Privy Council Appeal No. 11 of 1918

The Rosehaugh Tea and Rubber Company, Limited - - - *Appellants*

v.

Abekoon Walauwe Abeyratue Banda, substituted for Hendenia Walauwe Muthu Banda - - - - - *Respondent*

FROM

THE SUPREME COURT OF THE ISLAND OF CEYLON.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 20TH JANUARY, 1921.

Present at the Hearing:
LORD BUCKMASTER.
LORD DUNEDIN.
LORD SHAW.

[*Delivered by* LORD BUCKMASTER.]

In this case their Lordships have heard all that can be urged by the appellants against the judgment of the Supreme Court of Ceylon, and in their Lordships' opinion the judgment should stand. The real question for consideration is whether a lease that was granted on the 18th November, 1886, to the predecessors in title of the appellants is a lease which ought to be set aside under section 38 of the Buddhist Temporalities Ordinance, 1905. That section provides that:—

> "Wherever it is proved to the satisfaction of a competent court that any property of any temple has heretofore been leased (*a*) for a longer term of years than is consistent with the interests of such temple; or (*b*) on terms showing an improvident alienation,"

or for other reasons into which it is not necessary to enquire, the Court

> "shall set aside such lease and restore possession of the property to the trustees entitled to hold the same,"

It is further provided that in such a case the Court shall also award, where there has been no collusion, a reasonable compensation for permanent improvements effected to the property. In their Lordships' opinion, it is plain that the object of this ordinance was to prevent unduly prolonged alienation of the properties devoted to religious use, and that a long lease, unless

the Court should be satisfied that there were good reasons for its being granted, would be scrutinised very closely by the Court before whom it was challenged.

In the present case the lease was a lease for thirty years of jungle property at a rent which it is admitted was the fair rent for the property as it then stood. It further provided that at the lapse of the thirty years the lessee should have power to claim an extension for a further period of thirty years at the same rent. The lease nowhere contains any provision at all that would throw upon the lessees the duty of maintaining any state of cultivation into which they reduced the jungle or bound them to hand back to the lessors, when the lease ultimately ended, the property in any respect improved, and indeed it was expressly provided that

> " the said lessor or his aforewritten shall not be entitled to have or receive of or from the said lessee or his aforewritten any compensation or allowance for the non-cultivation or non-improvement of the said premises hereby demised or for any other act whatsoever on the part of the said lessee.'

It is quite true, as was urged by Mr. Barrington Ward, that there might be commercial reasons which would induce the lessees to prevent the property becoming derelict, but it is impossible to rely with confidence on the existence of such reasons at a lapse of time so long as sixty years when it might be either that the plantation would have been worked out, or that the purposes for which it was going to be cultivated would no longer exist. The result, therefore, is that this property has been alienated for sixty years at a rent which was fixed at the low rent of waste land at the time when the lease was granted, and both the learned Judge who tried the case, and at least one of the learned Judges in the Supreme Court, have held as a question of fact that in those circumstances this was an improvident lease. With that conclusion of fact, their Lordships are in complete agreement, and it only remains to say that the real point upon which the appellants based their appeal here was the question as to whether the Judges were entitled to consider the circumstances as they existed at the time when the action was brought as the real circumstances determining what the rent ought to have been at the time when the lease was granted. Both the learned Judges in the Supreme Court appear to have taken as an alternative view the view that they were so entitled to regard the position. Their Lordships are not satisfied that that view is correct, but as it is unnecessary that it should be decided at the present moment they content themselves with saying that the question of fact as to the improvident character of this lease as shown upon the face of it at the time at which it was executed is sufficiently established, and that upon the matter as placed before them in the exercise of their own independent judgment they would agree with the conclusion at which the learned Judges in the Supreme Court have arrived.

For these reasons their Lordships will humbly advise His Majesty that this appeal should be dismissed with costs.

In the Privy Council.

THE ROSEHAUGH TEA AND RUBBER COMPANY, LIMITED,

v.

ABEKOON WALAUWE ABEYRATUE BANDA, SUBSTITUTED FOR HENDENIA WALAUWE MUTHU BANDA.

DELIVERED BY LORD BUCKMASTER.

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