(1917) 08 CAL CK 0048

Calcutta High Court

Case No: None

Lakhi Charan Saha and Others		APPELLANT
	Vs	
Hamid Ali and Others		RESPONDENT

Date of Decision: Aug. 28, 1917

Citation: 44 Ind. Cas. 543

Hon'ble Judges: Richardson, J; N.R. Chatterjea, J

Bench: Division Bench

Judgement

1. This appeal arises out of a suit by the plaintiff appellant, who is the purchaser of an entire estate under Act XI of 1859, to eject the defendants. The, defendants and their predecessors in-interest, it is found, had been holding the lands at any rate from. 1838 as Raiyats, and had acquired a right of occupancy in the lands in suit, but the defendant Chunnu Miah and another in 1881 executed a daimi kaimi chirasthai (permanent Raiyati Kabuliyat). The Courts below have held that the interest of the defendants was protected u/s 37, of Act XL of 1859, and the plaintiff was not, therefore, entitled to khas possession, but was entitled to fair and equitable rent for the lands. The plaintiff has appealed to this Court.

2. u/s 37 of Act XI of 1859, the purchaser at a revenue sale is not entitled to eject any Raiyat having a right of occupancy at a fixed rent or at a rent assessable according to fixed rules under the laws in tores. On the facts stated, the defendants'' interest prima facie is that of a "Raiyat having a right of occupancy at a fixed rent."

3. At the time when the Revenue Sale -Law (Act XI of 1859) was passed, the law relating to landlord and tenant in force was Act X of 859, and u/s 6 of that Act every Raiyat who cultivated or held land for 12 years acquired a right of occupancy in such land. Under that Act there were two classes of occupancy Raiyats viz., Raiyats at fixed rates of rent, and occupancy Raiyats who did not hold at fixed rates of rent (see Sections 3, 4,5 and 6). Both these classes of occupancy Raiyats are protected under the proviso to Section 37 of

Act XI, which provides that the purchaser shall not be entitled to eject any Raiyat having a right of occupancy at a fixed rent, or at a rent assessable according to fixed rules under the laws in force. "Occupancy Raiyats at fixed rates of rent" do not find any place in the V classification of "Raiyats" under the Bengal Tenancy Act. Under that Act there are occupancy Raiyats and Raiyats holding at fixed rates. But if a Raiyat had a right of occupancy at a fixed rent under Act" X of 1859 (as the defendants in the present case had), we do not think that he lost his right of occupancy and the privileges attaching to it after the passing of the Bengal Tenancy Act, merely because occupancy Raiyats holding at fixed rates of rent are not separately mentioned in the classification of Raiyats under the Bengal Tenancy Act.

4. It is contended on behalf of the appellant, on the authority of the case of Bhutnath Naskar v. Monmotho Nath Mitra 2 Ind. Cas. 675 : 13 C.W.N. 1025 : 11 C.L.J that a Raiyat at fixed rates cannot have a right of occupancy. The question which had to be considered in that case was, whether the interest of the defendants was a protected interest within the meaning of Section 160, Clause (d) of the Bengal Tenancy Act. Doss, J., held upon a construction of the lease in that case that the interest of the defendants was a tenure, and that if the defendants were treated as Raiyats holding at fixed rates, their interest was not protected u/s 160 of the Act. On appeal under the Letters Patent, the learned Chief Justice affirmed the judgment of Doss, J., on the ground., that the interest of the defendants was a tenure and therefore not protected u/s 160, and did not express any opinion on the other question. Mookerjee, J., confirmed the judgment of Doss, J. not only on that ground, but also on the ground that a Raiyat holding at fixed rates is not protected u/s 160 of the Bengal Tenancy Act.

5. It is necessary to consider in the present case, whether a Raiyat holding at fixed rates is protected u/s 160 of the Bengal Tenancy Act, as the present case has to be considered with reference to Section 37 of Act XI of 1859, the wording of which differs materially from that of Section 160, Clause (d), of the Bengal Tenancy Act. Reliance, however, is placed on behalf of the appellants on the observations of Mookerjee, J., in that case, in support of the proposition that a Raiyat holding at fixed rates cannot have a right of, occupancy. No doubt; the mere fact that a holding is held at fixed rates, does not make it an occupancy holding, for a Raiyati holding at a fixed rent may be created only a month before the revenue sale, and the Raiyat, in such a case, cannot certainly" be called a Raiyat having a right of occupancy. The defendants in the present case had acquired a right of occupancy before their rent was fixed in perpetuity, which again was before the passing of the Bengal Tenancy Act. It is unnecessary, therefore, to consider, in the present case, whether a Raiyat holding at fixed rates after he has held the land for 12 years in a village can become a settled Raiyat of the village and acquire a right of occupancy--a question upon which there is divergence of judicial opinion. [See the unreported cases, Second Appeal No. 1115 of 1915 decided on the 15th February 1917 and Second Appeal No. 847 of 1913 decided on the 26th May 1915 Akhil Chandra Sen v. Tripura Charan 29 Ind. Cas. 563). The only question for consideration is whether a Raiyat

who has acquired a right of occupancy before the passing of the Bengal Tenancy Act can retain the privileges of an occupancy Raiyat although his rent has been fixed in perpetuity, by reason of which he becomes a Raiyat holding at fixed rates according to the classification of Raiyats in the Bengal Tenancy Act. Section 190 provides that every Raiyat who immediately before the commencement of the Act has a right of occupancy in any land shall, when the Act comes into force, have a right of occupancy in that land, and Section 178 (1), Clause (b), of the Bengal Tenancy Act provides that nothing in any contract between a landlord and tenant made before or after the passing" of the Act shall take away an occupancy right in existence at the date of the contract. In the present case the Kabuliyat executed in 1881, by which the rent of the defendants was fixed, did not even purport to take away any right which the defendants had at the date of the Kabuliyat. The right of occupancy, therefore, which the defendants had, was not affected by the Kabuliyat by which the rent was fixed.

6. Mookerjee, J., in referring to the omission of "a raiyat holding at fixed rates" from Section 160, suggests that "the policy of the Legislature was to protect the Raiyat, but not necessarily to the complete detriment of the purchaser of a tenure at a sale for arrears of rent. If a Raiyat holding at a fixed rate of rent were protected from ejectment, the purchaser would acquire the property in an incumbered condition; for he would be unable, not only to eject the Raiyat, but also to enhance the rent. On the other hand, if occupancy Raiyats and non-occupancy Raiyats alone were protected from ejectment, while their possession would be maintained, they would be liable to have their rent enhanced, from time to time, at the instance and for the benefit of the purchaser of the tenure."

7. Those considerations, however, do not arise in connection with the proviso to Section 37 of Act XI of 1859. That proviso expressly lays down that the purchaser shall not be entitled to enhance the rent of an occupancy Raiyat otherwise than in the manner prescribed by law or otherwise than the former proprietor, irrespectively of all engagements made since the time of settlement, may have been entitled to do. Now the rent of an occupancy Raiyat, who holds at a fixed rate of rent from the time of the Permanent Settlement, could not be enhanced under Act X of 1859, nor can the rent of such a Raiyat be enhanced under the Bengal Tenancy Act. Section 37 of Act XI of 1859 having expressly " laid down that the purchaser at a revenue sale is not entitled to enhance the rent of such Raiyats, no question arises as to the "detriment of the purchaser" under that section. Where, however, the occupancy Raiyat holds at a fixed rent not from the time of the Permanent Settlement, but only under an engagement made since the time of settlement he is not protected from enhancement, because the former proprietor would have been, irrespectively of the engagement, entitled in a proper case to raise the rent of such a Raiyat. The purchaser, however, is not entitled to eject occupancy Raiyats of either of the two classes. The rights of the purchaser as regards enhancement of rent having been clearly laid down by Section 37 of Act XI of 1859, the considerations relied upon by Mookerjee, J., do not arise in connection with cases coming u/s 37 of the Revenue Sale Law. The case of Abdul Gani v. Makbul Ali 31 Ind. Cas. 19 : 22 C.L.J. 223

: 42 C. 745 pc: 20 C.W.N. 185 in so far as it holds that a person who has already acquired an occupancy right does hot by obtaining a grant of fixed rent lose that occupancy right and that such a person is protected from ejectment u/s 87, supports the view we take and to that extent we agree with that decision. If the opposite view were taken, Raiyats who might be holding lands for generations and who might have acquired rights of occupancy would be liable to be ejected by a purchaser at a revenue sale, simply because they may come under the description of Raiyats holding at fixed rates under the Bengal Tenancy Act, by reason of their rent being fixed in perpetuity by contract, or by reason of their holding at the same rent from the time of the Permanent Settlement or by reason of a presumption arising u/s 50 of the Bengal Tenancy Act that they have been so holding, when the clear intention of the Legislature is to protect such Raiyats from ejectment at the hands of a purchaser at a revenue sale.

8. We are of opinion that as the defendants had acquired rights of occupancy they were protected from ejectment under the proviso to Section 37 of Act XI of 1859, although they held at a fixed rent. The appeal is accordingly dismissed with costs.