
(1909) 06 AHC CK 0018
In the Allahabad High Court

Harnand and Others

APPELLANT

Vs

Kalloo and Another

RESPONDENT

Date of Decision : 26-06-1909

Acts Referred:

Citation : 3 Ind. Cas. 2

Hon'ble Judges : George Knox, Acting C.J.;Griffin, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

George Knox, A.C.J.

1. It will be sufficient for the decision of this Letters Patent Appeal to say that after hearing all that could be said on behalf of the appellants, I fully agree with the decision arrived at by my learned brother with the reasons which he has given for that decision. In the course of the arguments my attention was drawn to an unreported decision of this Court F.A.F.O. 135 of 1899 Tota v. Sheo Narain, decided on 15th June 1899. I was one of the Judges who decided that case and I wish clearly to state that on a more careful consideration of the question at issue in that case, which was the same as the question at issue in this case, I am not prepared to adhere to what I then said and held. The reason for my decision in that case was mainly that in the record-of-rights prepared in 1890, no mention was made of the right of pre-emption, while there had been mention of the right in the record-of-rights prepared at the Settlement of 1863. From the silence in the record-of-rights of 1890, mainly, and for other reasons I inferred that the entry in the record-of-rights was a " covenant recorded in the year 1863 and that being the case, the covenant could not be considered binding beyond the settlement in "the course of which it was made. In that case the attention of the Bench was not drawn to the provisions of the Law in force when the record-of-rights was prepared in 1863, (viz., Reg. VII of 1822) or to the orders of the Board of Revenue under which the record-of-rights of the 1833 Settlement was prepared and to the Law and the further orders in force when the Settlement of

1890 was made. Reg. VII of 1822 Section 9 enacted that it shall be the duty of Collectors on the occasion of making or revising settlements of the Land Revenue to unite with the adjustment of the assessment the object of ascertaining and recording the fullest possible information in regard to landed tenures, the rights, interests and privileges of the various classes of the agricultural community. For this purpose their proceedings shall embrace the formation of as accurate a records possible of all local usages connected with landed tenures etc. The Board of Revenue in their circulars No; 24 of 1888 recalled the attention of Settlement Officers to these rules and laid down that in the first Clause of the wajib-ul-arz there should be recorded the customs relating to pre-emption in the village together with several other customs, and Settlement Officers were directed to confine themselves in the wajib-ul-arz, to a record of such usages and customs which they found to be actually in existence. It was farther ordered that particular care should always be paid to the attestation of the wajib-ul-arz, that the presence of all the parties interested should be secured, and the provisions carefully explained and read over to them, when possible by an English officer. As nothing to the contrary has been shown to us it is only right that we should presume that the record-of-rights, which is before us in this appeal, was prepared in accordance with the law and these instructions specially seeing that it can bear such construction without any violence done to and that it is a record of the custom of preemption found by the Settlement Officer existing when he prepared the record,

2. It need hardly be said that if the language of the wajib-ul-arz prevented our forming such an inference, neither the Regulation nor the Circulars could convert what was not a custom into a custom, but as I have pointed out above, this difficulty does not exist in the present case. When the Settlement of 1890 was under preparation Reg. VII of 1822 had given way to and had been repealed by Act No. XIX of 1873.

3. Section 62 and following sections of Act No. XIX of 1873 deal with the formation of the record-of-rights (wajib-ul-arz). The section that alone bears upon the immediate point is Section 65.

4. That section runs as follows:

The Settlement Officer shall also record the arrangement made by himself or agreed to by the co-sharers

(a) for the distribution of the profits derived from sources common to the proprietary body

(b)for fixing the share which each co-sharer is to contribute of the Government revenue and of the cesses levied under any law for the time being in force, and of the village expenses ;

(c) as to the manner in which lambardars or co-sharers are to collect from the cultivators ;

(d) as to any other matters which he may be directed to record under rules framed u/s 257.

The Settlement Officer may, subject to rules to be made from time to time by the Board, with the previous sanction of the Local Government, fix, and shall record,

(e) the amounts of instalments of rent and the respective dates for their payment;

(f) the dates for the payment of any amounts payable by inferior to superior proprietors u/s 54, Clause (1) and

(g) the dates on which profits shall be divisible by lambardars.

5. The custom of pre-emption then would no longer be recorded unless it was a matter which the Settlement Officer was directed to record under any rule framed u/s 257 of Act No. XIX of 1873, as amended by Section 7 of Act No. VIII of 1879.

6 The rules for the Muzaffarnagar Settlement framed u/s 257 are to be found in the Board's Circular No. 9 of Department 1st Edition of 1890.

7. Paragraph 9 runs as follows:

A memorandum of the village customs will be appended to each khewat by the Assistant Settlement Officer when he verifies the javiabandi, and will take the place of the document hitherto known as the wajib-ul-arz

8. It will contain those particulars only which the Settlement Officer is required to record u/s 65 of the Revenue Act, as amended by Section 7 of Act VIII of 1879. It should be verified at the same time and in the same manner as the Ichewat is verified.

9. There is nothing here which requires the Settlement Officer to put on record any custom of pre-emption. I have examined the Rules and find that nowhere else do they allude to this subject. On referring to the Final Report on the Settlement of the Muzaffarnagar District 1892,¹ find the following:

Paragraph 128. No new wajib-ul-arz has been prepared for, this Settlement. A statement called the memorandum of village customs takes its place, the contents of which have in tahsils Muzaffarnagar and Kairana been strictly limited to the matters required to be entered by Section 65 of the Revenue Act, all of which, it may be noted, are recorded as matters not of custom, but of arrangement or agreement. In tahsils Jansath and Budhana the memorandum was framed so as to include any special village customs; but it does not even there supplant the old wajib-ul-arz, which still remains in force for all matters not now provided for.

10. The village with which we are concerned is situated in parganah Jhijnjhana, tahsil Kairana. The silence, therefore, in the record-of-rights of 1890 is not a silence from which any inference opposed to the existence of the right of pre-

emption can be drawn. The probability is that if the circulars were before myself and my brother Aikman when we decided F.A.F.O. 135 of 1898, our decision would have been different. Certainly mine would have been. This appeal is dismissed with costs.

Griffin, J.

11. I agree.