Mohendra Lal Barua Vs Ramprasad at Padarath Chamar

Court: Gauhati High Court

Date of Decision: Nov. 24, 1953

Hon'ble Judges: Ram Labhaya, J; Haliram Deka, J

Bench: Division Bench

Advocate: J.N. Borah and S.A. Goswami, for the Appellant; P.K. Gupta and S.M. Lahiri, Advocate-General, as Amicus Curiae, for the Respondent

Judgement

Deka, J.
In this appeal, a point of some importance to the public is involved relating to certain rights or privileges acquired u/s 13 the

Assam (Temporarily-Settled Districts) . Tenancy Act, (Act 3 of 1935) and Mr. S. M. Lahiri. Advocate-General, was requested to appear as

amicus curiae which he kindly did. The suit from which this appeal arises was on behalf of the appellant Mohendra Lal Barua for evicting

Ramprasad alias Padarath Chamar from the plot of land measuring 1K out of Dags Nos. 49 and 50 of N. K. Periodic patta No. 4 of town Sarania

now included within the Gauhati Municipality within the limits of Panbari Mauza. The defendant resisted the claim for eviction on the ground that he

had already acquired the status of an occupancy tenant u/s 13 of the Assam (Temporarily-Settled Districts) Tenancy Act, 1935, and was not liable

to be evicted as a tenant-at-will or by the suit which had been brought by the plaintiff. There were some disputes as to for what purpose the land

was originally settled and it has been found by both the courts that the land was originally settled with the grandfather of the defendant sometime in

1923 for agricultural purpose and that the defendants had acquired the status of an occupancy tenant by virtue of twelve years" possession by

about 1935 and the Act (Assam Act III of 1935) being applied to the district of Kamrup in 1937, he had completed twelve years" possession at

the latest by 1939. The land in suit was subsequently included within the civil station of Gauhati or within the Gauhati Municipality by the order of

the Deputy Commissioner in 1940. Both the courts held that there is nothing to indicate, in the Act 3 of 1935, that the rights acquired under the

Act would be extinguished simply because the land is included within the civil station, though section 2 of the Act provides that this Act has no

application to any land included in a civil station.

2. Mr. Bora appearing for the appellant contended that when the suit was brought for eviction of the defendant, Act 3 of 1935 could not be held to

be applicable to the land in suit in view of the express wordings of the Act and as such, the defendant could not resist the suit by virtue of his status

that he had already acquired with respect to the land as an occupancy tenant. The learned Advocate placed reliance on the fact that express

provisions have been made in some of the Acts to the effect that rights once acquired either under the Acts--such as Bengal Tenancy Act,

Goalpara Tenancy Act or even the Bombay Tenancy and Agricultural Lands Act would not be extinguished even if a certain plot of land originally

covered by these Acts was subsequently taken away from the operation of these specified Acts, and included within the Municipality or placed

beyond the operation of those Acts, but since no such provision has been made in the Assam (Temporarily-Settled Districts) Tenancy Act, it must

be presumed that the intention of the legislature was that the occupancy tenant or any tenant having acquired any right with respect to the land

under the Assam Tenancy Act will not be permitted to enjoy the same after the land in occupation is taken away from within the operational area

of the Act itself. The relevant provision of the Bengal Tenancy Act is section 19(2) which runs as follows :--

The exclusion from the operation of this Act, by a notification under clause (ii), or clause (iii) of sub-section (3) of section 1, of any area or part of

any area referred to in those clauses shall nor affect any right, obligation, or liability, previously acquired, incurred or accrued, in reference to such

area or part thereof.

3. Similar safeguards appear in section 14 (2) of the Goalpara Tenancy Act. Section 30 of the Bombay Tenancy and Agricultural Lands Act has a

similar provision.

4. Mr. Gupta appearing for the respondent contends that even though there might be no separate provision to indicate that the rights once acquired

by the tenant under the Act 3 of 1935 are not extinguished because of the inclusion of the land in the Municipality or in civil station, the general

interpretation of a statute would support the proposition that a right once acquired cannot be extinguished unless by operation of law or by an act

of parties. Here in this case, there have been no transactions between the parties whereby the defendant would forfeit his rights and no Act of

legislature having prescribed that a tenant would forfeit his rights, he cannot be made to forfeit them simply by an executive action of the Deputy

Commissioner or of any other officer incorporating the land within the municipal limits or within the civil station of Gauhati. He relied on Shiya Janki

Thakurain Vs. Kirtanand Singh Bahadur and Others, in support of his contention and submitted that the rights once acquired vested with the

acquirer unless taken away by some other legislature and the new law ought to be construed, so as to interfere as little as possible with the vested

rights. The facts of that case, however, bear no analogy to the facts of the present case.

5. As I have already expressed, we the advantage of hearing Mr. Lahiri, Advocate-General, amicus curiae and he spared no pains to place before

us the relevant provisions of the law with regard to the interpretation of the statute and he submitted that the point for decision in this appeal would

depend on the interpretation of the Act itself. He further supports Mr. Gupta"s contention that unless there is express provision in either of the

Acts, that means the Act which created the right or the subsequent Act by virtue of which the transfer of the land is effected, taking away the rights

or divesting the tenant of certain rights, the rights originally acquired before the second Act came into force will continue. Here, there was no

second Act of legislature but there was an action of the Deputy Commissioner incorporating the land within the municipal limits or within the civil

station as it is called and therefore, we cannot say that there was any other Act of legislature or statute which deprived the tenant of his rights

already acquired. The express provision in some of the Acts as pointed out by Mr. Bora is only by way of abundant caution so that the matter

becomes abundantly clear either to the court of law or to the parties affected by the Act. Mr. Lahiri drew our attention to Craies on Statute Law

(5th Edition) and referred to page 111, to the sub-heading-- (d) To take away public or private rights"" --where in Re Cuho (2) (1889, 43 Ch. D.

12. 17) Bowen, L. J., said, ""In the construction of statutes you must not construe the words so as to take away rights which already existed before

the statute was passed, unless you have plain words which indicate that such was the intention of the Legislature. " Another passage to which our

attention was drawn by Mr. Lahiri occurs at page 113 (ibid) which is as follows :--

So also Lord Halsbury in McLaughlin v. Westgarth :

The misfortune in the framing of these statutes is that any body of persons, seeing a possibility of liability on their part, apply to Parliament to have

special provisions inserted for their protection. Thai application is occasionally complied with and then the argument arises, which their Lordships

have heard today--namely, that anybody who is not included in the enumeration of the particular persons so inserted must be taken to be excluded

by the operation of the statute from protection, just because they are not included and others are. A great many things are put into a statute ex

abundanti cautela.

7. At page 368 of the same book, we come to the sub-head ""Presumption against taking away vested rights"" where it is stated as follows : --

It is a well-recognised rule that statutes should be interpreted, if possible, so as to respect vested rights and such a construction should never be

adopted if the words are open to another construction. This rule is especially important with respect to statutes for acquiring lands for public

purposes. For it is not to be presumed that interference with existing rights is intended by the Legislature, and if a state be ambiguous the Court

should lean to the interpretation which would support existing rights. But it must be a ""vested right"" in the strict sense in order to raise the

presumption, for ""there is no presumption that an Act of Parliament is not intended to interfere with existing rights. Most Acts of Parliament in fact

do interfere with existing rights.

6. We have given our best consideration to the legal contentions raised in this matter and we are inclined to hold--accepting the general principles

of interpretation of statutes, that the rights once acquired under the Act are not extinguished even though there be no express provision in the Act

clarifying the position by way of abundant caution and in this Act (Act 3 of 1935) though there is no such provision, the intention of the legislature

seems to be clear that the rights acquired or vested under this Act in a tenant were not meant to be extinguished or terminated only because the

land was included in a civil station. Mr. Bora argued that the intention of the legislature has to be gathered from the Act itself and the silence as to a

provision as in other Acts clarifies that the defendant cannot continue in enjoyments of the rights that he had acquired prior to the inclusion of the

land in the civil station. We are, however, inclined to accept the observations contained at page 368 of ""Craies on Statute Law"" which are already

quoted and hold that in the absence of any definite provision extinguishing the right in the Act or in any subsequent enactment, the defendant must

be deemed in law to continue his status of an occupancy tenant with respect to the land in suit as provided u/s 13 of Act 3 of 1935.

7. The result is that the appeal fails but in view of the facts and circumstances of the case, we make no order as to costs.

Ram Labhava, J.

8. I agree with my learned brother. The respondent in this ease admitted had acquired occupancy rights before the area within which the land in

suit is situate was included within the limits of the civil station. The Assam (Temporarily Settled Districts) Tenancy Act, 1935, ceased to apply to it

from the date it was included in the civil station. But there is no provision contained in the Act which could deprive the tenants of the land so

included, of the rights they had already acquired. The learned counsel for the parties are agreed on this point. In the absence of any such provision

it should be presumed that the legislature did not intend to divest tenants of the right they had acquired under the Tenancy Act, if subsequent to that

acquisition the area was excluded from the operation of the Ass (Temporarily Settled Districts) Tenancy Act. The presumption is in accordance

with the recognized canons of interpretation of statutes. Before a person may be deprrived of vested rights or rights acquired under an Act of the

legislature, it is necessary that the legislature should indicate its intention in express terms or by necessary implication. The language employed by it

should be such as to plainly require such construction. But where such is not the case, rights acquired under an Act cannot be taken away merely

because the Act under which the) are acquired ceases to apply to the land in which such rights have been acquired. The only effect of the inclusion

of the land in question within a civil station would therefore be that after the date of the inclusion in the civil station, the relations of the landlord and

the tenant would not be governed by the provisions contained in the Tenancy Act; but the tenant shall retain his rights already acquired. It is true

that the Act does not contain any express provision to the effect that rights acquired under the Act would not be taken away by the inclusion of any

area in the civil station. But no such provision is necessary. The saving of rights acquired before the Act ceased to apply may be presumed. It is the

taking away of such rights that requires a provision either in express terms or by intendment which may be necessarily implied. Where vested or

acquired rights are expressly saved it is merely by way of abundant caution. The legislature in so doing removes all possibilities of any mistake

about its intention. But the absence of such a saving clause does not necessarily lead to the inference that there was an intention to take away rights

which had been acquired by the fulfilment of statutory conditions, by mere inclusion of the area in a civil station. There must be something in the

language employed in the enactment which should indicate that divesting of acquired rights was intended. There is nothing in the Tenancy Act to

point to any such conclusion.