

(1923) 07 CAL CK 0023
In the Calcutta High Court

Janabali Molla and Others

APPELLANT

Vs

Port Canning and Land Improvement Co. Ltd.

RESPONDENT

Date of Decision : 04-07-1923

Acts Referred:

Bengal Tenancy Act, 1885 — Section 20, 46

Citation : AIR 1925 Cal 336 : 84 Ind. Cas. 735

Judgement

1. These are second appeals in suits brought u/s 46 of the Bengal Tenancy Act by the landlords against tenants for the settlement of fair and equitable rent for the holdings. There are in all 7 suits before the Court in appeal. The defence taken as regards all these suits is that the defendants are occupancy raiyats and that accordingly they are not within the scope of the section sued. They also say that the rent which has been fixed is excessive and has been fixed upon an improper principle. There is one particular question with regard to suit No. 99 which is now appeal No. 1817.

2. Now the difficulty upon the first question is that the lands in suit are lands in the Sunderbans and it appears that no notice was issued by the Collector declaring the area as constituting villages until some date in 1912. For the present purpose it may be taken that the lands in respect of which the occupancy right is claimed are lands in all cases of which the defendants have been in possession for 12 years. The objection taken is that until 1912 there was no village within the meaning of the Bengal Tenancy Act, and therefore the condition prescribed by Section 20, Sub-section 1, has not been complied with, that is to say, the defendants have failed to show that any of them continuously held as a raiyat lands situate in any village for a period of 12 years.

3. Now, Dr. Basak has argued before us several points. First he maintains that in addition to the methods to be found prescribed in the Bengal Tenancy Act there still survives running pari passu with them the old method of acquisition of occupancy right. It would seem clear that the Act of 1869 which was wholly repealed is not now in force. Nor can a similar contention be put forward as

regards Act X of 1859. The appellants' vakils are therefore driven on this branch of his case to suggest that there is still running together with the provisions of the Bengal Tenancy Act the old provisions which I may call the common law on the subject in this country which give to khudkast raiyats certain rights which are denied to paikast raiyats. We are not of opinion that it was intended by the Bengal Tenancy Act to keep these older doctrines alive. It is perfectly true that the rights formerly enjoyed by the tenants have by successive Acts been enlarged rather than restricted. But since the rights have been enlarged and the tenants who are to be held entitled to these rights are to be held entitled on the construction of the more liberal Code and not by a resort to antiquated theories, the whole scheme of the Bengal Tenancy Act as a Code would be irretrievably spoiled if it were open to the tenants to fall upon other systems which were prevailing many years ago.

4. Putting on one side that contention we come to the next question. It is said that if one looks carefully at Section 20 of the Bengal Tenancy Act one finds that the word village as therein mentioned cannot be intended to be restricted to the meaning given by Clause 10 of the 3rd Section where the word village is defined. The section says this, that "any person who for a period of 12 years, whether wholly or partly before or after the commencement of this Act has continuously held" and so forth. Now the importance of the unit village only arose at the commencement of the Bengal Tenancy Act of 1885. Under the previous law as a tenant could only get an occupancy right by holding an identical piece of land the importance of the definition of an area of a village for this purpose did not arise. It is said then that as there could be no village in the statutory sense before 1885 the first clause of Section 20 which undoubtedly refers to possession prior to the commencement of the Act must be construed to refer to the village in the popular sense or in some other sense than the statutory sense. Now, there is no doubt that the definition in Section 3 would have to give way if there is plain repugnance in the context. But in this case a careful scrutiny of the definition shows no such repugnance; because the word village means an area defined, surveyed and recorded as a distinct and separate village in one or other of three ways. The first is a matter of past history. The second and third look forward to the future. The first thus refers to the general land revenue survey which had been made of the province of Bengal. Therefore in the strict sense of the statute and doing no violence to any part of it there is a meaning to be given to the word village for the purpose of the section prior to 1885 over a very large area of Bengal, namely, the whole area for which a revenue survey had been made. For this reason it does not seem to me sound to say that the statutory meaning of the word village in the first clause of Section 20 gives rise to any impossible construction or to any repugnance.

5. The next contention is that the statute does not expressly say that the lands must have been situated in an area defined as a village during the whole 12 years. Now, on that matter there might be something to be said if the question were absolutely open. We have been referred to the judgment of Chatterjea and

Panton, JJ., in Miscellaneous Appeal No. 18 of 1919. I understand it has been reported in some volume of Indian Oases. That deals with the whole of the contentions on this branch of the case put forward by Dr. Basak so ably on behalf of the appellant. The ruling is that in order that an occupancy right may be acquired the land must be held in a village for a period of 12 years and that if the land has not been comprised in any village in the statutory sense the condition of acquisition of the occupancy right has not been complied with.

6. The next point is a point with reference to all the cases. It is said that the learned Subordinate Judge instead of applying the test laid down by Section 43 on the question of settlement of the amount of fair rent has gone by a fanciful notion of the 1/6th of the gross produce as being the historical amount that was obtained by the Rajas in the old days. But looking at the judgment we do not think that that is so. The learned Subordinate Judge appears to have gone into the particular facts of these cases at considerable length and he has merely referred to a book by a distinguished learned Judge of this Court Mr. Justice Sarada Charan Mitter which refers to 1/6th of the produce as the amount used to be taken by the Hindu Rajas. It cannot be said that his judgment was based on any fanciful notion.

7. The remaining question is of some little obscurity. It has reference to suit No. 99. The learned Munsif dealt with this case among a batch of cases. According to him, the rights of the tenant might have ripened into occupancy right under the Act of 1869 were it not that there had been changes in the nature and terms of the holding by reason of addition or amalgamation of fresh lands. When one looks to the particular statements made by the Munsif as to this holding it appears that the amalgamation about which the Munsif was troubled did not take place until the year 1902 and later. If that were the position there would be some difficulty, because if it is clear that by 1885 the tenant had occupancy right under Act of 1869 then from the commencement of the Bengal Tenancy Act he held that right under the saving clauses of the Bengal Tenancy Act and he would not lose his occupancy right upon the narrow terms of Act of 1869. When, however, we consider the findings of the learned Subordinate Judge with reference to this particular case and when we scrutinise that finding by the dakhilas that are on the record the finding is that this tenant had not in 1885 acquired the occupancy right under the previous law.

8. [His Lordship referred to the dakhilas in some detail and finally dismissed the appeals with costs.]