

(1878) 06 CAL CK 0031

Calcutta High Court

Case No: None

Mohini Mohun Roy

APPELLANT

Vs

Ichamoyee Dassea
and Others

RESPONDENT

Date of Decision: June 19, 1878

Citation: (1879) ILR (Cal) 612

Hon'ble Judges: Mitter, J; Maclean, J

Bench: Division Bench

Judgement

Mitter, J.

The contention in special appeal is, that the decree of 1804 and the proceedings of 1807 established that the rent of the defendants' taluk was not fixed in perpetuity and that the zamindar, or the person representing the zamindar, is entitled to enhance its rent.

2. We do not think that this contention is well founded. We do not agree with the Judge in the construction which he has put upon the decree, and the proceedings mentioned above. The effect of these documents seems to us to be that the rent of the taluk in question was fixed in perpetuity and for ever.

3. It appears from these documents that Raja Bishonath was the owner of the zamindary of Parganna Amrol in the year 1205 (1798). On the strength of a conveyance, dated the 28th Choit 1205, alleged to have been executed by Raja Bishonath, Sreenath Kobiraj, the predecessor in title of the defendants, obtained an order from the Collector of Rajshahye for the separation of the mouzas (which constitute the defendants' patni taluk) from the main zamindary.

4. In the year 1206 (1799), Raja Lokenath became the zamindar of this parganna, under what title it does not appear, but it is stated as a purchaser at an auction held by the Collector for the realization of the Government revenue. Raja Lokenath brought a suit in the Judge's Court at Rajshahye against Sreenath Kobiraj to set

aside the Collector's order of separation, and obtained a decree on the 11th July 1803. Sreenath appealed against that decree to the Provincial Court of Moorshedabad.

5. The Provincial Court found that the kobala upon which Sreenath Kobiraj relied was executed by Raja Bishonath, when the whole zamindary was under attachment for sale on account of arrears of revenue due from him. The Court upon this ground held the kobala to be invalid. Then the Court further found, upon the evidence adduced by the plaintiff Raja Lokenath, that Sreenath was the holder of a patni taluk in respect of these mouzas, and that by the condition of the patni the patnidar was not entitled to separation.

6. Upon these findings the Provincial Court dismissed Sreenath's appeal with this reservation in his favour, that he the appellant would be entitled to remain in possession of the mouzas then in dispute as patnidar if he would agree to hold them at the parganna rates. In the decision they gave further instructions to the Judge of the lower Court for the carrying out of this reservation, and directed that the appellant was in future to remain in possession of the mouzas as patnidar by payment of the rent to be fixed by the lower Court.

7. By the proceedings, dated the 7th February 1807, the Judge of Rajshahye carried out the directions of the decree of the Provincial Court. He caused the mouzas to be measured, and ascertained the parganna rates. He calculated at these rates the amount of rents payable in each year from 1206 to 1211 (1799 to 1804) upon the respective quantities of culturable lands found in each year in these mouzas. From the total amount he deducted the sums proved to have been paid by the tenant during those years, and the balance was declared payable by the talukdar to the zamindar. Then he found a quantity of land, which was then fallow, was likely to become culturable between 1211 (1804) and 1216 (1809). He assessed the rent upon this quantity of land at the parganna rates, and directed that by a progressive yearly increase of Rs. 53 and odd annas the full amount of rent should be reached in 1216; then the rubokari closes with a declaration "that the appellant (Sreenath Kobiraj) do pay to the respondent (the zamindar) from 1216 B.S., and in future years, Rs. 1,307 10 as. 9g., as the rent which is realizable by the Collector of Moorshedabad". With reference to the decree and the proceedings mentioned above, it is contended on behalf of the special appellant that Raja Lokenath being a purchaser at an auction-sale held for arrears of revenue, the order of the Provincial Court was passed u/s 5 of Reg. XLIV of 1793, authorizing him to raise the rent of Sreenath's taluk to what was demandable from the lands thereof, according to parganna rates. There was nothing on the record, beyond the plaintiff's allegation, to show that Raja Lokenath was an auction-purchaser. But assuming that he was an auction-purchaser, and that the order of the Provincial Court to assess the rent of the taluk at the parganna rates was passed in accordance with Section 5 of Reg. XLIV of 1793, still we think the effect of that order is to fix the rent in perpetuity so far as

Raja Lokenath or any other person deriving his title through him is concerned.

8. In order to understand fully the effect of those proceedings we must see what was the exact nature of the power of an auction-purchaser u/s 15 of Reg. XLIV of 1793 regarding talukdari pottahs granted by the defaulting zamindar. The Judicial Committee of the Privy Council in the case of *Ranee Surnomoyee v. Maharajah Suttees Chunder Roy Bahadur* (10 Moores I.A. 123), have conclusively set at rest, so far as the Courts of this country are concerned, the question of the construction of Section 5 of the aforesaid Regulation. Referring to this section, the Judicial Committee in page 146 says: "Now looking at what follows in the same clause, it is obvious that no such absolute cancellation was intended, for the power expressly and affirmatively given to the purchaser, supposes the talukdar and the ryots to remain in all respects as before, except that they become liable to a certain limited increase of rent, according to the established usages and rates of the parganna or district, words in themselves showing that the section was directed to cases in which grants had been made with reservation of rent below those usages and rates". Again, in page 47 they observe;--The conclusion at which their Lordships have arrived as to the construction of the section is this, that a power was given by it to the purchaser at a Government sale for arrears to avoid the subsisting engagements as to rent and to increase the rent to that amount at which, according to the established usages and rate of the parganna or district, it would have stood had the cancelled engagement so avoided never existed. This gives it a just and reasonable operation, and virtually it would have had none, when the existing rent was already according to the usages and rates of the pargana".

9. From these passages it is clear that the construction which the Judicial Committee have put upon the section in question, is that an auction-purchaser under Reg. XLIV of 1793, in the event of the rent of a taluk originating with the defaulter being less than what would be demandable according to the parganna rates prevailing at the time of the auction-purchase or at the time when the taluk was first created, is entitled to raise it to what would be demandable according to those rates; and, in all other respects, the taluk is to remain just as before. Although their Lordships do not expressly say that the parganna rates referred to in the section are the parganna rates prevailing at the time of the auction-purchase or at the time when the taluk was first created, yet that that is their meaning is clear from the last passage in the above extract, and also from the manner in which they apply the section as construed by them to the particular facts of the case before them.

10. In this last passage they say, that this section would have had no operation, "when the existing rent was already according to the usages and rates of the parganna". This clearly shows that they here speak of the usages and the rates of parganna prevailing at either of the periods mentioned above.

11. This is also evident from their application of the section to the facts of the case before them. In the same page (147) they say: "The sale to Muddoosoodun Sandyal,

according to the respondent's own case, took place some time before 1823, and he found those under whom the appellant claims holding the land at an old rent of Rs. 64 1 anna 12 gandas; he did not attempt to disturb the occupation or increase this rent, but received it during all the time he remained owner. He sold by private contract to Mr. Harris, from whom it passed to his widow, Mrs. Harris, and from her again by private contract to the respondent's father, Maharaja Sreesh Chunder Roy, as has been already stated. During all this time (and for a considerable period before, so far as appears indeed from the very creation of the tenure more than sixty years ago), the same rent has always been paid; and there is no evidence that when first imposed--nay, even when the purchase was made--it was not a perfectly adequate rent for the property. Great changes in the value of property have now arisen, and the respondent demands by his plaints an annual rent of Rs. 1,470, or nearly twenty-three times the amount of the original rent, according, as he states it, to the actual rate current in the village".

12. Although the Judicial Committee do not find against the zamindar that the rent demanded by him is not in accordance with the actual rate current in the village; then, on the other hand, they find that "great changes in the value of property have now arisen", yet they decide the case against the zamindar upon the sole ground that, "there is no evidence that when first imposed, nay even when the purchase was made, it (the rent of the house) was not a perfectly adequate rent for the property".

13. Therefore, it is clear that, according to the decision of their Lordships of the Judicial Committee in the case cited above, the right of an auction-purchaser u/s 5 of Reg. XLIV of 1793 is limited to raising the rent of a taluk created by the defaulter to what is demandable from it according to the parganna rates prevailing either at the time when the taluk is created or at the time when the auction-purchase takes place. He cannot demand any higher rent, even if at any subsequent time such higher rent be in accordance with the prevailing current rate.

14. Keeping this construction of Section 5 of the Regulation in question in mind, is it not clear that the words--" the appellant (meaning the aforesaid Sreenath Kobiraj) shall hold in future the aforesaid mouzas as a patni-taluk by payment of the rent, thus fixed year by year," to be found in the decree of the Provincial Court, and similar words, viz.--" that the appellant (i.e., Sreenath) do pay to the respondent (i.e., the zamindar) for the year 1216 and in future Rs. 1,307 10 annas 19 gandas as the rent which is realizable by the Collector of Moorshedabad," to be found in the proceeding of the Judge of Rajshahye of the year 1807--mean that the patni-taluk was to be held in perpetuity at the rent thus fixed.

15. Therefore, if the patni-taluk, which was held by Sreenath Kobiraj within the zamindary under Raja Bishonath, was a permanent tenure, the rent of which was fixed, the present plaintiff, supposing that he has acquired by mesne succession, and transfers the right of an auction-purchaser under Reg. XLIV of 1793, which Raja

Lokenath had, cannot raise still further the rent of this taluk according to the prevailing rate now current, Raja Lokenath having by the decree of 1804 already raised it once to what was assessable upon the taluk according to the then prevailing parganna rates.

16. Then the next question is--Was the taluk held by Sreenath Kobiraj of that nature? Although the original engagement by which it was created has not been proved, there is abundant evidence upon the record which fully warranted the Courts below in coming to the conclusion that it was of that nature. The words "after the year 1216 B.S., in future years, &c.," to be found in the proceeding of 1807, have a significant bearing upon this point; they show that it was then considered that the rent of the taluk was originally unalterable. The proceeding in question further says, that the rent fixed was to be paid to the zamindar as the amount payable to the Collector of Moorshedabad. The words italicised above are accountable only upon the supposition that Sreenath's was a dependent taluk as defined in Section 6 of Reg. VIII of 1793, but created subsequent to the permanent settlement u/s 6 of Reg. XLIV of 1793. It could not have been in existence at the time of the permanent settlement, because in that case it would have been protected from enhancement u/s 7 of Reg. XLIV of 1793. Then a long and uninterrupted enjoyment at a fixed rent, and successive transfers of the taluk both by private contract and by public sales, and the conduct and dealing of successive zamindars and of the patnidars, plaintiff's predecessors in title, and other facts and circumstances upon which the lower Courts rely, legitimately give rise to the inference that the defendants' taluk is a permanent tenure, the rent of which is fixed and unalterable. Furthermore, there is a certain passage in the patni-patta of 1251 granted to the plaintiff's predecessor in title, Mr. Herklot, which goes to show that both the grantor and the grantee, at least the grantor believed the defendants' patni of this nature. The passage to which I refer is the one quoted by the Judge, but which it seems to me has not been rightly understood by him. It is to the effect.

17. The exact rendering of this passage is "that besides the fixed patni-rent, in the rest of the mehal, you are vested with the right of alienation of the patni title, by gift or sale". This passage confers upon the patnidar the right of alienation of the whole patni, and by way of explanation, declares that that right in the case of previously existing patni-taluks consists of simply transferring to the alienee the right to collect the fixed rents from the patnidars. The defendants' taluk is one of these patnis. Therefore, it is clear that at least the grantor at that time believed that the defendants' taluk was not enhanceable. On the whole, we are of opinion that there is abundant evidence on the record to justify the conclusion to which the lower Courts have come, that the defendants' taluk is a permanent tenure, with a fixed jamma.

18. We are, therefore, of opinion that, although the District Judge has not rightly understood the documents to which we have referred, the decisions of the lower

Courts, as to the right of the plaintiff to enhance the rent of the defendants' taluk, are correct.

19. Then there remains to notice the last ground of appeal, complaining of the lower Courts' refusal to decree the admitted jamma. We think that the prayer in the plaint admits of a wider construction than what has been given to it by the lower Appellate Court. It seems to us that the prayer of the plaint is sufficiently large to entitle the plaintiff to a decree at the admitted jamma. The plaintiff is also entitled to the amount of the road-cess for the year 1281, calculated upon the existing jamma. The lower Courts have already decreed the claim for the road-cess for the second half-year of 1280, and we think that there should be a decree also for the road-cess of 1281. Besides these two items, there should be a decree in favour of the plaintiff for the admitted jamma, with interest at the rate of twelve per cent, per annum from the beginning of the year 1282 B. Section to the date of the institution of this suit, and from the date of the institution of this suit to this date at the rate of six per cent, per annum. The whole amount thus decreed to bear interest at six per cent, per annum from this date. The plaintiff must pay to the defendants the costs of this suit in all the Courts with interest at the aforesaid rates.