

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of the New Beerbhoom Coal Company Limited v. Boloram Mahata and others, from the High Court of Judicature at Fort William, in Bengal; delivered February 6th, 1880.

Present:

SIR JAMES W. COLVILLE.

SIR BARNES PEACOCK.

SIR MONTAGUE E. SMITH.

SIR ROBERT P. COLLIER.

THE proper decision of this case depends upon the correct construction of the contract of the 13th December 1858, between the Mahatas and Mr. Erskine. The contract is set out at page 14 of the Record; but it is agreed that the translation made by the Judge at page 134 of the Record may be taken as the correct one. The contract was as follows: "Mouzah
" Mahatadihi, in Chakla Panchkoti (Pachete), in
" pergunnah Shergurh, is our ancestral rent-
" paying brahmottur land. Out of this talook
" the share of one co-sharer, Ramdhun Mahata,
" 2 annas, and that of Uma Churn, 1 anna
" 6 gundahs 2 cowris 2 krants, being in all
" 3 annas 6 gundahs 2 cowris 2 krants, is
" (already) a mokurruri of yours. Putting
" aside that interest, then out of the remainder,
" forming a kismut, 12 annas 13 gundahs 1 cowri
" 1 krant, a piece not to comprise crop-bearing
" land, that is to say, a piece of land quite uncul-
" tivable and waste land, a piece to cover in all
" 51 bighas, is leased to you under this pottah, for
" quarrying coal, for building stores, for garden,
" for orchard, for road making, and for other uses.

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" The boundaries thereof are on the east, &c." (describing them). " This land, amounting to " 51 bighas within those boundaries, is leased " to you at the rent of Rs. 25-8 and a suitable " bonus. You are to quarry coal, and till garden, " and erect building, and so on, and pay the above " rent every year and month as per schedule " annexed below; and you will carry on your " factory according to use and wont. If you " default you are to pay interest according to " law. The rent is not to be liable to increase " or decrease at any time. You will be allowed " no deduction in respect of drought or flood, " or for uncultivableness. You will build a " factory according to any plan you choose, " and possess the same. Within that afore- " said mouzah we will not give a pottah to " any factory person;" that is to say, " we shall " not let (literally, give settlement) to any- " body." It is not necessary with reference to their Lordships' view of the case to decide whether this really was a contract not to give a pottah to any person, or a contract not to give a pottah to any other factory person. The Plaintiffs, however, in their plaint have treated it as a contract not to give a pottah to any person whatever. If so, that might render the contract bad in restraint of alienation; but it is unnecessary to determine that question. Then it goes on:—" If you take possession," or more literally " take possession," and then, " according " to your requirements, of extra land over and " above this pottah, and we shall settle any such " lands with you at a proper rate. Thereat we " make no objection."

It is contended on the part of the Plaintiffs that this was a contract which Mr. Erskine or his heirs could assign to any one, and that the person to whom he assigned it would be at liberty to require the Mahatas to settle the

land with them at a reasonable rate. It may be assumed for the present purpose that Erskine had the power to assign the contract to any one; and it may also be assumed that the Bengal Coal Company, as the purchasers from the Mahatas of the adjoining land, with notice of the contract, were also bound by it. But then the questions arise, whether it was the intention that Erskine or any one to whom he might assign it should be at liberty to take the whole of the mouzah for any purpose whatever, whether for quarrying coal or not; and whether the Mahatas bound themselves to grant to Erskine all the cultivable as well as uncultivable land in the mouzah. The construction which the Plaintiffs have put upon the contract is, that Erskine was entitled, at any time and for any purpose, to take possession and to compel the Mahatas to grant him a lease of the whole of the residue of the mouzah at a reasonable rate. The words are: "If you take possession, according to your requirements, of extra land." Now what is the meaning of the words—"according to your requirements?" Does it mean "according to your requirements for any purpose, or according to your requirements having regard to the lease of the 51 bighas and the purpose for which it was granted?" Assuming that the words, "You are to quarry coal," and "You are to build a factory," were not obligatory, still they show that the object of Erskine in taking the lease was that he might quarry within the 51 bighas; that he might erect a factory, and carry on mining operations. Then comes the stipulation, which must be read in the sense that if, using the 51 bighas for the purpose for which you have taken them, you should require adjoining land as incidental to the lease, then we agree to grant it you at a reasonable rate. Could Erskine have assigned the lease of the 51 bighas to one person, and then

sold his interest with regard to the adjoining land to another person, so as to separate the two? Their Lordships are of opinion that he could not. It appears to them that the true construction of the contract was, that if Erskine or his assigns should require additional land for the purpose of carrying out the objects for which the lease was granted, then the Mahatas would settle as much of the adjoining land with them as might be necessary for the purpose of such requirements. It is unnecessary to make any distinction between the waste land and the cultivable land in that view of the construction, because the land was not taken possession of by the Company as requiring extra land for the purposes of the lease, but merely for the purpose of selling it. The Beerbhoom Company, to whom Erskine had assigned the agreement, ask the Court to compel a specific performance of it, because they had entered into a contract of sale to the Bengal Iron Company for a sum of money which they say would give them a profit of Rs. 26,000 odd. They say in their plaint, "Having got this agreement, " we afterwards negotiated with the Mahatas " for a lease of the adjoining land (not that " the Mahatas agreed to grant a lease) upon " the terms that we were to pay Rs. 1 An. 8 " for the waste land, and Rs. 3 for the cultivable " land." And then they ask the Court to grant them specific performance of the agreement by compelling the Mahatas to grant them a lease at those rates; or if the Court will not order a lease at those rates, then at such rates as the Court shall think reasonable.

Their Lordships are of opinion that the Judge of the First Court came to a correct conclusion upon the 6th issue, on which he found that, apart from the 51 bighas, the assignees could not compel the Mahatas to grant a lease of the

remaining lands of the mouzah. Their Lordships are not bound by, nor do they concur in, the reasons which the learned Judge gave for that decision. The High Court affirmed the decision, but not for reasons which their Lordships consider to be correct. They affirmed it upon the ground that it was impossible to determine what was a reasonable rate. Their Lordships cannot think that in the present case the Court, upon a proper inquiry, would have been unable to determine it. There might have been considerable difficulty in fixing the rate; but difficulties often occur in determining what is a reasonable price or a reasonable rate, or in fixing the amount of damages which a man has sustained under particular circumstances. These are difficulties which the Court is bound to overcome. Their Lordships therefore, without concurring in the reasons of either of the Lower Courts, have come to the conclusion that the Beerbhoom Company were not entitled to compel the Mahatas to settle the remainder of the land at reasonable rates, and they will therefore humbly advise Her Majesty that the decision of the High Court be affirmed, with the costs of this Appeal.

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