1962

Vijay Pratap Singh v. Dukh Haran Nath Singh

Shah J.

Court had ordered that the hearing of the appeals be expedited and heard on cyclostyled record but the record was not made ready for a long time. We also find that a large number of documents were included in the books prepared for use of the court to which no reference was made at the Bar during the course of the hearing. We trust that the case will be taken up for hearing with the least practicable delay and disposed of according to law.

The appellants in the two appeals will be entitled to their costs both in this Court and the High Court. The costs of the trial court will be the cost in the cause.

Appeals allowed. Cases remitted.

1962

January 19.

THE LODNA COLLIERY CO. LTD.

v.

BHOLA NATH ROY

(B. P. SINHA, C. J., P. B. GAJENDRAGADKAR and RAGHUBAR DAYAL, JJ.)

Lakhraj land—Permanently settled—Owners' right to sub-soil minerals.

The question arising for decision was whether a person with whom a resumed invalid Lakhraj (revenue free) land was permanently settled had rights in the sub-soil minerals or not.

Held, that the right of property of the persons with whom resumed invalid Lakhraj land had been settled, being the same as of the Zamindars, extended to the sub-soil minerals of the land held by them.

Ranjit Singh v. *Kali Dasi Debi* (1917) L.R.44 I.A. 117, referred to.

Hari Narain Singh v. *Sri Ram Chakrabarti* (1910) L. R. 37 I.A. 136, *Durga Prasad Singh* v. *Braja Nath Bose* (1912) L.R. 39 I.A. 133. *Sashi Bhusan Misra* v. *Jyoti Prasad Singh Deo*, (1916)L.R.44 I.A.46 and *Raghunath Roy Marwari* v. *Raja of Jheria*, (1919) L.R. 46 I.A. 158, held not applicable.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 405 of 1956.

Appeal from the judgment and decree dated September 11, 1952, of the Calcutta High Court in Appeal from Original Decree No. 162 of 1949.

M.C. Setalvad, Attorney General for India, B. Sen, S. N. Mukherji and *B. N. Ghosh,* for the appellant.

N. C. Chatterjee, J. C. Ghose, S. P. Ghose, and *P.K. Chatterjee,* for the respondents.

1962. January 19 The judgment of the Court was delivered by

Raghubar Dayal J.

RAGHUBAR DAYAL J.—This appeal on a certificate granted by the High Court at Calcutta, raises the question whether the person with whom a resumed invalid Lakhraj (revenue free) land was permanently settled has rights in the sub-soil minerals or not. The necessary facts are briefly these :—

The plaintiffs are the proprietors of the land in suit in C. S. Khatian No. 611 and Sub-Khatians Nos. 612 and 613 of village Sripur in Touzi No. 2597 of the Burdwan Collectorate.

The Maharaja of Burdwan is the proprietor of the lands in village Sripur appertaining to Touzi No. 12 of Burdwan Collectorate. He let out those lands to the Pals and Goswamis of Sripur in Putni right. The Putnidars also took coal mining lease of those lands from the Maharaja and, thereafter, both the Maharaja and the Putnidars granted the coal mining lease of those lands to one P. K. Chatterji of Ikrah who, in his turn, granted a sub-lease of the same to Messrs. Lodna Colliery Co. Ltd., the predecessor-in-interest of the defendant company, the Lodna Colliery Co. (1920) Ltd.

A portion of the lands in suit subsided and on enquiry the plaintiffs found that the defendant company had cut away a large quantity of the

1962

The Ledna Colliery Co. Ltd.
v.
Bhola Nath Roy

Raghubar Dayal J.

underground coal from the lands in suit. It is on account of such unjustified conduct of the defendant company that the plaintiffs, on the basis of their proprietary right, used for the recovery of damages for coal wrongfully taken away by the defendant from the land in suit and for other wrongs. The defendant company contested the suit and denied the plaintiffs alleged rights on the ground, *inter alia*, that the plaintiffs had no title to the sub-soil of the land in suit and consequently to the coal. The contention really is that the land in suit had been permanently settled with the plaintiffs after it had been resumed as invalid Lakhraj land and that such settlement conferred no better rights than what they originally possessed on account of the land in suit being granted to their predecessors-in-interest under Brahmottar and Debutter grants, the grantees under which had no rights in the sub-soil of the land granted.

The Trial Court held that the invalid Lakhraj tenure in the land in suit in favour of the predecessors-in-interest of the plaintiffs was resumed by the Government under the provisions of Regulation II of 1819 and, thereafter, was permanently settled with them at the fixed revenue and that therefore the plaintiffs had right to the minerals under the soil of the land settled with them. It accordingly decreed the suit in part and the decree was confirmed by the High Court.

It is contended for the appellant that the person with whom resumed invalid Lakhraj land had been settled has no rights in the sub-soil. The respondents rely on the provisions of the Regulation enacted by the Governor-General in Council in support of their claim to the sub-soil in such land held by them.

The Governor-General in Council passed a number of Regulation on May 1, 1793. We shall first consider Regulation XIX of 1793.

Regulation XIX of 1793 was made for re-enacting with modifications the Rules passed by the Governor-General in Council on December 1, 1790, for trying the validity of the titles of persons holding, or claiming a right to hold, lands exempted from the payment of revenue to Government, under grants and for determining the amount of the annual assessment to be imposed on lands so held which might be adjudged or become liable to the payment of public revenue. The preamble makes it clear that the Regulation was creating an agency for determining the title of the proprietors of land who claimed to hold it free from the liability to pay revenue on account of certain grants, that from time to time the British Government has declared all grants for holding land exempt from the payment of revenue without their sanction since the date of the accession of the East India Company to the Diwani on August, 12, 1765, illegal and void and that no such exempted land was to be made subject to the payment of revenue until the titles of the proprietors had been adjudged invalid by a final judicial decree. It is to be noticed that the persons who laid claims to hold the land exempt from the payment of revenue were referred to as proprietors.

Section II, Clause First, deals with the grants of alienated land made previous to the 12th August 1765, the date of the accession of the East India Company to the Diwani, and lays down that such grants would be deemed valid provided the grantee actually and bonafide obtained possession of the land or granted and the land had not been subsequently rendered subject to the payment of revenue.

Section III, Clause First, declares invalid all grants for holding land exempt from the payment of revenue made between the 12th August, 1765 and 1st December, 1790 by any authority other than that of Government and which had not been

1962

The Lodna Colliery Co. Ltd. v. Bhola Nath Roy

Raghubar Dayal J.

confirmed by Government or by any Officer empowered to confirm them.

Section IV is significant for our purpose and reads :

> "This Regulation, as far as regards lands alienated previous to the 1st December 1790, respects only the question whether they are liable to the payment of revenue or otherwise. Every dispute or claim regarding the proprietary right in lands alienated previous to that date, and which, in conformity to this Regulation, may become subject to the payment of revenue, is to be considered as a matter of a private nature to be determined by the Courts of Diwani Adalat in the event of any dispute or claim arising respecting it between the grantee and the grantor or their respective heirs or successors. The grantees, or the present possessors, until dispossessed by a decree of the Diwani Adalat, are to be considered as the proprietors of the lands with the same right of property therein as is declared to be vested in proprietors of estates or dependent taluks, (according as the land may exceed or be less than one hundred bighas, specified in sections 6, 7 and 21,) subject to the payment of revenue, and they are to execute engagements for the revenue, with which their lands may be declared chargeable, either to Government or to the proprietor or farmer of the estate in which the lands may be situated, or to the officer of Government, (according as the revenue of the estate in which the land may be situated may be payable by the proprietor or a farmer, or collected khas) under the rules for the decennial settlement. If by the decision of the Diwani Adalat the proprietary right in the land shall be transferred, the person succeeding thereto is in

like manner to be responsible for the payment of the revenue assessed or chargeable thereon."

It is clear from this section that the Regulation simply dealt with the question about the liability of certain lands to the payment of revenue and provided that any dispute about proprietary right between the grantees and the grantors would be a matter of a private nature to be decided by the Courts of Diwani Adalat. It, however, definitely provides that the grantees or the then possessors of land, until dispossessed by a decree of the Diwani Adalat, are to be considered as the proprietors of the lands with the same right of property therein as is declared to be vested in proprietors of estates or dependent taluks according as the land may exceed or be less than one hundred bighas subject to the payment of revenue. Such proprietors of land were to execute engagement for revenue with which their lands may be declared chargeable, either to the Government or to the proprietor or farmer of estates in which the lands be situated.

The grantees of invalid Lakhraj lands therefore had the same right of property in that land subject to the payment of revenue, as had been declared to be vested in the proprietors of estates. If the zamindars, the proprietors of estates, have rights not only over the surface of the land but in the subsoil as well, the persons whose grants had been held to be invalid and who were held to be liable to pay land revenue also possessed right in the sub soil of the land settled with them.

Now, Regulation VIII of 1793, also passed on May 1, 1793, re-enacted with modifications and amendents the Rules for the Decennial Settlement of the public revenue payable from the lands of the zemindars, independent talukdars, and other actual proprietors of land in Bengal, Bihar and

1962

The Lodna Colliery Co. Ltd. v. Bhola Nath Roy

Raghubar Dayal J.

Orissa, passed for those Provinces respectively on September 18, 1789, November 25, 1789 and February 10, 1790, and subsequent dates. Section IV provided that the settlement, under certain restrictions and exceptions specified in the Regulation, shall be concluded with the actual proprietors of the soil, of whatever denomination, whether zemindars, talukdars or chaudhris. It follows that the zemindars with whom settlement took place, were recognized as the actual proprietors of the soil. The settlement of revenue so made was made permanent by s. IV of Regulation I of 1793.

Regulation I of 1793 enacted into a Regulation certain Articles of a Proclamation dated March 22, 1793. Section I of this Regulation states that the various articles of the Proclamation were enacted into a Regulation and that those articles related to the limitation of public demand upon the lands, addressed by the Governor-General in Council to the zemindars, independent talukdars and other actual proprietors of land paying revenue to Government in the Provinces of Bengal, Bihar and Orissa.

By Section IV it was declared to the zemindars, independent talukdars and other actual propietors of land, with or on behalf of whom a settlement had been concluded under the Regulations mentioned earlier, that at the expiration of the term of settlement no alteration would be made in the assessment which they had respectively engaged to pay, but that they and their heirs and lawful successors would be allowed to hold their estates at such assessment for ever.

The preamble to Regulation II of 1793, which abolished the Courts of Mal Adalat or Revenue Courts and transferred the trial of suits cognizable in those Courts to the Courts of Diwani Adalat, stated, in connection with the proposed improvments in agriculture :

"As being the two fundamental measures essential to the attainment of it, the property in the soil has been declared to be vested in the landholders, and the revenue payable to Government from each estate has been fixed for ever.....The property in the soil was never before formally declared to be vested in the landholders, nor were they allowed to transfer such rights as they did possess, or raise money upon the credit of their tenures, without the previous sanction of Government."

It is thus clear from the above declarations that the zemindars, the proprietors of estates, were recognized to be the proprietors of the soil. Such a view was expressed by the Privy Council also in *Ranjit Singh* v. *Kali Dasi Debi* (1). It was said at page 122:

"Passing to the settlement of 1793, it appears to their Lordships to be beyond controversy that whatever doubts be entertained as to whether before the British occupation the zamindars had any proprietary interest in the lands comprised within their respective districts, the settlement itself recognizes and proceeds on the footing that they are the actual proprietors of the land for which they undertake to pay the Government revenue. The settlement is expressly made with the 'zemindars, independent talukdars and other actual proprietors of the soil': see Regulation I, s.3, and Regulation VIII., s.4. It is clear that since the settlement the zamindars have had at least a prima facie title to all lands for which they pay revenue, such lands being commonly referred to as malguzari lands."

The right of the zemindars to the sub-soil minerals under their land follows from their being

(1) (1917) L. R. 44 I. A. 117.

1962

The Lodna Colliery Co. Ltd. v. Bhola Nath Roy

Raghubar Dayal J.

proprietors of the soil and has been recognized in a number of cases between the zemindars and persons holding land under a tenure from them. It has been held in those cases that, in the absence of the right to sub-soil minerals being conferred on the tenure holder under the terms of the tenure held by him, he does not get any right to them.

The first such case is *Hari Narayan Singh* v. *Sriram Chakravarti*(1). The same view was expressed in *Durga Prasad Singh* v. *Braja Nath Bose* (2).

In *Sashi Bhushan Misra* v. *Jyoti Prashad Singh Deo* (3) Lord Buckmaster said at page 53, with regard to the above two cases :

> "These decisions, therefore, have laid down a principle which applies to and concludes the present dispute. They establish that when a grant is made by a zamindar of a tenure at a fixed rent, although the tenure may be permanent, heritable and transferable, minerals will not be held to have formed part of the grant in the absence of express evidence to that effect."

The fact that the tenure was rent free, makes no difference to this principle, as held in *Raghunath Roy Marwari* v. *Raja of Jheria* (4).

We are therefore of opinion that the right of property of the person with whom resumed invalid Lakhraj land had been settled, being the same as of the zemindars, extends to the sub-soil minerals of the land held by them.

Further, the plaintiffs trace their rights to the documents Exhibits 10, 2 and 6(a). Before dealing with them, we may refer to two other Regulations not so far mentioned.

Regulation II of 1819 modified the then existing Regulations regarding the resumption of reve-

(1) (1910) L. R. 37 I. A. 136. (2) (1912) L. R. 32 I. A. 133.
(3) (1916) L. R. 44 I A 46. (4) (1919) L. R. 46 I. A. 158.

nue of lands held free of assessment under illegal or invalid tenures. Its Section III declared that lands specified therein were liable to assessment in the same manner as other unsettled mahals and that the revenue assessed on all such lands would belong to Government. It laid down the procedure for enquiry claim of Government to assess such land and for assessment of revenue. Regulation III of 1828 made certain changes in the procedure, but contains nothing particular which would affect the determination of the question before us.

Exhibit 10 is the Robakari of the Deputy Collector of Burdwan, dated April 15, 1841, with respect to Touzi No. 2597. It is in pursuance of this order that permanent settlement was made with Madhusudan Roy and Sitaram Roy, predecessors-in-interest of the plaintiffs with respect to the land in suit. It appears from this Robakari that in proceedings between the Government as plaintiff and Manik Chandra Roy, Madhusudan Roy, Sitaram Roy and others as defendants, the claim of the Government, in accordance with the provisions of Regulation II of 1819 and Regulation III of 1828, in respect of the invalid revenue free land consisting of Brahmottar land measuring 156 bighas 10 cattahs and the Debutter land measuring 18 bighas 20 cattahs, in all 175 bighas, situated in village Pariharpur and other villages within Pergana Shergarh, was decreed in April 1837, with the result that that land was resumed and assessed to land revenue. Madhusudhan Roy and Sitaram Roy and other defendants claimed right to get settlement because it was the Lakhraj property obtained by their ancestors. The settlement was however made with Manik Chandra Roy on April 19, 1838, as the other defendants did not turn up. Subsequently, Madhusudan Roy applied for settlement jointly with Manik Chandra Roy and others. As a result of the enquiry made, permanent settlement was separately made with Manik Chandra Roy and others with respect to certain area and with Madhusudhan Roy and Sitaram Roy

1962

The Lodna Colliery Co. Ltd
v.
Bhola Nath Roy

Raghubar Dayal J.

with respect to the rest. On April 15, 1841, Amalnama, Exhibit 2, was issued by the Deputy Collector, Burdwan, to Mukhyas and others. It directed them to pay their respective rents to the persons with whom settlement was made.

Exhibit 6(a) is certified copy of settlement khatian No. 611 in respect of village Sripur, relating to Touzi No. 2597, R.S. No. 2416. It describes the interest in the land in suit to be Bajeapti (resumed) Lakheraj Pariharpur and others. It mentions five persons including the son of Madhusudhan Roy and the sons of Sitanath Roy, to be the proprietors in possession of that interest. It also shows the King Emperor of India as possessing the entire superior interest. It is thus clear that the possessors of the Bajeapti (resumed) Lakheraj land in suit held it as proprietors under the King Emperor of India. They must consequently have the same rights which other proprietors like zamindars had.

It is however urged for the appellants that the records prior to the resumption proceedings showed the lands in suit to be the Brahmottar and Debutter lands of the predecessors of the plaintiffs and that therefore, in view of the principle of law laid down by the Privy Council in *Hari Narayan Singh's Case*(1)and the later decisions, they cannot be held to possess rights in the sub-soil in the absence of definite evidence that such rights were conveyed under those grants. We do not agree with this contention. The predecessors-in-interest of the plaintiffs held the land from the Government and not on a subordinate tenure from the zamindars and therefore the principle of law as stated in *Hari Narayan Singh's Case* (1) and later confirmed in several decisions by the Privy Council, does not apply to the present case.

We are therefore of opinion that the plaintiffs had rightly been held to own and possess the rights

(1) (1910) L. R. 37 I. A. 136.

the minerals under the land in suit and that the decree in their favour is correct. We therefore dismiss the appeal with costs.

Appeal dismissed.

THE BAGALKOT CEMENT CO. LTD.

v.

R. K. PATHAN & ORS.

(P. B. GAJENDRAGADKAR, A. K. SARKAR and K. N. WANCHOO, JJ.)

Standing Orders—Certification of draft submitted by employer—Power of Certifying Officer and Appellate Authority—If can fix quantum of leave and holidays—Industrial Employment (Standing Orders) Act, 1946 (20 *of* 1946), *as amended by Amending Act of* 1956, *ss.* 4,10, *Schedule, cl.* 5.

The appellant company submitted draft Standing Orders as required by s. 3 of the Industrial Employment (Standing Orders) Act, 1946, to the Certifying Officer. The Certifying Officer in certifying the said draft added a clause to paragraph 11 of the said draft which provided, *inter alia,* for certain festival holidays and causal and annual leave for a number of days. On appeal the Appellate Authority in substance agree with the additions made by the Certifying Officer. The question raised in the appeal was whether the Certifying Officer or the Appellate Authority had the jurisdiction under the Act to make the additions in the draft Standing Orders. Section 4 of the Act provides, *inter alia,* that the draft standing orders could be certified if they provided for every matter mentioned in the Schedule to the Act and cl. 5 of the Schedule provided as follows :

> "conditions of, procedure in applying for, and the authority which may grant, leave and holidays."

Held, that the Certifying Officer and the Appellate Authority had the jurisdiction in making the addition that they did.

The word "conditions" in cl. 5 should be construed not in a narrow way but in a broad and liberal sense consistently with the object of the Act and, so construed, there could be no doubt that cl. 5 was not merely procedural but covered the substantive provision for fixing the quantum of