

(1920) 12 CAL CK 0006
In the Calcutta High Court

Maharajadhiraj Sir Bejoy Chand Mohatap Bahadur	APPELLANT
Vs	
Krishna Chandra Mukherjee and Others	RESPONDENT

Date of Decision : 08-12-1920

Acts Referred:

Citation : AIR 1921 Cal 466 : 66 Ind. Cas. 357

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

Bench : Division Bench

Judgement

1. This appeal arises out of a suit brought by the plaintiffs, who are the putnidars of Lot Jamitta under the defendant No. 1, for recovery of certain chaukidari chakran lands on the ground that the lands are included in their putni.
2. The lands were transferred on the 10th March 1915 to the defendant No. 1 (under the provisions of Act VI of 1870, B. C.) who, it appears, settled the same with the other defendants and kabuliyats were taken from to mo of them after the institution of the suit. The defense was that the plaintiffs were not entitled to these lands and that, at any rate, they were bound to take fresh settlement and pay additional rent for the lands.
3. The Court below has held that the lands were included in the putni, and that the plaintiffs were entitled to get possession of the lands without payment of any additional rent. In the result, the suit was decreed, the defendants being ordered to pay means profits for a period of three years prior to the suit.
4. The defendant No. 1 has appealed to this Court.
5. The first question for consideration is, whether, under the terms of the contract between the parties, the plaintiffs are entitled to these chaukidari chakran lands.
6. The putni kabuliyat has been placed before us. It appears therefrom that Lot Jamitta consisting of 16 Mouzas was let out in putni, and that there was no reservation with regard to chaukidari chakran lands.

7. It is contended, however, on behalf of the appellant that it is not stated in the kabuliyat that all the lands of the Mouzah were let out in putni. But, as mentioned above, it is stated that the 16 Mouzas of Lot Jamitta were granted in putni. It surely means that the whole of the Zemindar's interest in the Lot was granted in putni with the exceptions mentioned in the document, and the only exceptions in the document, were with regard to "tank excavations and the rent of the lands, which had by any sanad been granted by the Zemindar to other persons and with regard to gardens, Havelis and lands which were held by the estate in khas possession in the Lot." It appears, therefore, that all the lands in the Mouzas of the Lot, excepting those specially mentioned, passed to the putnidar and included the chaukidari chakran lands.

8. The learned Subordinate Judge was wrong in relying upon a passage in the kabuliyat, namely, "I shall every year separately pay the sum demanded after resumption at the Sadar of the chakran lands of the Thana under the Tahsil of the Zillah" in holding that chaukidari chakran lands were included in the putni. That passage evidently refers to Thanadari lands and has nothing to do with the chaukidari chakran lands. The only matter referred to in respect of the chaukidari chakran lands is contained in the passage which runs as follows: "I shall appoint and dismiss the chaukidars and other persons employed on Police duties in your Bakshi Department whenever any such person has to be appointed or dismissed and the Sarcar shall have no concern with the matter." That shows that the putnidar was given the right of nominating and dismissing the chaukidars and that there was no reservation of the chaukidari chakran lands in the contract creating the putni, and having regard to all the terms of the lease, we agree with the learned Subordinate Judge in holding that the chaukidari chakran lands were included in the putni.

9. The next question is, whether the plaintiffs, the putnidars, are entitled to have the lands only on payment of the assessment payable to the chaukidari fund, or are liable to pay some additional rent on account of the land to the Zemindar. The question no doubt should be decided having regard to the terms of the contract in each case, In the present case the contract does not deal with the question.

10. The question has been raised and dealt with in a large number of cases. In the earliest reported case on the joint vis, Hari Narayan Mozumdar v. Mukund Lal Manual 4 C. W. N. 814. it was held that the putnidar was bound to pay to the Zemindar such rent for these lands as correspondent to the proportion between the gross collections and the putni rent formerly payable by him. It was so held on the ground that the contract between the parties that is the putni lease did not contain any stipulation as to the rent payable for the chakran lands to the Zemindar. Although, as stated above, the question is one which must be determined upon the contract between the parties, the Courts have acted upon the principle laid down in the case of Hari Narain Mozumdar v. Mukund Lal mundal 4 C. W. N. 814, except so far as we can see two cases viz., one---the case of

kazi(sic)h Khoda V. Ram Jadu Dey 34 C. 109 : 5 C. L. J. 33 : 11 C. W. N. 201, and another retorted case which will be referred to later. In the first case the putnidar was held entitled to possession of the chakran lands without payment of any additional rent, The judgment of the learned Judges who decided the case, however, preceded upon different grounds. Mr. Justice Rampini was of opinion that the case of Hari Narain Mozumdar v. Mukund Lal Mundal 4 C. W. N. 814, did not lay down any general principle, that the Zemindar in that case was in the enjoyment of the services of the chaukidari and that it was admitted that by the assessment of the chaukidari lands the hustbood of the putni had increased. Mookerjee, J., observed: "If there were materials on the record corresponding to what were furnished by the parties in the case of Hari Narain Mozumdar V. Mukund Lal Mundal 4 C. W. N. 814, it might have been necessary to consider whether the putnidars were bound to pay the Zemindar any additional rentfor these lands," and that "the principle which determines whether additional rent is payable or not was indicated in the case of Hari Das Goswami v. Nistarini Gupta5 C. L. J. 30. The decision of the question must ultimately depend upon the mode in which the rent was assessed at the inception of the putni. If at the time of such assessment, the profits of all the land including chakran lands were fully taken into account, the Zemindar would clearly have no right to claim any rent in addition to the putni rent." Mookerjee, J., in a later case held that if there is no indication in the contract between the parties that at the time of inception of the grant, the putni rent was assessed on the basis of the asset's of all the lands situated within the ambit of the putni inclusive of the chaukidari chakran lands, the putnidar should be made liable to pay some additional rent to the Zemindar on account of these lands. [See Khondkar Mehdi Hoisein v. Umes Chandra 44 Ind. Cas. 964 : 45 C. 685 : 27 C. L. J. 494.]

11. A similar view was taken in Gopendra Chandra Mitter v. Taraprassuna Mukerjee 7 Ind. Cas. 790 : 37 C. 598 : 14 C. W. N. 1049, and Rakhal Das v. Madab Chandra 8 Ind. Cas. 828 : 13 C. L. J. 109 : 15 C. W. N. 61.

12. It may no doubt be said that where the putnidar is in enjoyment of the service of the chaukidar, he alone should get the benefit of the lands when they are enfranchised because he alone loses the services. But it is pointed out by their Lordships of the Judicial Committee in Ranjit Singh Bahadur v. Maharaj Bahadur Singh 48 Ind. Cas. 262 : 46 C. 173 : 29 C. L. J. 193 : 16 A. L. J. 96 : 35 M. L. J. 72 : 23 C. W. N. 198 : 25 M. L. T. 8 : 1 U. P. L. R. (P. C.) 23 : 21 Bom. L. R. 505 : 10 L. W. 83 : 45 L. A. 162 (P.C.), that at the time when the putni grants in that case were made, the resumption of the chaukidari chakran lands was not even contemplated, In the present case the putni was created so far back as 1846. Under the circumstances, and in the absence of anything in the contract or any evidence to show that these chaukidar lands were taken into consideration, we are unable to hold that the putni rent was assessed after taking these lands into account.

13. The unreported case referred to above (Second Appeal No. 1500 of 1914)

[Nalinakhya Basu v. Bijoy Chand Mahatap 40 Ind. Cas. 895.] was decided by Fletcher and Teunon, J. The learned Judges held that the putnidar was entitled to the chaukidari lands without payment of any additional rent to the Zemindar. The learned Judges were of opinion that the cases on the point could not throw any light because the terms of the contract were not stated in the reports. The judgment proceeded upon the ground that the rent in the case was fixed and could not be altered. But that is so in almost every case of the putni; and although, as we have already stated, the question is to be decided upon the contract between the parties the cases referred to by us lay down the principle, namely, that where there is nothing to show that chaukidari chakran lands were taken into account in assessing the putni rent, the putnidar must pay some additional rent for the lands. So far as that question is concerned, all the reported cases with the exception of the case of Kazi Newaz Khoda v. Ram Jadu Dey 34 C. 109 : 5 C. L. J. 83 : 11 C. W. N. 201, are in favour of the contention of the appellant. Even in that case, as pointed out above, Mookerjee, J., does not differ from the view taken in Hari Narain Mazumdar case 4 C. W. N. 814.

14. We do not feel pressed with the unreported judgment of Fletcher and Teunon, JJ., because there have been subsequent decisions of this Court, [see Radha Charan Chandra v. Ranjit Singh 46 Ind. Cas. 187 : 27 C. L. J. 532, Khondkar Mehdi Hossein v. Umesh Chandra 44 Ind. Cas. 964 : 45 C. 685 : 27 C. L. J. 494.], which have taken a view similar to that taken in a series of cases commencing with Hari Narain Mozumdar's case 4 C. W. 814.

15. Having regard to the weight of authority on the point, we hold that the Zemindar is entitled to some rent in addition to the amount payable to the chaukidari fund.

16. As to the amount of such additional rent, different views have been taken in different cases. In some cases it has been assessed after taking into the consideration the husbandry of the mahal, in some others the assets have been divided half and half. In the case which came up before Fletcher and Teunon JJ., to which the defendant No. 1 was a party, one third of the assets of the chaukidari land was given to the Zemindar, and two-thirds to the putnidar by the learned District Judge. In this case there are no materials on the record on the point. The putnidar should be allowed something on account of collection charges and in order to avoid further enquiry we think the putnidar might be given two thirds and the Zemindar one-third, of the amount at which the lands were assessed by the Collector.

17. The result is that the plaintiffs are entitled to get khas possession of the chaukidari chakran lands in dispute on payment to the defendant No. 1 the amount of Rs. 60, annas 5, pies 3 (Rupees sixty, annas five and pies three) payable to the chaukidari fund plus Rs. 20, anna 1. pies 9 (Rupees twenty, anna one and pies nine) as additional rent on account of these lands to the defendant (sic) 1.

18. As regards mesne profits, the plaintiffs will be entitled to mesne profits at the rate of Rs. 40, annas 3, pies 6 (Rupees forty, annas three and pies six) per annum from the 10th, March 1915 up to the date when they get delivery of possession of the lands. This disposes of one portion of the cross-objection. The other part relates to the 8 bighas odd of chaukidari lands which have been left out because we understand these lands were not entered in the deed of transfer in favour of the defendant No. 1. It is stated before us that the omission in the deed of transfer has subsequently been rectified on the 10th January 19(sic)9 and that the plots Nos. 6 and 7 Schedule (Ga) have now been included in the deed of transfer. It is contended that we should take cognizance of the facts which have happened since the institution of the suit and give a decree to the plaintiffs in respect of these lands also.

19. The alleged rectification of the deed of transfer, however, is said to have been made subsequent to the decision of the lower Court and the learned Pleader for the appellant is not in a position to say whether the statements are correct. Under the circumstances, we do not think we should deal with these 8 bighas of land. But if what is stated(sic) on behalf of the respondent is correct, probably there will be no difficulty in the plaintiffs' getting settlement of those lands on the basis of this judgment from the defendant No. 1.

20. Each party to bear his own costs in both the Courts.