
(1950) 09 CAL CK 0013
In the Calcutta High Court
Case No : A.F.A.D. No. 667 of 1948

Aga Mirza Ahmed and Others

APPELLANT

Vs

Subodh Chandra Roy and Others

RESPONDENT

Date of Decision : 06-09-1950

Acts Referred:

Bengal Tenancy Act, 1885 — Section 104E, 104H, 104J, 191

Citation : AIR 1951 Cal 312 : 55 CWN 70

Hon'ble Judges : Lahiri, J; Das Gupta, J

Bench : Division Bench

Advocate : Sen Gupta, Narendra Nath Dalal and Samarendra Nath Mukherjee, for the Appellant; Hiralal Chakravarty, Bimala Charan Deb and H.K. Bose, for the Respondent

Final Decision : Allowed

Judgement

Lahiri, J.—This appeal is by the plaintiffs and it arises out of a suit for a declaration that certain entries made by the revenue authorities in the record of rights prepared under Part II of Chap.X, Bengal Tenancy Act, are illegal and ultra vires.

2. The plaintiff's case, as stated in the plaint, is as follows : The plaintiffs are proprietors of touzi No. 1453 comprising Lot No. 88 Mouza Kharampur Abad and Lot No. 89 comprising Mouza Chimta and also of touzi No. 1448 comprising Lot No. 93 Mouza Par Bhawanipur and Jamberia Abad in the Sunderbans. The predecessor in interest of the plaintiffs, named Nawab Nazir Siddi Nazar Ali took settlements of the aforesaid lots for 99 years expiring on 31-3-1942. The predecessor of the defendants took Ganti Settlement of about 3700 and 2700 bighas of land within Lots 89 and 93 by a patta dated 21-3-1850. By this patta it was settled that rent would be paid for the arable land at the rate of 12 as. per bigha and the rent of the patit lands was to be assessed after reclamation at 10 as. per bigha. On 7-7-1869, a confirmatory patta, was granted after reclamation and by this patta the total rent was assessed at Rs. 2468-12-0 and it was

stipulated that the jama was to be mourashi mokurari one.

3. On the death of the original grantee of the patta his interest was inherited by his six sons who had it partitioned amongst themselves and paid rent separately. In course of time the shares of two co-sharers were made khas by the plaintiffs and the shares of two other co-sharers were purchased in auction by one Gopal Basini who has been impleaded in the suit as defendant 4. At the time of cadastral Survey in 1928 the rent recorded in each share was Rs. 411-7-4 which is exactly one-sixth of the total rent of Rs. 2468-12-0 fixed by the patta dated 7-7-1869. On the expiry of the term of 99 years' lease with the plaintiffs, proceedings under Part II of Chap. X, Bengal Tenancy Act, were started by the revenue authorities who settled the revenue and rents of all grades of tenants. The revenue of touzi No. 1448 was increased from Rs. 973 to Rs. 5662 and the revenue of touzi No. 1453 was increased from Rs. 641-3-0 to Rs. 2881. This increase in the revenue of the two touzis led to a corresponding increase in the rents payable by the defendants which were recorded in the khatians in the following manner :

Mouza Mouza Chimta. Par Bhawanipore. 1. Defendants 1 to 3 Rs. 527-13-0 Rs. 441-15-0 2. Golap Basini (D4) " 527-13-0 " 414- 2-0 3. Golap Basini (D4) " 527-13-0 " 372- 3-0 4. Mahtap Roy Choudury (D5) " 527-13-0 " 436- 8-0

4. In the remarks column of the khatians, however, it was stated that the total rent of Rs. 2468-12-0 is payable under the pattas dated 21-3-1850 and 7-7-1869 but the terms of the pattas are not binding against the Government.

5. The plaintiffs allege that their right to recover the rent settled u/s 104, Bengal Tenancy Act, has been clouded by the entry in the remarks column and they accordingly pray for a declaration that the said entry is ultra vires and redundant. The, plaintiffs originally prayed for a declaration that the rent settled by the pattas of 1850 and 1869 was not fixed in perpetuity but this prayer was Subsequently withdrawn.

6. The claim of the plaintiffs was resisted by the defendants inter alia on the ground that the suit was not maintainable under the provisions of the Bengal Tenancy Act or u/s 42, Specific Relief Act; that the pattas having been executed long before the passing of the Bengal Tenancy Act were binding between the parties and their successors in interest but they were not binding upon the Government or upon third parties; that the entry in the remarks column was made as a result of an objection u/s 104E, Bengal Tenancy Act, and that the said entry was merely a record of the contractual obligations between the predecessors in interest of the parties; that the plaintiffs have no right to recover rent at a rate higher than that settled by the patta.

7. The first Court held that the plaintiffs' suit was maintainable under Clause (g) of Section 104H, Bengal Tenancy Act, as it was instituted within six months of the final publication of the Record" of Eights; but on the merits the trial Court dismissed the suit on the round that since the original proprietor had taken

settlement from the Government he was bound by the contractual rent fixed by the patta and was not, entitled to claim at a higher rate. The trial Court further held that the higher rent entered in the column of rent was intended to be operative if the settlement was taken by a stranger but the entry in the remarks column would come into force if the settlement was taken by the proprietor. On appeal by the plaintiffs the lower appellate Court has affirmed the decision, of the Court of first instance on the merits and it has also held that the suit is not maintainable under the provisions of the Bengal Tenancy Act or u/s 42, Specific Relief Act.

8. Against the judgments of the lower Courts, the plaintiffs have filed this second appeal. Dr. Sen Gupta appearing in support of the appeal has challenged both the grounds given by the lower appellate Court for dismissing the suit. With regard to the maintainability of the suit it has been argued that the suit is maintainable under Clause (g) of Section 104H, Bengal Tenancy Act. That clause provides that a party aggrieved by an entry of rent settled in a Settlement Rent Roll may institute a suit in the civil Court on the ground "that the special conditions and incidents of a tenancy have not been recorded or have been wrongly recorded." On this point the lower appellate Court has observed that there is no provision in Section 104H enabling a party to bring a suit on the ground that a particular entry is redundant or superfluous. It is to be noticed that the plaintiffs in the present case challenge the entry in the remarks column not only on the ground that it is redundant and superfluous but also on the ground that it is beyond the jurisdiction of the Revenue Officer. In other words the grievance of the plaintiffs is that after having recorded the higher rents in the column of rent the Settlement Officer had no jurisdiction to record the rent payable under the patta of 1869 in the remarks column. This ground of attack, in our judgment, comes within the clause "the special conditions of the tenancy have been wrongly recorded" appearing in Section 104H, Clause (g). We accordingly hold that the plaintiffs' suit is maintainable under Clause (g) of Section 104H, Bengal Tenancy Act. In view of this decision we need not go into the question whether the suit is also maintainable u/s 42, Specific Relief Act, read with Section 111A, Bengal Tenancy Act.

9. Turning to the merits of the case it appears that after the publication of the draft of the Settlement Rent Roll, Golap Basini (defendant 4) filed an objection u/s 104E, Bengal Tenancy Act, claiming that by the patta dated 7-7-1869, the rent had been unalterably fixed before the passing of the Bengal Tenancy Act and as such the tenants were not liable to pay at a rate higher than that settled by the patta. Upon this objection the Revenue Officer made an order which runs as follows:

"As the contract was made prior to 1885 when the Bengal Tenancy Act was passed the contract is binding between the parties but not against the Government for assessment of land revenue. As the contract is binding between the parties the reference of the registered patta of 21-3-1850 and 7-7-1869

should be recorded in each of the gantis in question with the contract of rent noted in the remarks column. The other entries should be made in the usual way." Vide Ex. B.

10. As a result of the aforesaid decision two sets of rentals were recorded, the higher rental being recorded in the column of rent and the rent settled by the patta of 1869 being recorded in the remarks column; a further result of the decision is that the rent fixed by the patta of 1869 was to be operative if the proprietor took settlement but the rent recorded in the column of rent was to be effective if settlement was taken by a stranger.

11. Dr. Sen Gupta has argued that the order made by the Revenue Officer is not a legal and valid order after the decision of the Judicial Committee in the case of AIR 1942 8 (Privy Council) , as interpreted by Mukherjee and Ellis JJ. in the case of Province of Bengal Vs. Midnapore Zamindari Co. Ltd. and Others, . In the case of AIR 1942 8 (Privy Council) it was held by this Court relying upon some earlier authorities that what become final u/s 104J, Bengal Tenancy Act, was only the entry relating to the amount of rent. If there was a previous contract between the tenant and the holder of the estate fixing the amount of rent the question of the liability of the tenant to pay the rent under that contract was beyond the jurisdiction of the Revenue Officer who had no power to interfere with the contractual rights acquired before the passing of the Bengal Tenancy Act. In AIR 1942 8 (Privy Council) their Lordships of the Privy Council expressed their dissent from this view and observed as follows :

"A perusal of the grounds of appeal specified in Section 104H affords complete conviction that the entry of rent settled in the Settlement Rent Roll prepared under Sections 104A to 104F included a decision as to the liability to the payment of rent".

Their Lordships further held that in settling a fair and equitable rent the Revenue Officer was not merely fixing rent in an ideal sense in disregard of the contractual rights of the parties but he was bound to consider the contractual rights and "to give effect to his view of them". In the case of Province of Bengal Vs. Midnapore Zamindari Co. Ltd. and Others, Mukherjea and Ellis JJ. interpreted the aforesaid decision of the Privy Council to mean that the Revenue Officer is not

"permitted, as was held in earlier cases, to fix a rent which he considers to be fair and equitable and mention the contractual liability of the tenant as a special incident of the tenancy which would be attracted only if the contracting parties themselves cannot occupy the position of landlord and tenant."

Again their Lordships observed :

"Except in cases where Section 191, Bengal Tenancy Act, applies, if there is a contract between the proprietor and the tenant which according to the Revenue Officer was subsisting at the time of the settlement proceedings and which determines the rent in a particular way the Revenue Officer is bound to give

effect to his own views of the terms of the contract and fix the rent on the basis of the same and it is immaterial whether the settlement is accepted by the proprietor himself or by a stranger."

12. Applying the aforesaid principles to the facts of the present case we find that Section 191, Bengal Tenancy Act, does not apply because the contract in the present case was of the year 1869 before the passing of the Bengal Tenancy Act. Revenue Officer was, therefore, bound to give his view of the contract irrespective of the question whether the fresh settlement was taken by the old proprietor or by a stranger. Instead of doing that the Revenue Officer allowed the rent which he considered fair and equitable to retain its place side by side with the contractual rent recorded in the remarks column. It was open to the tenant defendant to institute a suit u/s 104H, Bengal Tenancy Act, for deletion of the entry of rent recorded in the column of rent but they did not choose to do it. On the other hand the proprietors have instituted this suit u/s 104H for a declaration that the entry of the contractual rent in the remarks column side by side with the entry as to the fair and equitable rent in the column of rent is unauthorised. The result of the omission of the defendants to take steps for the deletion of the entry as to the fair and equitable rent as recorded in the rent column is that that entry has become final u/s 104J, Bengal Tenancy Act, as interpreted by the Privy Council in the case of AIR 1942 8 (Privy Council) .

13. The Court of appeal below has got round this difficulty by holding that when there are two conflicting entries as to the rate of rent, as in the present case, the entry in the remarks column should prevail over the entry in the rent column, because the entry in the remarks column is the result of a decision u/s 104E and the Revenue Officer must be taken to have given effect to his views of the contract by the entry in the remarks column. Mr. Chakravarty appearing for the respondents has also tried to support the judgments of the Courts below on that ground. We cannot, however, hold that this view is sound. If the Revenue Officer had really given effect to his view of the contract by the entry in the remarks column he would not have allowed the entry about fair and equitable rent to retain its place in the column of rent. What the Revenue Officer thought was that the contractual rent was to prevail if the fresh settlement was taken by the outgoing proprietors, but that the Government was entitled to settle at the higher rent recorded in the rent column if the settlement was taken by a stranger. This view of the Settlement Officer is in direct conflict with the observations of Mukherjea and Ellis JJ. in Province of Bengal Vs. Midnapore Zamindari Co. Ltd. and Others, as quoted above. 14. In the result this appeal must be allowed. The judgment and decree of the Courts below should be set aside and the plaintiffs' suit should be decreed with costs in all the Courts.

15. Hearing fee in this Court is 5 G. Ms.

16. The entries made by the Revenue Officer in the remarks column of the Record of Rights should be deleted.

Das Gupta, J.

17. I agree.