

(1922) 12 AHC CK 0050
In the Allahabad High Court

Dina Singh and Others

APPELLANT

Vs

Lala Devi Chand

RESPONDENT

Date of Decision : 08-12-1922

Acts Referred:

Citation : AIR 1923 All 263 : 71 Ind. Cas. 529

Hon'ble Judges : Grimwood Mears, C.J;P.C. Banerji, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

1. In this case a zemindar sued Dina Singh and others for the recovery of possession of a house, the materials of which are said to be of the value of Rs. 300 and, the house as a standing house presumably of the value of about Rs. 1,000. The zemindar claimed the house shortly after the death of one Teku Sonar, who was admittedly in possession and in whose family the house had been for a number of years. The house was said in the plaint to have been erected prior to the Settlement of 1867; but of that no evidence was given at the trial. The zemindar alleged that the defendants were not the heirs of Teku, and he set up a further ground of claim, namely, that he had a right, in accordance with the terms of the Wajib-ul-arz of 1867, to resume possession of any piece of ground upon which a house might have been built at any time that he liked arbitrarily, and that he could do that leaving only to the dispossessed householder the right of removing the materials. The allegation that the defendants were not the heirs of Teku was decided adversely to the zemindar and thereupon he was thrown back upon the second branch of his claim, namely, that he could, without assigning any reason, re-possess to himself any land situated in the abadi. The passage of the Wajib-ul-arz, which has been relied upon, has been translated to us, and it is agreed that the passage runs as follows: "If the proprietors turn out, or eject or put out (jo malkan kisi bashinde ko uthawenge) any of the inhabitants, that inhabitant will have the right to remove the materials." In the Court of first instance there seemed to be no discussion on this

question of the text of the Wajib-ul-arz. At all events, the judgment of the learned Munsif is silent on this point. In the lower Appellate Court the learned District Judge purported to give "a translation of the provisions of the Wajib-ul-arz" and he commenced with this passage: "If the zemindar wishes to eject any one, he can do so." We have invited Dr. Agarwala to find that passage in the Wajib-ul-arz, and Mr. Nihal Chand has also searched for it, and it is agreed that that passage does not appear in the document, and it has been suggested, and it is probably the fact, that by mistake the learned District Judge was taking down what was, in Counsel's view, a short summary of the right of the zemindar. At all events, it must be taken that the, passage which we have quoted is the only passage in the Wajib-ul-arz on which the zemindar can rely. Now, the position must be looked at broadly. The zemindar is undoubtedly the owner of the land, in the abadi and he can grant a license if he so chooses to. any body to erect a house in the abadi and he can affix to it such terms as he wishes--and no doubt it would have been competent for the zemindar in about the years 1860 to 1870 to have stipulated that any body wishing to build a house could only do so upon the clear. understanding that the zemindar had a right which he could exercise at any time, without assigning any reason, of re-taking possession of the site and requiring the builder of the house to pull it down and remove the materials. Such a power implies putting the owner of the materials to great loss, to great disturbance and may very well result in, ruining a trade which may have taken years to get together. Therefore, an arbitrary right of that character ought to be proved with great definite-ness. Nobody, of course, was able to come forward to say what was the original bargain between the parties. No one could be called to explain how Teku or his predecessors were allowed, some fifty years ago at least, to build a house. Mr. Kendall, of course, had the passage before him, which in his belief appeared in the Wajib-ul-arz, that if the zemindar wishes to eject any one he could do so; and one can understand that that coloured his judgment, because that was a very clear expression of power given to the zemindar. Mr. Justice Gokul Prasad does not seem to have been impressed by that portion of it, and he bases his judgment strictly on the translation of the Wajib-ul-arz and comes to the conclusion, in the absence of any other evidence, he must be guided by that. That was in every way right and proper, and we are guided by it. But we are not satisfied that the phrase: "If the proprietors turn out, put out or eject any of the inhabitants" means arbitrarily and without assigning some good cause. That circumstances might arise which would give to the zemindar a proper right to turn out a man admits of no question; but it is not asserted in this case that there has been any just cause for this attempt to turn out the heirs of Teku: No reason whatever has been alleged. The zemindar relies on his alleged power to turn out at his pleasure. We are unable to hold that that clause in the Wajib-ul-arz, to which we have referred, is so clear and definite as to give him that extraordinary right. In looking at the wajib-ul-arz one sees that it was making provision for two events. The first was, that if a tenant voluntarily left the abadi he had to leave the materials of his house in situ. If, however, the inhabitant involuntarily had to leave the site he was at liberty to remove the

materials. We think the fair and proper construction of this clause ought to be not that the zemindar can turn out any body without reason but that it contemplated the turning out or ejectment of a man for good and sufficient cause. In that view of the case, this appeal must be allowed with costs and fees on the higher scale. The decrees of this Court and of the lower Appellate Court will, therefore, be set aside and the decree of the Munsif restored.