

(1912) 07 CAL CK 0034
In the Calcutta High Court

Rai Ganpat Singh Bahadur and Another	APPELLANT
Vs	
Moti Chand Zemindar	RESPONDENT

Date of Decision : 24-07-1912

Acts Referred:

Bengal Patni Taluks Regulation, 1819 — Section 2

Citation : 17 Ind. Cas. 171

Hon'ble Judges : Holmwood, J; Ashutosh Mookerjee, J

Bench : Division Bench

Judgement

1. This is an appeal on behalf of the zemindars in proceedings under the Land Acquisition Act for apportionment of compensation money. The dispute is between the zemindars and the patnidars as to the mode in which the apportionment is to be effected. The Subordinate Judge has awarded the entire compensation money to the patnidars on the ground that as the zemindars have not allowed any abatement of rent on account of the land acquired, they are not entitled to a share of the compensation money. On behalf of the zemindars, it is argued in this Court, first, that as the patnidars did not get themselves registered in the book of the zemindars under the provisions of the Patni Regulation of 1819, their title has not been perfected and they are, consequently, not entitled to claim any portion of the compensation money; and secondly, that although no abatement of rent has been allowed by the zemindars to the patnidars, yet the zemindars are entitled to a share of the compensation money. In our opinion, there is no foundation for either of these contentions.

2. In so far as the first point is concerned, Section 3 of the Patni Regulation of 1819 makes a patni tenure capable of being transferred by sale, gift or otherwise at the discretion of the holder in the same manner as other real property. Section 5 provides for the registration of the name of the purchaser in the books of the landlords. The landlord may demand a fee and security and he is entitled to refuse to give effect to the transfer till such fee and security have been paid; this is clear from the first paragraph of Section 6. But it cannot be maintained that

the omission to pay the fee and the security affects in any way the title of the purchaser. His rights are perfected upon the transfer by the patnidar and are not in any way contingent for their validity upon the payment of the fee and the security. This view is supported by the cases of Joykrishna Mukhopadhyaya v. Sarfannessa 15 AC. 345 and Chunder Pershad Roy v. Shuvadra Kumari Shaheba 12 AC. 622. Reference may also be made to the decision of the Judicial Committee in Luckhi Narain Mitter v. Khetro Pal Singh Roy 20 W.R. 380; 24 W.R. 407 note; 13 L.R. (P.C.) 146. In that case, a dar-patnidar had paid money to save the patni from sale. He subsequently claimed a refund and the question arose whether the claim was affected by his omission to register his name in the office of the superior landlord. It was ruled by this Court Khetter Paul Singh v. Luckhee Narain Mitter 15 W.R. 125 that his title had been perfected and he was entitled to a refund, notwithstanding that his name had not been registered in the office of the superior holder. The only effect of his failure to secure registration of his name is that the landlord is not bound to recognise his purchase and may sell up his tenure in execution of a decree for arrears of rents obtained against the registered tenant. Substantially the same view was taken in the case of a permanent tenure in Matangini Choudhurani v. Sreenath Das 7 C.W.N. 322 and the contrary opinion, implied in Gossain Mungal Das v. Baboo Roy Dhunput Singh Bahadur 25 W.R. 152 cannot be regarded as good law. In other words, as observed in the case of Okhoy Coomar Chatterjee v. Dhiraj Mahtab Chund. The Maharajah of Burdwan 22 W.R. 299, the status of a patnidar or dar-patnidar does not depend upon the registration or consent of the zemindar. The patnidars in the present case are, consequently, entitled to a share in the compensation money.

3. In so far as the second point is concerned; it has been broadly contended that the zemindars are entitled to a share of the compensation money even though they have not allowed any abatement of rent to the patindars. In support of this view, reference has been made to the cases of Gadadhar Dass v. Dhunput Singh 7 AC. 585 : 9 C.L.R. 227 and Khetter Kristo Mitter v. Dinendra Narain Roy 3 C.W.N. 202. In the case of Dinendra Narain Roy v. Sitaram Mukerjee 30 AC. 801 at p. 807 : 7 C.W.N. 810 it was pointed out, however, that the observations of Sir Richard Garth, C.J., in the case of Gadadhar Dass v. Dhunput Singh 7 AC. 585 : 9 C.L.R. 227 which were followed in Khetter Kristo v. Dinendra Narain 3 C.W.N. 202 were obiter dicta and were not binding upon this Court. It has not been seriously questioned that the view that the compensation money should be divided in equal halves between the zemindars and patnidars notwithstanding the fact that the zemindars, have not allowed any abatement of rent to the patnidars, cannot be maintained on principle. It has not also been disputed that the view militates against the decisions in Raye Kissory Dasse v. Nilcant Day 20 W.R. 370; Biprodas Pal Chaudhury v. Sarat Chandra Singha 16 C.L.J. 209 : 11 C.W.N. cli : 17 Ind. Cas. 168 and Raja Ram Ranjan Chakrabarty v. Bunwari Lal Mitter 16 C.L.J. 211 : 17 Ind. Cas. 170 : 14 C.W.N. cxxii. If we look at the matter as one of principle, it becomes manifest that the claim of the zemindars is clearly

unfounded. The compensation money in the hand of the Collector represents the value of the land acquired by the State. That sum has to be distributed amongst the holders of interests of different degrees in the land acquired. Each claimant can prove the value of his interest, in other words, the measure of the loss sustained by him by the acquisition, and when he does this, he becomes entitled to a proportionate share of the compensation money. If the zemindars allow an abatement of rent to the patnidars, the rent abated primarily represents their annual loss, and they may reasonably claim out of the compensation money the capitalised value of that rent. But if they do not allow any abatement of rent, if they recover from the patnidars the whole of the original rent, although the latter have lost the income derivable from the acquired portion of the land, what is the measure of their loss? Plainly, they do not suffer any immediate loss by reason of the acquisition. It has been ingeniously suggested, however, that although the rent is not abated, the zemindars may in certain events suffer loss; namely, their security for the rent is diminished in value and if the perpetual lease is ever forfeited, they will get back a smaller quantity of land than what was comprised in the original tenancy. This chance of forfeiture is indisputably very remote, indeed. Whether under the terms of the patni in the present case it can ever be at all forfeited is by no means certain. But even if it be assumed that there may be a forfeiture of the patni in certain contingencies, the zemindars have wholly failed to establish the value of this remote chance of possible loss; they are, consequently, not entitled to any share of the compensation money.

4. The result is that the decree of the Court below is affirmed and this appeal dismissed with costs. We assess the hearing-fee at two gold mohurs.