subject of Suit No. 6 of 1904. One of those clauses deals with cattle pounds.

Suits No. 6 of 1904 and No. 27 of 1904 were heard together. It was agreed that the decision in those suits should govern the decision in Suit No. 31 of 1905.

On the 6th of August 1906 the District Judge delivered separate judgments and made separate decrees in the three suits.

In Suit No. 27 of 1904, the District Judge held that the Raipur Zamindars in exercising police and Excise functions were not acting as of right, but were so acting either by sufferance, or by delegation, and that the resumption of those functions by the Government was a thing done by the Government in exercise of its sovereign powers, and consequently that the suit was not maintainable.

On appeal the Judicial Commissioner held that powers of administration in respect of police and Excise must be deemed to have been granted to the Plaintiff, and that the Plaintiff was entitled

to maintain his own police and administer Excise in his Zamindari.

On this question their Lordships agree with the view of the District Judge.

The District Judge dismissed Suit 31 of 1905. The Judicial Commissioner reversed his judgment and made a decree in favour of the Plaintiff.

In Suit No. 6 of 1904 which relates to the Wajib-ul-arz of the 6th of August 1903, the following are the clauses objected to :—

In Part I. :—

- “ 3. Removal of zamindar and forfeiture of
“ privileges.
- “ 6. Resumption and management of ferries and
“ pounds.
- “ 7. Provision that forest mahals shall be managed
“ in accordance with rules framed by the
“ Chief Commissioner under Section 124A Land
“ Revenue Act.
- “ 10. Declaration that all minerals are the property
“ of Government.

In Part II. : -

- “ 2. Discontinuance of nazarana on grant or renewal
“ of leases.
- “ 7. Appointment, suspension, and removal of kotwars
“ (village watchmen) to be governed by rules
“ framed under Section 147A, Land Revenue
“ Act.
- “ 11.—(1) Forest lands not included in forest mahals
“ to be managed in accordance with any rules
“ made by the Chief Commissioner.
- “ 15. Hides and carcases of dead cattle to be the
“ property of the owners of the cattle.”

The District Judge was in favour of the Government on all these questions except Part I., No. 3 and No. 7, and Part II. No. 2.

On appeal to the Judicial Commissioner the decree was varied by adding a direction that the words “and pounds” be deleted from Clause 6, Part I., and by substituting the words and figures “Clause 3 of Part I.” for the words and figures “Clauses 3 and 7 of Part I.”

On appeal to this Board the objection to Part II. No. 15 was not pressed.

The case was very fully and ably argued; but after carefully considering the arguments adduced the *Wajib-ul-arz* of 1892 and the Acts of the Legislature to which attention was called, their Lordships are of opinion that there is no ground for disturbing the judgment of the Judicial Commissioner in Suit 6 of 1904 except as regards cattle pounds.

Their Lordships are disposed to think that the maintenance of private cattle pounds is incompatible with the provisions of the Cattle Trespass Act, and they are of opinion that under the circumstances the establishment and maintenance of cattle pounds under the superintendence and control of Government officials empowered to obtain the assistance of the police when required may be considered essential for the maintenance of law and order, and the peace and good government of the country, and therefore an act of the Executive Government with which it is not competent for the Civil Court to interfere.

Their Lordships will humbly advise His Majesty that in Suits 27 of 1904 and 31 of 1905 the Decrees of the Judicial Commissioner should be discharged, and the Decrees of the District Judge restored, but without costs. That in Suit No. 6 of 1904 the Decree of the Judicial Commissioner should be varied by omitting the words "and pounds."

Their Lordships do not think fit to make any order as to costs.

In the Privy Council.

BIR BIKRAM DEO

v.

THE SECRETARY OF STATE FOR INDIA
IN COUNCIL.

DELIVERED BY LORD MACNAGHTEN.

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