

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of Raja
Sri Sri Durga Prasad Singh v. Braja Nath
Bose and others, from the High Court of
Judicature at Fort William, in Bengal;
delivered the 21st February 1912.*

PRESENT AT THE HEARING :

LORD MACNAGHTEN.

LORD ROBSON.

SIR JOHN EDGE.

MR. AMEER ALL.

[DELIVERED BY LORD MACNAGHTEN.]

The suit out of which the present Appeal¹ arises was brought by the Zamindar of Pergunnah Jharia, a permanently settled estate, in order to establish his right to the minerals underlying Mouzah Tasra and Mouzah Rohrabund. The two mouzahs are within his Zamindari. They are both held by the Digwar of Tasra on Digwari tenure at a fixed rent of Rs. 64 per annum payable to the zamindar.

Digwari tenure is similar to Ghatwari tenure. It was granted originally in consideration of the performance of military service, to which police duties were attached. The tenure is hereditary and inalienable. The Digwar is appointed by the Government and liable to be dismissed by the Government for misconduct. On dismissal the next male heir, if fit for the office, is appointed.

In 1892 the Digwar of Tasra granted a perpetual lease of the coal mines underlying the two villages. The lease became vested in the Tasra Coal Company, Limited. The Company took possession and raised and sold a large quantity of coal.

The Zamindar asked for a declaration of right, an account, and an injunction.

The Subordinate Judge of Manbhum gave judgment in favour of the Zamindar. On Appeal to the Calcutta High Court that judgment was reversed and the suit was dismissed with costs.

The case was argued at considerable length in both the Courts below and fully discussed before this Board.

Two points, and two points only, were seriously argued. It was contended (1) that the Government ought to have been made a party to the suit, and that in the absence of the Government the suit was defective and ought to be dismissed, and (2) that the Digwar had a proprietary right in the underground minerals.

The High Court decided both points in favour of the Defendants.

In their Lordships' opinion the Government is not a necessary or a proper party to this suit. Apparently the Government does not claim the minerals under permanently settled estates. However that may be, the Government has never claimed the minerals under the two Mouzahs or either of them, or put forward any claim inconsistent with the rights now asserted by the Zamindar. The rights of the Government, whatever they are, will not be prejudiced or affected by the result of a suit to which it is not a party.

The second point seems equally clear. The two Mouzahs are within the Plaintiff's Zamindari.

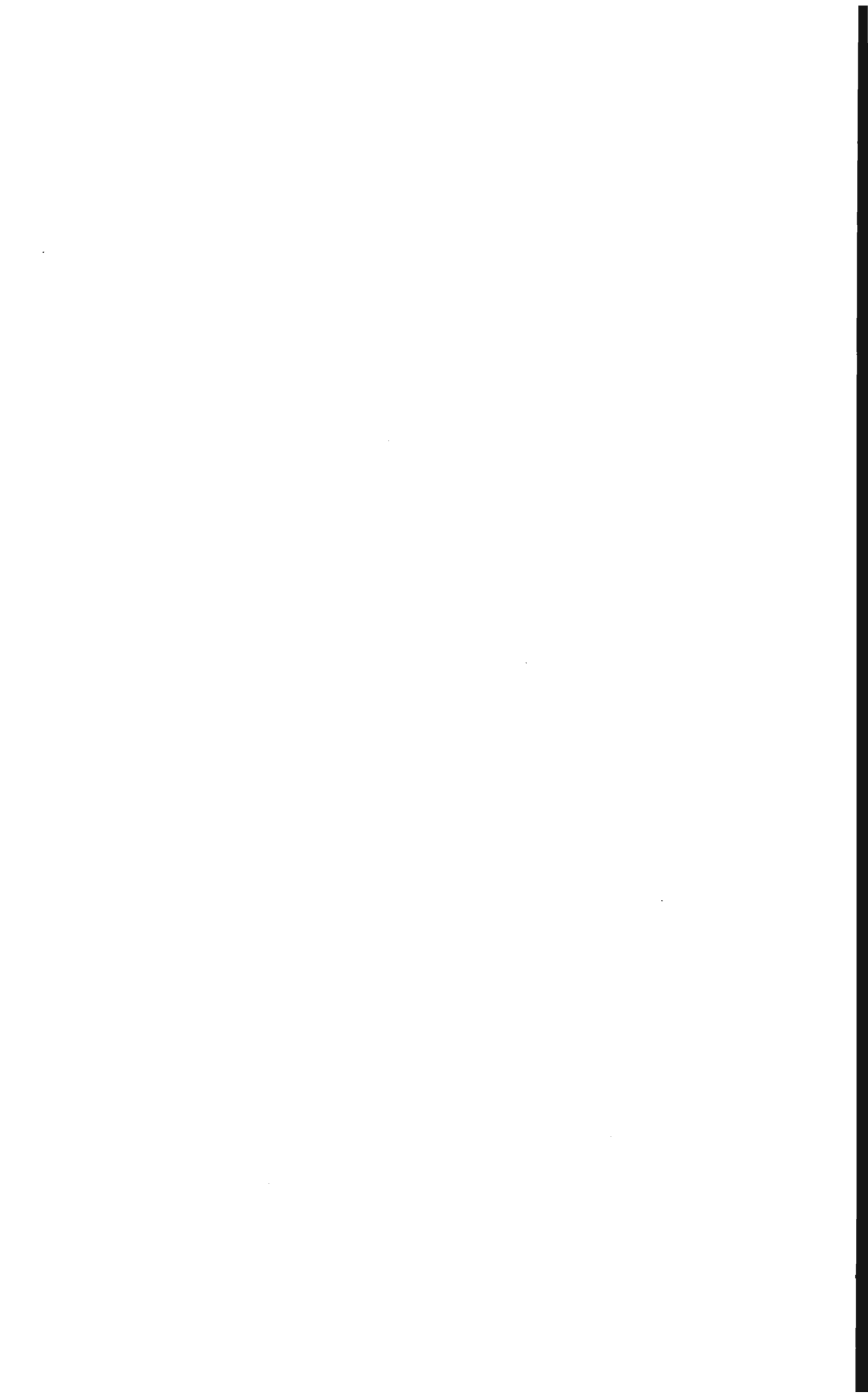
Both the Courts below have so held. The permanent settlement was made with the Zamindar of Jharia. No separate settlement was made with the Digwar of Tasra, if there was a Digwar of Tasra at the date of the Permanent Settlement, which seems more than doubtful. No attempt was made to prove that the mineral rights now in question were vested in the Digwar before or at the time of the Permanent Settlement if the lands were then held on Digwari tenure. Nor is there the slightest evidence tending to show or to suggest that the Zamindar ever parted with his mineral rights to the Digwar. Mineral rights were vested in the Ghatwals of Pergunnah Sarhat in the north-western part of the Berbhun Zamindari, but those Ghatwals paid their rent direct to the Government, and in other respects they were in a very peculiar position. They were dealt with by Regulation XXIX. of 1814. They obtained the right to lease the minerals by the Act No. 5 of 1859. With every respect to the learned Judges of the High Court no inference can be drawn from the circumstances of their case that the Digwars in Manbhun had similar rights or powers.

The learned Judges on Appeal seem to have been misled by a decision of the High Court in the case of *Kumar Hari Narayan Singh Deo Bahadur v. Sriram Chakravarti*, which was afterwards reversed by this Board, and is reported in L.R., I.A. XXXVII., p. 136. There certain persons, called Goswanis or Gossains, priests of a Hindu idol to which a certain village had been assigned on a permanent debottar tenure at a small annual rent granted a lease of the underlying minerals. The High Court held that the mineral rights were vested in the Gossains. But it was laid down by this tribunal that it must be presumed that the mineral

rights remained in the Zamindar in the absence of proof that he had parted with them.

Their Lordships will therefore humbly advise His Majesty that the Appeal ought to be allowed, and the decision of the High Court reversed, with costs, and the decree of the learned Subordinate Judge restored.

The Respondents will pay the costs of this Appeal.



In the Privy Council.

RAJA SRI SRI DURGA PRASAD SINGH

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BRAJA NATH BOSE AND OTHERS.

DELIVERED BY LORD MAONAGHTEN.

LONDON:
PRINTED BY HYLE AND SPOTTISWOODE, L^{TD},
PRINTERS TO THE KING'S MOST EXCELLENT MAJESTY.

1912.