
(1960) 03 PAT CK 0020
In the Patna High Court
Case No : A.F.A.D. No. 590 of 1958

Haji Fasihuddin and Others	Vs	APPELLANT
Mohd. Habib and Others		RESPONDENT

Date of Decision : 08-03-1960

Acts Referred:

Citation : AIR 1960 Patna 486

Hon'ble Judges : H. Mahapatra, J

Bench : Single Bench

Advocate : Sultan Ahmad, M. Rahman and Amin Ahmad, for the Appellant; B.C. De, Braj Kishore Prasad, Sheo Kumar Singh, Shambhu Saran Singh and Rajeshwar Prasad Srivastava, for the Respondent

Final Decision : Allowed

Judgement

H. Mahapatra, J.—The plaintiffs, who are the appellants, brought a suit for recovery of possession in respect of 1.57 acres of land on the ground that it was originally a khidmati Jagir land given to the ancestors of the defendants second party for performing particular services to the grantors. As they had left the village and had ceased to render the services required of them, the plaintiffs claimed right of resumption of the land.

2. Defendants first party are the transferees from the defendants second party. The contest in the suit was only by and on behalf of the defendants first party. No written statement was filed by the defendants second party. It was clearly alleged in paragraph 8 of the plaint that the defendants second party had left the village and had ceased to perform the duties allotted to them under the conditions of the Jagir granted to their ancestors. This cessation of service was alleged to have been since 1360 Fasli, corresponding to 1953. The suit was instituted in 1954.

In the written statement filed by the defendants first party, it was claimed that the land was not burdened with any service nor was it in lieu of duties to be

performed by the defendants. The land had been given to the ancestors of the defendants second party on account of their having helped the plaintiffs, landlords in excavating a tank.

3. The trial Court held that the land was a jagir land burdened with service and that it was resumable and on a finding that the defendants second party had ceased to render the service required of them, the plaintiffs suit was decreed for recovery of possession. On appeal by the defendants first party, the Court of appeal below has held that the land was burdened with service but it was of the view that the grantee could not be ejected and the land could not be resumed, inasmuch as, they (the defendants) did not refuse to work no matter whether their services were required or not. It has further held that in absence of a notice by the plaintiffs on the defendants, the plaintiffs are not entitled to resume the land.

4. On the finding that the land was burdened with service, there is no doubt that the land could be resumed, if really the defendants or the grantee for the matter of that, refused to render the services which were necessary for retaining the land. If the landlords would not require such service, but the grantees would be willing and are able to render those services, it will not be open to the landlords to resume the land.

If, in case, the grantors want to discharge the grantees from service, it will be necessary for them to give notice of that and as has been held in some of the reported cases, that notice must have a reasonable period. In the present case, as alleged in paragraph 8 of the plaint, the plaintiffs' case was that the defendants second party had left the village and had ceased to perform the services connected with the Jagir land. This allegation was not denied by the defendants second party as they had not filed any written statement. The case of the defendants first party, the transferees from the defendants second party, is an assertion that the land was not at all burdened with any service. They insisted that the land had been given to the ancestors of defendants second party on account of their service in the excavation of a tank, as required by the landlord.

Therefore, according to their case, it was in lieu of past service and not future service that the land was given to the defendants second party, It is true, that in their written statement, defendants first party said that the allegation made in paragraph 8 of the plaint to the effect that the defendants second party had left the village was not true, but there was no denial whatsoever of the allegation that the defendants second party had ceased rendering service connected with the Jagir land. Therefore, the case of the plaintiffs to that extent remains unchallenged in that written statement and in that view of the matter, it was not required of the plaintiffs to adduce any evidence in that respect. The evidence of P. Ws. 5 and 6 has been referred to in the judgment of the lower appellate Court, stating that at some point of time, some of the members of the defendants second party had come to the plaintiffs and wanted to guard the embankment, which is one of the services connected with this Jagir land, but they were not

allowed to do so by the plaintiffs.

This admission, it is argued by the learned counsel for the respondents, is sufficient to show that the defendants second party had not ceased to render services or were not unwilling to do so. I have gone through the evidence of these two witnesses. P. W. 5 has spoken of one Sancho, who, according to his own evidence, died sometime in 1950 or 1951. Therefore, from his evidence it does not appear that any member of the defendants second party had ever come to the plaintiffs with willingness to render service after 1953, which is stated to be the time, from which, the defendants second party had ceased performing the services.

Coming to the evidence of P. W. 6, it is to be seen that he stated that after the death of Sancho, other members of the defendants second . party fled away from village Lakra; they came back in 1360 Fasli and told him that they would work as guards, to which, this witness said that they were always remaining absent and so they would not be allowed to do the work of a guard. From this evidence it cannot be said that the defendants second party were willing to continue in service and that they were discharged from that or that they were not allowed to do so.

The Court of appeal below does not appear to have correctly read the statement of these two witnesses. Besides, it is not found anywhere in categorical terms or in clear manner, that on the evidence the lower Court was of the view that the defendants second party had not refused to render services. The written statement filed on behalf of the defendants first party clearly makes out a case of denial and, therefore, in view of that, it can be said that there was no scope left for the Court of appeal below to conclude that the defendants second party had ever expressed their willingness to continue service as before.

5. In that position, the only point to be considered here is whether the defendants were entitled to a notice from the plaintiffs as held by the Court of appeal below. Learned counsel for the respondents has referred to the case of Radha Pershad Singh v. Budhu Dashad ILr 22 Cal 938. That was a case in which the plaintiffs had alleged in the plaint that the defendants were ejected from the office of Gorait. It was held in that case that notice was necessary. The present case, as I have stated before, is not one of discharge of but of a refusal by the grantee, to render services. That case was considered in Hari Shankar Lal Sahu and Others Vs. Mt. Chandu Urain, , where, it was held that if the holder of a service tenure refuses to perform the services on the ground that no services can be demanded from him, such tenant is liable to be ejected without notice to quit. The defence in the present case is identical with the defence in Hari Shankar Lal's case AIR 1939 Pat 362 (supra). The other case referred to by learned counsel for the respondents is Narasayya v. Venkatagiri Rajah ILR 23 Mad 262, where a village and its hamlets had been given by the plaintiff's ancestors to the ancestors of the defendants on amaran service. The plaintiff required the defendants to hand over the land and had served two notices on

them to that effect. The first of such notices had been served less than three months before the end of a fasli and in the second, suit was threatened in default of reply within ten days.

In that context, it was held that lands held on amaran tenure were resumable and that the defendants had no permanent right of tenure. It was further held therein that before such resumption of land could take place, reasonable notice must be given and in that case, the notices served were found insufficient. That was also a case of discharge from service and not a case of refusal on the part of the grantees to render service. Neither of the two cases, in my view, will be of any assistance to the respondents to support the conclusion on the question of notice, as arrived at by the Court of appeal below.

6. Next it was contended on behalf of the respondents that the services, as alleged by the plaintiffs, being of a public nature, could never be terminated. In support of this contention, the case of AIR 1924 5 (Privy Council) , was relied upon. That was a case where Ghatwali service, which was of the nature of quasi-police and military service, was under consideration. Learned counsel referred to a passage in that decision which reads as follows :

"To terminate the ghatwali character of the lands it seems to their Lordships that it is necessary to find something done or omitted to be done on the part of the Government, as the grantor, which would have the legal effect of a surrender and re-grant of the lands on new terms, or, at any rate, of a release of the right to appoint the ghat-wal and call for the performance of the services. Nothing of this sort, at any rate, is shown. The burden of proof is on the mortgagees, and the Government not having been made a party, such proof may even have been for the time being inadmissible."

I do not find how any support can be derived from the passage quoted above. The nature of the services required of the grantees in the present case are confined to cutting earth and maintaining the embankment mainly and to guard the same, when necessary against damages. Under the Tenancy Act an obligation is imposed upon the landlord to retain an embankment and make provision for irrigating the land in the estate. This work, as it appears from the facts and circumstances of the present case, was entrusted to defendants second party's ancestors, and in lieu of that service to be done by them, they were given the Jagir land in question, which were recorded in the survey settlement as khidmati Jagir.

It cannot be said that this service was of a public nature and it would be only the Government and none else who could terminate such service. Besides, as I have already stated before, the present case is not a case of termination of or discharge from service. Whatever the nature of the service may be, if there is a refusal to render such service by the grantees, then the power to resume occurs in the grantors or their successors-in-inte-rest.

7. The next case relied upon by learned counsel for the respondents was Rajah

Leelanund Singh Bahadoor v. Thakoor Munoorunjun Singh IA Sup 181 (PC). That was also a case of Ghatwal. Their Lordships of the Judicial Committee observed as follows :

"The lands were held upon a grant, subject to certain services, and as long as the holders of those grants were willing and able to perform the services, the zamindar had no right to put an end to the tenure, whether the services were required or not."

This observation is clearly in support of the view that when the grantees are willing and able to perform the services, the land cannot be resumed by the grantors. The present case is entirely different, being a case of refusal, as averred in the plaint.

8. Another case was also referred to in this connection by learned counsel for the respondents, 10 CWN 161 (Privy Council) . There also their Lordships of the Judicial Committee held that when the grantees are willing and able to perform the services, there would be no resumption by the grantors. The case of I. A. Sup. 181 (PC) (supra) was relied upon in that case also,

9. It thus appears that none of the cases cited by learned counsel for the respondents is of assistance to him, in view of the fact that, here, the grantees namely, the defendants second party were not discharged from service and it was not denied by anyone of them to have discontinued the service. This discontinuance gains support from the fact that the defendants first party in their written statement also claimed that the land was not burdened at all with any future service.

10. The conclusion arrived at by the lower appellate Court that the plaintiffs were not entitled to resume the land cannot, therefore, be sustained, The judgment and decree passed by the lower appellate Court are set aside and those passed by the trial Court are restored. The appeal is allowed with costs.