(1870) 02 CAL CK 0028

Calcutta High Court

Case No: Special Appeal No. 2549 of 1869

Gabind Kumar Chowdhry		APPELLANT
	Vs	
Haro Chandra Nag and Another		RESPONDENT

Date of Decision: Feb. 3, 1870

Judgement

Phear, J.
I think that, unless we are prepared to differ from the judgment of a Division Bench of this Court given in Kali Chandra Chowdhry v. Ratan Gopal Bhaduri [1], we must hold that the Judge below was right in his decision. In this notice, the appellant, after first setting out his own zamindari title, says:--"That you are in possession of the mauzas, kismats, dihis, and chaks, & c., appertaining to the said talook as per schedule given below, without effecting any settlement as to the jumma, and executing any kabuliat in respect of the same : that, as the rate of rent of the said land is below the rate prevailing in the pergunna and in adjacent places, and as the productive powers of the land, and the value of the produce have increased, and as the patit land has been cultivated, I am entitled to receive from you rupees 794-5-7-11 1/2 per annum, according to the rate specified in the schedule."

2. It appears to me that this notice is quite as bad for indefiniteness and uncertainty as the notice which was held to be insufficient in Kali Chandra Chowdhry v. Ratan Gopal Bhadhuri 4 B.L.R., App. 62.

3. It has been argued before us that this notice specifies three grounds of enhancement. If it does so, I think this is done in so uncertain a manner as to leave it impossible to say whether these three grounds have reference to the rates of rents of talookdars, or to the rates of rents of ryots.

4. The first, namely, that the rate paid for the said land is below the rate prevailing in the pergunna and in the adjacent places, points in my mind rather to ryoti rates than to

talookdari rates; and certainly the inference which one would first draw from the reference to the productive power of the land, to the increase in the value of the produce of the land, and to the increase of Culturable land, without further words of explanation, is that the plaintiff had regard to rents payable by ryots rather than to rents payable by talookdars. It is a very long step indeed from increase in the productive power of the land to increase in the rents and profits derived, or capable of being derived, by the talookdar from his talook.

5. I am inclined to think with Mr. Paul that, if a distinct ground of enhancement had been mentioned in the notice, unless it also appeared on the face of the notice that by law that ground could not be maintained, the Court ought not to dismiss the case without going into the merits. It is, I think, the plaintiff"s look-out to see that he can establish, on the ground which he specifies, a right to receive enhanced rents. We know nothing in this case relative to the evidence which it may be in the power of the plaintiff to give in support of his claim, but I think that the tenant is entitled, on the authority of the case which I have cited, and of the other cases therein referred to, to a distinct and specific statement in the notice of enhancement, such as is beyond the reasonable possibility of mistake, of the ground of enhancement on which his landlord relies. I have already said that, in my opinion, the notice before us does not contain such a distinct statement; and, therefore, it seems to me that the special appeal should be dismissed with costs.

Mitter, J.

I concur in the judgment just delivered by Mr. Justice Phear. I do not think that the rent of a tenure like the present can be enhanced, except under positive law, or under some custom having the force of law, or by virtue of some agreement between the landlord and tenant. In the present case the notice does not specify any ground of enhancement sanctioned by any positive enactment, or by any custom having the force of law, or by any agreement by which the defendant has made himself liable to pay the enhanced rent which the plaintiff seeks to recover. Under these circumstances I am clearly of opinion that the notice in, this case does not specify any ground of enhancement on which the plaintiff, special appellant, could have enhanced the rents of the tenure in question, and that the present case is precisely similar to that referred to by Mr. Justice Phear. I am of opinion, therefore, that this appeal ought to be dismissed with costs.

---

[1] Before Mr. Justice Bayley and Mr. Justice Hobhouse.

Kali Chandra Chowdhry, Zemindar (Plaintiff) v. Ratan Gopal Bhaduri and Others (Defendants).

Special Appeals NOS. 2084 and 3223 of 1868, from the decrees of the Judge of Mymensing, dated the 4th May 1868, reversing the decrees of the Assistant Collector of that district, dated the 15th November 1867.

1st April, 1869.

Mr. Paul (with him Baboo Umerendranath Chatterjee), for appellant.

Baboos Srinath Das and Rames Chandra Mitter, for respondents.

Hobhouse, J.--It is then contended that the notice u/s 13 of the Act was a proper notice under that section, and was understood by the parties to be a notice under the provisions of clause 1, section 17 of the Act. But we do not think that this can properly be said. The notice did, undoubtedly, specify the rent which was to be demanded for the coming year, and did also specify a ground of enhancement, viz., the ground that the plaintiff was entitled to no enhancement at the pergunna rates by virtue of the decision of 1855. But that is not of itself a notice within the meaning of clause 1, section 17 of the Act. That section requires, if the notice is to be governed by it, that the notice should state that the "rate of rent paid by such "ryot is below the prevailing rate payable by the same class of ryots for land of a "similar description, and with similar advantages in the places adjacent," or words to that effect, and it does not, it seems to us follow that, because the rates are pergunna rates, therefore, they must be necessarily understood to be rates "below" those prevailing in the adjacent places, and paid by ryots of the same description as the defendants. Neither can we say that the defendants knew that they were pleading to the provisions of section 17, because they were not allowed an opportunity of adducing witnesses, and we do not therefore know exactly what it was that they pleaded to, and on the other hand, the evidence adduced by the plaintiff was not evidence as to the prevailing rates within the meaning of section 17, but only as to pergunna rates which, in our judgment, are not necessarily the prevailing rates, and we agree with the judgment in Radha Churn Chowdhry v. Chunder Monte Shikdar 9 W.R. 290 to the effect that the grounds of the notice must be specific so as to show exactly what the grounds are on which the plaintiff seeks enhancement.

In this view of the case we think we cannot say that the Judge was wrong in law when he held that the notice was not a legal notice; and we, therefore, dismiss this special appeal with costs.

We may add that the decision of Gobind Chunder Dutt v. Huronauth Roy 5 W.R. Act X, R. 10 and that of Mackintosh v. Adur Monee Dossee 6 W.R. Act X, R. 87 seem to bear us out in the view we take of the first part of the case.

This case is also approved in 4 B.L.R. App. 61 : 21 W.R. 442-N.