
(1921) 08 CAL CK 0024
In the Calcutta High Court

Raja Bhupendra Narain Singh Bahdur and Others	APPELLANT
Vs	
Madar Bux Sheikh and Others	RESPONDENT

Date of Decision : 23-08-1921

Acts Referred:

Bengal Patni Taluks Regulation, 1819 — Section 14

Citation : AIR 1921 Cal 296 : 66 Ind. Cas. 793

Hon'ble Judges : Panton, J; Asutosh Mookerjee, J

Bench : Division Bench

Judgement

1. This is an appeal by the zemindar defendant in a suit commenced on the 12th April 1915 u/s 14 of Regulation VIII of 1819 for reversal of the sale of a patni taluk held under the Regulation on the 15th May 1914. The validity of the sale was attacked on a variety of grounds. One of these grounds was that the requirements of Section 8 of the Regulation had not been fulfilled; and this was formulated in the ninth issue in the following term:

Were the Astom petition, notice, istahar and all the proceedings connected therewith, good and valid according to law and were notice and istahar duly served.

2. The District Judge has answered this question in favour of the putnidar and has, for this reason, set aside the sale as invalid. On the present appeal by the zemindar, the conclusions of the District Judge have been assailed as erroneous.

3. Sections, Clause 10 I. A. 19 : 9 C 619 : 13 C. L. R. 34 : 4 sar. P.C.J. 414 : 7 Ind. Jur. 212; 4 Ind. Dec. (n.s.) 1031 (p.c) of the Patni Regulation requires the zemindar to present a petition to the Collector containing a specification of any balance due to him on account of the expired year from all or any patni talukdars.

4. This petition must be stuck up in some conspicuous part of the Collector's Cut Cheri with a notice that if the amount claimed be not paid before the 1st Jaistha following, the tenure of the defaulter will on that day be sold by public sale in liquidation. This must be read with Section 10, which provides that at the

time of sale, the notice previously stuck up in the Cutahery shall be taken down and the lots be tailed up successively in the order in which they may be found in that notice. This makes it plain that Section 10 contemplates a self-contained notice, which comprises not only a specification of the arrears and notification that the sale will be held on the let Jaistha if the amount claimed be not paid before that date, but also a statement of the lots proposed to be sold in the order in which the sale will be held. This conclusion is confirmed by an important provision contained in Section 8, Clause (2) which is expressed in the following terms: "A similar notice shall be stuck up at the Sadar Cutahery of the etmindar himself, and a copy or extract of such part of the notice as may apply to the individual case shall be by him sent, to be similarly published at the Cutahery, or at the principal town or village upon the land of the defaulter." This leaves no room for doubt that the notice to be stuck up in the Cutahery of the Collector, like the petition, must contain specification of the balances that may be due to the zemindar concerned from all the patnidars under him and that a copy or extract of such part of the notice as may apply to an individual defaulter shall be sent by the tern, near to be similarly published at the Cutahery or at the principal town or village upon the land of the defaulter. There can thus be no serious controversy as to the correctness of the view adopted by this Court in the case of *Enjoy Rrithna v. Lakthmi Narain*⁵⁴ Ind. Cas. 736: 90 C. L. J. 433: 47 C. 337 : 24 C. W.N. 972. regarding the contents of the notice which is required to be stuck up in the Cutahery of the Collector u/s 8 and to be taken down at the time of the sale u/s 10, so that the lots may be sailed up successively in the order in which they may be found in that notice.

5. We have now to judge by this test, whether the zemindar who is exclusively answerable for the observance of the forms prescribed in Section 8, Clause (2), has established that the statutory requirements were carried out. The notice which has been produced (Exhibit P) obviously does not fulfill the requirements of the Regulation; it does not contain a specification of the balances due from all the patriarch; it mentions only the patni, now in suit, though the oral evidence makes it clear that "there were about forty Astam cases in which the Raja of Nashipore was interested." The zemindar has consequently been driven to bring forward oral evidence to establish that another notice, showing all the defaulting patnidars and the balances due from each of them was stuck up as required by the Regulation. Sailajaprasad Sengupta deposes that while he was Jamanabis in the service of the Maharaja of Nashipore, a notice used to be drawn up showing all defaulting patnidars in two parts—one was published in the Sadar Cutahery of the zemindar and the other was sent to the Raj Pleader, Sasibhushan Chaudhuri, at Birbhum. The Pleader, who is also the am mukhtear of the zemindar, has been examined. He asserts that he stuck up in the Collectorate two notices of Astam sales, one, of the mal, and the other, of the debutter mahal. The District Judge has not accepted this assertion, and after careful consideration of all the circumstances, we are unable to disagree with him. The memory of the witness as to the time when the alleged notices were put up is clearly at fault. He asserts

that he saw stuck up on the notice-board of the Collector the notice (Exhibit P) before the 12th or 13th Baisak, and he fortifies this statement by the further assertion that he examined the board between the 10th and the 13th. This must be incorrect, because the peon, who stuck up the notices, did not receive them for publication till the 14th Baisak. Apart from this, no explanation is forthcoming why notices in repeat of individual patnis should be stuck up, though not required by the Regulation, and complete notices as required by the Regulation should be subsequently stuck up. Besides, it is a matter for legitimate comment that while the notice (Exhibit P) was stuck up by the Collectorate peon in the discharge of his usual duties, the alleged comprehensive notice was put up by the am-muhtear. It does seem strange that a private individual should stick up the proper notice as required by the Regulation, while the inappropriate notice is stuck up by the officer concerned. The evidence also shows that the notice-board is in a glass case, that there are iron-safes and chests about a yard below the place where the notices are hung, and that a sentry armed with gun walks up and down by that place. An attempt by a stranger to stick up notice on a notice-board so placed should not fail to attract attention, and independent evidence might be expected of the endeavor made by the witness to comply with the requirements of the Statute. There is finally the significant fact that the notices alleged to have been stuck up by the witness on the notice board of the Collector were not found on the records, which contained, however, the notice (Exhibit P). In these circumstances, we are not prepared as a Court of Appeal to pronounce the opinion that the view taken by the Trial Court is erroneous. But even if it were conceded that the requisite notice had been put up by the am-muhtear as alleged by him, there is no evidence to show that it was taken down at the time of the sale as required by Section 10 and that the lots were sold up successively in the order in which they stood in that notice. Indeed, the notice does not appear to have been seen by any one except the am-muhtear. In this connection, we must take the statement of Upendi anath Sadhu, who was the revenue Pushcart of the Collector at the time, that the Maharaja of Nashipore always has a separate petition for each tenure. The witness was present with the Collector when the patni was sold and so also was the am-muhtear of the zemindar. The witness asserts that the am-muhtear filed before the Collector a list of arrears and the Muffasil notice, that the witness read them to the Collector who signed them and then the sale took place. To the same effect is the testimony of Anantalal Ghosal, another assistant in the Collectorate who was present at the sale. The evidence of Surendra Mohan Kar, who was the Naib Nazir of the Collectorate at the time, does not afford the slightest indication that the notice alleged to have been put up by the am-muhtear had ever been stuck up or seen by anybody or taken down at the time of the sale. He asserts that on the 27th April, the 14th Baisakh, 1905 the records of the Astam case were made over to Sheikh Amien the peon (since deceased) for publication that the witness himself went later and found that the records were later and found that the records were hung up in their proper place that they remained there till the day of sale, and that on that day they were brought down and arranged by

the nesses and sent to the revenue Peshkar with reports of service by the poen, The witness added that from the publication until they were returned to the Munshikhana, they remained in charge of publication until they were returned to the Munshikhana, they remained in charge of the nazir (who has died since)and that he himself had never noticed any record short when the record was brought down If the additional notice, alleged to have been put up by the am-muktear himself ,had been on the notice board when the records were brought down on the of sale and arranged by this witness should hardly have escaped his notice. On a review of the evidence relevant to this question we have in concurrence with the District-Judge that the memindar has not discharged the burden, which the law impose upon him to establish that a notice fulfilling the requirement of Section 8 was stuck up in some conspicuous part of the Cut chary of the Only notice which is shown to have been stuck up those not satisfy requiresment. This by self is fatal to the sale for as repeatedly emphasized by this Court as also by the Judicial Committee strict conformity with the requirements of the Regulation in respect of the contents and service of the notice mentioned in Section 8 and 10 is essential to secure a valid sale; Maharajah of Burduan v. Tarasundari Dasi¹⁴ I. A. 30, 14 C.365: 11 Ind. Jur.275 : 4 sar. P.C.J. 772: Ind.Dec.(N.S.) 1031(P.C.),Ahsanulla Khan affirmed in Ahsanulla Khan Bahadur v.Mahomed Gozi Choudhry(6), Rajnarain Mitra v.Ananta Lal(7).In view of our conclusion on this paint, it is not necessary to investigate whether there was due service of the requisite notice at the Sadar Cutshery of the reminder and at the Cutahery or at the principal town or villa ore upon the land of the defaulter. The District Judge has held that the reminder has failed to prove by satisfactory evidence that those notices were really or properly published. His criticisms on the evidence may, in some places, seem unduly searching, bat it is needless for us to embark upon a review of his conclusion Basel upon an appreciation ahictly of oral testimony, of oral testimony as in our opinion, the sale must be cancelled on the ground already stated.

6. The result is that the decree made by the District Judge is affirmed and this appall dismissed with costs.