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9 Ind. Cas. 582

Calcutta High Court

Case No: None

Bejoy Chand Mahatap Bahadur Zemindar	APPELLANT
Vs	
P.K. Mozumdar--Patnidar	RESPONDENT

Date of Decision: May 4, 1910

Acts Referred:
Land Acquisition Act, 1894 â€" Section 18

Citation: 9 Ind. Cas. 582

Hon'ble Judges: Mookerjee, J; Carnduff, J

Bench: Division Bench

Judgement

1. This is an appeal on behalf of the zemindar in a case for apportionment of compensation awarded under the Land Acquisition Act. It appears

that under the zemindar, was the patnidar (the present respondent) and under the latter, were two raiyats in occupation of the land. The Collector

by his award made on the 28th August 1906 apportioned the entire compensation money between the raiyats on the one hand and the superior

landlords, that is the zemindar and patnidar, on the other. He stated expressly that these two: landlords were allowed jointly twenty years"

purchase of the raiyati jama of Rs. 1-9, i.e., Rs. 33-12-5. The patnidar thereupon applied for a reference to the Civil Court u/s 18 of the Land

Acquisition Act, on the ground that the raiyats ought to pay to their landlords jointly thirty times the annual rent. There was no similar application on

behalf of the zemindar. When the matter came to be heard by the Civil Court the raiyats compromised the matter in dispute and agreed to pay to

the landlords thirty times the annual rent. The question then arose as to the mode in which this sum should be apportioned between the two

superior landlords, the zemindar and the patnidar. The learned Judge in the Court below held that the zemindar who did not obtain the reference

was entitled to twenty times the annual patni rent in respect: of the land acquired and that the balance was payable to the patnidar.

2. Against this decision the zemindar has appealed, on the ground that as soon as the sum payable to the landlords was raised from twenty to thirty

times the annual rent, such increase ought to have been applied for the benefit of not merely the patnidar but also of the zemindar. The learned

Counsel for the respondent has contended, however, that as the zemindar was satisfied with the decision of the Collector and did not ask for a

reference, he is not entitled to claim a share of, the money obtained from the tenants through the efforts of the patnidar. He has further argued that

the reference u/s 18 of the Land Acquisition Act had a limited scope, that upon such a reference the question of the title of the person who

obtained the reference could alone be investigated, and that no order could be made for the benefit of a person who did not ask for a reference. It

may be conceded that the ordinary rule, as pointed out by this Court in the case of Abu Bakar v. Peary Mohan Mookerjee 34 C. 451 is that in a

proceeding under the Land Acquisition Act a party who has raised no objection to the apportionment of compensation made by the Collector must

be taken to have accepted the award in that respect and such person, upon a reference made by some other party who considers himself

aggrieved by the award of the Collector, is not entitled to have it varied for his own benefit." In other words, as explained in the case of Promotha

Nath v. Rakhal Das 11 C.L.J. 420 : 6 Ind. Cas. 546 the Civil Court is restricted to an examination of the question which has been referred by the

Collector for decision and the scope of the inquiry cannot be enlarged at the instance of parties who have not obtained any order of reference. The

present case, however, is clearly distinguishable and the principle in question has no application here. This award of the Collector made on the 28th

August 1906 shows conclusively that up to that stage there had been no apportionment between the zemindar and the patnidar. The view is

fortified by the written statement of the patnidar filed in the Civil Court on the 9th November 1906. His contention in that written statement was

that the raiyats were bound to pay to the superior landlords thirty times the annual rent and it was added that if this sum was realized from the

raiyats the patnidar was prepared to leave for his own zemindar thirty times the patni rent. It is thus fairly clear that the scope and object of the

reference obtained by the patnidar was not to settle any question of apportionment as between himself and his superior zemindar, but merely to

obtain from the raiyats a higher amount than that allowed by the Collector for the joint benefit of himself and his superior landlord. It follows that

the Court below had jurisdiction to allow the zemindar thirty times the patni rent and we are of opinion that such order ought now to be made.

3. The result is that this appeal is allowed and the award of the District Judge is varied in the manner following; namely, the zemindar is allowed

thirty times the patni rent instead of twenty times as directed by the Court below. The appellant is entitled to his costs of this Court. We assess the

hearing fee at one gold mohur.