(1936) 11 CAL CK 0017

Calcutta High Court

Case No: None

Amar Krishna Chowdhury and Others		APPELLANT
	Vs	
Surendra Bijoy Dewanji and Others		RESPONDENT

Date of Decision: Nov. 18, 1936

Acts Referred:

- Bengal Tenancy Act, 1885 - Section 105, 50

Citation: 171 Ind. Cas. 632

Hon'ble Judges: M.C. Ghose, J; B.K. Mukherji, J

Bench: Division Bench

Judgement

B.K. Mukherji, J.

The plaintiffs are the appellants in these four analogous appeals, which arise out of as many suits commenced by them for enhancement of rent u/s 105, Bengal Tenancy Act. The plaintiffs are co-sharer landlords to the extent of 10 annas 7\u0000 gds. share of the lands in dispute aid it is admitted that they have separate collection of their share of the rents. The defence of the defendants is of a threefold character. It is contended in the first place that the tenures having been in existence from the time of the Permanent Settlement, the rents are not enhancible under law, In the second place a presumption of fixity of rent is sought to be raised from uniform payment of rent u/s 50, Bengal Tenancy Act. Lastly, reliance is placed upon certain pottas which were executed in the year 1912, and which, the defendants allege, created mukarrari tenures with rents fixed in perpetuity.

2. The Assistant Settlement Officer negatived all the three contentions of the defendants and decreed the plaintiff''s claim, fixing the enhanced rents in all the four cases, which were to take effect from 1338 B. Section There were appeals by the defendants to the Court of the Special Judge at Chittagong, and the learned lower Appellate Court reversed the decision of the Assistant Settlement Officer and

dismissed the suits holding that the intention of the parties was to create putni taluks with rents fixed for ever. It is against these decrees of dismissal by the Special Judge that these second appeals have been filed, and Mr. Chandra Sekhar Sen, who appears in support of the appeals, has contended before us that the judgment of the Special Judge, Chittagong, cannot be sustained, there being clear error of law committed by him in construing the pottas.

3. The pottas are in identical terms, and we have examined the contents of the original documents and have gone through the translation supplied to us by the learned Advocates for the appellant. Confining ourselves to one of them, we find that it purports to describe the tenancy as kaimi sikmi taluk reserving a rent payable in two instalments. Paragraph 1 states that the rent would be paid in specified instalments by the tenant and his successors and in case of default the landlord would be entitled to sell the tenure twice every year under the provision of Regulation VIII of 1879. Paragraphs contains the stipulation that on excess lands being found, or khila lands having been brought under cultivation, there will be separate settlement in accordance with the rates of the present settlement and on refusal of the tenant to agree to the new settlement the landlord will be entitled to have the rent enhanced or else could take khas possession of the lands. Paragraphs contains certain restrictions regarding the cutting of trees, and para. 6 provides for payment of certain abwabs on occasions of marriage. The other clauses are immaterial and have not been relied upon by the learned Advocates on either side. Now the question arises as to whether upon a proper construction of the potta it can be said that the document created a mukarrari tenure. The proposition of law is well-established since 1869, when the case in Bamasundari v. Radhika 13 M.I.A. 248 : 4 B.L.R. 8 : 13 W.R. 11 : 2 Suther 11 : 2 Sar. 254 (P.C.) was decided by the Judicial Committee, that:
A zamindar holding under the perpetual settlement is entitled to enhance the rents of all rent paying lands, unless he is precluded from doing so by a contract binding on him.

4. The proposition is reiterated in AIR 1927 20 (Privy Council) where it is said that:

Prima facie the rent is liable to enhancement on the application of: the landlord or to reduction on the application of the tenant unless either of them has precluded himself by contract from claiming such enhancement or reduction respectively.

5. Their Lordships further observed that the word usually employed in creating fixed rent in perpetuity is the word mokarrari though the absence of such word is not conclusive, if there are other words in the grant from which an intention to create fixed rent can be gathered. Keeping these principles in view let us turn to the provisions of the potta. The word mokarrari is not there, and it is conceded by the learned Advocate for the respondents that the expressions sikmi and kaimi do not connote fixity of rent. The learned Special Judge was of opinion, that the taluk

created was a putni taluk, and Mr. Das for the respondent has sought to support this decision by reference to the terms contained in paras. 1 and 2 of the potta. Now para. 1 uses the expression putra poutradi krame. which undoubtedly signifies a hereditable or permanent grant, and enjoins payment of the rent in specified instalments, by the tenant and his successors. Here again there are no words like nirdharita or abadharita with reference to the stipulated rent, and which occur in many cases to which our attention has been drawn by Mr. Das e.g. Ambikacharan Das Vs. Basantkumar Mandal, .

6. It is true that the landlord is given the right to avail himself of the procedure for summary sale given by Regulation VIII of 1819 in the matter of realisation of rent and Mr. Das for the respondent has contended with great force that this fact is practically a clincher on the point, as a putni taluk always connotes fixity of rent. He has relied amongst others on the decision of this Court in Saroda Prosad Pakrasi and Others Vs. Umasankar Sanyal and Others, . In that case a question arose as to whether the rent of a certain tenure was fixed in perpetuity or not, and reliance was placed on the facts that the tenure was in existence for about 100 years, at a uniform rate of rent, even though land values had increased much in the locality, and also on the fact that it was described as a putni Sanderson, C.J. observed in his judgment that there was no reason why the taluk being described as a putni it would not have its ordinary incidents. That the use of the word putni is not by itself conclusive is indicated in various decisions of which Sourish Chandra Roy Bahadur Vs. Saroj Ranjan Singha and Others, may be cited as instances.

7. In the present case the taluk has not been described as a putni taluk and Mr. Sen argues that it is open to the parties to put in an engagement in the lease that the landlord would be entitled to avail himself of the procedure of summary sale and if there is stipulation to that effect, Section (8) of Regulation VIII of 1819 will enable the landlord to put up the tenure to sale under the Regulation. "The proposition receives considerable assistance from a series of decisions in this Court, viz., Upendra Nath v. Jogesh Chandra 22 C.W.N. 275 : 38 Ind. Cas. 56 :A.I.R. 1918 Cal. 799 and Maqbul Ali v. Jogesh Chandra23 C.W.N. 945 : 54 Ind. Cas. 850 :A.I.R. 1920 Cal. 35 : 30 C.L.J. 140 where under similar circumstances it was held that such stipulation was not enough to prove fixity of rent, as Putni Regulation applied to cases where rent was not permanently fixed. We are in entire agreement with this view and are unable to hold that the mere mention of Putni Regulation is conclusive to show that the rent was fixed for all time.

8. Mr. Das has next laid stress upon para. (2) which provides for assessment of khila or excess lands at the rate of the present settlement. There again the authorities concur in holding that such stipulations are insufficient to prove mokarrari character. The question was raised and decided in Surja Kumar Tewari Vs. Ratan Choura and Others, and Lakshan Chandra Mandal and Others Vs. Narim Sardar and Others, . This fact indeed was considered to be material in Amur Nath Krishna Das

and Golam Rehman Gurudas but this was one amongst many other facts relied upon by the learned Judges and was never considered to be the sole determining factor. The other stipulations in the deed are really immaterial, and throw no light on the present question. Giving, therefore, our best attention to the question, we have come to the conclusion that all the provisions of potta taken together do not show that the rent was fixed for ever. The appeals are, therefore, allowed. The judgment and decree of the Special Judge is set aside and the, cases remanded to him to consider the amount of enhanced rent that the plaintiff is entitled to under law and on the evidence in the record. There will be no order as to costs in this Court. Future costs will abide the result.

M.C. Ghose, J.

9. I agree.