

(1914) 04 CAL CK 0052

Calcutta High Court

Case No: None

Lakhindar Barua and Another

APPELLANT

Vs

Saroda Charan De

RESPONDENT

Date of Decision: April 6, 1914

Citation: 24 Ind. Cas. 253

Hon'ble Judges: Beachcroft, J; Asutosh Mookerjee, J

Bench: Division Bench

Judgement

1. We are invited in this Rule to review the judgment of this Court in an appeal from an appellate decree, which arose out of a suit for ejectment by a purchaser of a tenure at a sale held under Act VII of 1868 (B. C.). The appeal was heard and dismissed by Newbould and Roy, JJ. When the application for review was made, both the learned Judges had ceased to be members of this Court : consequently under the rules of this Court, by an order of the Chief Justice, the application was placed before this Bench, for disposal. We heard the petitioners and granted a Rule which has now come up for consideration.

2. The substantial ground urged in support of the application for review is, that the petitioners are protected from ejectment under the third clause of Section 12 of Act VII of 1868 which, so far as it is material for our present purpose, is in these terms : "The purchaser of any tenure sold under the provisions of Section 11 of : the Act shall acquire it free from all encumbrances which may have been imposed upon it after its creation, or after the time of settlement whichever may have last occurred, and shall be entitled to avoid and annul all under-tenures, and forthwith to eject all undertenants with the exception, amongst others, of tenures created or recognised by the Settlement proceedings of any current temporary Settlement as tenures bearing a rent which is fixed for the period of such Settlement." The petitioners allege that their under-tenure was recognised in 1896 by the Settlement proceedings of a current temporary settlement as a tenure bearing rent fixed for the period of such Settlement.

3. It appears that proceedings were taken under Chapter X of the Bengal Tenancy Act as originally framed in 1885. It is not clear whether proceedings were taken under Clause (c) or Clause (d) of Sub-Section 2 of Section 101 : but it is plain that the preparation of the Record of Rights was directed by the Local Government in respect of the noabad mahal which comprises the tenure and the under-tenure in suit. The Record of Rights was finally, published on the 27th March 1896 and contained an entry in respect of the under-tenure claimed by the petitioners. The existing rent was mentioned as Rs. 13-7 : the new rent settled was stated to be Rs. 15-6 : and in the remark column, a note was made to the following effect : "This etmam is not binding upon the Government." The question for consideration is, whether this entry taken as a whole, involves a recognition of the under-tenure claimed by the petitioners. There has been considerable discussion at the Bar as to the meaning of the expression created or recognised" in the third clause of Section 12 of Act VII of 1868. It is plain that the expression was used with reference to Section 9, Clause (2) and Section 14, Clause (1) of Regulation VII of 1822, The former section after directing that a record be prepared by the Collector, authorises him to grant pattahs to the several mufassil zemindars and raiyats or other owners or occupants of land for the land owned or occupied by them, specifying the amount to be paid by them and all the conditions attaching to their tenure, and further provides that a register of all pattahs so granted do form a part of the rubakari of Settlement. The latter section authorises the Collector making or revising Settlements to declare the nature and extent of the interests of persons occupying land, such declaration to be contained in an official proceeding to be incorporated in the rubakari of Settlement, and to set out the nature and extent of the interests actually possessed by such occupant, referring to the denomination heretofore applied to him only as one means of proof in regard to the nature of the interest, but stating at" length, with specification of any examination he may make for his satisfaction, the grounds of his determination. There is no room for reasonable doubt that the third clause of Section 12 of :Act VII of 1868, when it speaks of the creation or recognition" by Settlement proceedings of a tenure, has reference to Section 9, Clause (2) and Section 14, Clause (1) of Regulation VII of 1822. It is not necessary, however, to maintain the view that the third clause of Section 12 is applicable only when Settlement proceedings have been initiated under the provisions of the Regulation. The view may well be maintained that the third clause of Section 12 also applies when proceedings have been instituted under Chapter X of the Bengal Tenancy Act. The question for determination really is, whether there has been a recognition by the Settlement proceedings of the under-tenure claimed by the petitioners. On behalf of the petitioners it has been argued that as it is not possible to have recognition by acceptance of rent, in a case of this description the only meaning which can be attributed to the term "recognition" is the record of existing facts." We are of opinion that this contention is not well founded. Recognition clearly implies something more than a mere record of a fact found to exist, it involves the notion of either acquiescence in or sanction of a fact found to exist. But it has been contended

that this view is not consistent with the decision of this Court in the case of Baroda Kant Laha v. Gobinda Charan Guha 7 W.R. 50. which, however, is clearly distinguishable. In that case, there had been an entry in the Settlement proceedings as to which the Court held that as the tenure-holder had been recorded as the holder of an existing rightful tenure, he was protected from ejectment by a purchaser under the Land Revenue Sales Act. In the case before us the entry is not unqualified and is incapable of such an interpretation, as the under-tenure claimed by the petitioner is not merely recorded, a note is actually appended to the entry to the effect that, this under-tenure does not bind the Government. Clearly there was no intention on the part of the Government to recognise the under-tenure and there was consequently no recognition in fact or in law. We are consequently of opinion that the petitioners are not protected under the third clause of Section 12 of Act VII of 1868.

4. The rule is discharged with costs. We assess the hearing fee at three gold mohurs.