

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Sri Sri Sri Goura Chandra Gajapati Narayana Deo Maharajulun Garu v. The Secretary of State for India in Council, from the High Court of Judicature at Madras; delivered the 8th February 1905.

Present at the Hearing :

LORD MACNAGHTEN.

LORD LINDLEY.

SIR ANDREW SCOBLE.

SIR ARTHUR WILSON.

[*Delivered by Sir Arthur Wilson.*]

This is an Appeal from a Judgment and Decree of the High Court of Judicature at Madras, reversing the decision of the Agent to the Governor of Madras at Ganjam. The question in dispute is whether the proprietary right in certain tracts, mainly hill tracts, known as the "Maliahs" of Parlakimidi, belongs to the Appellant, the Plaintiff in the suit, as Zemindar of Parlakimidi in the District of Ganjam, in whose favour the Agent decided, or to the Crown, as held by the High Court.

Parlakimidi is an ancient zemindari, and the Appellant's ancestors claimed descent, and appear to have originally derived title, from kings of Orissa, whose dominions once included the parts in question. The larger part at least of the zemindari is for all administrative purposes within the District of Ganjam and subject to the jurisdiction of the ordinary Courts. But on the north of the zemindari lie the Maliahs, which are and for many years have been separated for the

purposes of jurisdiction from the Ganjam district, and form the Parlakimidi Agency. It is to these that the present suit relates.

The Maliahs appear to have been always organised on a special system, not unlike that which has been found to prevail in other hill countries of India. The inhabitants of the country are those known as Savaras, an indigenous hill race, once no doubt a turbulent people and dangerous neighbours to those dwelling in the plains. The Maliahs are divided into eleven muttas, each of which is controlled by a local Chief or Bisoyee. Each Bisoyee has his fort (a term, sometimes at least, used as synonymous with the mutta) and his staff of officers and paiks. The Bisoyees were formerly responsible for controlling the Savaras within their jurisdiction, maintaining peace and good order, and defending the passes to the plains. In return for these duties they received certain advantages. It is not suggested by either side that a Bisoyee has ever had any proprietary right in the mutta under his control, or any part of it. On the contrary, it is agreed that whatever he has held has been held on a mere service tenure, not by right of ownership. In respect of what he has enjoyed he has paid a sum by way of kattubadi or quit rent.

The Agent to the Governor, in his very careful Judgment, summarises as follows the evidence as to the present position of the Bisoyee in his mutta and his relation to the Savaras, and there is no reason to suppose that these have been different in the past, except so far as will be noticed :—

“ The general tenor of the evidence of the Bisoyees which
 “ is fairly consistent, is to the effect that they hold their
 “ Muttas or ‘Forts’ from Government on service tenure, that
 “ they have to keep up a certain establishment of Paiks and
 “ maintaining (maintain?) guards at certain ‘Thanas’ or posts
 “ leading to the plains, and generally to assist Government

“ officers in the maintenance of order and arrest of offenders. Each ‘ fort ’ has its own boundaries, including forest lands, and is made up of a number of villages, each of which again has its own boundary. The remuneration of the Bisoyees is derived partly from land cultivated by themselves, to which the Savaras contribute a certain amount of ‘ Vetti ’ or ‘ customary ’ labour, while the Paiks are remunerated either by grants of land or by payment in cash and grain. The Savaras have permanent wet and permanent dry cultivation; they also practise ‘ Kumri ’ or ‘ Podu ’ cultivation. For the permanent cultivation they pay a fixed proportion of the produce to the Bisoyees, but in regard to the ‘ Kumri ’ cultivation they receive a fixed fee, either one rupee per house or one putti of grain per house, from each Savara family, besides ‘ Sambolos ’ or ‘ dallies ’ of fruit and vegetables six times in the year. A Savara residing in one village cannot practice ‘ Kumri ’ cultivation in another village, and permission must be obtained from the head of the village and the Bisoyee. The Kattubadi is paid by the Bisoyee to the Plaintiff, but with the exception of this payment the Bisoyee exercises absolute authority over the affairs of his Fort, subject to Government control.”

In another passage the Governor’s Agent correctly describes the situation of the Maliahs, and defines the subject-matter of this suit:—

“ The term *Maliahs*, strictly speaking, means the ‘ Hill country ’ and is applied generally to the Eastern Ghats. For the purpose of this suit, however, the term ‘ Parlakimidi Maliahs ’ is synonymous with the term ‘ the Agency Tracts of the Parlakimidi Taluk,’ comprising the 11 forts of the Bisoyees. From the oral evidence and from Ex. W. (para. 2 of Russell’s report), it is clear that many of the villages contained in this tract are situated in the plains, and are therefore not Maliahs in the proper sense of the term. Page 82 of the District Manual shows that the forts of Gandahatti, Narayanapuram, Namanagaram, and Lavania-kota are situated in the low country, while a considerable number of villages in other forts are similarly situated. Hence the term ‘ Maliahs ’ throughout this suit is not used in its literal sense as ‘ hill country ’ but as the country comprised within the 11 forts of the Bisoyees, and the terms ‘ Parlakimidi Maliahs ’ and ‘ Parlakimidi Agency ’ are interchangeable throughout wherever they are used in this judgment. At the same time there are hills, in the zemindary proper, outside the Maliahs, and Savaras also form a portion of the population of the ordinary tracts on these hills and on the country bordering on the Maliahs.”

The Bisoyees were formerly appointed by the Zemindars of Parlakimidi, they were subject

to their control, and they paid their kattubadi to them; and this state of things continued until almost the close of the eighteenth century. At that time disturbances occurred in the district, culminating in actual rebellion, in which the then Zemindar of Parlakimidi, Gajapati Deo, and some at least of the Bisoyees of the Maliahs, took part. In consequence of these events the Government of the day arrived at a decision which was finally embodied in a Proclamation of the Governor-General issued in 1800, the draft of which is in evidence, to the effect that:—

“Gajapetty Deo is declared to have forfeited his Zemindari for ever for the repeated breach of his engagements, for his disobedience of the orders of the Collector and finally for the withholding the Revenue collected by him under these circumstances of aggravation.

“The inhabitants of Kimidi District and all whom it may concern are hereby commanded to pay strict obedience to the orders of the Company issued by the Collector who is directed to make the necessary arrangements for the future peace of the country, and for the collection of the revenue until the arrears shall be paid as well as to make agreements with and grant the cowle of Government to the Bisoyees (their several *Maniam* and their villages to be inserted here—a blank to be left for the Collector to fill up) who are from henceforward to pay their revenue directly to the Collector and to be for ever kept under the Company’s immediate authority.

“The Right Honourable the Governor-in-Council in publishing these resolutions which have in view the maintenance of the supremacy of Government and the protection of the inhabitants at large, is at the same time pleased to announce that, as soon as these

“ arrangements for the future tranquility of the
 “ zemindari and security of the Company’s
 “ Revenue have been accomplished, he will be
 “ willing to temper this necessary exertion of
 “ the Company’s power by an indulgent con-
 “ sideration for the descendants of Gajapetty
 “ Deo and to manifest his desire of maintaining
 “ these ancient families as far as the conduct of
 “ their principals may be consistent with the
 “ public safety, (in ?) the possession of their
 “ hereditary rights by restoring his son Proshotam
 “ Narrain Deo to the lands of his ancestors,
 “ with the exception of those now held by the
 “ Bisoyees which are hereby declared separated
 “ from the Zemindari for ever.”

Prior to this forfeiture it would certainly have
 been difficult to regard the Maliahs in any other
 light than as forming part of the zemindari.
 The Zemindar as such appointed the Bisoyees,
 they were his servants and he received their quit
 rents. Throughout the transactions which fol-
 lowed the Maliahs are treated as something to
 be separated from the zemindari and to be dealt
 with by way of exception from it. But there
 can be no doubt that by the proclamation of
 forfeiture the rights of the Zemindar over the
 Maliahs ceased to exist in him and passed abso-
 lutely to the Government. And the previous
 state of things is only material so far as it throws
 light on the subsequent proceedings.

Two years later, in 1802, Gajapati, the
 incriminated Zemindar, having died in the
 meantime, steps were taken to carry out the
 policy of liberality indicated in the Proclamation
 just cited.

The first document of this period which it is
 necessary to notice is the report of a special
 commission for completing the permanent settle-
 ment of certain lands, dated the 29th April 1803.
 It recited the forfeiture incurred by Gajapati in

1800, and the intention then announced in favour of his son, the appointment in the interim of a manager on behalf of Government, the death of Gajapati in 1802, and the delivery of the zemindari to the authority of the young Zemindar. The report then proceeded to deal with the revenue to be permanently assessed on the zemindari. The details of the calculations were a good deal discussed during the argument of the Appeal, but, in the absence of explanations which could not now be obtained, their Lordships do not venture to rely upon those details as affording assistance in the solution of the present question. They show clearly that in ascertaining the basis on which the zemindari was to be assessed, the quit rents of the Bisoyees were left out of the account; but they do not show what it was in respect of which those quit rents were payable. A certain jumma was recommended. The report proceeded:—

“Your Lordship in Council having by a proclamation bearing date the — of January 1800 exempted the possessions of the Bisoyees from dependence in the zemindary of Kimidi, we have provided for that object by a separation to their payments from his jumma, and we beg leave to recommend with a view to arrange the future government of them with a due regard to their prejudices that the local authorities be from time to time required to gain correct information of the manners and customs of these people.

“Mr. Cherry having paid much attention to clearing the passes in the country, we beg leave to recommend that an obligation be required from the Zemindar of Kimidi to keep open those means of communication; that the names of the passes to be kept open be inserted by the Collector in the obligation; and that if Mr. Cherry should deem it advisable to clear the passes in a more effectual manner, authority may be granted by your Lordship in Council for that purpose.”

The Governor in Council, on the 6th May 1803, accepted the recommendations of the Commission as to the jumma, and added: “The recommendations of the Commission respecting the Bisoyees . . . are conformable to the intentions of the Board.”

In pursuance of this Resolution a sanad was issued to the new Zemindar, Purshottam Narain Deo. It is no longer forthcoming, but it has been assumed, and no doubt rightly, that the corresponding kabulyat, which is in evidence, correctly represents the terms of the sanad. The kabulyat bears date the 21st April 1804. It refers to the sanad as of the 6th May 1803. It says that the executant is "duly sensible of the important advantages which, under the blessing of God, may result to myself and the people of my zemindari from the arrangements established for the administration of justice and of the public revenue on permanent foundations." It undertakes to pay the jumma as permanently settled. It states that the permanent assessment is exclusive of certain matters, among which are "all lands and russions or fees heretofore appropriated to the support of Police establishments." It contains a further clause: "The Government having charged itself with the maintenance of the Police of the country is to defray the entire expense of that establishment; I nevertheless engage to aid and assist its officers in apprehending and securing offenders of all descriptions, and to inquire and give notice to magistrates of all robbers and disturbers of the public peace who may be found or who may seek refuge in my zemindari." And it concludes: "So long as I continue to perform the above stipulations and discharge the duties of allegiance to the British Government, its laws and regulations, which I now solemnly engage to do, I consider myself authorized and empowered to hold in perpetuity for myself, my heirs, successors and assigns, at the permanent assessment herein named, the zemindari of Kimidi."

It is clear, therefore, that, while the zemindari generally was re-granted by Government in 1803 to the new Zemindar, something was excepted from that grant, and from the assessment that formed the condition of the grant, which is variously described as "lands held by the "Bisoyees," "the possessions of the Bisoyees," and "all lands and russions or fees heretofore "appropriated to the support of Police establishments." The first and principal question argued upon this Appeal is as to the extent of the exception thus loosely expressed.

For the Appellant it was contended that the exception applied only to such lands (said to be small in amount) as were actually occupied and cultivated by the Bisoyees themselves, and that the Maliahs generally passed under the re-grant as part of the zemindari. And that is a possible construction, and would perhaps give legitimate effect to the words used.

It was contended on the other side that the exception extended to all the lands under the control of the Bisoyees, that is to say the Maliahs; and strong arguments were adduced in favour of this view. The mischief that led to the change of arrangement was a combination of Zemindar and Bisoyees hostile to Government. The object of the change was to separate the Bisoyees entirely from the Zemindar, and make them mere servants and under the complete control of Government, and as one of the means to that end to make them entirely dependent upon Government for their remuneration. But what has already been said shows that the benefits enjoyed by the Bisoyees, and held by them on service tenures, included not only the lands under their cultivation, but also fees and other dues received from the Savaras throughout the whole of their muttas. Both the Courts in India have adopted

the latter view of the extent of the exception, and their Lordships are not prepared to dissent from their conclusion. It follows that the Maliahs did not pass under the re-grant of the zemindari in 1803, but remained the property of Government, as they had been since the forfeiture of 1800.

The next transaction calling for notice was in 1823. By that time it was found that the attempt to keep the Bisoyees under the immediate control of the Collector and to recover their quit rents directly had proved a failure. And accordingly a new arrangement was made which was thus recorded in a Government Resolution of the 24th January 1823 :—“ The Governor in Council is of opinion that the Bisoyees and their dependent peons, who were a good many years ago separated from the jurisdiction of the Rajah of Kimidi in Ganjam and placed immediately under the Collector, should be transferred again to the Rajah and required to pay their quit rent through him. In consequence of their local situation, the authority over them can only be exercised by the Rajah and not by the Collector and has consequently been lost.”

This arrangement was carried out, but under it the Zemindar incurred no liability for the quit rents of the Bisoyees, he had only to account for what he succeeded in collecting. It cannot be said that this arrangement conferred any proprietary right in the Maliahs upon the Zemindar.

The next change was in 1825, and its nature is stated in a Resolution of Government of the 1st September in that year :—

“ The Right Honourable the Governor in Council is pleased to grant authority for annexing to the Kimidi Zemindari the Doratanam Moccassah villages which have become forfeitures to the State by the rebellion of the Moccassaders, on condition of the Zemindari being charged in future with the tribute of the Bisoyees in addition to the peshcush, and of the villages being always retained directly under the Zemindar, otherwise they shall be liable to resumption.”

Any argument that might otherwise have been urged in favour of inferring proprietary right from the responsibility for revenue imposed by this arrangement is excluded by the fact that the consideration to the Zemindar for his increased liability is expressly stated, and it consisted not in any rights conferred in the Maliahs but in the grant of certain villages outside them. So far as concerns the question now in dispute, therefore, matters remained as they were before.

It was next contended that the Appellant and his predecessors in title had acquired a title against the Crown by 60 years' adverse possession. Upon this question, which is one of fact, both Courts in India have found against the Appellant; and their Lordships do not see how any other conclusion could have been arrived at.

The only question that remains for consideration is the question upon which the Courts in India have differed, that of estoppel. It appears that for some years, in consequence of the disability or incapacity of successive Zemindars, the zemindari of Parlakimidi was under the charge of the Court of Wards. And during the whole or part of this time the view prevailed that the Maliah forests belonged to the zemindari. The officers acting under the Court of Wards, the principal of whom was, of course, the Collector of the District, worked those forests for the benefit of the zemindari, and no one on behalf of Government disputed the propriety of what was being done. But these facts could bear only upon the question of title by adverse possession, which has already been dealt with. It is further shown, however, that while the Court of Wards was in charge, money out of the funds of the zemindari was expended upon the making of roads in the Maliahs, partly, it would seem, to increase the profits derived from the working of the forests, and partly for objects of

more general importance. And this expenditure was approved and encouraged by the Government.

The Agent to the Governor who tried this case thought that these facts estopped the Defendant (Respondent) from denying the Appellant's title to the Maliahs. From this view the High Court dissented.

Their Lordships agree with the High Court. The Court of Wards on behalf of the Zemindar was in possession of the Maliah forests under the mistaken idea that they belonged to the zemindari. The Government officials, under the same mistake, acquiesced in that possession, and, while that state of things continued, they encouraged such an expenditure of zemindari funds upon the Maliahs as seemed good in the public interest. It seems impossible to put the Appellant's case higher than this. And their Lordships can see in this no such representation as could give rise to the estoppel contended for.

Their Lordships will humbly advise His Majesty that this Appeal should be dismissed. The Appellant will pay the costs.

