(1959) 02 CAL CK 0002

Calcutta High Court

Case No: Appeal from Original Decree No. 156 of 1953

Hemanta Kumar Mitra		APPELLANT
	Vs	
Mohit Kumar Chakravartty and Others		RESPONDENT

Date of Decision: Feb. 18, 1959

Acts Referred:

- Bengal Tenancy Act, 1885 - Section 104J

Citation: 63 CWN 689

Hon'ble Judges: P.N. Mookerjee, J; Law, J

Bench: Division Bench

Advocate: Murari Mohan Dutt for Chandra Narayan Laik, for the Appellant;Saroj Bagchi for the Dy. Registrar representing a minor Respondent, for the Respondent

Final Decision: Dismissed

Judgement

P.N. Mookerjee, J.
This is the plaintiff''s appeal, arising out of a suit for inter alia, "a declaration that the defendants have not mokarari interest"'' in the suit land and a further declaration "that the plaintiff is entitled to realise from the defendants a sum of Rs. 571" as fair and equitable rent for the same. The suit arose under the following circumstances:

At the time of institution of the suit, the plaintiff was the holder of Lot No. 37 (which was a temporarily settled estate in the Sundarbans) under the Government. This Lot was originally settled sometime in the year 1830, but the said settlement (grant) was forfeited and, thereafter, a fresh grant or settlement was made in 1849 for a period of 99 years. The plaintiff''s father Kumar Manmatha Nath Mitra purchased the Lot from the then Lotdar Surendra Nath Dutt under a kobala, dated March 16, 1906, and, after the demise of Kumar Manmatha (which took place on September 16, 1934). the plaintiff, under and by virtue of a deed of settlement, executed by him (Manmatha) on August 24, 1934, became the owner of the said Lot on and from the

said date, namely, September 16, 1934. The defendants and their predecessors were the holders of the present disputed tenure under the original Lotdar, Surendra Nath Dutt and, after him, under Kumar Manmatha, and, thereafter, under the plaintiff, under and by virtue of a patta, executed, as it appears from the records, in or about the year 1878 and 1879. Incidentally it may be pointed out here that the learned Subordinate Judge has accepted June 1, 1878, as the date of execution of the above patta and that date has not been disputed before us. We would, accordingly; proceed upon that footing.

Under the terms of the above patta, the defendants'' said tenure appears to have had a Mourashi Mokarari character and the rent, mentioned therein, was Rs. 326-14-0 per annum. Later on, however, as appears to be the admitted position, this rent was enhanced or altered to Rs. 374-9-5 gandas pa. due to increase in area. In the District Settlement, which was made in or about the year 1929, the defendants'' predecessor was recorded as the tenure-holder in respect of the disputed tenure at the above original annual rent of Rs. 326-14-0, the increase in rental, due to increased area, as afore said, having taken place thereafter, under the plaintiff''s father with a re mark that the said tenure was "permanent" but was "liable to enhancement of rent on the expiry of the ''present period'," this latter expression obviously meaning the period of settlement then current, of the lot or the touzi in question. That settlement expired on March 31, 1948, and thereafter, a fresh settlement of the Lot was taken by the plaintiff on and from April 1, 1949, he having continued to hold over during the intervening period. The present suit relates to the status of the defendants and their rent during the period of this fresh or new settlement. For the purpose of this new settlement, there was a revisional survey and settlement operation by the Settlement Authorities and, in the draft revisional records, as it appears from the submissions, made before us, the rent of Rs. 571 per annum was recorded as the fair and equitable rent in respect of the defendants'' above tenure, but, so far as the plaintiff was concerned, that interest was mentioned in the said records as Mokarari. It is really against this latter entry, which was confirmed on appeal by the Revenue Authorities, that the present suit was directed and the plaintiff made the consequential claim also of being entitled to realise rent at the enhanced figure of Rs. 571 p.a, as recorded in the draft records as fair and equitable rent for the tenure in question.

2. To the plaintiff''s suit, the main defence was that, under the relevant patta, the defendants'' tenure was Mokarari and the rent also, in accordance with the terms of the said patta, would not exceed Rs. 374-9-5 grandas per annum, in view of the area of the tenure, in terms of the said patta. The revisional settlement records were finally published during the pendency of the present suit which was instituted on October 25, 1949. and the date of final publication of the said records is December 21, 1950. In the finally published records, the defendants'' status was recorded as Mokarari and the rent also appears to have been recorded at the figure of Rs. 374-9-5 gandas per annum, as admitted by the defendants, in terms of the patta,

dated June 1, 1874, mentioned hereinbefore. The plaintiff endeavoured to support his claim by alleging, inter alia, that the terms of the above patta were not binding upon him-not, at any rate, after the expiry of the original settlement of 99 years of the Lot in question, namely, Lot No. 37, which expired on March 31, 1948, and he contended further that the fair and equitable rent, as settled by the Revenue Authorities in the draft record of rights, namely, the figure of Rs. 571 per annum, represented the proper rental of the disputed tenure and the plaintiff was entitled to realise the same.

3. The learned Subordinate Judge dismissed the plaintiff''s suit holding, inter alia, that, notwithstanding the District Settlement records, the defendants were not estopped from contending that they had Mourashi Mokarari rights in the disputed land and that the plaintiff''s claim was barred by the terms of the aforesaid patta which, according to him, would govern the relationship between the parties and their rights in the above matter, notwithstanding the fact that the estate in question was a temporarily settled estate and the patta in question had been granted by the previous Lotdar Surendra Nath Dutta. The learned Subordinate Judge further appears to have directed in his judgment that the plaintiff would be entitled to recover rent at the rate, as originally stipulated in the lease, this direction being ambiguous in that it may be construed to mean that the plaintiff would be entitled only to realise Rs. 326-14-0 per annum and not even the increased rent due to increased area, namely, Rs. 374-9-5 gandas per annum.

4. Against the above decree of the learned Subordinate Judge, the present appeal has been preferred by the plaintiff appellant, and, on his behalf, Mr. Dutt has put forward, with some force, two arguments in support of the appeal. Mr. Dutt has contended first that, in view of the decision of the Judicial Committee reported in Kumar Chandra Singh Dudhoria and others v. Midnapore Zemindary Co. Ltd., (1) 46 C.W.N. 802, the Revenue Officer was entitled, in the circumstances of this case, to fix the rent at Rs. 571 per annum, as he did in the draft settlement record; and secondly, that, in view of the entry in the remarks column of the earlier District Settlement record of rights that the defendants'' tenure, though permanent, was liable to enhancement of rent on the expiry of the then current period of settlement of the Lot in question, namely. Lot No. 37 (which settlement expired with the end of March 1948), the plaintiff''s claim can be supported either by referring to the general law of estoppel, or to the special law in that behalf as contained in sec 104J of the Bengal Tenancy Act, in the light of the provisions of the group of sections 104 to 104H of the said Act and above Privy Council decision.

5. The arguments, as presented above, really constitute one single submission, to appreciate the point wherein.- and to understand its real implication and significance,-we have to put the two component arguments (which are really the two links in the chain) in their proper order and logical sequence and assess or ascertain their combined or cumulative effect. So put, the above submission will

read as follows:

The entry in the District Settlement record that the rent of the disputed tenure was enhanceable or liable to enhancement was binding upon the defendants, they or their predecessor, not. having taken any steps for the alteration or correction of that entry, and, that being so, the defendants could no longer claim any mokarari status in respect of their said tenure and, accordingly, it was open to the Revisional Settlement Authorities to fix a higher rent for the disputed tenure, if the same was considered to be fair and equitable, and, they having actually determined Rs. 571 per annum as such fair and equitable rent, as evidenced by the draft record of rights, and such determination not being questioned, except on the ground (not open or available to the defendants as aforesaid) that the disputed tenure was mokarari, the plaintiff was entitled to realise rent at the said rate of Rs. 571 per annum and also to a declaration that the defendants had no mokarari rights in the disputed tenure.

6. In support of the above submission, reference has been made, as already stated, to the law of estoppel, both general and special,-the latter, as it arises under sec. 104J of the Bengal Tenancy Act,-and strong reliance has, been placed by Mr. Dutt on the decision of the Privy Council in Dudhoria''s case (1) supra, and we have to see how far that reliance is justified and bow far estoppel, general or special, helps the plaintiff-appellant in the present case.

7. As to general estoppel, the plaintiff''s position is perhaps the weakest. All that could be pointed out by the plaintiff-appellant under that head was (1) the fact of the existence of the entry in the remarks column of the District Settlement record of rights, which has been quoted above, and (2) the fact that the defendants or their predecessor did not take any step against the same. Those two facts, however, are utterly insufficient to support the plea of estoppel under the general law. Mere non-action against an incorrect settlement entry is not certainly such an act or omission as would, without more, be sufficient in law to induce or mislead another person to act upon the same and so to act to his prejudice, and, as a matter of fact, there is no allegation here that the plaintiff-appellant was so induced or misled. Accordingly, the plea of general estoppel must fail in the present case. There is also nothing in Dudhoria''s case, (1) supra, which would, even remotely, support such a plea.

8. The other part of the appellant''s above submission, which is founded on special estoppel under sec. 104J of the Bengal Tenancy Act and upon the decision of the Judicial Committee in Dudhoria''s case, (1) supra, merits a closer and much more detailed examination but, as we shall presently see. it has also very little substance. The finality which attaches under the said section 104J of the Bengal Tenancy Act and under the above quoted decision of the Judicial Committee and, upon which, the appellant''s plea of the special estoppel rests, attaches only to the entry of rent, that is, to the amount of rent settled, and the liability for payment of that rent and

any other incident, necessarily involved or reflected in the said settlement, and it does not extend any further or beyond the same even under the above Privy Council decision.

9. In Dudhoria''s case, (1) the Judicial Committee considered, in some detail, the effect of sec. 104J of the Bengal Tenancy Act in the light of the other connected provisions, namely, sections 102 and 104 to 104H and against the background of sec. 103B and laid down in authoritative terms that the finality or irrebuttable presumption under that section (sec. 104J) attaches not only to the entry as to the amount of rent settled but also to any liability or incident, necessarily involved or reflected therein. It did not, however, go further so as to give a similar effect to any other entry in the settlement record. That, indeed, would have gone against the intention of the statute and would have, to some extent at least, militated against the express provision of sec 103B of the Act which raises only a rebuttable presumption in favour of such entries. The decision of the Privy Council in Dudhoria''s case, (1) no doubt, over-ruled the view of this Court, taken in earlier cases (vide, e.g. (2), 35 C.L.J. 14; (3). 65 C.L.J. 583 and also (4). 68 C.L.J. 305 which was the judgment under appeal before the Privy Council in (1) 46 C.W.N. 802) as to the effect of sec. 104J and which purported or sought to limit it only to the amount of rent settled and entered in the record of rights to the exclusion of even the liability for payment of the same which was treated as a separate or severable element or incident of the tenancy, but that it did because, under the scheme of the statute, as pointed out by their Lordships by reference to the "grounds of appeal specified in sec. 104H" and the definition of rent in sec. 3 (13), the liability to pay the rent settled was necessarily implied or involved in such settlement and, accordingly, the two could not be severed or separated. This is amply clear from the following two paragraphs of their Lordships'' judgment appearing at pp. 806-7 of the report, namely-

The Appellants contend that not only the amount of the rent, but also the liability for rent, was determined in the proceedings for making the Settlement Rent-roll, and that the only method of challenge of the rent so settled was that provided by sec. 104H. The Respondents, on the other hand, maintain that the record-of-rights and the Settlement Rent-roll must be distinguished; that the latter only deals with the settlement of the quantum of a fair and equitable rent, while the former relates to the question of title; that the fair and equitable rent so fixed was conclusive as to its amount, subject to the right of appeal prescribed by sec. 104H, but that any question of title was only affected by the presumptive value attached to the record-of-rights by sec. 103B. Alternatively, they maintained that sec. 111A provided an alternative right of appeal to them. The Subordinate Judge, in his judgment of the 17th September, 1935, was clearly in favour of Appellants on these contentions, but, on appeal, the High Court took a different view.

10. The view of the learned Judges of the High Court appears to have been that sees. 104A to 104J dealt only with the amount of rent and did not authorise the Settlement Officer to deal with the question of liability, and, there-fore, that the question of liability for rent was only affected by the presumption of correctness giver, to entries in the record-of rights by sec. 103B of the Act. In particular, they held that the Settlement Officer, in settling the rent, was not entitled to touch "Contractual rights" Their Lordships are unable to agree; in their view, either the Settlement Officer was merely fixing a fair and equitable rent in the ideal sense, regardless of the existing contractual rights, or it was his duty to consider and form a decision based on such contractual rights. A perusal of the grounds of appeal specified in sec. 104H affords complete conviction that the entry of rent-settled in the Settlement Rent-roll prepared under sees. 104A to 104F included a decision as to liability to the payment of rent, and it will be remembered that rent is defined in sec. 3(13) as "whatever is lawfully payable or deliverable m money or kind." Their Lordships agree with the learned Judges of the High Court that the Settlement Officer is not entitled to disregard or to alter-contractual rights, but, (differing?) from the learned Judges,-they hold that the Officer is bound to regard them and to give effect to his view of them. It follows that the defence now stated by the Respondents would properly have formed the subject of a civil suit instituted under sec. 104H within the period thereby prescribed.

11. That also explains their Lordships'' significant statement at page 807 of the Report which we have italicized above and which implies-and implies necessarily and unequivocally-that if, in discharging his duties, as set out above, and in settling the fair and equitable rent the Settlement Officer does something by way of interpreting the contract between the parties which affects or alters their true contractual rights, that also would come within the ambit or protection of section 104J and the result of his action would bind the parties under that section provided of course,-but that only that it is necessarily involved or reflected in the amount of rent settled This view of ours is in perfect accord with the three subsequent decisions of this Court, reported in (5) 49 C.W.N. 395. (6) Surja Kanta Jana and Another Vs. Sm. Nishu Bala Debi and Others and (7) Midnapore Zamindary Co, Ltd. Vs. Krishna Kishore Mukherjee and Another, , where the effect of the above Privy Council decision (1) (46 C.W.N. 802 P.C.) came up for consideration and the legal position was reviewed and sufficiently explained and analysed. It also avoids conflict with the earlier Privy Council decision, (8) reported in 34 C.W.N. 1, (the Midnapore Zemindary Co. Ltd., v. the Secretary of State for India in Council), which affirmed the decision of this court, reported in (9) Raja Promoda Nath Roy Vs. Asiruddin Mandal and The Secretary of State For India , where it was expressly laid down that, only where a party is aggrieved by the entry of the rent settled, he could invoke the aid of section 104H. there by implying or supporting the view that sec 104J also would not otherwise apply. So far as this aspect of the matter is concerned, the present case seems to be sufficiently similar to the last two cases, cited above as here also the

tenants, namely the present defendants were certainly not aggrieved by the amount of rent settled and entered in the District Settlement record and in the finally published revisional record in both of which the rent of the disputed tenancy was recorded in terms of their (defendants) patta. In any event, in the facts and circumstances before us, the incident, purported to have been recorded in the remarks column of the District Settlement records, cannot be said to be necessarily implied or involved in the entry of rent or the amount of rent, settled and entered in the said records. In the above view, in whichever way the matter is looked at or approached,- the plaintiff''s plea of estoppel would fail.

12. Estoppel failing, the parties'' rights must be determined or governed by the patta. It is contended, however, on behalf of the plaintiff-appellant, that he is not bound by its terms after the expiry of the previous settlement of the Lot in Question, which event took place on March 31. 1948. This contention is put forward in the following manner:

The patta was granted by the previous Lotdar or settlement holder from the Government and it is not binding on the plaintiff, -not, at any rate, beyond the period of the said previous settlement, and, accordingly, it is not binding on the plaintiff-appellant as the new or the subsequent, to wit, the present, settlement holder.

13. To the above contention, a simple answer is sufficient. There can be no question that the patta, on its true construction, is a mokorari mourashi patta and it was accepted by the plaintiff-appellant and his predecessors who realised rents in terms of the same. The plaintiff again is not a stranger -settlement holder, inasmuch as he held the Lot previously and has taken the new or the subsequent settlement. In the circumstances the plaintiff-appellant must be held bound by the terms of the above patta both under Dudlioria''s case, (1) supra, as explained by this Court in (5) 49 C.W.N. 395, and also under the earlier Privy Council decision (10) in 7 C.W.N. 601 (Prio Nath v. Ram Taran Chatterjee) which was distinguished in the 49 C.W.N. case (5) cited above, and it is not necessary for our present purpose to consider whether the position would be the same or different if the plaintiff-appellant had been a stranger settlement holder (vide (5) 49 C.W.N. 395) or if the Lot in question had been in the khas possession of the Government for a number of years, presumably implying a break in the Lotdar''s possession, (vide, (7) Midnapore Zamindary Co, Ltd. Vs. Krishna Kishore Mukherjee and Another, or to consider either the seeming or apparent conflict between the said two decisions (5) (49 C.W.N. 395 and (7) Midnapore Zamindary Co, Ltd. Vs. Krishna Kishore Mukherjee and Another, or, rather, the obiter dicta therein bearing on the above question or questions,-on the above point. In the above view, the plaintiff appellant is not entitled to disown the patta in the present case, or to make any claim, contrary to or inconsistent with it. Clearly, then the plaintiff-appellant is not entitled to claim rent at a rate, higher than Rs. 374-9-5 gondas per annum, and the entries in the finally published re visional

record of rights, both as to amount of rent and its character or the status of the tenant, must be held to have been correctly made.

14. The position in law as to the rights of the parties being as indicated above, the dismissal of the plaintiff-appellant''s suit must be maintained, subject only to this clarification that he will be entitled to recover rent from the defendants in respect of the dispued tenure at the rate of Rs. 374-9-5 gandas per annum even if anything in the judgment of the learned Subordinate Judge may indicate the contrary.

15. Subject to the above observations, this appeal fails and it is dismissed.

16. As there is no appearance on behalf of the respondents in this Court, other than the minor whose costs have already been put in, there will be no further order for costs in this appeal.

Law, J.

I agree.