(1909) 06 CAL CK 0052

Calcutta High Court

Case No: L.P. Appeals Nos. 97 and 98 of 1908

Bhut Nath Naskar and Another		APPELLANT
	Vs	
Surendra Nath Dutt and Another		RESPONDENT

Date of Decision: June 22, 1909

Judgement

Jenkins, C.J.

I agree that these appeals should be dismissed, and I do so on the ground that the interest of the Defendants was a tenure, and therefore not a " protected interest " within the meaning of sec. 160 of the Bengal Tenancy Act. This is in accord with the interpretation placed on a lease, not fairly distinguishable from the present, by Mr. Justice Mitra, whose decision was affirmed on appeal under the Letters Patent. The District Judge refers to this decision of Mr. Justice Mitra, but was evidently misled by the omission of a " not " before the words " raiyati holding"-an omission shown by a perusal of Mr. Justice Mitra''s judgment to be obviously attributable to a clerical error. In this view, I think it unnecessary for me to discuss the further question that has been dealt with by my learned colleague. Both the appeals are dismissed with costs.

Mookerjee, J.

This is an appeal on behalf of the Defendants in an action for ejectment commenced by a purchaser at a sale for arrears of rent, after service of notice under sec. 167 of the Bengal Tenancy Act The Court of first instance decreed the suit in the view that the interest of the Defendants was liable to be and had been annulled under that section. The District Judge on appeal held that the Defendants were not tenure-holders but raiyats and were consequently protected from ejectment under sec, 160 of the Bengal Tenancy Act. On appeal to this Court Mr. Justice Doss reversed the decision of the District Judge. He held in the first place that upon a true construction of the lease of the 8th November 1881 the Defendants were tenure-holders and were consequently liable to have their interest annulled under sec. 167 of the Bengal Tenancy Act. He held in the second place that even if the Defendants were taken to be raiyats, they were raiyats holding at a fixed rate of rent

whose interests were not protected by sec. 160. On appeal under the Letters Patent it has been argued that the Defendants were not tenure-holders, and that if under the lease of 1881 they were treated as raiyats holding at a fixed rate of rent as they had been in occupation of the holding for more than 12 years, they had acquired a right of occupancy which was entitled to protection under see. 160.

2. As regards the first of these contentions, it is sufficient to say that the terms of the lease upon which reliance is placed make it reasonably plain that the position of the Defendants was that of tenure-holders and not that of raiyats. As is pointed out by Mr. Justice Doss, the rights conferred upon the Defendants under the lease are very much more extensive than those ordinarily possessed by any raiyats; and I need not refer in detail to the terms of the lease, as I agree with the learned Judge in the construction placed by him on that document, as also with Mr. Justice Mitra in the view taken by him in the unreported case where a lease substantially identical in terms came under consideration (S. A. 2862 of 1902 affirmed in L. P. A. 10 of 1905 by Maclean, C. J., and Pratt, J.). As regards the second contention of the Appellants that if they are raiyats holding at a fixed rate of rent they have also acquired a right of occupancy, I am unable to hold that the argument is well-founded The Bengal Tenancy Act appears to have drawn a clear and well marked distinction between the different classes of raiyats. Sec. 4 first classifies tenants into tenure-holders, raiyats and under-raiyats. Raiyats are then classified into raiyats holding at fixed rates, occupancy raiyats and non-occupancy raiyats. The incidents of tenure-holders are dealt with in Chap. III of the Act; the incidents of holdings of raiyats who hold at fixed rates of rent are described in Chap. IV; position of occupancy raiyats is considered in detail in Chap. V, while the rights of non-occupancy raiyats are considered in Chap. VI; lastly, Chap. VII is devoted to under-raiyats. The learned vakil for the Appellants contends that the terms of sec. 20 of the Bengal Tenancy Act are comprehensive enough to cover a case of raiyats holding at fixed rates. His argument in substance is that a raiyat holding at a fixed rate after he has occupied the holding for twelve years becomes a settled raiyat of the village and thus acquires a right of occupancy. This contention involves the position that the rights and liabilities of such a tenant after twelve years are to be determined with reference to the provisions of Chap. V of the Bengal Tenancy Act. When, however, we proceed to examine that chapter, it becomes at once obvious that there are provisions which could never have been intended to apply to raiyats holding at fixed rates. For instance, while sec. 18, to. (&), renders a raiyat holding at fixed rates liable to be ejected by his landlord only on the ground that he has broken a condition consistent with the Act on breach of which he is under the terms of a contract between him and his landlord liable, to be ejected, sec. 25 renders an occupancy raiyat liable- to be ejected on the same ground as also on the additional ground that he has used the land comprised in his holding in a manner which renders it unfit for the purposes of the tenancy. If therefore the argument of the Appellants prevails, the result follows that a raiyat holding at a fixed rate, before the lapse of 12 years, is

liable to be ejected only on the limited ground stated in sec. 18, whereas after the lapse of 12 years he is liable to be ejected on the additional ground mentioned in sec. 25 Again, if we look to sec. 30 of the Act, it is clear that the money-rent payable by an occupancy raiyat may be enhanced by suit; on the other hand, the very essence of the right of a raiyat holding at fixed rates is that his rent is not liable to be enhanced. If, therefore, the contention of the Appellants is well-founded, we must hold that within a period of twelve years from the creation of the tenancy a raiyat holding at a fixed rate of rent is not liable to have his rent enhanced, whereas after the lapse of twelve years, when, according to the contention of the Appellants, he has in addition acquired a right of occupancy, his rent is liable to be enhanced under see. 30. It is not necessary to examine in detail the other provisions of Chap. V, but it may be pointed out that the anomalous position described may arise even before the lapse of twelve years, in cases where sec- 20, sub-sec. (5), or sec. 21, sub-sec. (1), is applicable. What I have said already, seems to make it fairly clear that the Act observes a well defined distinction between, a raiyat holding at a fixed rate of rent and an occupancy raiyat. If we now turn to see- 160, we find that reference is made expressly to a right of occupancy and the right of a non-occupancy raiyat, but no mention is made of the right of a raiyat at a fixed rate of rent. The inference therefore seems to be reasonable that the intention of the Legislature in sec. 160 was to protect from ejectment a raiyat who possesses a right of occupancy as also a raiyat who possesses the right of a non-occupancy raiyat as mentioned in cl. (e) of that section and not to protect from ejectment a raiyat holding at a fixed rate of rent. The reason for this distinction, if it is permissible for us to enquire into the reason for plain provisions of the law, is not difficult to find. 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 encumbered condition; for he would be unable, not only to eject the raiyat but also to enhance his 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. Upon a consideration then of the provisions of the Bengal Tenancy Act the inference seems to be fairly clear that the Appellants cannot successfully contend that their interest in the tenancy is a protected interest within the meaning of sec. 160, In my opinion, the view taken by Mr. Justice Doss upon both the points is correct, and his decree should be affirmed with costs.