

Privy Council Appeal No. 22 of 1939
Patna Appeal Nos. 24, 25, 26 and 27 of 1936

Jagadish Chandra Deo Dhabal Deb	-	-	-	-	-	-	<i>Appellant</i>
							<i>v.</i>
Debnath Mahto	-	-	-	-	-	-	<i>Respondent</i>
Same	-	-	-	-	-	-	<i>Appellant</i>
							<i>v.</i>
Nanda Kumar Maity and another	-	-	-	-	-	-	<i>Respondents</i>
Same	-	-	-	-	-	-	<i>Appellant</i>
							<i>v.</i>
Iswar Chandra Manna	-	-	-	-	-	-	<i>Respondent</i>
Same	-	-	-	-	-	-	<i>Appellant</i>
							<i>v.</i>
Chintamani Upadhaya	-	-	-	-	-	-	<i>Respondent</i>

Consolidated Appeals

FROM

THE HIGH COURT OF JUDICATURE AT PATNA

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 23RD MAY, 1940

Present at the Hearing :

LORD RUSSELL OF KILLOWEN
SIR GEORGE RANKIN
MR. M. R. JAYAKAR

[*Delivered by* SIR GEORGE RANKIN]

In this case four appeals from the High Court at Patna have been consolidated. They are brought by the proprietor of the permanently settled estate of Dhalbhum, a large estate situate on the eastern part of the district of Singhbhum in Bihar but extending for a little distance into Bengal. The orders complained of were made by the High Court on 29th April, 1936. They arose out of four applications for execution made to the Revenue Court at Jamshedpur on 10th March, 1934. By each of these applications the appellant sought execution of a decree for rent obtained by him against the respondents respectively as the person or persons holding certain tenancies in four different mouzas of his zemindary. These decrees had been obtained *ex parte*: in the plaints and in the decrees the tenancies were described as "tenures," and by his execution proceeding in each case the appellant, on the footing that the tenancies were tenures within the meaning of the Chota Nagpur Tenancy Act, 1908 (herein

called "the Act"), applied for the sale of the tenancy under the provisions of section 208. Each tenancy was described by its boundaries and by its area as disclosed in the record of rights and was further described as "held in pradhani right." The terms of section 208 under which these applications claimed to come, are that when a decree is for an arrear of rent due in respect of a tenure or holding the decree holder may apply for the sale of such tenure or holding and the tenure or holding may thereupon be brought to sale in execution of the decree; provided that the Commissioner may by order in any case in which he may consider it desirable so to do prohibit the sale of any tenure or portion thereof or stay any such sale. The Deputy Collector dismissed the applications, holding that a pradhani was not saleable, but an appeal to the Judicial Commissioner (Mr. Najabat Hussain) having been taken in each of the four cases (and in six others which are not now in question) that decision was reversed (29th September, 1934), it being held that "there is no provision in the law which prevents a pradhani right or the interest of a village head-man being sold for arrears of rent in respect thereof."

The tenants in the ten cases appealed to the High Court which used its powers under O. 41, r. 25, C.P.C. On 24th September, 1935, it directed the Judicial Commissioner to take evidence and report his findings upon the following issue:—

"Whether the pradhani in each of the ten cases before us is liable to be sold in execution of the rent decree either under the custom prevailing in the locality or under the law enforced in that district."

This issue was tried by Mr. W. W. Dalziel, District Judge, as Judicial Commissioner. The evidence produced before him for the tenants consisted of the record of rights prepared at the last survey and settlement under chapters XII and XV of the Act and the Settlement Report of Mr. J. Reid, I.C.S., the officer who had made the settlement in Dhalbhum during the years 1906 to 1911. Evidence on behalf of the appellant was given by five witnesses, whose evidence was supported by production of a large number of pradhani pottahs and kabulyats; also of registered sale deeds showing numerous instances in which pradhani tenancies had been sold.

On the evidence as a whole Mr. Dalziel came to the conclusion that the practice of selling pradhani tenancies for arrears of rent had begun about 1906 and not earlier, and that it was due to the action of ijaradars, from whom a capital sum had been raised by the proprietor in 1904 on the terms of a lease for 25 years, and whose agents "were neither familiar with the local system of land tenure nor particularly interested in preserving it." He found that the ancient custom of the Dhalbhum estate is that on non-payment of rent the pradhans are ejected and others appointed in their places by the zemindar; that the pradhan's rights are not sold in execution or by private sale; and that they do not come within the definition of tenures so as to be liable to sale under the

Act. In six of the ten cases before him he held that the original customary incidents of the tenancy were no longer in force and that they were liable to be sold in execution for arrears of rent. But as regards the four tenancies now in question—the names of the villages are Kalajhore, Bankata, Mauda, Kuldiha—notwithstanding that the pradhans were Hindus and not aboriginals as previous pradhans had been, he held that each was “a genuine pradhani” and was not liable to sale for arrears of rent, the only remedy of the zemindar being to remove the pradhan. He arrived at these findings on the basis of the *satwalipis* or records of pradhani rights prepared under chapter XV of the Act and made conclusive evidence by section 132.

In the six cases in which the tenancy had been held by Mr. Dalziel to be saleable, the tenants' appeals were not persisted in before the High Court and were dismissed. But in the four cases now before the Board, Noor J. (with whom Saunders J. agreed) held that the pradhans were not saleable and restored the order made by the Deputy Collector at first instance. The view taken by the learned Judge was that the pradhans are a sort of tenure-holders and come within that class under some provisions of the Act; but that their treatment in the Act and their rights as recorded in the *satwalipis* show that they are not tenure-holders pure and simple, but are something more and form a distinct class by themselves. He pointed out—according to the *satwalipis* of these four villages—that the rate of rent at the time of a fresh settlement is not merely in the landlord's discretion; that the pradhan and the raiyats have rights in jungle lands not included in the area of the pradhani; that the pradhani is not transferable or divisible by the pradhan; that in no case is any mention made of a right of sale for arrears of rent though the landlord's remedy of ejectment is noted; and in no case is it said that the landlord has a right to hold the village *khas*. As the places of the original pradhans had been taken by new-comers, he thought that these latter pradhans came within the second of the three classes mentioned by Mr. Reid in his Settlement Report—viz., (1) khuntkatti pradhans, (2) non-khuntkatti pradhans with heritable rights, (3) non-khuntkatti pradhans with non-heritable rights. The pradhani right in these four cases he described thus:—

“The right is independent of the pradhan being a khuntkattidar so long as the incidents of the tenancy are the same. Cases may happen in which a pradhan is removed and in his place another man is appointed but the new man will be clothed with all the rights and liabilities of his predecessor and will hold the tenancy with all the incidents appertaining to it. He will not become a tenant of a different class altogether.”

His careful characterisation of the four tenancies led the learned Judge to conclude that though the pradhans are tenure-holders in their relation to the superior landlord they are also his permanent agents for certain purposes, e.g., the supply of grain for troops (*rasad*); they are landlords of the raiyats of the village and also their headmen and holders of

an office, and are in this capacity their representatives. The right and interest of the raiyats having been recognised by section 74A (introduced into the Act in 1920) the learned Judge considered that "a right in which third persons are interested cannot be sold behind their back section 74A makes it impossible for me to hold that pradhani rights are saleable." He rejected the argument that section 74A applies only to Mundari khuntkattidars. He rejected also the contention that, as these villages are shown by a document of 1788 not to have been then in existence, the tenancies cannot be governed by custom. He agreed with Mr. Dalziel in holding that no custom had been established of a liability to sale in execution of a rent decree: in any case he thought such a custom would be bad "as saleability is by necessary implication inconsistent with section 74A of the Act." But he acknowledged that his decision would place a great impediment in the way of the landlord getting his rent as ejectment is not an adequate remedy.

Their Lordships see no reason to differ from the High Court's finding that these four tenancies are genuine pradhanis with customary incidents, and that they are not outside the scope of section 74A, each being "a tenancy which in accordance with custom is held by a village headman." In their Lordships' view it is reasonably clear that the Act recognises such customary tenancies apart altogether from its provisions as to Mundari khuntkattidars who are specially defined by section 8 and regulated by chapter XVIII of the Act. The original Mundari village system had before 1908 been the subject of careful research and a valuable memorandum upon it, written by the Rev. Father J. Hoffman S.J. and Mr. E. Lister, I.C.S., had been printed in an edition of the Act of 1879 (Ben. Act I of 1879) prepared by a member of the Indian Civil Service, later known as a learned Judge of the Calcutta High Court (Sir Herbert Carnduff). The position of the Mundaris had attracted attention at the time of the amending Act of 1903 (Ben. Act V of 1903), as Mr. Reid has pointed out in his edition of the Act of 1908 (cf. p. 185). In that work the notes to section 37 contain a description of villages such as the Board is here concerned with, showing that they are of a later and somewhat different origin from the Mundari village, prospering or decaying under different influences. The original Mundaris would appear to have had no ideas of individual ownership in land and it is unnecessary to go beyond the provisions of the Act itself to discover that among Mundaris the tenancy may still be in the whole group or brotherhood (section 240 (5)). Independently of such Mundari villages as they exist more or less intact in the Ranchi district, the Act in section 37 and in its references to village headmen is dealing with khuntkattidars throughout Chota Nagpur. As regards the particular estate of Dhalbhum, their Lordships would refer to what was said in *Raja Jagadish Chandra Deo Dhabul Deb v. Shankarahan Bhumi* (1936) I.L.R. 15 Patna 488, by Macpherson J.—a learned Judge of special experience and authority in this matter. He referred to "the

commonplace that the system of village headman is universal among aboriginals in each of the three great estates, Porahat, the Government Kolhan and Dhalbhum which make up the district of Singhbhum; and Dhalbhum is a part of the tribal area of the Bhumijis." In these circumstances it is clear that the fact that a village was first cleared and cultivated at some date later than 1788 is no reason why it should not be governed by a custom of pradhani (cf. *Raja Jagadish Chandra Deo Dhabal Deb v. Mirza Santal* (1937) I.L.R. 17 Patna 110).

But learned counsel for the respondents before the Board appreciated the difficulty of contending that a tenancy if it be the interest of a tenure-holder within the meaning of section 5 is not made saleable by section 208. The reliance placed by the High Court on section 74A, which was not introduced into the Act until 1920, does not seem to their Lordships to be warranted. Its terms seem rather to be addressed to the case in which the pradhan has been evicted by the landlord but, either no other person has been given the tenancy, or else it has been given to someone who is not suitable to hold it, having regard to its customary character. It seems to be the case that sales of such tenancies under rent decrees had been going on since 1906 or 1910 and if it had been intended to abrogate the practice by legislation in 1920, the amendment could hardly have taken the form of section 74A, which is plainly inapt for that purpose. Their Lordships are not of opinion that the case of purchase at execution sale by a third party comes within its terms, and in no view of the matter does it seem right to hold that the amendment of 1920 had the effect of taking away an existing right conferred by section 208. Acknowledging the force of this consideration, Mr. Tucker for the respondents contended before their Lordships that the pradhans in these four cases were not tenure-holders within the meaning of the Act. He maintained that they were not within the definition given by section 5, though he agreed that the pradhani is undoubtedly a tenancy and the pradhan a tenant as these words are used in the Act. He insisted upon the anomalous character sustained by the customary village headman as described in paragraphs 74-83 of Mr. Reid's Settlement Report:—

"The headman is the representative of the village community in all its external relations but he is also a chief resident raiyat. He is in fact a tenureholder or landlord, a village official and a raiyat. As landlord he collects the rents and settles the village lands with the raiyats: as a village official he is responsible for the supply of *rosad* and transport to troops and officials on tour; he is bound to prevent bad characters from settling in the village, to report offences at the thana, and to see to the repair of the tanks and *bandhs*, the preservation of the jungle, and to guard against waste. As a raiyat he cultivates his own khas lands and pays rent for them at village rates as an occupancy or *khuntkatti* raiyat. He can reclaim new lands himself and can also acquire *khuntkatti* or occupancy rights in them. The Legislature has now definitely recognised this custom by providing that there is no bar to the acquisition of occupancy rights by any village headman, who by local usage or custom has a right to acquire the same (s. 20 (3))."

Observations of Macpherson J. in the case already cited have been stressed as part of the same argument:—

“As to the headmanship itself, it is generally difficult or impossible to describe it in ordinary legal terms. Indeed attempts in that regard in regard to Chota Nagpur institutions have been attended with so much peril that the Legislature in desperation described the Mundari Khuntkattidari tenancy as ‘neither a tenure nor a holding.’ But whether the headmanship is an office with a tenancy annexed or is a tenancy with an office conjoined or whatever it is, it is always exceedingly inexpedient to attempt to interpret it in terms of ideas alien to the environment the only safe course being to get the facts clear and in close detail for an estate first and then for the particular village.” (I.L.R. 17, Patna, at pp. 498-9.)

Their Lordships fully approve these observations as to method. The four tenancies with which they are concerned differ but little and it will suffice that one of them—the Kalajhore tenancy—be chosen for consideration in detail. But when that has been done the question to be answered is not how it should have been described but how the Legislature has dealt with such a tenancy. It may or may not have employed alien ideas. The solution must depend upon the exact language which it has employed and the definitions which it has given as a guide to its meaning. Their Lordships will not omit to consider any relevant provision of the Act, but as section 5 is on any view the crucial section, it may be first set out:—

“5. Tenureholder means primarily a person who has acquired from the proprietor or from another tenureholder a right to hold land for the purpose of collecting rents or bringing it under cultivation by establishing tenants on it; and includes

“(a) the successors in interest of persons who have acquired such a right; and

“(b) the holders of tenures entered in any register prepared and confirmed under the Chota Nagpur Tenures Act, 1869;

but does not include a Mundari khuntkattidar.”

The record of the pradhani rights in the village of Kalajhore was published in 1909 and shows that the pradhan is Hriday Mahato; that he is a Hindu of kurmi caste and resident in the village; that he holds under a pottah dated 11th October, 1904; that the term of the pottah was for twelve years; that he has a right to a renewal at a rate to be fixed by arbitration or by law unless he has broken the stipulations of the pottah; and that settlement would be made with him or with his heir if considered a fit person. Any jote which has been abandoned must be settled by the pradhan with a tenant of the village and only if no such tenant will take settlement can the jote be held by the pradhan or settled with a tenant from another village. The tenants of the village may reclaim the jungle and waste without sanction from the zemindar or the pradhan, and for settling newly reclaimed lands or an abandoned jote the pradhan is to take no premium. For newly reclaimed lands the tenant need pay no rent for five years: thereafter he is to pay at half rate only until a new settlement is made. The assessed rents of cultivated lands are to be enjoyed by the pradhan till a fresh settlement is made. The pradhan's rent

cannot be enhanced and will not be reduced till a new settlement. He can be ejected for non-payment of rent, for violating the terms of the pottah, for realising rent in excess of the fixed rent, and (but not without the aid of the Court) for unfitness. The pradhani rent had been enhanced under section 85 (2) of the Act with effect from 1911 from about 50 rupees to over 80 rupees. The pradhan held no lands free of rent but held certain lands in raiyati right. He had the right to hold these even if dismissed from the pradhani. He had a right to renewal of his pradhani which was heritable and which existed in the absence of any pottah. The zemindar could only settle it with others if the pradhan or his heir refused to take settlement at the prevailing rate. The pradhan had no right to divide the pradhani or to transfer it by way of sale or mortgage or otherwise and no right to entrust others with his duties. Among the stipulations of the pottah is one that he will take care of the jungles, fruit-bearing and other trees, *bunds* and tanks within the boundaries of the mouza. The cultivating tenants were to take certain classes of wood on payment of certain rates and also reeds for thatching and were to be paid for fetching straw, bamboo or wood for the zemindar. The pradhan was to report any crime to the police and the zemindar, and was to arrange for rations for any troops within the area. For taking excess rent from tenants or for failing to pay his rent to the zemindar he was liable to be dismissed, but not during the term of the pottah without the aid of the Court. The pottah is called a "pradhani pottah for a term."

In the *khewat* the zemindary interest is entered as No. 1, and the ijaradar company, entered as No. 2, are treated as holding an area of 2,007 bighas. The pradhan, Hriday Mahato, is shown as holding under the ijaradar an area of 365 bighas, though the pottah of 1904 gives 178 bighas as the area.

In the *maliki khatian* the pradhan's name is entered in the column headed "name of landlord" and the various raiyats under "name of tenant" including that of the pradhan himself in respect of his own raiyati.

This being the character of the tenancy when examined in close detail, their Lordships think it to be plain *prima facie* that it is the interest of a person who has acquired from the proprietor a right to hold land for the purpose of collecting rents. If so, it satisfies the conditions which according to the Act make it a tenure as that word is used in the Act. Though the raiyats of the village are entitled to clear jungle not within the area of the tenancy and to do so without the pradhan's consent, yet it is from the pradhan and from him alone that they can take settlement. This process may perhaps not be described with exactness as bringing land held by the pradhan under cultivation by establishing tenants on it, but both of the purposes mentioned as alternative need not be present; and if the land of his tenancy is held by the pradhan for the purpose of collecting rents, he is not taken out of the definition of tenureholder by reason that he has

a right to settle tenants on newly-reclaimed waste and thus to increase the area of his tenancy. This is a valuable right incident to his tenancy in the lands he holds. It was suggested that as villages were often cleared by their aboriginal founders without the consent of anyone, the pradhan of Kalajhore had not acquired his right to hold land "from the proprietor," but their Lordships cannot accept this view. It seems to them that the customary right of the pradhan is acquired from the proprietor who pays land revenue for the whole of his permanently settled estate. *Prima facie*, therefore, they are unable to refuse to the pradhan of Kalajhore the character and position of a tenure-holder or to disagree on this point with the learned Judges of the High Court; or with Mr. John Reid, whose view has been already quoted from his Settlement Report; and is also to be found in the notes to section 37 in his edition of the Act (cf. p. 38) where he says of such a pradhan that "he is technically a tenure-holder."

But it is only reasonable to consider the bearing of other sections of the Act before arriving at a final view: all the more so as one Judicial Commissioner (Mr. Dalziel) in the present case and a Bench of the Patna High Court in *Tata Iron and Steel Co., Ltd. v. Raghunath Mahto*, A.I.R., (1918) Patna 392, 394, have taken a different view of the matter. In the latter case the opinion was expressed by Atkinson J. in a case which raised the question whether a suit by the pradhan's landlord to eject him from his lands and also his office was within section 139, clause 6, as it then stood. The area of the tenancy was small, being about 64 bighas, and a question arose whether it was a raiyati. In rejecting that view, Atkinson J. said, "We think the defendant occupies the position of a quasi-service tenure-holder, that he is a tenure-holder of a kind; but certainly not one within the definition of the Chota Nagpur Tenancy Act." Their Lordships will consider section 77 of the Act in due course, but they do not find it easy to appreciate why the holder of such a tenancy as is now before them is outside the definition of tenure-holder given in section 5, especially if he be a "tenure-holder of a kind" for the purposes of the Act. If the *khewat* of Kalajhore be examined it is seen to give the name of the "interested person" the party under whom he holds and the nature of his rights (cols. 2, 3 and 4). Under section 80 (3) the record of rights is to be prepared in the prescribed manner and under section 81 (b) the class to which each tenant belongs is one of the things which may be ordered to be stated. The function of the *khewat* (cf. rule 12 of the Notification dated 9th November, 1909, given in Mr. Reid's edition of the Act, pp. 97, 209), is to "show the character and extent of the interests of proprietors and tenure-holders such of their interests as are of a raiyati nature being also recorded in the *khatian*." The cultivating tenants of the village are shown in the *maliki khatian* as holding under Hriday Mahato the pradhan, the person numbered 3 in the *khewat*. Unless Hriday Mahato be a tenureholder within the meaning of the Act, what is their position? The Act makes

the widest difference between a raiyat and an under-raiyat greatly to the advantage of the former. By section 6 (2):—

“ a person shall not be deemed to be a raiyat unless he holds land immediately under a proprietor or immediately under a tenureholder or immediately under a Mundari khuntkattidar.”

While the *khatian* shows that a number of the village tenants are Bhumijis it does not show which of them, if any, have khuntkatti rights, but unless the pradhan of such a village be a tenureholder the cultivators would not be raiyats at all and the provisions of section 7 of the Act would be inapplicable—in other words a main provision for the benefit of the aboriginal cultivators if descended from the original founders of the village would have no effect in such a village as Kalajhore. The word “primarily” in section 5 may or may not assist to show that persons may be tenureholders within the meaning of other provisions of the Act though not within the definition; but to narrow the definition is made more rather than less difficult by the use of the word primarily. The particular problems of the land system in villages which had been originally reclaimed by aboriginals are not only touched upon in sections 5 and 6 by the reference to Mundari khuntkattidars but figure prominently in section 7 which deals with raiyats having khuntkatti rights. It is thus difficult to imply an exclusion of pradhans if once it be found that they are within the terms of section 5. In the Act as it was passed in 1908 section 74 did indeed begin: “When a tenure-holder village headman or raiyat has been in occupation of a tenure or holding,” but this only confirms the view that the village headman will either be a tenureholder or a raiyat. The Act of 1920 in sections 9A, 51A, which are concerned with enhancement of rent speaks of “tenureholder or village headman” and of “tenureholder, village headman or raiyat,” but whatever be the explanation of this choice of words, it can hardly be supposed to have altered the Act in a fundamental respect by implication.

In the result their Lordships must conclude not only that Noor J. was right in thinking that pradhans are a sort of tenureholder and come within that class under some provisions of the Act, but also that so far as regards villages in Dhalbhum such as Kalajhore it is an essential feature of the technique of the Act that the pradhan is a tenureholder: though it has been thought to be in the interest of the raiyats to deny him this position, their Lordships are satisfied that it is neither possible nor in the interest of the raiyats so to do.

It is necessary therefore to consider whether if the pradhan be a tenureholder he can be held exempt from the liability to have the tenure sold in execution of a rent decree under section 208. Under section 65 of the Bengal Tenancy Act, which applies to those tenures only which are permanent, the remedy of eviction is denied to the landlord and the right to sell the tenure in execution is closely connected with the doctrine that the rent is a first charge on

the tenure. Under the Act of 1908 section 60 may have some bearing upon the application of section 208, but it is unnecessary to discuss the question. The saleability of tenures generally in execution of rent decrees was introduced by the Act of 1903 and general considerations of the interests of raiyats as a matter of public policy cannot be allowed to interfere with direct provisions of the Act. If the village land system hinges upon the pradhan, it may well be that his default in payment of rent will redound to the disadvantage of those who are holders of interests under him and in great measure dependent upon his properly discharging the obligations of his tenure. As a legal principle, to say that "a right in which third persons are interested cannot be sold behind their back" is too broad if it be made to cover "interests" which are not recognised by law as proprietary interests vested by law in the raiyats as against the zemindar or as legal duties owed to the raiyats by the zemindar. An examination of the incidents of the pradhani tenure at Kalajhore discloses no basis in law for the application of the principle.

On the question of custom it is plain that the appellant is under no necessity to make out any custom of saleability but relies upon the Act. On the other hand, no custom has been made out by the respondents which would take the tenancy out of the category of "tenure." Section 76 is of no service to them. They cannot succeed upon the footing of a custom contrary to the provisions of the Act as to the methods of enforcing a rent decree; nor indeed have they proved more than that landlords, where it was open to them to evict at their own hand for non-payment of rent, used in former days to employ this remedy. It need not here be considered whether before 1903 it would have been open to a zemindar to have a pradhani sold in execution of a rent decree.

There remain only two further lines of defence—first that the tenancy of the pradhan is a service tenure, and, secondly, that to sell the pradhani right would be to sell more than the tenure and in particular to sell a right to personal service contrary to clause (e) of section 186 of the Act.

On the first point, which is of importance in view of section 77 of the Act, their Lordships are of opinion that the pradhani in such a case as Kalajhore is not a service tenure. In previous cases before the Board it has been noticed that service tenures—*chakaran* lands—vary greatly in character and importance. The lowest class is held by minor officers of the zemindar whom he appoints and with whose services he could dispense, resuming the lands for the purpose of imposing upon them a suitable rent [*Raja Lelanund's* case 1855 6 M.I.A. 101. *Ranjit Singh v. Kali Dasi Debi* 1917 L.R. 44 I.A. 117, 121. *Secretary of State v. Jyoti Prashad Singh* 1926 L.R. 53 I.A. 100, 110]. But among service tenures must also be ranked lands held on terms of performing public services whether of a police or military character—in addition it may be to services personal to the zemindar. Certain types of *chowkidari chakaran* lands

come within this class. In the highest class of service-tenure-holder stands the ghatwal—"a great proprietor who in his day was a veritable warden of the marches." His services being in part of a military character in which the public interest is plain, such tenures have long been held to be inalienable [*Nilmoni Singh v. Bakranath Singh* 1882 L.R. 9 I.A. 104] though a local custom has been held valid in Kharakpur [*Pershad Singh v. Anund Roy* 1887 L.R. 15 I.A. 18] whereby alienation is permitted if sanctioned by the zemindar. But as was noticed by Lord Sumner delivering the judgment of the Board in *Narayan Singh v. Niranjana Chakravarti* 1923 51 I.A. 37, 50, even within the range of the term "ghatwal" the utmost variety of conditions may exist. There is no question here of the pradhan having a mere personal contract for employment for wages which take the form of the use of land. But if the pradhan's interest in his tenure is to be held unsaleable because it is a service tenure in the proper sense of that expression and because in the discharge of the duties of the office the public interest is involved, it is necessary first to show from the pottah and the record of rights that it is a service tenure. The observations of Jackson J. in *Koolodeep Naram Singh v. Mahadeo Singh*, 1866, 6 W.R. 199, 209, approved by the Board in *Forbes v. Meer Mahomed Tuquee*, 1870, 13 Moo. I.A. 438, 464 are in point: "There is a clear distinction between the grant of an estate burdened with a certain service and the grant of an office the performance of whose duties are remunerated by the use of certain lands". And in the judgment already cited the Board made it clear (L.R. 51, I.A. 37, 70) that in the case of a ghatwali such as *Handwa* "the service is not a mere burden on the land; it constitutes a personal right in so far as the land held on that condition is concerned, and a personal obligation in so far as concerns the grantor, which, being in the nature of a public obligation, cannot be waived by the grantor for his own advantage, nor, being in the nature of a title to the lands, can be relegated to desuetude for the mere disadvantage of the ghatwal." Of the pradhanis in the present case it may be said that the pradhan represents the village and is the leading man in a very useful sense, forming the point of contact with outside authority. It may well be that as time goes on more duties will gradually be cast upon him in the interest of good administration. But his land is not held by him in virtue of an office and as remuneration for the performance of its duties. His services, as disclosed by the pottah and *satwalipi* are minor duties on behalf of his landlord, either taking care of the jungles and trees, or providing *rasad* and reporting crimes, which are part of the landlord's original responsibility. It is true that the Act makes express mention of the pradhan's right to his office as well as his land (sections 14 (1) (e), 127 explanation, 139 (b), and 238), and the difficulty arising from the conjunction of the office and the tenancy is not to be denied. Yet there is here nothing like the grant of an office remunerated by lands granted to be held in virtue thereof. The office would rather appear to arise out of the position

of the pradhan as tenant of the zemindar and landlord of the raiyat. On eviction from the land he has never been regarded as retaining the office; as indeed is shown by the language of section 74A itself. If their Lordships were to hold that customary pradhanis in Dhalbhum were service tenures they would be depriving the pradhans of the protection given by section 68 of the Act against eviction without the order of a Court, as section 77 would override it. Whether the duties of the pradhan are "praedial conditions" within the Act (section 3 (xix) and chapter XII) need not here be determined, as their Lordships are not of opinion that a decision on this point is necessary for determining the question whether the tenure is a service tenure.

The right of sale in execution of a rent decree is a right in the landlord less burdensome to the tenant than eviction: the indirect effect on other people may not be so light in view of the terms of the amendment introduced into the Act in 1920. But as no such amendment has as yet excluded the pradhani from the general liability of tenures to be brought to sale, and as there exists in the Commissioner a general right to prohibit or stay the sale of a tenure, the terms of section 208 cannot be modified merely upon a consideration of the social or economic merits of its provisions.

The remaining objection is that the pradhani cannot be sold as the sale would be of a "right of personal service" (section 186 (e)). These are the same words as are found in section 60 (f) of the Civil Procedure Code and the Indian decisions appear since *Ganesh v. Shankar* (1886) I.L.R. 10 Bom. 395, to have interpreted the words as including the right of a person to give service and not only the right to receive service. Whether these decisions are in this respect correct may be a question, but it is one which need not here be entered upon. The sale of the tenure would not be bad as the sale of a right on the part of the pradhan to render personal service to the zemindar. It would be the sale of the tenancy with all its incidents—a subject-matter very different from a valuable right to perform certain ceremonies for reward or to discharge certain functions which are held in estimation. The same answer appears to their Lordships to apply to the objection that the sale of the pradhani would be the sale of something more than the pradhan's interest in the land of his tenancy. His right to have the area increased as jungle is cleared and cultivated by the raiyats is only an incident of his tenure and if he fails to perform his duty to pay rent the existence of other duties towards the zemindar is no reason to bar a sale if the zemindar is otherwise entitled to such remedy.

Their Lordships will humbly advise His Majesty that this appeal be allowed, that the order of the High Court be set aside, and that of the Judicial Commissioner (Mr. Najabat Hussain) dated 29th September, 1934, be restored. The respondents must pay the appellant's costs of this consolidated appeal and each of the four sets of respondents must pay to the appellant his costs of the appeal brought in the High Court in respect of the tenancy in which they were respectively interested, such costs to be apportioned according to value in the manner indicated by the High Court.

In the Privy Council

JAGADISH CHANDRA DEO DHABAL DEB

v.

DEBNATH MAHTO

SAME

v.

NANDA KUMAR MAITY AND ANOTHER

SAME

v.

ISWAR CHANDRA MANNA

SAME

v.

CHINTAMANI UPADHAYA

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