

BENGAL REGULATION 11 OF 1825

(THE BENGAL ALLUVION AND DILUVION REGULATION, 1825¹)

[26th May 1825.]

A Regulation for declaring the rules to be observed in determining claims to lands gained by alluvion, or by dereliction of a river or the sea.

1. In consequence of the frequent changes which take place in the channel of the principal rivers that intersect the [territories]² immediately subject to the Presidency of Fort William, and the shifting of the sands which lie in the beds of those rivers, chars or small islands are often thrown up by alluvion in the midst of the stream, or near one of the banks, and large portions of land are carried away by encroachment of the river on one side, whilst accessions of land are at the same time, or in subsequent years, gained by dereliction of the water on the opposite side; similar instances of alluvion, encroachment and dereliction also sometimes occur on the sea-coast which borders the southern and south-eastern limits of Bengal.

The lands gained from the rivers or sea by the means above mentioned are a frequent source of contention and affray, and although the law and custom of the country have established rules applicable to such cases, these rules not being generally known, the Courts of Justice have sometimes found it difficult to determine the rights of litigant parties claiming chars or other lands gained in the manner above described.

The Court of Sadar Diwani Adalat, with a view to ascertain the legal provisions of the Muhammadan and Hindu laws on this subject, called for reports from their law officers of each persuasion, and on consideration of the reports furnished by the law officers in consequence, as well as of the decisions which have been passed by the Court of Sadar Diwani Adalat in cases brought before them in appeal which involved the rights of claimants to lands gained in alluvion or by dereliction of rivers or the sea, the Governor General in Council has deemed it proper to enact the following rules for the general information of individuals as well as for the guidance of the Courts of Judicature to be in force, as soon as promulgated, throughout the whole of the [territories]² subject to the Presidency of Fort William:—

2. Whenever any clear and definite usage of *shikast paiwast* respecting the disjunction and junction of land by the encroachment or recess of a river may have been immemorially established, for determining the rights of the proprietors of two or more

Claims and disputes as to alluvial lands to be decided by usage when clearly recognised and established.

¹ SHORT TITLE.—This short title was given by the Amending Act, 1897 (V of 1897), since repealed.

LOCAL EXTENT.—This Regulation has been declared, by notification under the Scheduled Districts Act, 1874 (XIV of 1874), s. 3, to be in force in the district of Sylhet, Garo Hills, Khasi and Jaintia Hills, Naga Hills and Goalpara except Eastern Duars, vide Notification No. 713-L., dated 27th September 1937.

Substituted for 'Provinces' by A.O., 1950.

contiguous estates divided by a river (such as that the main channel of the river dividing the estates shall be the constant boundary between them, whatever changes may take place in the course of the river, by encroachment on one side and accession on the other), the usage so established shall govern the decision of all claims and disputes relative to alluvial land between the parties whose estates may be liable to such usage.

Where no usage established claims how decided. 3. Where there may be no local usage of the nature referred to in the preceding section, the general rules declared in the following section shall be applied to the determination of all claims and disputes relative to lands gained by alluvion or by dereliction either of a river or the sea.

Lands gained by gradual accession from recess of river or sea. 4. First.—When land may be gained by gradual accession, whether from the recess of a river or of the sea, it shall be considered an increment to the tenure of the person to whose land or estate it is thus annexed, whether such land or estate be held immediately from [the Government]¹ by a zamindar or other superior land-holder, or as a subordinate tenure, by any description of under-tenant whatever:

Extent of interest in increment of person in possession. Provided that the increment of land thus obtained shall not entitle the person in possession of the estate or tenure to which the land may be annexed to a right of property or permanent interest therein beyond that possessed by him in the estate or tenure to which the land may be annexed, and shall not in any case be understood to exempt the holder of it from the payment to [the Government]¹ of any assessment for the public revenue to which it may be liable under the provisions of Regulation 2, 1819,² or of any other Regulation in force.

³Nor, if annexed to a subordinate tenure held under a superior land-holder shall the under-tenant, whether a khudkast raiyat, holding a maurusi istimrari tenure at a fixed rate of rent per bigha, or any other description of undertenant liable by his engagements, or by established usage, to an increase of rent for the land annexed to his tenure by alluvion, be considered exempt from the payment of any increase of rent to which he may be justly liable.

¹The words 'the Crown' was substituted for 'Government' by the A.O. 1937; 'Crown' again has been substituted by 'Government' by A.O., 1950.

²The Bengal Land-revenue Assessment (Resumed Lands) Regulation, 1819. It is not in force in Assam. In so far as the permanently-settled estates of the district of Goalpara and the district of Cachar are concerned the words "the Assam Land and Revenue Regulation I of 1886" were substituted for the words "Regulation II of 1819" by Assam Act I of 1929 and Assam Act XI of 1936 respectively.

³In so far as the permanently-settled estates of the district of Goalpara and the district of Cachar are concerned the words commencing with "Nor, if annexed to a subordinate tenure" to "any increase of rent to which he may be justly liable" were repealed by Assam Act I of 1929 and Assam Act XI of 1936 respectively.

Second.—The above rule shall not be considered applicable to cases in which a river, by a sudden change of its course, may break through and intersect an estate without any gradual encroachment, or may by the violence of stream separate a considerable piece of land from one estate and join it to another estate, without destroying the identity and preventing the recognition of the land so removed.

In such cases the land, on being clearly recognized, shall remain the property of its original owner.

Third.—When a char or island may be thrown up in a large navigable river (the bed of which is not the property of an individual), or in the sea, and the channel of the river or sea between such island and the shore may not be fordable it shall, according to established usage, be at the disposal of [the Government]¹.

But if the channel between such island and the shore be fordable at any season of the year, it shall be considered an accession to the land tenure or tenures of the person or persons whose estate or estates may be most contiguous to it, subject to the several provisions specified in the first clause of this section with respect to increment of land by gradual accession.

Fourth.—In small and shallow rivers, the beds of which, with the jalkar right of fishery, may have been heretofore recognized as the property of individuals, any sand-bank or char that may be thrown up shall, as hitherto, belong to the proprietor of the bed of the river, subject to the provisions stated in the first clause of the present section.

Fifth.—In all other cases, namely, in all cases of claims and disputes respecting land gained by alluvion or by dereliction of a river or the sea, which are not specifically provided for by the rules contained in this Regulation, the Court of Justice, in deciding upon such claims and disputes, shall be guided by the best evidence they may be able to obtain of established local usage, if there be any applicable to the case, or, if not, by general principles of equity and justice.

5. Nothing in this Regulation shall be construed to justify any encroachments by individuals on the beds or channels of navigable rivers or to prevent Zila * * * Magistrates or any other officers of [the Government]¹ who may be duly empowered for that purpose from removing obstacles which appear to interfere with the safe and customary navigation of such rivers, or which shall in any respects obstruct the passage of boats by tracking on the banks of such rivers, or otherwise.

¹ The word 'the Crown' was substituted for 'Government' by the A.O. 1937, 'Crown' again has been substituted by the word 'Government' by A. O., 1950.

² The words "and City," which were repealed by the Amending Act, 1903 (I of 1903), are omitted.