

Judgement of the Lords of the Judicial Committee of the Privy Council on the Appeal of Maharajah Mirza Sri Ananda, Sultan Bahadur of Vizianagram Samastanam, v. Pidaparti Surianarayana Sastri and others, from the High Court of Judicature at Madras; delivered 6th February 1886.

Present :

LORD MONKSWELL.

LORD HOBHOUSE.

SIR BARNES PEACOCK.

SIR RICHARD COUCH.

The question in this case is whether the Respondents are entitled to hold the village of Buradapeta, in the principality of the Appellant, as tenants in perpetuity at a rent of Rs. 253. 6. 7, under a grant made by the Appellant's father in 1863, a suit to recover the village having been brought by the Appellant on the ground that he had, after his father's death, determined the tenancy by a notice to quit. The facts of the case, as proved by the evidence in the suit, are stated in the judgement of the High Court.

In 1794 Visiaram Raz Pusapati, zemindar of Vizianagram, the ancestor of the Appellant, took up arms against the Government, and was defeated and slain at Padmanabham. His son Naraina Gajapati, then a youth of 16 years of age, fled to the hills; but in 1797 came in and surrendered himself, and on payment of a heavy fine was allowed to resume possession of his Raj. Probably, out of his gratitude for his good

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fortune, Naraina Gajapati at once created several inams in favour of Brahmins and his dependants. Among others one Pidaparti Sitaram Sastri, the ancestor of the Respondents, received in 1797 a lease, expressed in the terms of a pious gift, of certain lands at Chetanapalli to be held by him and his heirs from generation to generation, subject to an annual quit-rent of Rs. 50, and in 1800 the same grantee also received other lands in the same village to be held with the lands formerly granted on payment of a quit-rent increased by Rs. 100, which was reduced shortly afterwards to the extent of Rs. 50.

In 1802 the Permanent Settlement was introduced, and the villages of Chetanapalli, Malliada, and Buradapeta were included in the assets of the zemindari.

Early in 1802 Naraina Gajapati Raz conferred on Sitaram lands in Malliada in lieu of those held by him in Chetanapalli, and in 1811 he conferred on him the village of Buradapeta, to be held in lieu of the lands in Malliada at a quit-rent of Rs. 45 by the grantee and his heirs from generation to generation "for the satisfaction of Sri," the expression usual in cases of pious gift.

On Sitaram's death, his sons Seshadri and Appayya made a partition of the village in March 1842, and, to discharge outstanding debts due by the family, each of the brothers made a usufructuary mortgage of his share for Rs. 4,000 to the Durivars. Naraina Gajapati Raz was unable to live within his means, and, on more than one occasion, it was necessary for the Government to take charge of his revenues. Eventually he died at Benares leaving large debts.

At that time, owing to a misconception of a provision in the regulations which was intended for the security of the land revenue, it was

believed by some officers that grants made by a zemindar were generally resumable by his successor.

It appears from Proceedings of the Government, dated 30th January 1853, that on receipt of the news of Naraina Gajapati Raz's death, "the Board of Revenue directed the Governor's agent, who was in charge of the zemindari, to adopt all measures in regard to resumptions of Inams and Shrotriems to which it would be legal and proper for the late Raja's successor to have recourse," and that the agent, in anticipation of such instructions, had already issued orders for the attachment of all lands conferred by the late Raja subsequently to the permanent settlement, whether agra-harams (grants made to Brahmins), mokhasas, or other inams. It also appears that in 1848 the agent "requested permission to employ the collections derived from the attached lands for the liquidation of the public debt of the zemindari, and offered suggestions for the settlement of the claims of the ousted inamdars," and "that the Government while considering this money available for the purpose agreed with the Board of Revenue that the claims of the parties who had been dispossessed called for further inquiry, and only permitted the agent to employ the collections as a present recourse on the distinct understanding that the sums appertaining to such of the inams as might be eventually restored should be repaid from the zemindar's treasury." It further appears that it was reported to the Government in 1852 that the lands attached in 1845 consisted of 87 villages and 184 detached plots bearing a gross assessment of Rs. 83,312, from which sum quit-rents of Rs. 6,839 being deducted, a sum of Rs. 76,473 represented the net income of which the grantees were deprived. It was also reported that the zemindar wished to resume the

whole of the lands attached indiscriminately, and to grant compensation in certain cases by money allowances, and that the collections derived from the attached lands up to the end of F. 1261 (1851-52) amounted to 3 lacs, of which Rs. 2,40,000 had been devoted to the liquidation of the public debt.

The condition of the dispossessed mokhasadars and inamdars, in the opinion of the Commissioner for the Northern Circars, Mr. Walter Elliot, demanded great consideration, and, while he believed the zemindar was empowered, under Regulation XXV. of 1802, sect. 3, to resume lands alienated by his father, he urged him to deal liberally with the inamdars. The Governor in Council, in Minutes of Consultation recorded on Mr. Elliot's report, said the Government felt "themselves bound to express their disapproval of resumptions and the substitutions of money allowances (except with the full consent of parties interested) when there has been long possession such as gives all persons a legal title by prescription. It would be an injustice such as they could not sanction where such prescriptive right as is recognized by Hindu law may have been in existence by an unquestioned and undisturbed enjoyment for many generations. The Governor in Council could not view such resumption as other than a spoliation, which should not be carried out, as interfering with the peace of the country for which the Government are responsible." The Governor in Council also expressed doubts as to the soundness of Mr. Elliot's opinion as to the effect of Regulation XXV. of 1802, sect. 3, and intimated that the true construction of the Regulations was probably that which has been since adopted by this Committee, namely, that it imposed restrictions on alienations only to secure the interests of the public revenue, and that the

zemindar would have no power to disturb grants, otherwise valid, made by his predecessor, or titles to inams acquired by prescription. Considering the prompt and liberal settlement of the claims of the dispossessed grantees essential to the tranquillity of the country, and having been informed that the zemindar was willing to abide by the opinion of the Government, the Governor in Council desired the Commissioner and Special Agent at Vizagapatam to consider themselves empowered to use the name and authority of the Government in impressing upon him the absolute necessity of at once entering into a liberal and just settlement of all the claims. It was ordered that the views entertained by the Government should be communicated to the zemindar.

It appears that in 1850, during the dis-possession, Appayya, one of the sons of Sitaram, took a lease of Buradapeta for three years at an annual rent of Rs. 650. On the termination of this lease, the late Maharaja directed his agent to collect from the Buradapeta ryots the quit-rents then existing, and a quarter of the Gudikattu dowle (the entire assessment), and payments were made on that footing up to 1863, the village still being regarded as attached. The dispute relating to the propriety of the resumption was still subsisting, and it seems probable that a settlement was delayed by the provision which, in 1847, the Government had made for the protection of the inamdars, that the income of any inam appropriated for the liquidation of arrears of revenue in the zemindari should be repaid from the Treasury of the zemindar on the restoration of the inam.

However this may be, in 1863 the eldest sons of Seshadri and Appayya each presented to the late Maharaja a petition respecting the moiety

of the village which had fallen to his branch of the family in the following terms :—

“ Darkast (application) presented by Pidaparti Surianarayana, Agraharamdar of Buradapeta, *alias* Lakshminarainapuram Agraharam attached to Vizianagaram Tana.

“ The said village which was granted to my paternal grandfather, Pidaparti Sitarama Sastrulu, by Sri Naraina Gajapati Razu Maharazulungaru subsequent to the settlement, having been after (the time of) the donor attached by the then collector, still continues under attachment. The same not having been as yet released from attachment, I have been suffering much.

“ I therefore humbly submit as follows :—

“ In the event of your Highness being graciously pleased to take all the money collected from the said Agraharam during its attachment up to the end of Fusli 1272 on account of your installation and other nazirs (presents), and to grant me my share of lands in that Agraharam from Fusli 1273, I shall pay the kattubadi fixed by your Highness and enjoy the remaining income, and be bound by the Circar orders.

“ I, therefore, pray that your Highness will be graciously pleased to restore the said Agraharam and protect (me).

“ 18th July 1863.”

Upon these petitions, the Maharaja issued an order to each of the petitioners which differed only in the amount of the rent. In one, it was Rs. 115. 3. 0 and in the other Rs. 138. 3. 7, the total rent of the village being Rs. 253. 3. 7. instead of Rs. 45 under the grant made in 1811. The order is as follows :—

“ Buradapeta, *alias* Lakshminarayanapuram Agraharam, attached to Vizianagaram Tana which was favoured by our father subsequent to the settlement being under attachment, it was settled that you should for the $4\frac{1}{2}$ vuttis of land in your holding in that village pay, out of Rs. 691. 3. 0, being the gudikattu dowe (the entire revenue) thereof, Rs. 115. 3. 0. inclusive of Rs. $22\frac{1}{2}$ kuttubadi in existence prior to the attachment, and enjoy the remaining income, and that the said village should be placed under the head of zuft villages. While such state of things continued, you submitted to our Huzur on the 18th instant, a sannad (petition) requesting among other matters that the land might be restored to you, the said amount itself being fixed as kattubadi, and that you will continue to enjoy the said $4\frac{1}{2}$ vuttis of land, paying every year the said kattubadi, and be bound by the Circar orders. Being moved to show you favour, we have issued orders this day to the Tana Amin to put the attached lands in your possession from the

current Fuzli 1273, subject to the kattubadi of Rs. 115. 3. 0 (Rupees one hundred and fifteen and annas three). You shall accordingly take possession, pay the said kattubadi of Rs. 115. 3. 0 duly every year, and be bound by the Circar orders."

Thereupon each of the petitioners executed sanads engaging to pay the rent and "act up to the orders of the Circar," and they were put in possession of the village.

The Maharaja died in 1879, and was succeeded by the Appellant. In 1881 the Appellant called on the Respondents to execute fresh engagements, undertaking to pay such rent as he might fix, and on their refusal notice was given them to quit the village on the 1st July 1881, which they refused to do.

Before stating their opinion on the main question, their Lordships will dispose of another question which was raised. In 1866 the Darivar mortgagees sued the inamdars to enforce the mortgages executed in 1842. The inamdars pleaded that the mortgaged lands having been resumed in 1845 by the Collector, the original right possessed by them therein and the mortgage lien of the Plaintiffs thereon had ceased to exist. The suit was dismissed by the First Court, and their decree was affirmed on appeal. As the Maharaja was not a party to the suit, this plea does not operate as an estoppel, but is only an admission and not conclusive. This was so held in the present suit by the High Court, which then proceeded to consider the real nature of the arrangement in 1863, and held that it resulted in a confirmation of the original grant on terms more favourable to the zemindar, that if the arrangement was to be regarded as a new grant, it was intended to be the grant of an estate in all respects save the amount of quit-rent similar in tenure to that which had been created by the grant of 1811, namely, a tenure in perpetuity.

Their Lordships think the latter is the correct view, but the difference is not material in this suit, where the question is whether the tenancy could be determined by the notice to quit. The circumstances under which the applications to the Maharaja and his reply were made are to be considered. He was, doubtless, aware of the opinion of the Government. The inamdars had not relinquished their rights under the grant of 1811. The effect of the attachment in 1845 and the subsequent transactions was at least doubtful, and the inamdars had a claim to have the collections repaid to them from the zemindar's treasury. In the application to the Maharaja, the applicant is described as Agraharamdar of Buradapeta, and it is proposed that the Maharaja shall take all the money collected during the attachment on account of his installation and other presents. It is prayed that he will be pleased to restore the said agraharam. This meant more than becoming yearly tenants, and when the Maharaja replied that they were to take possession, and ordered it to be given to them, he, in their Lordship's opinion, intended that they should hold the agraharam at the increased rent, in the same manner as they had done before the attachment. And it was admitted by the Appellant's Counsel that the Maharaja had power to do this. Their Lordships will therefore humbly advise Her Majesty to dismiss the appeal, and to affirm the decree of the High Court dismissing the suit.
