

(1918) 12 CAL CK 0004
In the Calcutta High Court

Jogendra Narain Ray Chowdhury

APPELLANT

Vs

Rai Kiran Chandra Ray Bahadur and Another and Janaki Nath
Biswas and Others

RESPONDENT

Date of Decision : 11-12-1918

Acts Referred:

Bengal Land Revenue Sales Act, 1859 — Section 37

Citation : 50 Ind. Cas. 406

Hon'ble Judges : Newbould, J; N.R. Chatterjea, J

Bench : Division Bench

Judgement

1. This appeal arises out of a suit instituted by the plaintiff (who was the purchaser of an estate sold for arrears of revenue) for the annulment of certain intermediate tenures held by the defendants.
2. The lands in dispute lie within Mauza Joka which is included in four separate estates, one of which, No. 3845, was purchased by the plaintiff and it is in respect to the lands included in the said estate that the plaintiff seeks to eject the defendants.
3. The defendants set up certain tenures as having been held by them from before the Permanent Settlement and they pleaded that they are protected from ejectment under the provisions of Section 37 of Act XI of 1859. They further pleaded that the plaintiff was not entitled to the privileges attaching to the purchaser of an entire estate u/s 37 of the Act.
4. The Courts below held with reference to a portion of the lands that the defendant held the tenure from before the Permanent Settlement, and with regard to another portion they held that the defendant's tenure was created subsequently to the Permanent Settlement and it is with respect to this portion that the plaintiffs were given a decree, with the exception of lands covered by tanks and places of worship which came under the fourth proviso of Section 37 of the Act.

5. The defendant No. 6 has appealed to this Court and three contentions have been raised before us. The first is that Section 37 of the Act does not apply to the purchase made by the plaintiff.

6. It appears that in Towzi No. 3845, two separate accounts had been opened, described as shares Nos. 1 and 2, and there was a residuary share. All these three shares fell into arrears of revenue. Notifications of sale were accordingly issued in respect of each of the shares separately, specifying the share together with the arrears of revenue due on account of each share. The shares were put up to sale on the 24th March 1906. No one bid for any of the shares. Thereupon the Collector made the following order in the proceedings relating to the sale of the residuary share: "it is hereby declared that the entire estate will be put up to sale for arrears of revenue at the next sale date unless the other recorded co sharers, one or more of them, shall within ten days from to-day purchase the share in arrear by paying to Government the whole arrear due from the share." A similar order was passed with respect to the shares Nos. 1 and 2. No one came forward to purchase the shares in arrears by paying to Government the entire amount due, and the Collector on the 25th April 1906 ordered, "advertise the entire estate for sale on the 23rd June 1906." This order was passed in the proceedings relating to the residuary share. In respect of the other two shares, the order was as follows: "The whole estate having been advertised for sale on the 23rd June 1906 in Case No. 21 of 1905-06, no separate order for sale is necessary." The sale notification was accordingly published on the 11th May 1906 and in the sale notification the estate to be sold was described as Towzi No. 3845 and the Sadar Jama of the entire estate was mentioned. It was also mentioned that the whole estate would be sold. In the 8th column, however, of the notification which is headed "if the whole estate is to be sold, the arrears due from it," only Rs. 630 1-11 was mentioned. That was the amount due from the residuary share alone and did not include the arrears due from the other two shares.

7. It is contended on behalf of the appellant that Section 37 of the Act applies to the purchaser of an entire estate sold under the Act "for the recovery of arrears due on account of the same" and that those words mean that the estate must be sold for the recovery of the entire arrears due on account of all the shares and not only for the arrears due on account of a share.

8. Section 13 of the Act provides for sale of a separate share when such a share is in arrears, and Section 14 lays down that "if in any case of a sale held according to the provisions of the last preceding section, the highest offer for the share exposed to sale shall not equal the amount of arrear due thereupon to the date of sale, the Collector or other officer as aforesaid. shall stop the sale and shall declare that the entire estate will be put up to sale for arrears of revenue at a future date unless the other recorded sharer or sharers, or one or more of them, shall, within ten days, purchase the share in arrear by paying to Government the whole arrear due from such share. If such purchase be

completed, the Collector or other officer, as aforesaid, shall give such certificate and delivery of possession as are provided for in Sections 28 and 29 of this Act to the purchaser or purchasers, who shall have the same rights as if the share had been purchased by him or them at the sale. If no such purchase be made within ten days as aforesaid the entire estate shall be sold after notification for such period and publication in such manner as is prescribed in Section 6 of the Act."

9. The Collector, therefore, has power to put up to sale the entire estate for realising the arrear due in respect of a particular share, provided the other sharers have had an opportunity of purchasing the share in arrears by paying to Government" the whole arrears due from the shares in default. In the present case that procedure was followed, as stated above, and the entire estate was, as a matter of fact, put up to sale. The fact that the other, shares were also in arrears did not deprive the Collector of the power to put up the entire estate to sale for realising the arrears due upon a particular share.

10. As for the argument based on the words "estate sold under the Act for recovery of arrears due on account of the same" in Section 37, it seems to us that those words have been used in contradistinction to a sale of an estate for "arrears due on account of estates other than that to be sold" referred to in Sections 5 and 53, the latter of which lays down, that "any purchaser of an estate sold for arrears or demands other than those accruing upon itself shall by such purchase acquire the estate subject to all its encumbrances existing at the time of sale and should not acquire any rights in respect to under tenants or raiyata which were not possessed by the previous proprietor at the time of the sale of the said estate."

11. Now, Rs. 630 odd for the realisation of which the entire estate was put up to sale in this case was an arrear due on account of the estate itself, though it was not the entire amount of arrears on account of the estate, We are of opinion that Section 37 applies to a sale of an entire estate for recovery of arrears due on account of an entire estate as well as to a sale for recovery of arrears due on account of a share only, provided the entire estate is sold under the provisions of Section 14 of the Act and that so long as it is the entire estate which is sold and the arrears are due on account of the estate itself and not on account of estates other than that which is sold, Section 37 applies. The first contention must accordingly be overruled.

12. It is next contended that the Courts below were wrong in construing the pattas of 1221 as creating the tenures; and reliance has been placed upon the words of the patta, namely, "I grant you an osat talukdari patta in respect of jungle patit land as per boundaries below which you have been holding possession of." It is argued that that shows that the predecessor of the defendants had been in possession of the tenure from before the date of the patta which was merely a confirmatory lease and that that being so and the defendants having proved their possession for such a long time, the Court ought

to presume backwards and hold that the tenure was in existence from the Permanent Settlement.

13. We are unable, however, to accept the contention that the patta was merely a confirmatory grant or that it indicated that the defendants had been holding the tenure from before the date of the patta so as to raise any such presumption. In the first place, the land was jungle patit. An osat talukdari patta was granted for bringing the land under cultivation and five years were allowed for that purpose. It was stipulated in the patta that after the land was brought under cultivation, it would be measured and one-tenth would be allowed to the lessee on account of khanabari and jibka and that he should pay rent of the remaining land at certain rates, namely, at the rate of 4 annas in the first year, 6 annas in the second year, and at the full rate of 10 annas in the third. All these indicate that there was no tenure before and that the tenure was created for the first time by this patta. There is no mention at all in the document that the lands had been held under any sort of tenure or that any rent had ever been paid prior to the grant of the patta. It is no doubt stated in the document that the defendants had been holding possession of the jungle patit land. It is not stated, however, that they were holding possession as tenants. Both the Courts below have held that the tenure was created by the patta and that there being no tenure before that date, the date being subsequent to the Permanent Settlement, the defendants do not come under the exception to Section 37. We agree with the Courts below as to the construction of the patta and the second contention accordingly is also overruled.

14. The last contention relates to lands whereon tanks have been excavated and places of worship built. The Courts below have excepted such lands from the decree, but it is contended that not only should the lands actually covered by tanks and places of worship be excepted but also the entire land covered by the lease should be excepted.

15. This question has been considered in several cases in this Court. The earlier cases on the point are noticed in the case of Najemoddeen Moonshi v. Syed Hassan Hyder Chowdry 9 C.W.N. 852, followed in the cases of Wahid Ali v. Rahat Ali 12 C.W.N. 1029, decided by Brett and Cox, JJ., Bisweshwar Ghatak v. Fatteh Hussain 10 C.W.N. (24), decided by Rampini and Mookerjee, JJ., and Mathuranath Ghoshal v. Ratneswar Sen 23 Ind. Cas. 917, decided by Carnduff and Chapman, JJ., It has been held in all these cases that the benefit of the 4th exception to Section 37 of Act XI of 1859 must be limited only to such portions of land as are covered by buildings, tanks, etc, and cannot be extended to cover those lands included in the lease on which no permanent works have been constructed.

16. The only case in which a different view was taken was that of Kiron Chundur Roy v. Naimuddi Talukdar 30 C. 498, but that case has never been followed. We think we should follow the current of decisions of this Court and hold that the lower Courts are right in excluding from the a decree only the lands covered by

tanks and places of worship.

17. The result is that the appeal fails and is dismissed with costs.