

(1915) 02 CAL CK 0037
In the Calcutta High Court

Case No : Appeals From Original Decrees Nos. 91 and 339 of 1912

Ranjit Singha, Principal

APPELLANT

Vs

Jnanendra Ch. Sen Gupta and Others

RESPONDENT

Date of Decision : 04-02-1915

Acts Referred:

Citation : (1915) 02 CAL CK 0037

Final Decision : Dismissed

Judgement

1. These two appeals arise out of two suits for setting aside a putni sale in which the zamindar is the purchaser. Appeal No. 91 arises out of the suit brought by the putnidars and No. 339 out of the suit brought by the dar-putnidar of some of the mauzas covered by the putni. The grounds on which the sale is impeached are the same in both suits, namely, irregularities in the service and publication of the notices required by law and irregularities in the conduct of the sale. The Court below has set aside the sale and the purchaser, the zamindar, has filed these appeals. It is contended on his behalf-

(1) that the findings as to the irregularities are not justified by the evidence on the record;

(2) that the provisions of the Putni Regulation are directory and it is not necessary that they should followed in every detail

(3) that the Plaintiffs have not shown that they suffered any injury by reason of the irregularities complained of;

(4) that the irregularities even if proved do not vitiate the sale.

We shall first see if the irregularities complained of are proved.

2. Under sec. 8 of the Putni Regulation, the zamindar's application for sale and notice that the defaulting property is to be sold on the 1st of Jyaistha if the arrears are not paid before that have to be stuck up in some conspicuous part of the kutchery.

3. The Nazir of the Collectorate who was examined as a witness produced a bundle of papers stuck up in respect of the sale of the 15th of May.1911. This bundle does not contain the original application of the zamindar. Even the notice that has been exhibited as being in respect of the disputed mahal (Ex. A) is in respect of a different mahal altogether, bearing a different jama and a different number and owned by a different putnidar. This may be due to some mistake in the Court below in marking one document for another but no notice of this was taken by the Appellant until it was pointed out by the learned, Vakil for the Respondent. But supposing this was a mistake for the correction of which no steps have been taken by the Appellant, there is nothing to show that the original application was stuck up. Our attention has been drawn to Ex. C, the notice to the putnidar, which mentions that the original petition is going to be stuck up in the sadar kutchery, but that is no evidence that it was stuck up in the Collectorate and the whole bundle produced by the Nazir did not contain this. The Appellant has therefore failed to prove that the original application was stuck up.

4. As regards the sticking up, the Nazir says that the istahar (notice of sale) was hung up on a board in the verandah but it used to be taken down by the Muktears and placed on his table to be hung up again at the close of the day. The Appellant's witness Muktear Purna Chandra Chatter-jec admits that this used to be so formerly when he used to go to the Nazarat but he is not aware of the present practice. We agree with the learned Subordinate Judge that this way of dealing with the notices is proved and does not make out that continuous unobstructed presentation to the notice of the public which the law contemplates. In the ease of *Bejoy Chand Mahatap v. Atulya Charan Bose* (I.L.R 32 Cal. 953 (1905)), the sticking up of the notice from 10 to 5 in the day during Court hours was held to be not in conformity with the Regulation. This view was considered to be an obiter dictum in the case of *Sachi Nandan Dutta v. Bejoy Chand Mahatap* (11 C.W.N. 729 (1906)) by Brett and Gupta, JJ., and the learned Judges held that this sort of publication was sufficient to meet the requirements of the Regulation. The present case is however distinguishable in that in it the notice bundle was removed from the notice-board and placed on the table in the Nazir's room for the inspection of the Muktears so that although the notices might be on the board in the night and during short times when the Muktears did not remove them, to the Nazarat, they were not on the board during the greater portion of the Court hours. There is no evidence that the public had notice of the removal or had access to the Nazarat. It is not for the Muktears alone that these notices are meant and we agree with the learned Subordinate Judge that the sticking up was not in accordance with the requirements of the Regulation. A similar notice is to be stuck up in the sadar kutchery of the zamindar, but the Appellant's Nazir says he only hung up a list of the defaulting mahals with the names of the defaulters and the amounts due. This is not strictly in accordance with the letter of the law but we agree with the learned Subordinate Judge that this may be taken as a substantial compliance.

5. Then the notice in the mofussil was served in the kutchery of the dar-putnidar, although it incorrectly states that it was served in the kutchery of the putnidar. Now the dar-putni is in respect of three only of the six mauzas covered by the putni, The dar-putnidar's kutchery, however, is in the principal village of the; defaulting tenure and we agree with the learned-Subordinate Judge that service there was good service.

6. As regards the conduct of the sale, several irregularities are complained of. One is that the public had not unobstructed access to the place of the sale and the sale was therefore not in a public kutchery as required by the law. It is clear from the evidence that the sale was in the Courtroom of the Collector and therefore in a public kutchery but it is also clear that the chapras is of the Collectorate who were placed at the wicket gate for keeping order did not allow many persons to enter for preventing overcrowding. The learned Subordinate Judge has believed this evidence and we have no hesitation in agreeing with him.

7. Then it is urged that the sale took place too early, i.e., before 12 o'clock-the usual hour for holding these sales. There is no evidence as to at what particular time this sale took place, as no one referred to his watch. The Collector is under the impression that he commenced sale at 12, but he is not quite sure. There is evidence that the Muktears remarked at the time that the sale was too early and they had to hurry to the ejlas to look after the interests of their clients. The law however does not require that the sale should be at any particular hour and the defaulter cannot impeach the sale as illegal merely on the ground that it took place earlier than usual; he may however be permitted to shew that he was misled to his prejudice by the deviation from the usual practice. Now supposing the sales of the day commenced at or very near 12, if the formalities enjoined by the law had been observed, the sale of this property would have taken place much later and the Plaintiffs could have paid up the money which they no doubt brought to the kutchery but could not pay as they could not enter the sale-room before the sale on account of the excessive zeal of the chaprasis of the Collector.

8. Sec. 10 of the Regulation requires that the lots shall be called up successively in the order in which they may be found in the notice. If the lots in the several notices of the Nawab Bahadur, Maharaja Tagore, Maharaja Bahadur Singh, and the Appellant Maharaja were called one after another and orders were passed on each before the property in suit was reached, it would have taken a good deal of time and the Plaintiffs who came with the money in arrears would have been able to pay to the Muktear according to the usual practice and save their property. The earlier lots however were passed over as the zamihdars would not proceed with the sales, having probably received the arrears, and the sale of this property was finished in 3 or 4 minutes, the zamindar's Muktear being the only bidder. The section further directs that the observance of the forms mentioned in the section shall be recorded in a separate rubakari to be held upon each lot sold. There was a rubakari but it was not prepared at the time of the sale; it is signed not by the Collector but by a Deputy Collector and is dated the 18th May

1911, corrected into 15th May 1911. It is clear, it was not prepared at the time of the sale.

9. Then the 15 per cent of the purchase money was not deposited as required by sec.-9.

10. These are the irregularities and we agree with the Court below that they are proved. In the case of *Maharaja of Burdwan v. Tata Sundari Debt* (L. R. 10 I. A. 19 : s.c. ILR 9 Cal. 619 at p. 622 (1882)), their Lordships of the Judicial Committee say-" Their Lordships desire to point out that the due publication of the notices prescribed by the Regulation forms an essential portion of the foundation on which the summary power of sale is exercised and makes the zamindar who institutes the proceeding exclusively responsible for its regularity." In another case, the *Maharaja of Burdwan v. Krishna Kamini Dasi* (L.R. 14 IndAp 30 : I. L. R. 14 Cal. 365 (1887)), their Lordships say-" Their Lordships have to construe the Regulation. They find a process prescribed by it which the framers thought it indispensable to fix, for the observance of which they have declared the zamindar to be exclusively answerable, and which is calculated to protect all persons interested in the estate against injury by the working of a very swift and summary remedy given to the zamindar." Some of the irregularities found in this case might not be of much consequence but they are certainly deviations from the rules laid down in the Regulation but there are others such as the advertisement in the Collectorate which are very material and cannot by any means be called directory only and not mandatory. As regards injury, the learned Subordinate Judge has found in favour of the Plaintiffs and we are of the same opinion. In fact the matter was not pressed before us. There are, we think, sufficient reasons for setting aside the sale. We therefore dismiss these appeals with costs. We assess the hearing fee in Appeal No. 339 at five gold mohurs. We do not interfere with the order of the lower Court as to costs in that Court.