

(1868) 08 CAL CK 0014

Calcutta High Court

Case No: Special Appeal Nos. 1911 and 1935 of 1867

Bakranath Mandal

APPELLANT

Vs

Binodram Sen

RESPONDENT

Date of Decision: Aug. 6, 1868

Judgement

Sir Barnes Peacock, Kt., C.J.

I entertain no doubt whatever in this case. Section 13 is not applicable merely to ryots having rights of occupancy, but to all under tenants or ryots. It enacts that no under-tenant or ryot who holds or cultivates land without a written engagement, or under a written engagement not specifying the period of such engagement, &c., shall be liable to pay any higher rent for such land than the rent payable for the previous year, unless a written notice shall have been served on such under-tenant or ryot on or before the month of Chait, specifying the rent to which he will be subject for the ensuing year, and the ground on which an enhancement of rent is claimed. This section is applicable to ryots who have not gained a right of occupancy, as well as to ryots who have a right of occupancy. Speaking for myself, I have no doubt that a ryot who has held, without any period for the duration of his tenancy having been fixed, although he may not have gained a right of occupancy, cannot have his holding determined without a reasonable notice to quit, and that a notice given in the last month of a current year would not be sufficient. By Section 19,⁴ a ryot may relinquish possession by giving notice to his landlord in or before the month of Chait of the year preceding that in which the relinquishment is to have effect. If the land-owner, instead of giving notice to quit, requires the ryot to pay a higher rent than that paid in the previous year the ryot is not bound to continue to hold the land at such enhanced rent, but is at liberty to quit upon giving notice in or before the month of Chait. The landlord, however, cannot, by giving notice of enhancement, compel the tenant to pay more than a reasonable rent, and he cannot enhance without notice, specifying grounds of enhancement. If giving notice of enhancement in or before end of Chait to a ryot not having a right of occupancy, he could enhance the rent to any amount he pleased, the ryot might suffer great

injustice. For the landlord might give him notice of enhancement to an exorbitant amount at the last moment of the month of Chait, when it would be too late for the ryot to quit without being liable to pay rent for the ensuing year u/s 19, Act X of 1859. The notice might be sent on the last day of Chait from the land-owner's kutchery at a long distance, when it would be too late for the tenant to send notice to his landlord u/s 19 of his intention to relinquish possession; and if the tenant should quit without such notice, he would be liable to pay rent (see Section 19).

2. When Section 13 required that the notice of enhancement should specify the grounds on which the enhancement should be claimed, the Legislature could not have intended to compel the land-owner to do that which they considered to be superfluous; still less could they have intended to compel him to do something worse than superfluous, viz., to specify grounds of enhancement by which he was not to be bound. Section 14 authorizes the tenant to contest his liability to pay the enhanced rent demanded of him, either by complaint of excessive demand of rent, or in answer to a suit preferred against him for recovery of arrears of the enhanced rent. I think it clear that the meaning of the Legislature was that the grounds specified for enhancement should be such as to justify the enhancement, and that their existence should be proved in the suit in which the tenant should contest his liability to enhancement. It was contended in argument that the landlord may enhance the rent of a ryot not having a right of occupancy to any amount he pleases, and may specify any grounds that he pleases for such enhancement; and that he is not bound to prove that any of such grounds exist, and that it is for the ryot to prove that no such ground exists. If such an argument were tenable, a landlord might give notice that he intends to enhance to some exorbitant amount, upon the ground that he is a grasping oppressive landlord, having no regard for justice or fair dealing, or for the interests of any one except himself. It might be difficult, if not impossible, in many cases, for a ryot to disprove the grounds alleged, by showing that the landlord was not a person of that description. This shows that the grounds must be reasonable, and such as to justify the enhancement claimed. The onus of proving the existence of the grounds alleged is upon the land-owner. It, appears to me that the Judges who referred this case came to a right conclusion that a landlord cannot enhance the rent unless he states the grounds on which he seeks to enhance; and that if those grounds are disputed, it will be for the Court to determine whether they exist, and whether they are such as to justify the enhancement. Section 8 has been referred to, but it appears to me to have nothing to do with the question. It merely says, "ryots not having rights of occupancy are entitled to pottas only at such rates as may be agreed on between them and the persons to whom the rent is payable." A ryot is not at liberty to compel his landlord to give him a potta at any rent he pleases.
Bayley, Jackson, Macpherson and Mitter, JJ., concurred.

¹Enhancement of rent of ryot holding without, or after expiry, etc. of written engagement.

[Sec. 13:--No under-tenant or ryot, who holds or cultivates land without a written engagement not specifying the period of such engagement, or whose engagement has expired, or has become cancelled in consequence of the sale for arrears of rent or revenue of the tenure or estate in which the land held cultivated by him is situate, and has not been renewed, shall be liable to pay any higher rent for such land than the rent payable for the previous years, unless a written notice shall have been served on such under-tenant or ryot, in or before the month of Chait, specifying the rent to which he will be subject for the ensuing year, and the ground on which an enhancement of rent is claimed. Such notice shall be served by order of the Collector on the application (which may be on plain paper) of the person to whom the rent is payable, and shall, if practicable, be served personally on the under-tenant or ryot. If for any reason the notice cannot be served personally upon the under-tenant or ryot, it shall be affixed at his usual place of residence, or if he has no such place of residence in the District in which the land is situate, the mode of service of such notice shall be by affixing it at the Mal Cutcherry of such land or other conspicuous place thereon, or at the village Chouree or Chowpal or at some other conspicuous place in the village in which the land is situate. (Amended by Act XIV, 1863, ss. 10, 11 and 12)]

²Pottahs to which ryots not having rights of occupancy are entitled.

[Sec. 8:--Ryots not having rights of occupancy are entitled to pottas only at such rates as may be agreed on between them and the persons to whom the rent is payable.]

³Grounds on which ryot having right of occupancy is liable to enhanced rent.

That the rate paid by him is below that prevailing in adjacent places.

That the value of the land, etc., has increased independently of the ryot.

[Sec. 17:--No ryot having the right of occupancy shall be liable to an enhancement of the rent previously paid by him except on some one of the following grounds, namely:--

That the rate of rent paid by such ryot is below the prevailing rate payable by the same class of ryots for land of a similar description and with similar advantage in the places adjacent.

That the value of the produce or the productive powers of the land have been increased otherwise than by the agency or at the expense of the ryot.

That the quantity of land held by the ryot has been proved by measurement to be greater than the quantity for which rent has been previously paid by him.]

That the quantity of land held by the ryot is greater than he has paid rent for.

⁴Relinquishment of land by ryot after notice given.

[Sec. 19:--Any ryot who desires to relinquish the land held or cultivated by him, shall be at liberty to do so, provided he gives notice of his intention in writing to the person entitled to the rent of the land or his authorized agent in or before the month of chait of the year preceding that in which the relinquishment is to have effect. If he fail to give such notice, and the land is not let to any other person, he shall continue liable for the rent of land. If the person entitled in the land or his agent refuse to receive any such notice and to sign a receipt for the same, the ryot may make an application on plain paper to the Collector who shall thereupon cause the notice to be served on such person or his agent in the manner provided in Section XIII.]