Privy Council Appeal No. 38 *of* 1936

Raja Jagadish Chandra Deo Dhabal Deb - - - *Appellant*

v.

Mirza Santal and others - - - - - *Respondents*

FROM

THE BOARD OF REVENUE OF THE PROVINCE OF BIHAR AND ORISSA

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 30TH NOVEMBER ,1937

Present at the Hearing:

LORD WRIGHT.
SIR GEORGE LOWNDES.
SIR GEORGE RANKIN.

[*Delivered by* LORD WRIGHT.]

This appeal is brought by special leave of His Majesty in Council and raises questions of some difficulty and somewhat out of the ordinary course. It is an appeal from a resolution of the Board of Revenue of Bihar and Orissa, dated 10th November, 1933, which confirmed an order of the Commissioner of Chota Nagpur, dated 11th June, 1933, affirming on appeal the order of the Deputy Commissioner of Singbhum, dated 6th March, 1933.

As will appear later, these orders seem rather of an administrative nature than judgments in the ordinary acceptance of the term, and in that sense may well appear not to be proper to be brought before the Board. They have, however, now come before the Board; it may be because of the observations of the Board of Revenue that the question was difficult and that it was much to be desired that the law should be clarified. The Board will accordingly deal with the position as it now presents itself.

The question arises under the Chota Nagpur Tenancy Act (Bengal Act VI of 1908) and in particular under a section later added to that Act, namely section 74 (*a*) by an amending Act of Bihar and Orissa Act VI of 1920. These two Acts will be referred to subsequently in this judgment as "the Act." The proceedings relate to a village called Lango which is situate in Taraf Atkosi of Perganna Dhalbhum. The district in which Lango is situated is part of a backward tract inhabited by certain tribes who are described as aboriginal and who have their own primitive traditions and customs. The dispute which arose was between the Raja of Dhalbhum, who is the appellant in this appeal, and certain inhabitants of the village. The respondents have not appeared. The case has been argued ex parte,

but Mr. Dunne and Mr. Pringle, for the appellant, have laid the whole position very fully before their Lordships, who also have the benefit of the very careful resolution of the Board of Revenue delivered by Mr. Dain.

The question relates to the appointment of a village headman or pradhan for Lango. The appellant contends that in the facts of this case, no village headman should be appointed but that he is entitled to khas possession of the village properties. It will be convenient to refer to the relevant sections of the Act of which the most material section is section 74 (*a*) which is in the following terms:—

> " 74A.—(1) Where a tenancy which in accordance with custom is held by a village-headman, has for any reason been vacated, any three or more tenants holding land within the said tenancy, or the landlord, may apply to the Deputy Commissioner to determine the person who in accordance with custom should be village-headman entitled to hold the tenancy.
>
> " (2) Such application may be made notwithstanding that a person is in possession of the land of the tenancy, or part thereof, under the authority or with the consent of the landlord.
>
> " (3) On receiving such application the Deputy Commissioner shall, after giving notice in the prescribed manner to the landlord, the person, if any, referred to in subsection (2), the heirs of the last village-headman, the tenants and such other persons, if any, as he considers should be parties to the proceeding, make such inquiry as appears necessary, and determine the person who in accordance with custom should be village-headman entitled to hold the tenancy, and shall place such person in possession of the tenancy, if such person is not already in possession thereof.
>
> " (4) In every such inquiry the Deputy Commissioner shall have regard to the entries in a record of rights finally published under this Act or under any law in force before the commencement of this Act, and to the suitability of a person in respect of tribe or caste, membership of the village family or of the late village-headman's family (if it be not the village-family), resident, character and other matters, to be the village-headman of the particular village or group of villages comprised in the tenancy."

It is also necessary to consider section 231 which runs as follows:—

> " 231. All suits and applications instituted or made under this Act, for which no period of limitation is provided elsewhere in this Act, shall be commenced and made respectively within one year from the date of the accruing of the cause of action.
>
> " Provided that there shall be no period of limitation for applications under Sections 28, 31, 34, 50, 61, 75, 105 or 121."

The Act by Chapter XV provided for the preparation of a record of rights and obligations of raiyati and other classes of tenants, and by section 132 provided that when a record has been finally published the entries made therein should be conclusive evidence of the rights and obligations of the tenants to which such entries relate and of all particulars recorded in such entries. It will be necessary therefore to refer to the record of rights which has been put in as evidence in the case. This record of rights was published in 1910; it is headed " Record of rights of pradhan in pradhani mauza of Lango." It gives as the name of the pradhan, Ram Kol, resident in the village; it finds that he

originally held under a patta for three years from the 5th April, 1931, which provided that a fresh settlement would be taken under a patta at the expiry of the term but that no fresh settlement was made under a patta. It states the various rights which the pradhan, either has, or has not, and certain grounds on which the pradhan might be ejected. The record also states that the landlord as superior jotdar has no right to get the pradhan rent enhanced during the term of the lease; that the pradhani rights are not heritable but that the pradhan has the right to hold possession in the absence of a patta; it states the right of the landlord or superior jotdar to make pradhani settlements with a different person in certain events and it further affirms or negatives various other rights. It is stated in the notes of the Assistant Settlement Officer in reference to Lango that one Jadab Bhumij of Dablabera was Ghatwali Atirikta pradhan of the village, that he resigned in 1891 and that then the village was settled in ordinary pradhani with one Ramu Kol. This record would seem clearly on its face to show that there was by custom a pradhan in Lango. There is also certain evidence given in the course of the proceedings before the Deputy Commissioner from which it appears that Ramu Kol died leaving no sons in about 1917. The villagers who gave evidence say that his brother Ambra then succeeded, or was regarded by them as succeeding, as pradhan. At that time the village with other land was under lease to the Midnapore Zemindary Company. The evidence of the tenants is somewhat conflicting. They claim that Ambra became a pradhan by custom on the death of Ramu Kol, but it seems that, at least in many cases, they either paid rent to the Company or deposited the rent in Court. So matters seem to have proceeded until the appellant became possessed of the estate on the expiration of the lease on the 14th September, 1929. The appellant then proceeded to attempt to enforce his rights to khas possession. An application was thereupon made by the tenants under section 74 (*a*). This initiated the present proceedings.

It may be noted that the headman or pradhani system is characteristic of the social organisation of the aboriginal tribes who established themselves in Chota Nagpur before the advent of the Hindus; in some cases the headmen seem to have had police duties also imposed upon them so that such tenancies came to be regarded as ghatwali tenancies.

The application under section 74 (*a*) came before the Deputy Commissioner of Singhbum. He heard the villagers who presented the petition, now respondents herein, and objections on the part of the appellant. On the 28th April, 1930, he gave his decision, which stated that after the death of Ramu Kol "the Midnapur Zamindari Co., made the village khas. Since then there had been nothing but trouble to the tenants, the landlord and every one else concerned." Some of the raiyats deposited their rents in court, and the others did not do so because they could not afford it. He thought it unnecessary to discuss the questions raised on

behalf of the appellant as to limitation, custom, etc.; he was of opinion that Lango was a village which obviously required the aboriginal pradhan both from the point of view of the landlord and from that of the villagers. He appointed Ambra Ho as the natural pradhan of the village.

The appellant then brought an action in the Civil Court for a declaration that this order of the Deputy Commissioner was made without jurisdiction and the Munsif on the 16th January, 1931, in the suit which was No. 93 of 1930 declared that the decision of the Deputy Commissioner was made without jurisdiction because he had no jurisdiction under the section without first deciding whether Lango was held by a pradhan by custom. He also discussed the facts of the case, but he himself expressly recognised that his statements were merely obiter dicta. The matter came again before the Deputy Commissioner, who, on the 19th August, 1932, expressed the view that his predecessor who made the previous order was of opinion that the village did by custom have a headman. The matter then went before the Commissioner who directed the Deputy Commissioner to decide the question of custom and also the question of limitation raised under section 231. A further enquiry was then held by the Deputy Commissioner who held in effect on the evidence before him that there was a custom of pradhani at Lango which had not been broken and decided that Ambra should be appointed as headman. From this decision an appeal was brought before the Commissioner who made an order on the 11th June, 1933, holding that it was clear that the custom of the village headmanship extended to this village and that the custom had not been broken because the villagers had stood out resolutely against the attempt of the landlord to break the custom of headmanship and had never acquiesced in the wrong, and that there was a continuing wrong so that the cause of action referred to in section 231 had accrued within one year of the application.

There was a further appeal to the Board of Revenue, who on the 10th November, 1933, gave their decision in a reasoned resolution delivered by Mr. Dain. As regards custom, the resolution held that the decisions of the Courts below were the outcome of their views as to the facts, and that the Board of Revenue would not intervene in regard to their agreed finding. On the question of limitation the Board of Revenue did not agree that the cause of action could be put as a continuing wrong for purposes of section 231, but decided that the section did not bar the suit because the competence of an application under section 74 (*a*) depended on the existence of the vacancy rather than on its occurrence at a particular moment. Emphasis was placed on the language of the section which was not "when" a tenancy has been vacated and from that the inference was drawn that the cause of action was as has just been defined. The resolution concluded with these words "On the merits the orders of the Courts below are obviously right. In a remote

aboriginal village, the presence of the headman is essential to village welfare. The Board therefore declines to interfere."

On the question of custom, there are clearly findings of fact of the Deputy Commissioner and the Commissioner and this Board sees no reason whatever for going behind or interfering with these findings. It has been strenuously argued that the findings are vitiated either because there is no evidence on which they could be based or because a custom must be an ancient custom of the village, whereas on the evidence this village was of quite recent foundation; according to one view it was clear that the village was founded for the first time by Ramu Kol not long before 1891, or on the other view stated in the village notes of the Assistant Settlement Officer it had been in existence some time before 1891 because Jadab Bhumji of Dablabera had been made Ghatwali pradhan. But in either case, it was argued, there could be no ancient custom. Their Lordships are unable to accept this view. In their judgment, assuming that the village was of recent foundation it was founded by members of the tribe who brought to its foundation their ancient custom. The Board are satisfied that there was abundant evidence of a pradhani custom in the village and this is abundantly clear from the record of rights. Accordingly they see no ground in law for reviewing the findings of fact of the Commissioner or the Deputy Commissioner. It was, however, further contended that the findings of fact cannot stand and indeed that the whole proceeding was incompetent because in 1917 when Ramu Kol died, section 74 (*a*) which was only enacted in 1920 was not in force and could not have a retrospective effect. Their Lordships cannot accept this contention. At the time when section 74 (*a*) was enacted there was, according to the findings of the Deputy Commissioner and the Commissioner, in fact a vacancy; the tenancy of the village headman had in fact been vacated and there appears to be no reason why section 74 (*a*) as soon as it came into operation should not be applied to that state of things.

The question of limitation which arises under section 231 is somewhat peculiar. It was forcibly contended on behalf of the appellant that section 231 of the Act applies to applications under section 74 (*a*) because it deals with applications made under the Act and because section 74 (*a*) is not one of the sections which are expressly excluded from the Limitation provisions. That may be accepted, but the difficulty which arises is to apply to the position under section 74 (*a*) the words " the cause of action." Section 74 (*a*) according to ordinary interpretation is not dealing with a cause of action at all; it is defining the right to apply to the Deputy Commissioner to make an appointment of a village headman in the event of a vacancy and that application may be made either by the landlord or by the tenants. It pre-supposes that there is a custom requiring the appointment of a village headman and what is dealt with by the section is not in the nature of a litigation or a dispute, but it is the calling

into operation of an administrative duty on the part of the Deputy Commissioner. It would appear, therefore, more natural to say that as there is not in the strict sense a cause of action under section 74 (*a*) but merely a right to invoke an administrative operation which may be exercised by either the landlord or the tenants or both, section 231 is incapable of application. It has, however, been dealt with in the proceedings below on the footing that section 231 does apply and cause of action has been construed somewhat liberally as including a right of making an application. Where the propriety of the application being granted has, as here, been disputed by the landlord, the view accepted by the Commissioner and the Deputy Commissioner was that there was a continuing wrong. It is not, however, easy to apply the idea of a wrong, to a case of this sort where either side may apply and all that has happened is that there has been a delay in making the application. The delay no doubt was due to the fact that matters were allowed to drift until the appellant, the landlord, took possession on the termination of the lease. If then the idea of a continuing wrong is rejected there remains to be considered the view accepted by the Board of Revenue, namely, that the right of application is a continuing right which endures so long as there is a vacancy. Their Lordships are prepared to accept that as the most reasonable construction on the assumption that section 231 does apply. It would fit in with the exigencies of the case and indeed with the language of section 74 (*a*) which does not fix any specific time at which the application should be made and accordingly from which the period of limitation would run. On the contrary the section makes the right of applying conditional on a state of facts, namely where a tenancy has been vacated. While that condition exists there is no ground for fixing on any specific moment of time. If the language had been " when a tenancy has been vacated " the matter, it may be, would have required to be considered differently and it may be that the limitation period, if these were the words, would run from the moment of the vacancy occurring, but that is not the language of the section, and Counsel for the appellant had refused to argue that time ran from the moment of the vacancy which in this case would be 1917. The alternative which they proposed was that it should run from the time when the landlord was taking active measures to enforce khas possession. Their Lordships cannot so construe the section. Accordingly there is no reason to differ from the conclusions arrived at by the Board of Revenue.

Their Lordships' judgment is that the appeal should be dismissed and they will humbly so advise His Majesty.

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In the Privy Council.

RAJA JAGADISH CHANDRA DEO
DHABAL DEB

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DELIVERED BY LORD WRIGHT

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