

APPENDICES

Appendix I

Letter Copy send by Civil Surgeon W.D. Ritchie to the *Dewan* of Bijni Raj Estate explaining physical and mental condition of Raja Jogendra Narayan

Dhubri

5th April, 1912

R.C. Sen

Dear Sir,

I now send you my somewhat belated note on the condition of Kumar of Bijni.

In my opinion he is clearly suffering from the form of insanity known as “Adolescent insanity”, (Dementia Praecox).

This condition never in India completely recovered from, but, in order to help any medical man who may after wards examine the Kumar, I enclose a short account of his present condition as I recently found it after 3 days observation.

Col Campbell writes me that he does not know who is the expert alienist in Bengal since Major C. Robertson Milne’s death. He suggests asking the I.G. Civil Hospitals, Bengal and if required I will do this for you.

Yours faithfully

Sd./ W.D. Ritchie

Capt. IMS

Civil Surgeon

Source: Collected from Tomalkusum Devi, youngest daughter in law of *Raja* Bhairabendra Narayan Bhup.

Appendix II

Letter of Bhairabendra Narayan Deb of Bijni to the Revenue and Finance Secretary of Assam

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From Kumar Bhairabendra Narayan Deb,
of Bijni

To
S. P. Desai, Esqr., I.C.S.,
Revenue and Finance Secretary,
Government of Assam,
Shillong.

ASSAM SECRETARIAT.
Department.
Register No. _____
Date of Receipt 6 JUL 1936
Diary No. _____

22/6/36

NO 517

*Rev. B. 1
Sept 1936
No 1165*

Dated, Shillong the 26 th June, 1936.

Sir,

With reference to your letter No. 395 C.B., dt. 2-3-36 I beg to enclose herewith a draft amendment of Assam Act II of 1931 for consideration of the Government. I have typed the whole Act with necessary amendments in the same underlining the amended portions in order to distinguish them from the original Act. These additions were made in view of the recent High Court judgment in connexion with the appeals Nos: 171 & 205 of 1933. Some of the amendments are suggested according to the defects pointed out by the learned late Advocate General Sir N.N.Sircar while he conducted the original suits at Alipore.

I further beg leave to say that such amendments are not rabe after the High Court decisions. I may mention here that after the passing of Act II 1931 there was some discussions whether this Act would affect the pending suits and Mr, B.N.Rau the then Legal Remembrance was clearly of opinion that the pending suits would be affected ~~as~~ it really did so. However I shall further submit the instances of such amendments as suggested here with the opinions of counsels as early as possible to place them before the Government for consideration.

Your obedient servant,
B. Deb
of Bijni.

Source: Board of Revenue Papers, 1936, No. 1165, Assam State Archives, Guwahati.

Appendix III

Telegram Copies: First one send by the *Dewan* to the District Collector and Second one send by the District Collector to *Dewan* of Bijni Raj Estate

Abhayapuri 17 October, 1918, 11.30 AM

To

A.J. Laine

Raja of Bijni Dead; Kumar alive

but unable to submit application

to be disqualified; come at once.

Dewan.

To

R.C. Sen, Abhayapuri

Despatched 11.55 AM

Message received; am starting by first train with armed

police; take possession of all movable at once on behalf

of collector, pending my arrival.

L A I N E

Source: Collected from Tomalkusum Devi, youngest daughter in law of *Raja* Bhairabendra Narayan Bhup.

Appendix IV

An Order Copy or Notice issued by the *Dewan* to all *Naibs* and *Tehsildars* of *Bijni Raj* Estate after the death of *Queen Abhayeswari*

No. 991/1006 D(B)

Abhayapuri

18.10.18

1.7.25

To

All Naibs & Tehsildars

প্রয়াত বিজনী রাণী অভয়েশ্বরী দেবী মহোদয়ার মৃত্যুর পর হইতে গভর্নমেন্ট হইতে কুমার শ্রী শ্রীযুক্ত যোগেন্দ্র নারায়ণ ভূপ বহাদুর বিজনী ইস্টেটের উত্তরাধিকারী মনোনীত হইয়াছেন এবং তাহার প্রধান অমাত্য স্বরূপে গভর্নমেন্টের তত্ত্বাবধানে ইস্টেট পরিচালনের ভার আমার ওপর অর্পিত হইয়াছে। এবিষয় প্রজাসাধারণকে অবগত করাইবেন।

ইতি-

Sd/- R.C. Sen

Dewan

Source: Collected from Tomalkusum Devi, youngest daughter-in-law of *Raja Bhairabendra Narayan*.



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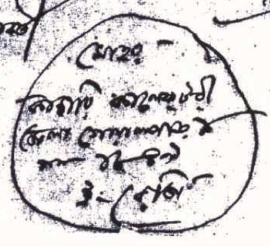
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6.1.50
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Handwritten text in Odia script, likely a receipt or record, covering the majority of the page.

Handwritten signature or name at the bottom left.



Handwritten signature or name at the bottom right.

Source: Receive from Dharmapur Satra Management Committee, Abhayapuri.

Appendix VII

Copies of the reports submitted by different officials regarding disposal of the tenants' holdings in Bijni Duar Pargana, purchased by the Bijni Raj Ward Estate in auction sale

ASSAM SECRETARIAT PROCEEDINGS.

REVENUE DEPARTMENT.

REVENUE—A.

SEPTEMBER 1928.

Disposal of the tenants' holdings in Bijni Duars Pergannah, purchased by the Bijni Raj Ward Estate in auction sale, in execution of rent decrees or certificates.

No. 104.

No. 636G., dated Gauhati, the 14th July 1928.

From—A. J. LAINE, Esq., I.C.S., Offg. Commissioner, Assam Valley Division,

To—The Secretary to the Government of Assam in the Revenue Department.

I have the honour to submit, for the orders of Government, a copy of letter No. 58 W., dated the 7th July 1928, from the Deputy Commissioner of Goalpara, regarding disposal of tenants' holdings in Bijni Duars Pergannah, purchased by the Bijni Raj Ward's Estate in auction sale, in execution of rent decrees or certificates.

2. In my opinion, the proposals submitted by the Manager are unacceptable and the arguments by which he seeks to support them are illogical. The *pattas* issued to the tenants contain a clause expressly withholding from the tenants the free right of transferability. The mere fact that transfers are in practice usually permitted does not make them transferable in law so as to entitle the landlord or any other auction-purchaser of the tenant's rights to exercise a free right of transferability on the ground that he has succeeded to the evicted tenant's "right" (?). When a tenant's holding is sold by auction and bought up by the Bijni Raj, the doctrine of merger must, in my opinion, be held to apply. In other words, the outgoing tenant's interests are thereby immediately extinguished and merged in the landlord's interest, and there is nothing left to be the subject matter of a right of "transfer" or otherwise.

3. At the same time it cannot be denied that the Bijni Raj is placed in a somewhat unfortunate position. They are losing a large amount of revenue and are in practice denied facilities for recouping themselves for these losses. If these holdings were situated in an ordinary *zamindari*, the landlord would be in a position to recoup himself, for what he had lost in the form of irrecoverable rent, by realizing a *salami* or premium as a condition of resettlement of the holding with a new tenant.

4. Mr. Commissioner Barnes, however, in his order dated the 31st March 1927 (copies of references enclosed) decided that the estate could not realize *salami* in this area. Mr. Barnes' decision was evidently based on his interpretation of clause 7 of the Bijni lease which prohibits the levy of any form of *abwabs*, whether in the shape of *markuchi*, *dera*, etc. *Markuchi* I may explain, is the 3 years' penal back-rent realised in Goalpara (or which used to be realised) on lands occupied by a tenant which had not been formally applied for, while *dera* is a term applied to penal rent realised on "concealed" cultivation generally.

5. It is perhaps open to argument whether clause 7 of the lease was intended to prohibit the realisation of *salami* prior to settlement. The term *abwab* has never yet been comprehensively defined, but there is a very considerable body of case law in support of the conclusion that the *abwab*—the realisation of which was prohibited or discouraged by successive regulations and by Act VIII of 1869 (now in force in Goalpara)—did not and was not intended to comprise *salami*, which is a premium paid to the land prior to the establishment of the relationship of landlord and tenant and as a condition precedent to such establishment.

6. If, however, Mr. Barnes' view of the scope of clause 7 of the lease is maintained, I consider that—in justice to the Bijni Raj—the Raj should be permitted to realise in advance from prospective new settlers on abandoned holding or on holdings from which the tenant has been duly evicted in course of law, any arrears of rent that may have been due from the former occupant and which the Raj has been unable to realise.

No. 105.

No. 588W., dated Dhubri, the 7th July 1928.

From—Rai Bahadur PANCHU GOPAL MUKHARJI, M.A., B.L., Deputy Commissioner of Goalpara,

To—The Commissioner, Assam Valley Division.

DISPOSAL OF TENANTS' HOLDINGS IN BIJNI DUARS PERGANNAH, PURCHASED BY THE BIJNI RAJ WARD'S ESTATE IN AUCTION SALE, IN EXECUTION OF RENT DECREES OR CERTIFICATES.

Copies of letter No. 993G., dated the 14th June 1928, from the Manager, Bijni Raj Ward's Estate; and letter No. 115, dated the 2nd July 1928, from the Government Pleader, Dhubri, are enclosed for your information and orders.

I should think the Raja of Bijni is the *de facto* proprietor of his "acknowledged estate", although the settlement is for a term of years and the land revenue is liable to enhancement, and the people regard it as a part of the Bijni zamindari.

If the Estate is permitted to levy back-rent due from persons obtaining new settlement of purchased holdings, a considerable portion of arrears covered by decrees will be realised. This is I think distinct from *salami* which is usually a premium at so many rupees per bigha of land settled. The Manager may not charge anything in excess of arrears of rent actually due in respect of the new settlement from persons who may be willing to accept settlement on such terms.

No. 106.

No. 998G., dated the 14th June 1928.

From—Babu GURU CHARAN CHOUDHURI, Offg. Manager, Bijni Raj Ward's Estate,

To—The Deputy Commissioner of Goalpara.

DISPOSAL OF TENANTS' HOLDINGS IN BIJNI DUARS PERGANNAH, PURCHASED BY THE ESTATE IN AUCTION SALE, IN EXECUTION OF RENT SUIT DECREES OR CERTIFICATES.

It will appear from the statement enclosed to my No. 914G., dated the 7th June 1928, that the total outstandings on account of arrear rent in Bijni Duar amounted to the huge sum of Rs. 47,880-1-3 at the end of 1334 B. S. Since then only a sum of Rs. 6,584-10-0 has been collected, leaving still a balance of Rs. 41,295-7*3. The Naib estimates the number of defaulters to be about 7,000 roughly. I have asked him to report the names of solvent defaulters in order to enable the institution of certificate cases against them.

2. In the meantime the following question deserves consideration. In great many cases the immovable properties consisting of the holdings of the defaulters have to be proceeded against for want of attachable movables and in many cases the estate itself has to buy the tenants' holdings at auction for want of rival bidders. On completion of the purchase the decree is automatically satisfied although no money has actually come into the hands of the Estate. In the permanently-settled parganahs of Khutaghat and Habraghat the Estate disposes of similarly purchased holdings by settling the same for *nazar salami* which sometimes rises much higher in amount than the sum for which the estate purchased them but in his letter No. 1335 G., dated the 6th April 1927 (copy of which has been forwarded with Deputy Commissioner's No. 86 W., dated the 20th April 1927), the Commissioner has ruled that the *salami* cannot be taken in the Bijni Duars Perganah, that it is the business of the Estate to collect arrears from those from whom it is due and that if it fails to do so it bears the loss. The above ruling which was given in respect of an abandoned holding taken up by others from whom the Estate tried to recover the back-rent due from the *ferar* tenant does not, in my opinion, apply to the class of cases now under consideration. The legal position seems to be that as soon as the Estate buys a tenant's holding it acquires the right of the outgoing tenant free of all encumbrances. The

tenant has undoubtedly the right to hold and enjoy the land on payment of rent. He is also permitted to dispose of his holding by transfer although his *patta* forbids such transfer. As a matter of fact the Estate never objects to transfers except in very rare cases under exceptional circumstances. At any rate as the right to allow or disallow a transfer rests with the Estate it stands to reason that it has also the right to sell a holding which it has purchased for recovery of rent. In the permanently-settled tracts of which the estate is the proprietor there is a merger of the tenants' right in the superior right of proprietorship in case of similar purchase and the Estate can only dispose of the land by *settlement* for *salami* or no *salami* as it pleases. But in the Bijni Duars Pergannah which the estate holds merely as a settlement-holder for a temporary period the proprietary right does not belong to the Estate and hence there can be no merger. The holding continues to be a separate entity even after the Estate's purchase. The question of levy of *salami* for *settlement* does not therefore arise but there seems no reason why the Estate should not be able to dispose of it *by sale*, if it pleases, for a price. To debar it from doing so would amount to denying it the right which is being allowed to an ordinary tenant. Should the above view be accepted then it will be essentially necessary in the interests of speedy disposal of these holdings to empower the Manager to sell them, submitting periodically statements of the sales for Deputy Commissioner's sanction. I make the above suggestion because for an ordinary sale of immovable property the sanction of the Court of Wards is necessary which is likely to take longer than the disposal of the holdings could wait for.

3. Apart from the legal view set forth above I should like to point out that if the Estate were denied the right to sell the holdings so purchased the usefulness of the certificate procedure would be very greatly diminished. It will be worse than useless for the Estate to buy such holdings in future. Ordinarily bidders at Court sales of such holdings are not numerous and if it ever became known to the tenantry that the Estate is not a likely bidder their number is likely to grow rarer. This will under the tenant's holding almost immune from coercive processes. Such a result is bound to be very unfavourable to the Estate. Persuasion as a means of collection has evidently failed and if the Estate's efforts are virtually confined to tenants' movable properties which could be easily concealed or otherwise saved from attachment the question will have to be considered afresh whether good money should be spent on certificate procedure which holds out so meagre prospects of success. I need hardly add that a part of the tenant's movables is legally unattachable and that as regards the remainder the area of the country concerned is vast, and the knowledge of the tahsil staff of such property is necessarily inadequate while the subordinate staff who are entrusted with the task of attachment and sale of movables are not above temptations.

Early orders are solicited.

No. 107.

No. 115, dated the 2nd July 1928.

From—Babu ANUKUL CHANDRA DAS GUPTA, Offg. Government Pleader, Dhubri,
To—The Deputy Commissioner of Goalpara.

DISPOSAL OF TENANTS' HOLDINGS IN BIJNI DUARS PERGANNAH PURCHASED BY THE ESTATE IN AUCTION SALE, IN EXECUTION OF RENT DECREES OR CERTIFICATES.

With reference to your memorandum No. 493, dated the 17th June 1928, I have the honour to state that in order to approach the subject under reference it is necessary to consider all the aspects regarding the status of the Raja of Bijni with regard to Bijni Duars and with that end in view I beg to submit the following:—

- (1) First, the conditions of the lease granted to the Manager on behalf of the Raja, properly construed, create in favour of the lessee no higher status than that of a mere collector of rents or *ijardar*, the proprietary right remaining with the lessor. In that case acquisition by the Estate of *raiyyati* interests will not operate a merger. The holding of the *raiyyati* will continue to be a separate entity. The lessee purchasing a *raiyyati* holding is in the position of a *raiyyat* and can sell the same to another.
- (2) Secondly, it is stated in the Manager's letter No. 993, dated the 14th June 1928, that the Raja is merely a settlement holder having no proprietary right in the land held by him. The wording of the lease lends support to this view of the Manager and the position of such settlement-holder will be the same as that of an *ijardar* or Collector of rents. As such the settlement-holder will be entitled to sell the *raiyyati* holdings purchased by him.

- (3) The lease thus reduces the Raja to a mere collector of rents or settlement holder having no right in the land. I am not aware if it has any other authoritative sanction behind it besides the lease.
- (4) Lastly, from what I have come across I have not found in earlier records regarding Bijni Raja's status with respect to Bijni Duar any piece of evidence in support of the fact that the status of the Bijni Raja is that of a mere settlement holder or collector of rents; on the contrary he has been accorded the status of a proprietor of a temporarily settled estate.

In this connection I beg to invite your attention to the letter No. 240 Rev—2302R., dated the 3rd June 1897, from the Officiating Secretary to the Chief Commissioner of Assam, to the Officiating Commissioner of the Assam Valley Districts, on a reference by the Commissioner as to the rights and position of the Raja of Sidli. The status and rights of Raja of Sidli with regard to Sidli Duar were fully discussed therein and it was pronounced following the earlier decisions of the Government of India and the Government of Bengal that the Raja's status is that of a proprietor of a temporarily settled estate. And it was further observed in the said letter that all the orders contained therein would apply *mutatis mutandis* to the case of the Raja of Bijni as well as to the Raja of Sidli.

If real status of the Raja of Bijni with respect to the Bijni Duar is that of a proprietor of a temporarily settled estate, purchases by the estate of the *raiyati* holdings will operate as a merger of the *raiyati* interests in the superior proprietary interests as by the principle of the merger the inferior interests become merged or drowned in the higher interests and the same person cannot both be landlord and tenant of the same land—the two rights being incompatible and inconsistent. In this view of the case the Raja has no other interests to sell but the proprietary interests limited though it may be.

In the above anomalous state of things I am of opinion that it is not advisable to allow sale of *raiyati* holdings purchased by the Estate as such sales may in future give rise to many complications and may involve the Estate in costly litigation. The whole file is returned herewith.

No. 108.

Copy of order, dated the 31st March 1927, passed by Mr. H. C. BARNES, O.I.E., I.C.S., Commissioner, Assam Valley Division, communicated to the Deputy Commissioner of Goalpara with this office No. 1835G., dated the 6th April 1928.

Salami cannot be taken in this area. It is the business of the estate to collect arrears from those from whom it is due and, if they fail, the estate bears the loss.

No. 109.

No. 2258W., dated the 24th March 1927.

From—Rai Bahadur PANCHU GOPAL MUKHARJI, M.A., B.L., Deputy Commissioner of Goalpara,
To—The Commissioner, Assam Valley Division.

I have the honour to enclose a copy of a letter No. 4538G., dated the 15th March 1927, from the Manager of the Bijni Raj Ward's Estate regarding realisation of some arrear rents which were remitted on the ground of the former holder becoming *ferar*. I do not see why the Estate should forego such income if this can be helped. The back-rent might be treated as *salami* or premium for the settlement but under the terms of clause 7 of the lease of the Bijni Duar, a copy of which was submitted to you with this office letter No. 313R., dated the 8th May 1924, *salami* cannot perhaps be realised in Bijni Duar Pargana. I would therefore solicit your instruction in the matter.

No. 110.

No. 4538G., dated the 15th March 1927.

From—The Additional Manager Bijni Raj Ward's Estate,
To—The Deputy Commissioner of Goalpara.

One Nawon Meech became *ferar* after abandoning his holding in mauza Amguri in lot No. 1 in Bijni Duar Pargana and remission was obtained for his arrear rent for 1328 to 1331 B. S., *vide* sanction communicated by your memorandum No. 1876W.,

dated the 8th December 1925 (item No. 14 of the statement). Subsequently Purna Chandra Rai and others have been settled on the holding, after realising the above back-rent from them. Sub-Deputy Collector, Sidli, now seems to be in doubt as to whether the Estate is entitled to recover the amount which has already been remitted. In my opinion your order sanctioning the remission should be no bar to subsequent realisation of the dues of the Estate if possible. I solicit your ruling on this point.

No. 111.

No. 2851R., dated Shillong, the 21st August 1928

From—A.V. JONES, Esq., Assistant Secretary to the Government of Assam, Revenue Department,

To—The Commissioner, Assam Valley Division.

I am directed to acknowledge the receipt of your letter No. 636G., dated the 14th July 1928, regarding the disposal of tenants' holdings in Bijni Duars Pergannah, purchased by the Bijni Raj Ward's Estate, in auction sale, in execution of rent decrees or certificates.

In reply I am to say that there is no objection to the Bijni Raj realising in advance from prospective new settlers on abandoned holding or on holdings from which the tenant has been duly evicted in course of law, any arrears of rent that may have been due from the former occupant and which the Raj has been unable to realise.