Privy Council Appeal No. 51 *of* 1929.

Dattatraya Krishna Rao Kane, for himself and on behalf of the members of the Yeotmal Izardars' and Inamdars' Association - *Appellant*

v.

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

FROM

THE COURT OF THE JUDICIAL COMMISSIONER OF THE CENTRAL PROVINCES.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 1ST JULY, 1930.

Present at the Hearing.

LORD ATKIN.
LORD MACMILLAN.
SIR JOHN WALLIS.

[*Delivered by* LORD ATKIN.]

This action is brought by the plaintiff, on behalf of himself and other Izardars and Inamdars who hold land in the territory known as the Berar, against the Secretary of State for India in Council, to have it declared that the Act passed in 1921, which one may call shortly the Berar Tenancy Act, is invalid. It is said to be invalid because it is in conflict with and purports to take away rights which the plaintiff and those whom he represents allege were given to them by grant from the Government of India.

The position as it exists is due, in the first instance, to the treaties that were made between the Crown and His Highness the Nizam of Hyderabad. The first treaty was made in 1853, and by the terms of that treaty His Highness the Nizam assigned the districts mentioned in the schedule, which include the territory of the Berar, to the exclusive management of the British Resident for the time being at Hyderabad, and to such other officers acting under his orders as might from time to time be appointed by the Government of India. That was for the

purpose of paying the Hyderabad Contingent and certain other expenses. On the 26th November, 1860, a further treaty was made between Her Majesty Queen Victoria and His Highness the Nizam, by which the Nizam agreed to forego all demands for an account of the rents and expenditure of the assigned districts, and by Article 6 it was provided as follows :—

> " The districts in Berar already assigned to the British Government under the Treaty of 1853, together with all the Surf-i-Khas talooks comprised therein, and such additional districts adjoining thereto as will suffice to make up a present annual gross revenue of thirty-two lakhs of rupees currency of the British Government, shall be held by the British Government in trust for the payment of the troops of the Hyderabad Contingent, Appa Dessaye's chout, the allowance to Mohiput Ram's family, and certain pensions mentioned in Article VI of the said Treaty."

In 1902, however, a permanent arrangement was made between the Government of India and His Highness the Nizam, whereby His Highness the Nizam, whose sovereignty over the assigned districts was reaffirmed, leased them to the British Government in perpetuity, in consideration of the payment to him by the British Government of the fixed and perpetual rent of 25 lakhs of rupees. By Clause (II) it is provided :—

> " The British Government, while retaining the full and exclusive jurisdiction and authority in the Assigned Districts which they enjoy under the Treaties of 1853 and 1860, shall be at liberty, notwithstanding anything to the contrary in those Treaties, to administer the Assigned Districts in such manner as they may deem desirable."

In June, 1902, no doubt in anticipation of the agreement which was made and signed in November, 1902, there was an Order in Council made entitled : " The Indian (Foreign Jurisdiction) Order in Council," giving power to the Governor-General of India in Council to deal with these particular territories. Clause 3 of the Order provides :—

> " The Governor-General of India in Council may, on His Majesty's behalf, exercise any power or jurisdiction which His Majesty or the Governor-General of India in Council for the time being has within the limits of this Order, and may delegate any such power or jurisdiction to any servant of the British Indian Government in such manner, and to such extent, as the Governor-General in Council from time to time thinks fit."

It was under that power that the Tenancy Law in question was promulgated, and it appears to their Lordships that, in pursuance of those powers so given to the Governor-General by Order in Council, he by this Tenancy Law purported to legislate and pass an enactment having the full effect of an Act in those territories, and the question is whether or not he had authority so to legislate. The power to make the Order in Council is derived from the Foreign Jurisdiction Act, 1890, which recites :

> " Whereas by treaty, capitulation, grant, usage, sufferance, and other lawful means, Her Majesty the Queen has jurisdiction within divers foreign countries, and it is expedient to consolidate the Acts relating to the exercise of Her Majesty's jurisdiction out of Her dominions,"

and proceeds to enact by Section 1 :—

> " It is and shall be lawful for Her Majesty the Queen to hold, exercise, and enjoy any jurisdiction which Her Majesty now has or may at any time hereafter have within a foreign country in the same and as ample a manner as if Her Majesty had acquired that jurisdiction by the cession or conquest of territory."

By the definition, " foreign country " means any country or place outside of Her Majesty's dominions, and the expression " jurisdiction " includes power. There can be no doubt at all that the King in Council has power, in respect of foreign territory within the definition of that Clause, either to legislate himself by Order in Council or to make provision for legislation by delegating that legislative authority to such a person or body as he may denote in the Order in Council. It is plain, in their Lordships' opinion, that the Order in Council of 1902 does purport to delegate to the Governor-General in Council the power to legislate in respect of the territories in question. The Governor-General, therefore, in enacting this Tenancy Law of 1921, had the power to legislate : he exercised that power, and the legislation may operate, as all legislation may operate, subject to the terms of the Foreign Jurisdiction Act, to take away vested rights or to alter vested rights, of anyone who is in fact subject to that particular legislation.

The plaintiff in this case had in fact had dealings with the Government of India before this legislation was passed. There were certain Waste Land Rules which were made on the 13th December, 1865. It is not necessary to go through them in detail. The view that their Lordships take of those rules is that they are merely administrative rules, and were not intended to be in the nature of legislation at all. They lay down certain principles under which the Government of India would allow persons to hold land within the territory, and, in pursuance of those rules, certain leases were granted to the plaintiff's predecessors in title and the predecessors in title of those whom he now represents. The leases were granted for thirty years, and, pursuant to the same rules, at the expiration of the leases the holders of the land were entitled to exercise the option of acquiring proprietary rights in the land which they held. Under those rules the proprietors were to have full power to make their own arrangements for the cultivation of the lands of the villages, " subject to such rules and regulations as the Government of India may from time to time prescribe for determining their relations with their *ryots* of any description."

In their Lordships' opinion, there cannot be any doubt that the provisions of the Tenancy Law which was passed do in fact interfere with the rights which the plaintiff and the persons whom he represents acquired over their own property under these sanads which were granted to them by the Crown, because the Tenancy Act incorporates most of the provisions with which we are familiar

in the Bengal Tenancy Act and other Acts giving large powers to the Courts and administrative officers to protect the actual occupiers of the land, to give them security of tenure and to fix the sums which they have to pay, and undoubtedly interfere with the relations that previously existed between the principal proprietors and the actual occupiers of the land. To that extent, therefore, their rights are interfered with, but, inasmuch as, as has been said, the Tenancy Act is a piece of legislation of a competent legislature, in this case the Governor-General in Council, it is effective to alter the rights of persons within the territory, and it appears to their Lordships to be impossible to say that the Act is invalid merely on that ground.

The validity of the Act was also assailed on the ground that it violated the provisions of Section 12 of the Foreign Jurisdiction Act, the Act which gave authority to make the Order in Council under which the Governor-General derives his legislative authority. That section provides :—

> "(1) If any Order in Council made in pursuance of this Act as respects any foreign country is in any respect repugnant to the provisions of any Act of Parliament extending to Her Majesty's subjects in that country, or repugnant to any order or regulation made under the authority of any such Act of Parliament, or having in that country the force and effect of any such Act, it shall be read subject to that Act, order, or regulation, and shall, to the extent of such repugnancy, but not otherwise, be void."

It was said that the Waste Land Regulations were regulations which, within this section, control the operation of legislation effected by the Governor-General. It appears to their Lordships that that is a misreading of the Foreign Jurisdiction Act. The Act of Parliament and the Order and Regulations referred to thereunder are Acts, Orders and Regulations so far only as they apply to His Majesty's subjects in the territory in question and have no relation to a case such as this, where the legislation does not purport to affect His Majesty's subjects at all but has relation to persons who are not subjects of His Majesty but subjects of His Highness the Nizam of Hyderabad. That seems to their Lordships to be quite sufficient to dispose of the claim in this case. That is the view which was taken by the learned Trial Judge, whose judgment on this part of the case seems to their Lordships to be completely satisfactory. There is a further point which has specially impressed the Appeal Court, namely, that the terms under which the plaintiffs themselves held their right expressly provide that they are subject to such regulations as may be made in future by the Government of India, that the provisions of the Berar Tenancy Act if not legislative would at any rate be regulations made by the Government of India, and that the plaintiffs, therefore, cannot complain. It is unnecessary to discuss this contention, for, in their Lordships' opinion, it is quite clear that this is legislation by a legislature which is competent to deal with existing rights and vary them. There is no

provision in any Act which restricts the operation of that legislation, so far as any previous existing regulations are concerned, which the plaintiffs can invoke in aid of their title, and therefore it appears that the plaintiffs' action is ill-conceived and there is no ground for attacking the validity of the legislation in question. Therefore the suit fails and the appeal must be dismissed with costs, and their Lordships will humbly advise His Majesty accordingly.

In the Privy Council.

DATTATRAYA KRISHNA RAO KANE, FOR HIMSELF AND ON BEHALF OF THE MEMBERS OF THE YEOTMAL IZARDARS' AND INAMDARS' ASSOCIATION

v.

THE SECRETARY OF STATE FOR INDIA IN COUNCIL.

DELIVERED BY LORD ATKIN.

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