(1922) 02 CAL CK 0048

Calcutta High Court

Case No: None

Ram Taran Tewary and Others	APPELLANT
Vs	
Kumeda Dasi	RESPONDENT

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 net governed by Section 3 t of the Regulation referred to but by Section 3 of Regulation V of 812 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 Tenanoy 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 bean 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 dared 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 exiles 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 distasted 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 interoretation of Section 3 of Regulation VI(I 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 Ant 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 pro-vision qualifies a general one [Ebbs r. Boulnois (l), that this clause by its general terms abrogated all previous restrictions a3 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 stub, payable in respect of the demised premise?, 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 tarms:

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 XLlV, 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 talu"t 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 there of 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 leace were abwab 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 abvnbi and the ease-law on the point, it was held by Maepherson and Banerjee* J J., that as chaukidari tax was part of the ground rant quite as mush as the actual rent, it was not an abwab 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 mot, we think, hi 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 abwab 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 laud (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 its. 15 every, year in the month of Bhadraas. 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 oacupation 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 he 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 holding* 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 Sction 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 bold 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.