(1869) 02 CAL CK 0015

Calcutta High Court

Case No: Special Appeal No. 1792 of 1868

Kasimuddi Khandkar		APPELLANT
	Vs	
Nadir Ali Tarafdar and Others		RESPONDENT

Date of Decision: Feb. 24, 1869

Judgement

Loch, J.
This was a suit for a kabuliat at an enhanced rate. The Judge has disposed of it by referring to a judgment of this Court, in the case of Golam Ali v. Baboo Gopal Lal Thakoor (9 W.R., 65) and has held that the words "full customary rent" are equivalent to saying that, when the rent reaches that rate, it will be considered permanent. There is another ruling in the case of Bharat Chandra Aitch v. Gaurmani Dasi (*), in which it is held that the words "fall customary rate" referred to the highest rate for the time being, i.e., at the time when the potta was drawn up.

(*)

Present:

Mr. Justice Loch and Mr. Justice Hobhouse.

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Bharat Chandra Aitch versus Gaur Mani Dasi.

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[=11 W.R. 31]

Special Appeal, No. 4 of 1868, from Jessore

The Judgment in this case was delivered on 11th January 1869, by

Hobhouse, J.--The suit in the Court below was for arrears of rent at an increased rate. The defendant holds under what is called a jungle-buri howla tenure, by a potta, dated 29th Baisakh 1250; and the questions in the Courts below were much the same questions which are now raised in special appeal before us.

Special appellant contends:

First.--That he is not bound to pay enhanced rent, because his potta does not provide for, but rather in its terms precludes, enhancement;

Secondly.--If I understand him right, he argues that there can be no increase in his howla settlement, because no such increase had ever been made in such settlements since the rates of the khasra or under-tenures have risen from Re. 1-4 to Re. 1-8 a biga; and

Thirdly,--He contends, that if he is held liable to pay enhanced rent, he is entitled to have deducted from the amount of such enhancement whatever expenses he incurred in clearing the lands in making them fit for cultivation, his tenure having been in the first instance what is called jungle-buri tenure.

In support of his first contention, the special appellant relies upon the case of Golam Ali v. Gopal Lal Thakoor (9 W.R., 65) and no doubt there is a very great similarity between the document discussed in that case and the document now before us. But the documents being different documents, we do not think we should be justified in following any precedent, which does not really touch upon the very document actually before us; and it follows that we must put the best construction we can upon the document now before us. The terms in the document on which the special appellant relies, are these: that the lands covered by it shall beheld rent-free for a period of five years, viz., from 1250 to 1254, and for the year 1255; the lands shall bear a rate of five annas per biga; for the year 1256, a rate of 10 annas per biga; and that from the year 1257, the rate to be paid every year shall be the "para dastur" or full customary rate of 14 annas.

On the terms of this document, the special appellant contends that the intention of the parties was that from the year 1257 and thereafter, no higher rate than the full customary rate of 14 annas should ever be taken for the lands. We think this contention is not sound. We think the meaning of the parties simply was, that inasmuch as the ryot, appellant before us, was bringing those lands into cultivation for the first time, he should, as an encouragement and as a re-payment for his expenses and labour, pay for these lands for a certain period either no rent at all, or at something less than customary rates; and that when that period had expired, he should pay for the lands at full customary rates, whatever they might be for the time being, the rate of 14 annas being found in this case the rate at the period for the settlement; and we think it would be going too far were we to

say that by such a condition as is here recited, the landlord bound himself never to exercise the privilege which, generally speaking, all landlords have of enhancing rents under certain given circumstances.

On the second objection taken, we remark that when once it is determined that the plaintiff may enhance the rates in question, the only question then left is to ascertain what is the fair rate at which, under the pleadings, that enhancement should be made; and we think that the Court below has, upon the evidence, arrived at a proper finding on this point. It says that when the under-tenants paid 1 rupee 4 annas per biga to the howladar, he paid 14 annas to the landlord. So when now the under-tenants pay 1 rupee 8 annas to the howladar, it is only fair that he should pay one rupee to the landlord. We think this finding is a proper one of a fair and equitable rate.

And on the third objection taken, we agree with the Appellate Court below. We think the appellant''s expenses in bringing the lands to the state in which they now are, cannot be taken into consideration in Assessing the enhanced rates to be paid; for a consideration had already been given for these expenses, and it was this, viz., that of paying no rent at all for five years and that of paying less rent for the two years immediately preceding the year 1257.

In this view of the objections taken, we dismiss the special appeal with costs.

Loch, J.--I entirely concur.