Case Note: Validity of the land reform act challenged on various grounds.

AIR1956SC346, [1956]1SCR72

IN THE SUPREME COURT OF INDIA

Decided On: 03.02.1956

Raja Sri Sailendra Narayan Bhanja Deo
v.
The State of Orissa

Hon'ble Judges:
S.R. Das, C.J., B.P. Sinha, Bhagwati, Jagannath Das and Venkatarama Ayyar, JJ.

JUDGMENT

Das, C.J.

1. This is an appeal from the judgment and decree passed on the 28th September, 1953, by a Bench of the Orissa High Court in an Original Suit which was filed on the 24th November, 1952, in the Court of the Subordinate Judge of Cuttack and was on the 17th January, 1953, transferred to the High Court and marked as Original Suit No. 1 of 1953. The suit was filed by the plaintiff-appellant claiming as the Raja and owner of the Rajgee, known as the Kanika Raj, against the State of Orissa, praying for a declaration that the Orissa Estates Abolition Act, 1951 (hereinafter referred to as "the Abolition Act") was, in its application to the Rajgee of Kanika, invalid, unconstitutional and ultra vires the State Legislature and for an injunction restraining the State of Orissa from taking any action under the said Act. The suit was instituted evidently under an apprehension that the State of Orissa might issue a notification under section 3(1) of the Abolition Act declaring that the Rajgee of Kanika had passed to and become vested in the State free from all encumbrances. The High Court dismissed the suit but gave a certificate of fitness for appeal to this court. Hence the present appeal by the plaintiff.

2. The plaintiff's contention before us is that no notification under section 3(1) of the Abolition Act can issue because (1) his land is not an "estate" as defined in section 2(g) of the Act, and (2) the plaintiff is not an "intermediary" within the meaning of section 2(h) thereof. In answer to this, the Attorney-General, appearing on behalf of the State, makes five submissions, viz.,

(a) that on the admitted facts the plaintiff's land is an "estate" within the meaning of the Abolition Act;

(b) that the plaintiff is estopped by the compromise decree passed by the Patna High Court on 2nd May 1945 in F. A. No. 15 of 1941 from contending that his land is not an "estate" within the meaning of the Abolition Act;

(c) that the plaintiff's land has been held as an "estate" ever since 1803;

(d) that whatever may have been the position before 1805, the plaintiff's land became an "estate" by Regulation XII of 1805; and

(e) that in any event, the plaintiff's land became an "estate" after 1805 by subsequent acts and conduct of the plaintiff and his predecessors in title.

3. Re. (a) :- Under section 3(1) of the Abolition Act, the State Government can declare that a specified "estate" has passed to and has become vested in the State. It is, therefore, clear that the State Government cannot make any notification with respect to land which is not an "estate"."Estate" is defined in section 2(g) of the Abolition Act. The material portion of that definition, as it stood at the date of the institution of the suit, was as follows :-

"'estate' means any land held by an intermediary and included under one entry in any of the general registers of revenue-paying lands and revenue, free lands, prepared and maintained under the law for the time being in force by the Collector of a district,....."

4. "In order to be an "estate", the land must be held by an "intermediary" and must be included under one entry in any of the general registers of revenue-paying lands and revenue-free lands and such general registers must be prepared and maintained under the law for the time being in force. Section 2(h), as it stood then, by its earlier part, defined an "intermediary", with reference to any "estate", to mean, amongst other things, a proprietor. The plaintiff certainly claims to be the proprietor of his land. Therefore, if his land is an "estate", he is clearly an "intermediary". The case of Biswambhar Singh v. The State of Orissa and Others [[1954] S.C.R 842], which has been relied on by learned counsel for the plaintiff has no application to the present case, for that case was concerned not with the earlier but with the latter part of the definition of "intermediary". That the plaintiff's land is included under one entry in the general register of revenue paying lands is not disputed. What is contended for is that in order to make such land an "estate" the register must be prepared and maintained under the law for the time being in force. There is no dispute that "the law for the time being in force" means the Bengal Land Registration Act (Bengal Act VII of 1876). The plaintiff contends that the register in which his land is included under one entry was not prepared or maintained under the Bengal Land Registration Act. The argument is that it is not only necessary to show that the land is included under one entry in a register but that it is also necessary to show that the register where the entry appears was prepared and maintained under the law. Under the Bengal Land Registration Act, 1876, land can be included in the register prepared and maintained under that Act only if such land is an "estate" as defined in that Act. The relevant part of that definition is :-

"3(2) 'estate' includes :-

(a) any land subject to the payment of land-revenue, either immediately or prospectively, for the discharge of which a separate engagement has been entered into with Government;

(b) .....

(c) ....."

5. It is urged, therefore, that the preparation of a register under that Act means the making of entries in that register of lands which are subject to the payment of land revenue for the discharge of which a separate engagement has been entered into. Land which is not subject to payment of land revenue and for the discharge of which a separate engagement has not been entered into is not an "estate" and cannot be entered in the register prepared and maintained under the Bengal Land Registration Act. That Act confers powers on the Collector to prepare the register in the manner specified therein and such statutory power, in order to have effect, must be exercised in strict compliance with the provisions of that Act. The plaintiff maintains that the Rajgee of Kanika was never subject to payment of land revenue for the discharge of which a separate engagement had been entered into by him or his predecessors-in-title.

6. That the ancestors of the plaintiff were at one time independent chiefs and that the Rajgee or Killa of Kanika was in ancient time an independent State are conceded. Later on, the Rajas of Kanika owed nominal allegiance to the Mahrattas. Then came the last Mahratta War and the plains of Orissa were conquered by the East India Company. On 22nd November, 1803, there was an "Engagement" between the East India Company and Raja Balabhadra Bhanja Deo, the then Raja of Killa Kanika. The East India Company on the same day granted a Kaool-Namah to the Raja. Under the Engagement the Raja agreed, amongst other things, to pay, as annual Peshkush or tribute, 84,840 Kahuns of Cowrees, amounting to Rs. 20,407-12-11. This Engagement was confirmed by clause 10 of the Treaty of Peace concluded on the 17th December, 1803, at Deogan between the East India Company and the Mahrattas which treaty was later on ratified by the Governor-General in 1804. On the 5th September, 1805, was passed the Bengal Regulation XII of 1805. Sections 33 to 37 which are material for our present purpose were as follows :-

"XXXIII. - The Commissioners having granted sanads to certain zamindars, entitling them to hold their estates at a fixed jama in perpetuity, those sanads are hereby confirmed. The following is the list of the names of the zamindars to whom this provision is to be considered applicable :

Zamindar of Killah Darpan,

Zamindar of Killah Sookindah,

Zamindar of Killah Muddoopore.

XXXIV. - The Commissioners having likewise granted a sanad to Futtah Mohmed, jaghirdar of Malood, entitling him and his heirs for ever, in consideration of certain services performed towards the British Government, to hold his lands exempt from assessment, such sanad is hereby confirmed.

XXXV. First. - The late Board of Commissioners having concluded a settlement of the land revenue with certain zamindars, whose estates are situated chiefly in the hills and jungles, for the payment of a fixed annual quit-rent in perpetuity, those engagements are hereby confirmed; and no alteration shall, at any time, be made in the amount of the revenue payable under the engagements in question to Government.

Second. - The following is a list of the mehals to which the provision in the preceding Clause is applicable :

Killah Aull, : Killah Humishpore,

Killah Cojang, : Killah Miritchpore,

Killah Puttra, : Killah Bishenpore.

Third. - The zamindaries of Cordah and Cunka being mehals of the description of those specified in the preceding Clause, a settlement shall be concluded, as soon as circumstances may admit, for the revenue of those mehals on the principle on which a settlement has been concluded with the zamindars of the mehals specified in the preceding Clause.

XXXVI. - All Regulations relating directly or indirectly to the settlement and collection of the public revenue, or to the conduct of the officers employed in the performance of that duty, whether European or native, in the province of Bengal, which are not superseded by the foregoing rules, are hereby extended to, and declared to be in force in the zillah of Cuttack. Provided, however, that nothing herein contained shall be construed to authorize the division of the lands comprised in any estates in the zillah of Cuttack, in which the succession to the entire estate devolves according to established usage to a single heir : in cases of this nature, the Courts of Justice are to be guided by the provisions contained in Regulation X, 1800. Provided, also, that nothing herein contained shall be construed to imply, that any part of the said Regulations are for the present to be considered to be in force in certain jungle or hill zamindarries occupied by a rude and uncivilized race of people with the proprietors of which estates engagements were formed by the late Board of Commissioners for the payment of a certain fixed quit rent or tribute to Government. The following is the list of the names of the mehals to which this exemption from the operation of the general Regulations is to be considered applicable.

Killah Neelgerry, : Killah Toalcherry, : Killah Rampore,

Killah Bankey, : Killah Attgurh, : Killah Hindole,

Killah Joormoo, : Killah Kunjur, : Killah Teegereah,

Killah Nirsingpore, : Killah Kindeapara, : Killah Burrumboh,

Killah Augole, : Killah Neahgurh, : Killah Deckenaul.

XXXVII. The foregoing exemption from the operation of the general Regulations shall likewise, for the present, be considered to be applicable to the lands known by the appellation of the territory of Mohurbunge; but it shall be the duty of the Collector of the zillah to conclude a settlement with the proprietor of the estate for the payment of a fixed annual quit-rent, on the principles on which a settlement has been concluded with the other hill or jungle zamindars specified in the preceding section".

7. It is claimed that there was at no subsequent time any such revenue settlement as was contemplated by section XXXV(3) and that there was no separate engagement for payment of any land revenue at any time thereafter. The conclusion sought to be drawn in the circumstances is that as Killa Kanika was not subject to payment of land revenue, for the discharge of which a separate engagement had been entered into, it was not an "estate" as defined in Bengal Land Registration Act, 1876, and that that being the position, it could not have been validly entered in the register prepared and maintained under the Bengal Land Registration Act. The action of the Collector in entering Killa Kanika as a revenue-paying estate was wholly ultra vires and in the eye of the law such an entry is a nullity and does not exist. It follows, therefore, that Killa Kanika cannot be regarded as an "estate" within the meaning of the Abolition Act because the general register in which it is included cannot be said to have been validly prepared and maintained under the law for the time being in force.

8. Section 4 of the Bengal Land Registration Act, 1876, directs the Collector of every district to prepare and keep up the four kinds of registers therein mentioned. Section 7 lays down that in Part I of the general register of revenue-paying lands should be entered the name of every estate which is borne on the revenue-roll of the district and certain other particulars relating to every such estate as therein specified. Therefore, if the name of Killa Kanika was borne on the revenue-roll of the district, the Collector would be bound to enter the same in Part I of the general register prepared and kept up by him under section 4. Section 20 of the Act provides that until the registers by that Act directed to be prepared were so prepared the existing registers then kept up in the office of every Collector should be deemed to be the registers kept up under the Bengal Land Registration Act, 1876. Prior to 1876, land registers used to be maintained under the Bengal Regulation XLVIII of 1793 as amended by Bengal Regulation VII of 1800. Existing registers mentioned in section 20 of the Bengal Land Registration Act, 1876, clearly refer to registers kept under those Regulations and the learned Attorney-General contends that section 20 gives a statutory validity to the registers kept under those Regulations. Mr. P. R. Das appearing for the appellant submits that his arguments apply with equal force to the registers kept under the old Regulations referred to above.

According to him, if the Collector entered lands which were not "estate" as defined in the old Regulations, he did not exercise his statutory powers and the entry made by him was a nullity and if any of the existing registers was void as regards a particular entry, then that entry did not exist and could not be transferred to the new register and if it was transferred, such transfer was a nullity and the new register, qua that entry, was void and could not be said to have been prepared and maintained under law.

9. We are unable to accept the line of reasoning developed by Mr. P. R. Das. To accede to his contention would be to add words to section 2(g) of the Abolition Act so as to make it applicable to lands which were "validly" included under one entry in any of the general registers "properly" prepared and maintained under the law for the time being in force, that is to say, the Bengal Land Registration Act, 1876. This the court has no power to do. If section 2(g) defined "estate" as including lands mentioned in the schedule to the Act, then whatever was included in the schedule would be an "estate" within the meaning of the Abolition Act, irrespective of whether such land was or was not an "estate" within the meaning of any other Act. The same reasoning applies when the definition included lands entered in the general registers prepared and maintained under the Bengal Land Registration Act, 1876. Here the reference to the register prepared or kept under the law for the time being in force was meant only to identify the particular register in which the particular land was included under one entry. Suppose that a register prepared and maintained under the Bengal Land Registration Act, 1876, included lands which were "estates" within the meaning of the Land Registration Act and also lands which were not "estates" within the meaning of that Act. Suppose further that the Orissa Legislature by the Abolition Act intended to include all these lands, properly or improperly included in the register, what language would they then have used ? Precisely the language they have used in section 2(g) of the Abolition Act, namely, that an "estate" means any land included in the general registers prepared and maintained under the law for the time being in force. In other words, the definition covers lands which are factually included in the particular register referred to. Whether they are "estates" within the meaning of the Bengal Land Registration Act, 1876, and whether they were validly or properly entered according to the provisions of that Act, appears to us to be wholly irrelevant for the purpose of construing section 3(g) of the Abolition Act. In our opinion, the contention of the State of Orissa on this point must be accepted.

10. Re. (b) :- Mr. P. R. Das appearing for the appellant objects to the plea of estoppel being raised, because it has not been included in the Statement of Case filed in the present appeal by the respondent. Order XVIII of the Rules of this Court deals with the lodging of cases. Under Rules 1 no party to an appeal is entitled to be heard by the court unless he has previously lodged his case in the appeal. Rule 3 lays down how the case is to be prepared and what its contents should be. Order XIX, Rule 4 provides that the appellant shall not, without the leave of the Court, rely at the hearing on any grounds not specified in the Statement of Case filed by him. The Privy Council Practice founded on Sheo Singh Rai v. Mussumut Dakho and Moorari Lall [[1878] L.R. 5 I.A. 87], and set forth in Bentwich 3rd edition Ruling 63 at page 181 is to the same effect. There is no rule imposing corresponding disability on the respondent. Further even with regard to the appellant the Court may, in appropriate cases, give him leave to raise a ground not

specified in the Statement of Case. In the present case there is no question of surprise, for the plea of estoppel was pointedly raised and made the subject matter of an issue before the High Court and was elaborately dealt with by the High Court in its Judgment under appeal. In the circumstances we do not consider it proper to shut out this plea of estoppel.

11. The plea of estoppel is sought to be founded on the compromise decree, Ex.'O' passed by the Patna High Court on 2nd May, 1945, in F. A. No. 15 of 1941. The compromise decree is utilised in the first place as creating an estoppel by judgment. In In re. South American and Mexican Company, Ex parte Bank of England [L.R. [1895] 1 Ch. 37], it has been held that a judgment by consent or default is as effective an estoppel between the parties as a judgment whereby the court exercises its mind on a contested case. Upholding the judgment of Vaughan Williams, J., Lord Herschell said at page 50 :-

"The truth is, a judgment by consent is intended to put a stop to litigation between the parities just as much as is a judgment which results from the decision of the Court after the matter has been fought out to the end. And I think it would be very mischievous if one were not to give a fair and reasonable interpretation to such judgments, and were to allow questions that were really involved in the action to be fought over again in a subsequent action".

12. To the like effect are the following observations of the Judicial Committee in Kinch v. Walcott and others [L.R. 1929 A.C. 482, 493] :-

"First of all their Lordships are clear that in relation to this plea of estoppel it is of no advantage to the appellant that the order in the liable action which is said to raise it was a consent order. For such a purpose an order by consent, not discharged by mutual agreement, and remaining unreduced, is as effective as an order of the Court made otherwise than by consent and not discharged on appeal".

13. The same principle has been followed by the High Courts in India in a umber of reported decisions. Reference need only be made to the case of Secretary of State for India in Council v. Ateendranath Das [[1935] I.L.R. 63 Cal. 550, 558], Bhaishanker Nanabhai and others v. Morarji Keshavji and Co. [[1911] I.L.R. 36 Bom. 283] and Raja Kumara Venkata Perumal Raja Bahadur, Minor by guardian Mr. W. A. Varadachariar v. Thatha Ramasamy Chetty and others [[1911] I.L.R. 35 Mad. 75]. In the Calcutta case after referring to the English decisions the High Court observed as follows :-

"On this authority it becomes absolutely clear that the consent order is as effective as an order passed on contest, not only with reference to the conclusions arrived at in the previous suit but also with regard to every step in the process of reasoning on which the said conclusion is founded. When we say "every step in the reasoning" we mean the findings on the essential facts on which the judgment or the ultimate conclusion was founded. In other words the finding which it was necessary to arrive at for the purpose of sustaining the judgment in the particular case will operate as estoppel by judgment".

14. The correctness of these principles laid down in these decisions is not disputed by Mr. P. R. Das. Proceeding on the basis that there is such a principle of estoppel by judgment, he contends that the test laid down in the decisions referred to above is whether the judgment in the previous case could have been passed without the determination of the question which was put in issue in the subsequent case, where the plea of estoppel by the previous judgment is raised. This leads us to a consideration of the facts, which are material to this question.

15. On the 4th February, 1936, the predecessor-in-title of the plaintiff brought a suit (O. S. No. 7 of 1936) in the Court of the Subordinate Judge of Cuttack against the Secretary of State for India in Council, praying for a declaration that the plaintiff had a good and indefeasible title to the beds of certain rivers, by expressed or implied grant from the East India Company, alternatively for a declaration that the plaintiff had acquired an indefeasible right and title to the beds of the said rivers by prescription or adverse possession and for permanent injunction against the defendant restraining him from interfering with the rights of the plaintiff in the beds of the said rivers and the churs formed on them. The suit was founded on, amongst others, the following allegations. In paragraphs 3 to 6 of the plaint were pleaded that the plaintiff's ancestors were the rulers of Killa Kanika owing allegiance to the Hindu Gajapati Kings of Orissa and were absolute owners of all lands and waters within the ambit of their territories including the two rivers therein mentioned and that after the fall of the Hindu kingdom in Orissa, and during the Afghan, Moghal and Mahratha occupation of Orissa, the Rulers of Killa Kanika, the ancestors of the plaintiff continued to be the absolute owners of the Killa including the said rivers. In paragraph 7 of the plaint reference was made to the Engagement and Kaoolnama of 1803, whereby the Raja was said to have been confirmed in his Rajgee or proprietorship of the entire Killa and it was submitted that the said grant was intended to and did, in fact, confirm his title to the said rivers. In paragraph 9 of the plaint, it was acknowledged that subsequently the status of the rulers of Killa Kanika was gradually reduced to that of a Zamindar and that they were divested of all administrative powers, but it was claimed that nevertheless, their proprietary rights in the Killa consisting of land and water including the disputed rivers remained intact and that the tribute which had been fixed by the engagement of 1803 remained so in perpetuity as Peshkush payable by the proprietors. In paragraph 33 it was stated that having regard to the fact that prior to the British conquest of Orissa, the plaintiffs predecessors-in-title had been independent rulers of Killa Kanika and as such had valid title to the said rivers within their territory and that after the British conquest the East India Company confirmed the title of the then Raja of Kanika to whatever had been in the possession of the said Raja prior to the said conquest and maintained him in possession thereof, the plaintiff claimed good and valid title to the beds of the said rivers by an express or implied grant by the said East India Company. A claim of title to the beds of the said rivers by prescription and adverse possession was also pleaded by way of alternative plea. The written statement of the Secretary of State was filed on the 29th May, 1936, traversing the allegations in the plaint. In paragraph 7 it was definitely pleaded that the Raja, with whom engagement had been entered into in 1803, was deposed for misrule and his status was reduced to that of a Zamindar as a punishment and that it was as an act of mercy that he was allowed to retain the estate without an enhancement of his Peshkush. It

was submitted that in view of the treatment of the estate during the past 100 years, it was idle for the plaintiff to suggest that he retained the rights comparable to those of a Ruling Chief. Reading the pleadings and the issues raised in the case fairly and as a whole, it appears quite clear that although the Engagement and Kaoolnama of 1803 was referred to as a grant, express or implied, from the East India Company, the plaintiff was, in substance, founding his claim on his antecedent title as the Ruling Chief of Killa Kanika which, according to him, had been confirmed by the Engagement and Kaoolnama of 1803, which were, therefore, construed as a grant, express or implied, from the East India Company. That the real issue on which the suit was fought out in the trial court was whether the plaintiff was an independent Ruling Chief and as such entitled to the beds of the rivers passing through his territory or was a mere Zemindar and as such having no such right is apparent from the following passage in the judgment of the Subordinate Judge :-

"It is, therefore, too late now to suggest that the status of the plaintiff in relation to his Killa is something higher than or superior to that of a holder of an estate. In my view, it is of no consequence, as respects the point now under consideration whether the estate is a permanently settled estate or it is a temporarily settled estate. The question is whether the plaintiff is the holder of an estate or it is that he owns a State. But as I have just pointed out, a private individual cannot own a State in the sense a sovereign authority owns the same".

16. After referring to the Regulations of 1805 and 1806, the learned Subordinate Judge proceeded to say :

"Thus it is apparent that with the advent of the British the question of status of the plaintiff was never left in any degree of uncertainty. All these various Regulations taken together will go to establish in an unmistakable term, that the plaintiff's status in his relation to his Killa, was recognised from the time of the advent of the British in Orissa as that of a Zamindar, i. e., a holder of an estate. That being so, in relation to these rivers, or to their beds, the plaintiff's position shall be nothing more than or superior to that of a riparian owner".

17. Again referring to the Engagement and Kaoolnama of 1803 the learned Subordinate Judge stated as follows :-

"Now taking these two documents together, it is difficult to read in them that any grant was made either expressly or impliedly by the sovereign authority in favour of the holder of the Killa. The main provisions are that the revenue was fixed for ever, and that the holder was asked to be loyal to the Company's Government. Thus initially, I have been unable to associate any idea of grant as to be flowing from these engagements. All that can be said, and perhaps the learned counsel for the plaintiff maintains to that effect, is that what rights the holder of the Killa had, in reference to the Killa, were fully and without any limitation or restriction, recognised. It is, therefore, that the question will now be set at large for a discussion as to what rights the proprietor of the Killa had at the time when these engagements were made".

18. It is needless to extract further passages from the judgment. In the result the learned Subordinate Judge answered the issues against the plaintiff and dismissed the suit. The plaintiff appealed to the Patna High Court. A compromise was arrived at between the parties, which was filed in court and the appeal was disposed of in accordance with the terms of the compromise petition. The principal terms of the compromise petition were as follows :-

"1. That it shall be declared that the Crown and for the matter of that, the Province of Orissa, the defendant has the title to the disputed river beds, as described in the schedule of the plaint, and the plaintiff-appellant acknowledges the same.

2. That the plaintiff-appellant, that is the Proprietor of the Kanika Estate is the rightful owner of the fisheries of the said rivers and the defendant has not nor will have any objection to his unobstructed exclusive permanent enjoyment of the fishery rights in the said rivers at any time whatsoever. The respondents shall not claim nor the appellant shall be liable to any assessment on that ground, other than what is payable in respect of the permanently settled estate of Killa.

3. That subject to such rights as the Crown or in other words, the Province of Orissa has in the beds of the rivers aforesaid and in the channel of waters flowing thereon, the Proprietor of Kanika Estate that is the plaintiff-appellant will have his rights to the ferries over the said rivers which he has been so far enjoying and except when such ferry rights interfere with the Crown's right in the bed of the rivers and similar rights in the waters on the channel of the rivers for the purpose of navigation and things of the kind, the Province of Orissa will not interfere with nor raise any objection to the plaintiff's enjoyment of such rights or ferry through the length and breadth of the aforesaid rivers.

4. That such Chars, islands or other accretions formed in the said rivers as have been shown in the Civil Court Commissioner's map prepared in this suit and now forming a part of the court's record shall be deemed as part and parcel of the permanently settled estate of Kanika and the defendant will not be entitled to any further assessment in respect thereof.

5. That all future riparian accretions or Chars formed adjoining the banks of the rivers in dispute shall also be always deemed to be part and parcel of the said permanently settled Zamindary of Kanika and shall be so possessed by him without any further payment on assessment of land revenue over and above the land revenue that has been permanently fixed.

6. That all other islands or Chars that may be formed subsequent hereto in the midst of the river being cut off from the banks thereof by waters that are tidal, unfordable and navigable in all seasons of the year shall belong to the defendant and the plaintiff or his successor-in-interest will have a right to possess and take settlement of the same from the defendant and the latter will have the right to levy assessment of land revenue thereon according to the principles and provisions of law as laid down in Regulation II of 1819 and this assessment will be of force from the time when the islands or Chars will appear

and be capable of enjoyment irrespective of the fact whether estate holder does really enjoy it or not".

19. The declaration of the title of the State to the disputed river beds was a clear acknowledgment by the plaintiff of the State's sovereign rights, which necessarily negatived the sovereign rights which he asserted and claimed for himself. The declaration that the plaintiff, as the proprietor of the Kanika estate, was the rightful owner of fisheries in the said rivers and that the defendant would not claim any assessment on that ground was nothing but a recognition of the plaintiff's title as the holder of a permanently settled estate. The same observations apply to clause (3) whereby the plaintiff was declared to have the ferry rights over the said rivers, which were expressly made subject to the rights of the State in the beds of the rivers. The provision that all future riparian accretions or Chars formed adjoining the banks of the rivers would always be deemed part of the permanently settled Zemindari of Kanika and should be possessed by him without further payment of assessment of land revenue over and above the land revenue that had been permanently fixed clearly acknowledges that the plaintiff accepted the position that he had no rights other than what he had as the holder of a permanently settled estate liable to the payment of land revenue, in contradistinction to tribute fixed in perpetuity. The provisions of clause (6) of the terms of settlement also point to the same conclusion.

20. Mr. P. R. Das contends that the issue in the present case is whether the land held by the plaintiff is an "estate" within the meaning of the Bengal Land Registration Act, 1876, whereas the issue in the earlier case was whether the plaintiff's predecessors had title to the river beds by express or implied grant from the Crown. This does not appear to us to be a fair reading of the pleadings as a whole. The plaint in the earlier suit summarised above and the passages culled from the judgment of the trial court clearly indicate that the parties went to trial on the definite and well understood issue that the plaintiff's claim to the river beds was founded on his anterior title as an independent Ruling Chief of Killa Kanika and that that title had been confirmed by the Engagement and Kaoolnama of 1803, which were, in a loose way, construed as a grant of the river beds, express or implied, by the East India Company. What the parties understood by the issues on which they went to trial is clearly illustrated by the passages quoted from the judgment. The fact that the claim in the earlier suit related only to a part of the land, namely the river beds, whereas the present case is that the entire land held by the plaintiff is not an "estate" makes no difference, for the real issue between the parties in the earlier suit was, as it is in the present suit, only concerning his status and the rights flowing therefrom. To hold in this suit that the plaintiff is not the holder of an estate subject to payment of land revenue for the discharge of which a separate engagement has been entered into, will be to permit the plaintiff to set up a sovereign status for himself, which he actually did in the earlier case but failed to establish in the trial court and which he, by the compromise, expressly abandoned in the appeal court. In our judgment the compromise decree precludes the plaintiff from re-asserting the title, which had been negatived by the compromise decree although it related only to his claim to a part of the lands, namely the beds of the rivers therein mentioned.

21. The compromise decree is also sought to be pleaded by the State against the plaintiff as estoppel by representation. It is said, that even if the compromise had not the imprimatur of the court, it would, nevertheless, be representation that the plaintiff's predecessor was the Zemindar of a permanently settled estate. The compromise consisted of reciprocal concessions, those made by one party being the consideration for those made by the other. It was on the basis of the concession made by the plaintiff's predecessor, namely, that he was a Zemindar of a permanently settled estate, that the State gave up the benefit of the decree which had been passed in its favour by the trial court and also the right to levy assessment on the accretions of future Chars. One of the main considerations for the compromise was the clear admission on the part of the plaintiff in that case that his status in respect of Killa Kanika was nothing more than that of a proprietor of a permanently settled estate liable to pay land revenue. The High Court decided the issue of estoppel against the State on two considerations, namely, (1) that the status of the owner of Killa Kanika was not directly and substantially in issue in the earlier litigation and (2) that there was no clear evidence led on the side of the State to establish that the admission by the plaintiff in that case of his status was the main consideration for the compromise. We are satisfied that the High Court was in error on both these points. As already pointed out, the pleadings summarised above and the passages in the judgments quoted above clearly indicate that the status of the plaintiff was the foundation of his claim to the river beds and was consequently directly and substantially in issue in that litigation and was understood to be so by the parties themselves. On the second ground the terms of the compromise speak for themselves. It is quite clear that the concessions made by one party were the consideration for those made by the other party and, therefore, it was not necessary to adduce any further evidence, assuming that any evidence was admissible for the purpose. In our judgment, the finding of the High Court on this issue was clearly erroneous.

22. Each of the conclusions we have arrived at on the first two points is quite sufficient, by itself, to enable us to dispose of this appeal and it is not necessary for us to deal with or express any opinion on the other three points canvassed before us. The result, therefore, is that this appeal should be dismissed with costs and we order accordingly.