

Ram Taran Tewary and Others Vs Kumeda Dasi

Court: Calcutta High Court

Date of Decision: Feb. 10, 1922

Acts Referred: Bengal Patni Taluks Regulation, 1819 " Section 3

Citation: AIR 1922 Cal 80 : 68 Ind. Cas. 161

Hon'ble Judges: Suhrawardy, J; Cuming, J

Bench: Division Bench

Judgement

1. The facts of this appeal are there.

2. The plaintiffs sued to recover arrears of rent for-the years 1321 to 1324 B. Section with cresses and damages on a registered maurasi

mokurrari kabuliyat exeouted in 1877

3. The lease recites that "" within the aforesaid Monza you have granted me a patta of 12 big has of land at an annual jama of Rs 6 and Rs. 24 as

premium,"" After reciting how the runny should be paid and in what instalments, the lease- states that the landlord should have right to the minerals,

ets"" and, lastly, the words appear : Also it should appear that I would deliver 1 seer of shyama ghee and one kid every year."" No amount is

mentioned as payable in lieu of the ghee and goat in case of default.

4. The Trial Court held that the plaintiff was entitled to recover rent at the" rate of Rs. 6 per annum and that le was not entitled to recover the ghee

and the goat.

5. This finding was upheld by the Appellate Court on the ground and that the ghee and goat are net mentioned as part of the rent.

6. The plaintiffs have appealed.

7. They contend that the ghee and goat are part of the consideration for which the lease is granted and are not abwabs. They argue that they argue

patnidars and so the tenancy is governed by terms of Section 3 of Reguration VIII of 1819 and that, therefore, though Section 179 of the Bengal

Tenancy Act does not help them, because the lease was created before the passing of the Tenancy Act, still their position under the Putni

Begulation is the same as it would be under the Tenancy Act. So that, even if it be considered as an abwab and not part of the rent, they are still

entitled to get it.

8. The respondent contends that the case is not governed by Section 3 of the Regulation referred to but by Section 3 of Regulation V of 1812 and

that there is nothing to show that the plaintiffs are putnidars, Will regard to the last objection of the respondent it appears that in the plaint the

plaintiffs describe themselves as putnidars which averment has not been traversed in the written statement. We, therefore, accept the plaintiffs'

statement that they are putnidars and proceed to determine the case on that basis.

9. A number of cases have been cited at the Bar, of which we will notice the following:

In the case of Krishna Chandra Sen v. Sushila Soondury Dassee (3), it was held that, even if the imposition were an abwab still it was recoverable.

This case was governed by the Bengal Tenancy Act and it was held that Section 74 did not control Section 179 of the Act. This case has no

application to the present case.

10. The next case we have been referred to is the case of Aparna Charan Ghose v. Karam Ali (4). This was a case of a permanent tenancy

created by a lease dated 1-60. In that case it was held that Section 10 of Act X of 1859 or Section 3 of Regulation V of 1812 made all

impositions upon all classes of tenants, including a permanent tenure-holder, in excess of the specified rent illegal.

The next case to be considered is the case of Tilukhdari Singh v. Chuihan Mahton (5), a decision of the Privy Council, in that case it was decided

that payments over and above the rent were abwabs and could not be recovered. The Judicial Committee do not seem to make any distinction

between what was arbitrary or uncertain and what was not.

11. This case was distasteful in the case of Radha Prosad Singh v. Bal Kowar Eoeri (6), and Sir Comer Petheram, C. J. (page 740*), Considered

that the meaning of Section 74 of the Bengal Tenancy Act was that no imposition under any name whatever shall be recovered from the tenant for

or in respect of the occupation or tenure beyond the sum fixed for rent. O'Kinealy, J., in considering the meaning of the expression "'abwab,

states: (page 745*) "'this, too, I think, is the sense in which abwabs were considered as arbitrary or indefinite in the old Regulators---arbitrary, in

the sense they were unauthorized by law,---indefinite, in the sense that, though levied in a certain proportion to and upon the original

assessment...there was no definite rule guiding the Zemindar in fixing the proportion they bore to the produce of the land.

13. All these cases discussed and determined the law relating to abwabs and illegal taxations and are of not much to us in the consideration of the

question of the correct interpretation of Section 3 of Regulation VI of 1819 with reference to the law then in force prohibiting illegal impositions.

14. We may note that when the lease in the present case was treated, i.e., in 1877, the law relating to illegal impositions was contained in Sections

54 and 55 of Regulation VIII of 1793, Section 3 of Regulation V of 1812, Section 10 of Act X of 1859 and Section 11 of Bengal Act III of

1869.

15. The appellants submit that the second Clause of Section 3 of the Patni Regulation overrides all previous prohibitions against such imposition

and makes all engagement between a putnidar and his lessee, on whatever term?, binding on the parties to the same and become even the

stipulation regarding the payment of always is enforceable as against the latter, being one of the terms on which the lands are let out. It is

contended, on the principle that a special provision qualifies a general one [Ebbs v. Boulnois (I)], that this clause by its general terms abrogated all

previous restrictions as to abwabs so far as relating to putni tenures. We may mention here that it is not seriously contended, in view of the clause

imposing the delivery of the goat and ghee standing so completely isolated from the terms relating to the rent proper, its mode of payment and the

penalty attaching to non payment, and appearing in the lease by way of post script as it were, that the goat and ghee are part of the rent as such,

payable in respect of the demised premises?, but it is urged that being part of the consideration of letting such stipulation is enforceable by virtue of

the second Clause of Section 3 of Regulation VIII of 1819.

17. Regulation VIII of 1819 was enacted to govern a class of tenures known as putni taluks, the nature of which the preamble to the Regulation

describes in these terms:

The character of which tenure is that it is a taluk created by the Zemindar, to be held at a rent fixed in perpetuity by the lessee and his heirs for

ever,"" Section 2 of the Regulation validates leases fixing rent in perpetuity though in contravention of the provisions of Regulation XLIV, 1793. This

is followed by Section 3 which confers On the Zamindar and the putnidar the right of letting and under-letting on any terms,

18. Clause 1 of the section recognizes that validity of ""the term of the engagements"" between the Zamindar and the putnidar and Clause 2 makes

any engagements between the putnidar and his sub-lessee binding on both parties. Section 8 of the Regulation authorises the Zamindar to bring the

taluk to sale for ""any arrear of rent."" There is no provision in the Regulation for enforcing any ""terms of engagement"" other than the payment of

rent, Reading the Regulation as a whole, and considering its policy and scheme, it seems to us that the ""engagements"" mentioned in Section 3 of the

Regulation connotes engagements as to rent and other terms connected therewith. If the "goat and ghee" mentioned in the lease under consideration

is not part of rent, as we hold it is not, the stipulation regarding delivery thereof is not legalized by Regulation VIII of 1819 but is subject to the law

relating to "abwabs" in force at the time of the creation of the lease. It is hardly necessary to observe that if the above articles are not to be

considered rent or part of the rent reserved by the lease, they are abwabs or illegal cess.

19. The question as to whether Section 3 of the Putni Regulation, creates an exception to the general rule against abwabs as enunciated by

Regulation V of 1812 and other enactments has not been yet directly raised in this Court. The reason for it may be that the answer to it was

deemed too obvious for serious consideration. There have been cases in this Court in which the question whether certain impositions in a putni

lease were abwabs or not came up for consideration and was elaborately discussed, It will suffice to notice two of them.

20. In the case of Assanulla Khan Bahadur v. Tirthabashini (2) the question was whether chaukidari tax payable by the putnidar under the Putni

Settlement is an illegal cess. After a careful review of various enactments relating to abwabs and the law on the point, it was held by

Maepherston and Banerjee* J J., that as chaukidari tax was part of the ground rent quite as much as the actual rent, it was not an abwabs and was,

therefore, recoverable. At page 688* of the Report their Lordships remark as follows;---"A stipulation for the payment of such an amount can

not, we think, be regarded as one for the imposition of an arbitrary or indefinite cess" within the meaning of Section 3 of Regulation V of 1812, or

for an imposition under the denomination of abwabs mathaut or other like appellation in addition to the actual rent" within the meaning of Section 74

of the Bengal Tenancy Act, for this simple reason, that the imposition here depends primarily, not upon the will of the Zemindar, but upon law of

the land (Bengal Act VI of 1870), It is this Act which imposes the liability on the Zemindar, and the Zemindar merely stipulates with the putnidar

when granting the putni that the latter should, among other sums, regularly pay him the amount levied from him under the Act." These observations

clearly indicate that, had the imposition been one dependent upon the will of the Zamindar it would have been an imposition of an arbitrary or

indefinite cess illegalised by Regulation Y of 1812. It was not contended there that that Regulation was superseded by the Putni Regulation.

21. The next case demanding reference is the case of Bejoy Singh v. Krishna Behari Bitivas (17). In that case the tenant, in the kabuliyat which was

in respect of a putni tenure executed in the year 1882, stipulated to pay a sum of Rs. 15 every year in the month of Bhadras. the mamuli (usual)

for the Iswar Thakur. This covenant was contained in a clause separate from that stipulating the yearly rent. The question was whether this sum of

Rs. 15 was an abwab and irrecoverable. The Court held that this sum was not intended to be part of the consideration for the use and occupation

of the land or as part of the rent and being an abwab was irrecoverable. As appears from the judgment of the Chief Justice it was agreed by both

sides that the matter was governed by Section 3 of Regulation Y of 1812. Chatterjee, J., in a considered judgment in that case, held that the sum of

Rs. 15 mentioned in the Kabuliyat did not form part of the consideration for the lease, and even if it did, it did not form part of the rent. This

observation affords an answer to the contention of the appellants before us that the stipulation for the delivery of the goat and ghee is a part of the

consideration though not of rent.

22. Subsequent to Regulation VIII of 1819 the law against illegal cesses was re-enacted, though in indirect terms by Section 10, Act X of 1859

and Section 11, Bengal Act VIII of 1839. Both these Acts were of general application and having made no reservation in cases of Putni

Settlements, there is no reason for holding that they did not apply to tenures or holdings* created under the Putni Regulation. These enactments

furnish ample ground to strengthen the supposition that the Legislature did not intend that the Putni Regulation should restrict the application of the

general law against abuabs as embodied in Section 3 of Regulation V of 1812. Even if it were otherwise, the provisions of Act X of 1859 and Act

VIII of 1869, Bengal Council, which were applicable to permanent leases *Aparna Charan Ghose v. Karam Ali* (4) would govern Section 3 of the

Putni Regulation.

23. It is to be understood that we have proceeded on the assumption that Regulation VIII of 1819 controls all the incidents of the tenure in

question, a point which, in view of the interpretation we put on the law, we have considered unnecessary to discuss.

24. For the reasons above, we hold that the stipulation regarding the ghee and goat if, in its term and effect, the imposition of an abwab and as

such not enforceable.

25. The result is, that this appeal fails and is dismissed with costs.