(1932) 12 CAL CK 0030

Calcutta High Court

Case No: None

Surendra Nath Sarkar	APPELLANT
Vs	
Poornachandra Mukherji	RESPONDENT

Date of Decision: Dec. 20, 1932

Acts Referred:

- Transfer of Property Act, 1882 - Section 106

Citation: AIR 1933 Cal 609

Hon'ble Judges: Mukerji, J

Bench: Division Bench

Judgement

Mukerji, J.

Prior to the amendment introduced in 1928 into the Bengal Tenancy Act, 1885, which has secured some measure of protection to utbandi raiyats in the matter of rent and status, their position was very precarious under the Act as it stood till then. The nature of their rights and liabilities have been explained in several cases amongst which reference may be made to Kinny v. Issur Chunder (1864) WR Gap 9, Mirzan Biswas v. Hills (1865) 3 WR 159, Dwarkanath v. Noboo Sirdar (1870) 14 WR 193, Premanund v. Shoorendra Nath (1873) 20 WR 329 and Beni Madhab v. Bhoban Mohan (1890) 17 Cal 393. Descriptions given of the characteristics of utbandi holdings are not quite the same in all these cases and it is clear that the incidents of such holdings vary under the influence of custom. But the outstanding general conception of all utbandi holdings seems to be that the land which is specified remains the Khas Khamar land of the landlord, and the raiyat is allowed to occupy it for a season or for a year, and the raiyat pays rent at a given rate for so much of it as he cultivates during that term; that the land lord is not bound to give the land to the same raiyat nor is the raiyat bound to take it, in the next season of the next year; that in some places there is a custom under which the raiyat has a sort of a lien which entitles him to occupy the lands for three years if he elects to do so; and that there is an implied agreement that if without fresh rates being fixed, the raiyat

occupies the lands for the next season or year he would pay at the same rate also for the lands he may cultivate during the period of such occupation.

2. The question to be considered in these cases is whether for ejectment of an utbandi raiyat notice is necessary, and if so, notice of what character. Utbandi raiyats cannot acquire a right of occupancy until they have held the land for 12 continuous years [Section 180(1)], and Ch. 6 of the Act which deals with non-occupancy raiyats is not applicable to them [Section 180(2)]. It is true that the Bengal Tenancy Act not having made any provision as regards this matter, we have to look to the general law. Now, having regard to the incidents of utbandi holdings to which reference has been made, it is clear that unless it is otherwise under a special custom that there may be in vogue, the right to occupy the land does not enure beyond a particular season or a particular year, and therefore an ordinary utbandi tenancy, having regard to custom, such as regulates it ordinarily, cannot be regarded as a lease from year to year. Section 106, T.P. Act, therefore, can have no application. No exceptional circumstances nor any extraordinary custom such as has been referred to above have been established in this case. It must therefore be held that under the custom by which the tenancies in these cases are to be regulated, the tenants remain tenants only so long as the period of the agreement has not run out, but as soon as that period expires the tenancy ceases and their occupation of the lands depends entirely on the will of the landlords, and that in that view their rights, if any, are in no sense higher than those of tenants at will.

3. That being the position, and there having been no written lease, a verbal demand for possession was, in my opinion, sufficient: Deonandan v. Maghu (1907) 34 Cal 57. It may be pointed out that it has been held by this Court that as the settlement is for a year only no notice is required to be given by an utbandi tenant to the landlord in abandoning the holding: Amrita Lal Mukerjee v. Giridhari Ghose (1907) 5 CLJ 398. Such verbal demand has been proved. Another contention has been put forward, namely that the decision should be revised in view of the result of the proceedings taken u/s 160-A of the Act, after the institution of the suits. This contention cannot be upheld. The appeals are dismissed with costs.