Privy Council Appeal No. 10 *of* 1920.

The Secretary of State for India in Council - - - *Appellant*

v.

Unde Rajahe Raje Sir Velugoti Sri Rajagopala Krishna Yachendra Bahadur Varu, Raja of Venkatagiri, since deceased - - - - - - - *Respondent.*

Same - - - - - - - - *Appellant*

v.

Raja Panaganti Sitaramarayanim Garu and another - - *Respondents*

(*Consolidated Appeals*)

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 15TH JULY, 1921.

Present at the Hearing:

VISCOUNT CAVE.
LORD SHAW.
MR. AMEER ALI.

[*Delivered by* MR. AMEER ALI.]

The facts of this litigation take their origin in the early establishment of British rule in the Madras Presidency. The Raja of Venkatagiri holds a zamindari of considerable extent in the modern district of Nellore. His ancestors were admittedly in possession of the estate since the Mohammedan times, subject first to the Emperors of Delhi and afterwards, on the disruption of the Mogul Empire, to his representatives in the Carnatic, usually styled the Nawabs of Arcot. Besides the payment of a fixed revenue or peshcush they were bound to maintain an armed force for the assistance of Government in times of disorder or rebellion.

In the year 1792 a treaty was entered into between the East India Company on the one side, and the Nawab of Arcot on the other, under which the administration of the country was assigned to the British. The arrangement, however, was found not to be satisfactory. It had left the Nawab a considerable amount of authority, which soon gave rise to causes of friction between him and the East India Company. Consequently, in 1801, a fresh treaty was executed under which the entire administration passed into British hands. In both the treaties the position of the Raja of Venkatagiri was maintained ; and the revenue he became bound to pay to the East India Company continued to be the same as he had all along paid to the Mohammedan rulers.

In pursuance of the policy laid down by the Board of Directors, Lord Clive, who was at the time the Governor of Madras, proceeded to persuade the Raja of Venkatagiri and other polygars, who occupied a similar position, and whose zamindaries lay chiefly in Western Arcot, to abandon the system of maintaining an armed force for the assistance of Government. It was pointed out to them by the Governor in Council that the duty of maintaining an army for the service of Government imposed a heavy and costly responsibility ; the East India Company would henceforward take over all charge for the preservation of law and order and thus relieve the zamindars of an irksome burden. They were at the same time assured that their fixed peshcush would remain invariable. The zamindars were thus induced to consent willingly to this arrangement, and in lieu of maintaining an army, which cost them a considerable amount of money, they undertook to pay an additional revenue on their estates, which was added to their peshcush.

Pursuant to this arrangement a sanad was issued, on the 24th August, 1802, to the zamindar of Venkatagiri and other zamindars occupying a like position, embodying the terms which had been agreed upon. This document is called a "*sunnud-i-milkeut istimrar*, or deed of permanent property." The word *istimrar* denotes its character of perpetuity and permanency of revenue. The aggregate peshcush was, in the case of Venkatagiri, put down as 1,11,058 star pagodas. The clause in the sanad which relates to this particular arrangement is in these terms :—

> "In consideration of your relief which your finances will derive from the relinquishment of your military service and from the discontinuance of the expenses to which you have on that account been liable, in consideration also of charging itself with the entire protection of the territories dependent on its power, the British Government has fixed your annual contribution, including equivalent for the military service and the established peshcush for every year, at the sum of star pagodas 1,11,058, which said amount shall never be liable to changes under any circumstances, and is hereby accordingly declared to be permanent annual demand of Government on your zamindari."

The only reservations in respect of the absolute abandonment on the part of Government of all claim to enhance the consolidated peshcush is contained in clause 5, which runs thus :—

> "The permanent peshcush fixed by this sanad in your zamindari is exclusive of the revenue derived from the manufacture and sale of salt and

saltpetre, exclusive of the sayer or duties of every description, the entire administration of which the Government reserves to itself, exclusive of the tax on the sale of spirituous liquors and the intoxicating drugs, exclusive of all lands and russums heretofore appropriated to the support of the police establishment. The Government reserves to itself the entire exercise of its discretion in continuing or discontinuing temporarily or permanently. The articles of all sorts included according to the custom and practice of the country under the several heads above stated."

It is clear, however, that at this time two policies were on foot : one with regard to the powerful zamindars who maintained large armies, with whom a settlement was essential on a separate basis ; the other a measure of general assessment in accordance with the instructions issued to the Board of Revenue on the 24th September, 1799. In the carrying out of this latter policy the Government passed Regulation XXV of 1802, which came into force on the 13th July, 1802. The preamble of this Regulation is important. It declared :—

"Whereas it is known to the zamindars, merassydars, ryots, and cultivators of land in the territories subject to the government of Fort St. George, that from the earliest until the present period of time, the public assessment of the land revenue has never been fixed ; but that, according to the practice of Asiatic Governments, the assessment of the land revenue has fluctuated without any fixed principles for the determination of the amount ; and without any security to the zamindars, or other persons, for the continuance of a moderate land tax : that on the contrary, frequent enquiries have been instituted by the ruling power, whether Hindu or Mohammedan, for the purpose of augmenting the assessment of the land revenue ; that it has been customary to regulate such augmentations by the enquiries and opinions of the local officers appointed by the ruling power for the time being ; and that in the attainment of an increased revenue on such foundations it has been usual for the Government to deprive the zamindars, and to appoint persons on its own behalf to the management of the zamindaries ; thereby reserving to the ruling power the implied right, and the actual exercise of the proprietary possession of all lands whatever ; And whereas it is obvious to the said zamindars, merassydars, ryots, and cultivators of land that such a mode of administration must be injurious to the permanent prosperity of the country, by obstructing the progress of agriculture, population and wealth ; and destructive of the comfort of individual persons, by diminishing the security of personal freedom, and of private property ; Wherefore the British Government, impressed with a deep sense of the injuries arising to the State, and to its subjects, from the operation of such principles, has resolved to remove from its administration so fruitful a source of uncertainty and disquietude ; to grant to zamindars, and other landholders, their heirs and successors, a permanent property in their land in all time to come ; and to fix for ever a moderate assessment of public revenue on such lands, the amount of which shall never be liable to be increased under any circumstances."

And in Section 2 it proceeded to enact that :—

"In conformity to these principles, an assessment shall be fixed on all lands liable to pay revenue to the Government ; and in consequence of such assessment, the proprietary right of the soil shall become vested in the zamindars, or other proprietors of land, and in their heirs and lawful successors for ever."

Section 3 will be referred to later.

Section 4, which forms an important element in the consideration of the present case, is in the following terms :—

> " The Government having reserved to itself the entire exercise of its discretion in continuing or abolishing, temporarily or permanently, the articles of revenue included according to the custom and practice of the country, under the several heads of salt and saltpetre ; of the sayer, or duties by sea or land ; of the abkarry, or tax in the sale of spirituous liquors, and intoxicating drugs ; of the exercise on articles of consumption ; of all taxes personal and professional, as well as those derived from markets, fairs or bazars ; of lakheraj lands (or lands exempt from the payment of public revenue) ; and of all other lands paying only favourable quit rents : the permanent assessment of the land tax shall be made exclusively of the said articles now recited."

The drafting of this section can by no means be commended for preciseness or lucidity, but it is clear that the reservations in respect of the power of Government are wider than in the sanads referred to above.

It appears that the Venkatagiri estate, when it came under British administration, included a large number of inam lands, which had been expropriated by the zamindars from time to time for charitable or pious purposes, either free of rent or on favourable rent. Some lands had also been granted to people for services to the estate. In respect of the latter the zamindar had an absolute right of resumption. As regards the others, which came within the category of pious grants, his power appears to have been limited ; he could resume them only on specific and apparently valid reason.

In 1816 the Government attempted to enforce its rights against the zamindar in respect of some of these alienated lands. The dispute was as to whether the zamindar was entitled to take possession of them without any liability for the payment of additional revenue, or whether the Government was entitled to the benefit of the resumption and possessed the right to assess revenue on those lands. The dispute was decided in favour of the zamindar, viz., that the Government had no such right as it claimed. Matters remained quiescent from the year 1822, when the action was decided in the Provincial Court, until 1897, when the Government again put forward the same claim as they had done in 1816 and attempted, by their revenue officers, to investigate into the title of the grantees who held the lands under the zamindar and to ascertain whether the grants were valid or not, and if they were not, to assess revenue on them. The Raja of Venkatagiri resisted the Government's claim, and after a good deal of correspondence brought in the Court of the District Judge of Nellore the four suits which form the principal foundation of the present consolidated appeal. The fifth suit, which has been made a part of the proceedings, was brought against the Government on similar grounds by another person in the Court of the Subordinate Judge of North Arcot in respect of lands lying in another estate.

In paragraph 10 of the plaint the Raja states the nature of the grants and his rights with reference to the alienated lands, and in

paragraph 11 he specifies his grounds of objection to the fresh assessment which the Government proposed to make on him. His ground of action is thus stated in the plaint :—

> "That the Inam Deputy Collector of Nellore acting under the orders of Government, gave a notice to the plaintiff that he would proceed to investigate the condition of devadayam and dharmadayam inams in the Venkatagiri zamindari which had been granted prior to the permanent settlement, and that in order to enable him to do so, the plaintiff should furnish him with a list of such inams containing the particulars specified in a statement annexed to the said notice, and that, in spite of the plaintiff's repeated objections to the right of Government to resume such inams in the zamindari of Venkatagiri or deal with the same under the Inam Rules, the said Deputy Collector is proceeding with the investigation. . . ."

He pleaded *res judicata* on the basis of the proceedings in 1816, and alleged further that the Government by their own conduct were estopped from claiming the right of assessment On these grounds he prayed for a declaration that the Secretary of State had no right to resume or assess to public revenue inams or lakheraj lands situate within the zamindari of Venkatagiri nor any reversionary right therein, or any such right in the inams or lakheraj lands which had already come in the plaintiff's possession. He also asked for a permanent injunction restraining the Secretary of State and his officers from holding any investigation into the nature of and title to inams or lakheraj lands within his estate, and from dealing with the same under the Inam Rules sanctioned by Government on the 9th August, 1859, or resuming them or assessing them to public revenue.

The Government joined issue with him on the question of the right of Government to resume and assess these expropriated lands ; their principal contention being that under Section 4 of Regulation XXV of 1802 the Government had expressly reserved its power and that the provisions in the sanad do not prejudice it or take it away.

The other objections in the written statement do not appear to their Lordships material for the purposes of the present judgment.

The District Judge states, in their Lordships' opinion, correctly and concisely the question for determination :—

> "The main question really to be decided in this suit is, whether the reversion in respect of inams or lakheraj lands situated within the zamindari of Venkatagiri belongs to the Government or to the zamindar, and whether the Government is entitled to resume those inams or whether such right of resumption belongs to the zamindar."

In a careful review of the facts, he held in substance that the Venkatagiri zamindari did not fall within the purview of the Regulation, and that consequently the contention of the Government was not maintainable ; and he accordingly in the four suits before him made a declaration in favour of the plaintiff's right and granted an injunction as asked for. On appeal to the

High Court his decrees have been maintained, although the reasons which the learned Judges of the High Court have assigned for coming to the same conclusion as the first Court do not proceed on the same lines as those followed by the District Judge. In substance, however, there is absolute concurrence between the two Courts.

The Government appears to have failed also in the Court of the Subordinate Judge of North Arcot, and their appeal to the High Court was dismissed.

As their Lordships substantially agree with the conclusions arrived at by the Courts in India, they do not think it necessary to traverse at any great length the grounds upon which the High Court and the District Judge have rested their judgments. It has been argued before the Board that the sanad of the plaintiff could not possibly override the express provisions of the Regulation, and that the executive Government had no power to convey to the grantee—viz., the zamindar—larger rights than the statute provided. It was urged that the rights of the Crown cannot be taken away by implication, and it was stated that, having regard to the terms of the section already referred to, the Government had absolute power at any time to direct an investigation into the title of the lakheraj lands to which the plaintiff laid a claim as part and parcel of his estate not liable to assessment by Government. In view of this contention which has been strenuously pressed by learned Counsel for the Government, it becomes necessary to examine a little more closely the circumstances which led to the conferment of the sanad on the zamindar of Venkatagiri and the other zamindars who were in the same position with him, and to consider how far the grant is affected by the provisions of Regulation XXV of 1802.

As already observed, the British authorities appear to have taken in hand as early as the 24th September, 1799, the regularisation of the land revenue in the Carnatics and to have issued instructions to the Board of Revenue as to the line of action to be taken, for the purpose of instituting a general enquiry into the conditions under which land was held within those territories. Regulation XXV of 1802 was an outcome of the enquiries made under those instructions to the Board of Revenue ; but it appears that whilst these enquiries were proceeding with regard to a general settlement of revenue, simultaneously an enquiry was in progress respecting the amount the Venkatagiri estate should in addition to the " established peshcush " pay in lieu of its release from the liability to keep up an army for the service of Government.

Mr. Stratton, the peshcush Collector of North Arcot, had been deputed to make a thorough enquiry as to the resources of the different polygars, and the Report which he submitted to the Government on the 14th July, 1801, contained all the requisite information, and upon that information the commutation which was granted to the zamindar of Venkatagiri in respect of his military force appears to have been fixed. He sets out in his

Report the different kinds of inams, some of which the zamindar was at liberty to resume at his own discretion, others which he could not resume without sufficient reason, such as neglect of duty, etc. All these lands appear to have been taken into consideration in arriving at the estimate of the commuted amount.

The sanad to the zamindar of Venkatagiri was issued, as already stated, on the 24th August, 1802, by the Governor in Council, Lord Clive, on behalf of the East India Company. The material terms of the sanad have already been referred to.

On the same date Lord Clive addressed a letter to the zamindar in terms which leave little doubt as to the meaning to be attached to the grant. He states first the object with which the sanad was granted, and goes on to say that—

> "Under the circumstances, the amount which your brave self has to pay annually in future is fixed as follows :—
>
> "In consideration of military service—eighty-nine thousand three hundred and eighty-five star pagodas.
>
> "The fixed peshcush (tribute)—twenty-one thousand six hundred and seventy-three pagodas.
>
> "Total—one lakh eleven thousand and fifty-eight star pagodas."

and what follows is important. The document goes on to say :—

> "As the above-mentioned amount is the maximum portion of your exalted self's zamindari which should annually be sent to the Government on account of the expenses for general protection, therefore, sanad (deed) of perpetual ownership, to the effect that the sum of one lakh eleven thousand and fifty-eight star pagodas should be paid to Government annually, by the zamindari of your brave self, by way of permanent jama (assessed revenue), is sent to you under the seal and signature of the Members of Government."

and again :—

> "Accordingly, having this matter in view, all the incomes from the lands of Amaram and Kattubadi retained in possession of foot soldiers were not included in the account of the item of the consideration for their services."

On the 25th August, 1802, a letter was addressed by the Secretary to the Government to the Collector of western peshcush, which included the three zamindaries principally concerned, viz., Venkatagiri, Calastry and Bomrauzepollam, making it clear that the revenues that were assessed upon these three zamindaries were deliberately fixed in the case of Venkatagiri at Rs. 1,11,058, to be paid annually by the zamindar.

Paragraph 10 of that document is important, and it is in these terms :—

> "To remove from the minds of the zamindars all doubt of the permanency of the present arrangement the Governor-in-Council has caused *sunnud-i-milkeut istimrar* to be prepared under the seal and signature of His Lordship-in-Council for the purpose of being delivered to the zamindars Kabooliats corresponding with these sanads are also transmitted, and the special commission desire that you will require the zamindars to sign and return them to you duly executed ; to these kabooliats you will annex a kistbundy fixing the kists according to the seasons of produce."

In accordance with these instructions from the Government given to the Collector of western peshcush, kabuliyats were taken from the zamindar in identical terms, but before executing his kabuliyat the zamindar of Venkatagiri took particular care to have the extent of his zamindari inserted in specific terms in the sanad that was granted. That appears from Mr. Stratton's letter of the 17th September, 1802. In paragraph 6 that officer states as follows :—

> "The Venkatagiri zamindar further made objections to sign his kabooliat until I had specified therein the several Districts composing the Venkatagiri zamindari ; considering this scruple of no material import, I was induced to accede to his request and at his suggestion to recommend to you that the districts under him should be particularised at the back of his sanad, for which purpose it is now accordingly returned."

So far as these documents are concerned, they leave no possible doubt that the Government, represented by the Governor-in-Council on the one side fixed a definite specific assessment on the whole zamindari of Venkatagiri irrespective of the particular assets derived from each particular unit of property within the estate, and that the zamindar, on his side, accepted that arrangement on that special understanding. The question now is whether that action of the Government was, in view of the provisions of Regulation XXV of 1802, valid or otherwise. As already stated, Counsel for the appellant have strongly argued that, in view of the provisions of Section 4 of that Regulation excluding the "lakheraj lands (or lands exempt from the payment of public revenue) and all other lands paying only favourable quit rents" from the permanent assessment of the land tax, it was not competent for the Governor-in-Council to grant a sanad of the character that is in issue in this case ; and much stress is laid upon the instructions that were originally issued in connection with the enquiry into the general resources of the different estates in 1799. It is said that in that document the Government took care to reserve its right on all lands "at present alienated and paying no public revenue which may have been or may be proved to be held under illegal or invalid titles and the revenue of which is not included in the Committee's account."

In respect of this contention two considerations arise—firstly, whether the lands which are now sought to be assessed were in fact paying no public revenue, and secondly, whether, in view of the provisions of Section 3, it is open to the Government to contend that the sanad should not be taken into account in the construction of Section 4. Section 3 declares as follows :—

> "Where the conditions of the permanent assessment of the revenue may have been adjusted, a *sunnud-i-milkeut istimrar*, or deed of permanent property, shall be granted on the part of the British Government to all persons being, or constituted to be, zamindars or proprietors of land ; and each zamindar or proprietor of land shall execute and deliver to the collector of the district a correspondent kabooliat. The said sanads and kabooliat shall contain the conditions and articles of tenure by which the lands shall be held ; in all cases of disputed assessment, reference shall be

had to the sanads and kabooliats; and judgment shall be given by the Courts of Judicature, in conformity to the conditions under which the agreement may have been formed in each particular case."

The above section lays down a definite rule relative to the principles on which the provisions in the Regulation should be construed. Now the sanad in question contains no reference to the lakheraj lands within the Venkatagiri zamindari. It would follow, therefore, that in the case of this property the provisions of Section 4 have no application, and that the assessment fixed upon it by virtue of the arrangements adopted in 1802 was upon a basis quite different from that provided in Section 4 of the Regulation. In other words, both the assessment and the sanad are outside the Regulation under which the Government claims the right to resume the inam lands within the estate of the plaintiff and to assess them separately.

It should also be observed that, although the Regulation was passed on the 13th July, 1802, and the sanad was granted to the zamindar of Venkatagiri on the 24th August, the recommendation of the Commission of the 12th August, 1802, on which the sanad was granted, recommended that the new assessment should be fixed to run from the 12th July of that year. After stating the principle on which they were proceeding in fixing the amount to be paid by the zamindar in commutation of the military service, in paragraph 40 they say as follows :—

"If the grounds on which we have now had the honour to propose that the assessment of public revenue should be fixed on the four Western zamindaries, including the customary peshcush and equivalent for military service, be approved by your Lordship-in-Council, the total amount of revenue derived to the State from those valuable provinces will exceed the amount of the old peshcush by the sum of 1,72,296 pagodas, and the aggregate amount of peshcush and the equivalent will, in future, be 2,50,000 pagodas per annum. We conclude the subject by recommending that the permanent assessment of the public revenue on these zamindaries be fixed accordingly at that rate, from the 12th day of July last."

This also clearly shows that the arrangement in respect of "the four Western zamindaries" was made independently of the provisions of the Regulation. Another thing has to be observed in connection with this arrangement, viz., the difference in the terms of this sanad from the sanads granted to the other zamindars under the Regulation itself.

In the view their Lordships take of the general evidence in the case they do not consider it necessary to express any opinion on the question raised by the plaintiff that the controversy in dispute is *res judicata* in consequence of the decision of the Provincial Court in 1822; but it is desirable to point out that since that decision the Government at various times expressly assented to the position which the zamindar had taken up in respect of the inam lands within his estate. Their Lordships will refer only to three documents: first, Exhibit K.—a letter of the 24th April, 1823, addressed by the Secretary to the Board of Revenue

to the Chief Secretary to the Government, in which it was stated as follows :—

> " The permanent peshcush of the zamindari of Venkatagiri was fixed upon the principles as upon Bomrauze and Calastry, and for the same reasons which induced the Board to state upon a former occasion that they considered the zamindar of Bomrauze not to be entitled to remission on account of certain villages having been taken from him by a decree of Court inasmuch as by the operation of that decree there was taken from him nothing on which his contribution to Government was fixed ; they are now of opinion that the zamindar of Venkatagiri is entitled to benefit by the resumption of any villages formerly alienated from his zamindari without question on the part of Government or being liable to assessment on the increase to his resources thereby acquired."

Again in 1839 the Board of Revenue, in a letter addressed to the Chief Secretary to the Government (exhibit N), stated as follows :—

> " The zamindar now rests his claim on the ground that as his permanent cowle was framed without any reference to its assets, and as it contains no reservation in respect to the right of resuming lakheraj land, as in the case of the northern and other zamindaries, the right to resume inams or lakheraj lands in the position of Peddapoloor belonging of right to him and by no means to the Government, and he cites a decree by the Provincial Court of the Northern Division in favour of the zamindar of Venkatagiri in a suit brought by the Collector of Nellore for the recovery of the village under similar circumstances."

and in paragraph 7 they say as follows :—

> " On the other hand, the decrees of the Zillah Court of Chittoor and of the Provincial Court of the centre division are in favour of the right of Government to resume, in preference to that of the zamindar. But it will be noticed that they contain no allusion to the dissimilarity in the terms of the permanent settlement of Calastry and the other Western polliems, assuming that the peshcush was fixed as on the zamindaries in the northern, upon the assets, and that Regulation XXXI of 1802 applies to the former as to the latter. By a reference to the kabooliat of the zamindar of Calastry and the correspondence which passed at the time a permanent cowle was granted to him, it will be seen at once that the peshcush was not so fixed, and, as already shown, the Regulation above mentioned was not considered to apply to the case of the Venkatagiri zamindar."

On the 3rd September, 1860, the Commissioner of the Division issued certain instructions for the guidance of the Deputy Collectors employed in inam investigation of the North Arcot district, and he correctly laid down the position with regard to the zamindar of Venkatagiri and the other zamindars who stood in the same position, in the following terms :—

> " The private estates will be first noticed. The zamindaries of Kalahastri and Karvetinagar were, like the zamindari of Venkatagiri in the Nellore District, permanently settled in 1803 on the principle of the commutation of the military service tenure attached to them. The peshcush was not fixed upon the assets of the estates, but was a proportion of the cost of the zamindar's military establishment, inclusive of amarams and kattu badis, diminished by the amount of revenue derived from salt, sayer and abkari, which were reserved by Government. The inams were not excluded by the terms of the settlement, and the Government have therefore no right of reversion in them."

The revenue authorities in that part of the Presidency, in the face of the expression of opinion to which reference has been made here, have attempted to reverse the arrangement expressly entered into in 1802. In their Lordships' opinion this attempt fails.

Some stress was laid on behalf of the appellant on the provisions of Regulation XXXI of 1802. It is sufficient, however, to point out that that Regulation refers entirely to procedure appointed for the investigation of the title to hold lands exempted from the payment of revenue. Here the lands which are sought to be resumed were not exempted from the payment of public revenue; the revenue which was paid on the estate included the lands in question and the jama was assessed on the whole estate inclusive of the lakheraj and inam lands.

For the foregoing reasons their Lordships are of opinion that the judgments and decrees of the Courts in India are right and should be affirmed and that these appeals should be dismissed with costs, and they will humbly advise His Majesty accordingly.

In the Privy Council.

THE SECRETARY OF STATE FOR INDIA IN COUNCIL

v.

UNDE RAJAHE RAJE SIR VELUGOTI SRI RAJAGOPALA KRISHNA YACHENDRA BAHADUR VARU, RAJA OF VENKATAGIRI, SINCE DECEASED.

SAME

v.

RAJA PANAGANTI SITARAMARAYANIM GARU AND ANOTHER.

(*Consolidated Appeals.*)

DELIVERED BY MR. AMEER ALI.

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