
(1934) 04 CAL CK 0007
In the Calcutta High Court

Sourish Chandra Roy Bahadur	Vs	APPELLANT
Saroj Ranjan Singha and Others		RESPONDENT

Date of Decision : 16-04-1934

Acts Referred:

Bengal Patni Taluks Regulation, 1819 — Section 13

Citation : AIR 1934 Cal 571 : 150 Ind. Cas. 1019

Hon'ble Judges : Patterson, J; Mitter, J

Bench : Full Bench

Judgement

Mitter, J.—These seven appeals arise out of seven suits instituted in the Court of the Additional Sub-ordinate Judge of Nuddea for the setting aside of a sale held under the provisions of the Putni Regulation (Reg. VIII of 1819). The Suit No. 174 of 1927 to which the renumbered 3 of 1930. First Appeal No. 205 relates was brought by Saroj Ranjan Sinha and others, now respondents, who are co-sharers to the extent of eight annas in the patni tenure which has been sold, the other eight annas co-sharer, a lady of the name of Joy Durga Dasi, having been impleaded as a pro forma defendant as she did not join in the suit. The principal defendant to the suit was the Hon'ble Maharaja Khaunish Chandra Roy of Krishna-nagar, who died pending suit on 22nd May 1928, leaving behind him an infant son Kumar Sourish Chandra Roy whose estate was taken charge of by the Court of Wards and the suit was defended by the Collector of Nadia through the Manager Birendra Nath Roy at all subsequent stages.

2. Appeal No. 206 arises out of Suit No. 152 of 1928 which was renumbered 4 of 1930 commenced by the Haldars who are Dar putnidars of some of the patni properties and Seputnidars in respect of others, against the original principal defendant, the Maharaja. Appeal No. 207 arises out of Suit No. 169 of 1928, re-numbered 5 of 1930, which was commenced by the Chetlanges who are Darputnidars in respect of some of the villages and Seputnidara in respect of others. Appeal No. 208 of 1930 arises out of Suit No. 171 of 1927, re-numbered 2 of 1930, commenced by the Sircars who are the Darputnidars in respect of

some villages included in the patni. Appeal No. 210 of 1930 arises out of Suit No. 161 of 1928, re-numbered 6 of 1930, commenced by one Durga Bala Dassi who is Dar-putnidar in respect of some of the villages. Appeal No. 211 of 1930 relates to Suit No. 162 of 1928, re-numbered as 7 of 1930, commenced by Ratan Lal Halder, one of the Darputnidars. Appeal No. 8 of 1933 arises out of a suit which was instituted by Rati Kanta one of the Darputnidars.

3. The Maharaja of Krishna Nagar was the common principal defendant in all these suits being the Zemindar of the Revenue paying estate under which the Taluk in question is held by the putnidars the plaintiffs in the suit to which appeal No. 205 relates, and their co-sharer Putnidar Joy Durga Dassi. The sale in question was held for arrears of rent due from the putnidars for the Aswin Kist of 1334 B. S. for a total demand of about Rs. 13,000. It was held by the Zemindar under the summary procedure laid down in the Putni Regulation, and the putni was purchased by the Zemindar the Maharaja for a sum of Rs. 10,000 as nobody else was present to bid at the sale. It is admitted on behalf of the zemindar that the property has fetched a very inadequate price, and the manager of the Court of Wards, Birendra Lal Roy, has admitted that the putni in question (Taraf Mahatpur) was a very valuable property, and in fact the biggest Putni Mehal in the Raj Estate, and that the Maharaja's income would increase to the extent of Rs. 40 to 60 thousand a year if the mahal could be made khas, and that the Manager Kanti Babu used to try zealously to increase the Maharaja's income. It is by reason of the extreme inadequacy of price fetched at the sale that these eight suits (one of which to which appeal No. 209 of 1930 relates is not before us just now) have been commenced by the several grades of tenants who have joined in attacking the sale on common grounds. The plaint in the suit of the Putnidars, the Sinhas, to which appeal No. 205 relates, has been taken as the type as representing the case of the plaintiffs in the other suits in the argument before us. The validity of the sale has been attacked on a variety of grounds. The grounds of attack as formulated in the plaint of the putnidars fall under two broad heads: (1) the sale is void as on a proper construction of the putni kabuliyat which regulates the rights of the zamindar and tenant, the tenure in question is not a putni tenure at all and the provisions of the Regulation 8 of 1819 are not attracted to it, and the summary sale by the zamindar cannot be sustained; (2) assuming the tenure was a putni tenure there has been non-compliance with the provisions of the Regn. 8 of 1819 which render the sale invalid. Under this second head several irregularities are described in the plaint but it is not necessary to refer to all of them as some of the defects have been held by the trial Court not to affect the sale. I will only refer to such irregularities as have formed the foundation of the decision of the Subordinate Judge in setting aside the sale. They are:

A. That the sale was held by the Collector notwithstanding the attempt made by the Darputnidars Mr.M.Pal Choudhury to avoid the putni sale by tendering to the Collector the amount of the arrears of the patni in accordance with the provisions of Section 13 of the Regulation. B. That the Maharaja filed a separate petition for

sale for each separate Putni in arrears and purported to have caused to be stuck up at the Collector's Court and at his own Sadar Kutchery a separate sale notice for each such putni and there was contravention of Section 8 read with Section 10 of the Regulation. C. That there was no service of the publication of the sale notification on the Cutchery upon the land of the defaulting putnidar at Chapra, one of the putni villages, and this was sufficient to vitiate the sale. D. That further that there has been no publication of the sale notice in the Mofussil. E. That the rules prescribed in Section 10 of the Regulation were not duly observed in that (1) the lots were not called up successively; (2) that the Revenue Peshkar did not look into the kabuliyat in order to see that the balance remaining unpaid exceeded a four annas proportion of the demand up to the date of the sale, and (3) that the Collector did not give sufficient opportunity to bidders other than the Maharaja to bid. All these grounds of attack have been traversed by the defendant in his written defence. These allegations and counter-allegations have given rise to issues 6, 8, 9 and 14 which run as follows: 6. Is the putni mahal saleable under Regn. 8 of 1819 under the terms of the putni patta? 8. Were the provisions contained in Section 13 Clause (2) of the putni Regulation complied with? 9. Were the provisions of Section 8. Clauses 2 and 3 of the putni Regulation complied with? 14. Was the sale properly conducted?

4. The Subordinate Judge after taking oral and documentary evidence has found for the plaintiffs on all these issues and has set aside the sale basing his decision on the findings on these four issues. Against the decrees the seven appeals have been preferred by the representative of defendant 1 who has assailed the findings of the Subordinate Judge on these issues as erroneous. Issue 6. We proceed now to the consideration of issue 6 which raises the question of the inapplicability of the provisions of Regn. 8 of 1819 to the tenure in suit. The Subordinate Judge has held that Regn. 8 cannot govern the incidents of the tenure and if his view is right it affects seriously the right of the zamindar to realise his rent by sale of the tenure in accordance with the summary procedure laid down in the Regulation. The effect of his finding is that the zamindar cannot, for all time to come, have recourse to the summary sale, and thus prevents him in future from adopting the method for speedy realisation of any arrear of rent of the putni. This issue therefore requires very serious and careful consideration at our hands. The determination of this issue depends on the construction which is to be put on the putni kabuliyat dated 24th of Pous 1224 B. S. corresponding to 6th January 1818 a certified copy of which has been marked as Ex. "E" in the case and is printed at p. 1, Part 2 of the paper Book. The material portions of the kabuliyat are as follows:

To The High In Dignity Srijut Ratnes-war Roy Talukdar of Taraf Mahatpur and others. This kabuliyat in respect of Putni Taluk is executed by us Sana-tan Pramanik and Radha Madhab Pra-manik in the year 1224 B. S., to the following effect: That on receipt of the total sum of rupees one lac fourteen thousand (sicca) as consideration money you have executed a kabala settling us as Putni Talukdars of the Mahal Taraf Mahatpur consisting of 57 Mauzas within your Taluk

in the District of Nadia, at a total annual jama together with Foujdari tax of (sicca) Rs. 19,000 and we also have accepted it of our own free will. Excepting Debutter, Brahmat-tar and Mahatran Malik, Lakhraj, etc., as they exist within the present boundaries of the Mahal given in the schedule we shall take into our control and possession all the Mauzas and Mahals lying within the boundaries given in the schedule, consisting of rayati, Khamar or Chakran, cultivated, waste and jungle, Jalkar, Bankar, Nalkar, Falkar, and garden, lands, trees, rivers, channels, khals, beels, jhils, tank and others, that is the entire zamindari together with land and water therein situate to which you are entitled shall enjoy the same with our sons and grandsons in succession on payment of the said entire rent as per Kistibundi year after year at the Kutchery of your Taluks at Krishnanagar. This shall never be cancelled. We shall have no concern with the Sarkari Habeli, tank or garden which are in your khas possession. There will never be any increase or decrease of this jama.

5. If I neglect to pay the entire rents at the close of the year then you shall at your pleasure take khas possession of this Putni Taluk at the end of the first month of the following year. If we grant the Mehal in Darputni settlement to anybody else then that Darputnidar shall act according to the terms and conditions of this kabuliyat given by us. We and our heirs shall act according to this kabuliyat. To this effect we of our own accord, on payment of the entire consideration money and receipt of the Kobala of the Putni Taluk, execute this kabuliyat.

6. It appears from a plain reading of this document that although the document is described as a kabuliyat of a Putni Taluk it does not contain any stipulation giving the power of sale to the zamindar for arrears of rent nor does it give the zamindar the power to make the other properties of the defaulter liable for any balance of arrears of rent which may remain after the sale of the tenure in question. It will appear from para. 7 of the preamble to Regn. 8, of 1819 that these two rights of the zamindar were the cardinal incidents of the tenures which were usually denominated as Putni Taluks prior to the enactment of the Putni Regulation, for the Preamble states:

By the terms also of the engagements interchanged, it is amongst other stipulations provided that in case of an arrear occurring, the tenure may be brought to sale by the zamindar and if the sale does not yield a sufficient amount to make good the balance of rent at the time due, the remaining property of the defaulter shall be further answerable for the demand. These tenures have usually been denominated Putni Taluks.

7. Exhibit "E" which was executed a year before the enactment of the Putni Regulation merely empowers the zamindar to take possession of the Putni if there are arrears of one full year, but does not contain any stipulation for sale. Section 3, Clause 3 of the Putni Regulation enacts that in case of an arrear upon any tenure of the description alluded to in Clause 1 of this section, the tenure shall be brought to sale by public auction and Clause 1, Section 3 refers to the

tenures known by the name of Putni Taluk as described in the Preamble to the Regulation which has already been referred to. Section 8 of the Regulation provides that zamindars shall be entitled to apply in the manner following for periodical sales of any tenures upon which the right of selling or bringing to sale for arrears may have been specially reserved by the stipulation in the engagements interchanged on the creation of the tenure.

8. In the case of *Sahebuddin v. Fatia* (1867) 7 WR 260, Sir Barnes Peacock, C. J., observed that Section 8 of the Regulation applied to the sale of those tenures only upon, which the right of selling or bringing to sale for arrears of rent has been specially reserved by the stipulation in the engagements interchanged on the creation of the tenure. The learned Chief Justice pointed out that under Regn. 7 of 1799, Section 15 there were two classes of tenures saleable for arrears of rent: (1) those in which the tenure was saleable by the stipulations in the title deeds, and (2) those which were saleable by the established usage of the country and that it was the first class of tenures, which came within the purview of Section 8, Putni Regulation. It was argued for the appellant that the use of the expression "Putni Taluk" at the beginning of the document implied *prima facie* that it was a Putni taluk of the character designated as putni taluk in the preamble to the regulation and that the right to take khas possession was merely an additional right.

9. In other words it was said that instead of describing the leading characteristics of putni taluk as described in the preamble to the regulation viz., the right of sale by the zamindar for arrears and the right to make other properties of the defaulter liable in case the sale does not fetch a sufficient price to liquidate the entire rent, the idea of those incidents is conveyed by the use of the compendious expression "putni taluk." It was said that the word "putni taluk" had by 1818 acquired a certain technical meaning and in construing the deed if significance is attached to the words "putni taluk" then it must be held that the parties intended to convey by the use of the two words the idea of the saleability of the tenure for arrears of rent at the instance of the Zemindar. In the first place it is to be noticed that before the enactment of the Regulation it cannot be said that every taluk which was described as putni taluk had the meaning attached to it as is described in the preamble to the Regulation. The meaning of the word "putni" according to Harrington's "Analysis" is "settled": see Vol. 3, p. 549. In Field's "Land holding and the Relation of Landlord and Tenant," Edn. 2, p. 715, the following note occurs: the derivation of the word "putni" is according to Wilson uncertain. Mr. Harrington says it may be rendered "settled or established" which Professor Wilson pronounces very questionable. There is a word "pattan" which I have met in several districts used as settling with, letting to, a tenant, which is doubtless connected with Mr. Harrington's explanation. This is a literal meaning of the word "putni." The Regulation was therefore careful, enough to state in the preamble that the tenures which carried with them the right of the Zemindar to sell were usually designated putni taluks. The preamble does not suggest that every taluk without exception which was designated as putni taluk

would be a taluk within the meaning of the preamble to the Regulation even if the terms creating the taluk show that no right to sell was reserved in the Zemindar.

10. Even if it be assumed that the words "Putni Taluk" had acquired in 1818 the technical meaning which is ascribed to it in the Preamble to the Regulation all that it can be said is that it raises a strong presumption that the parties intended to use the words according to their correct technical meaning, but this is not conclusive evidence that such was the real meaning. In this case the terms of the kabuliyat Ex. "E" displaces the presumption for there is no reference whatever in the deed to the power of sale of the Zemindar in case rent has fallen into arrears and to the further power of the Zemindar to make the other properties of the defaulter liable for the balance of the arrears of rent if the sale does not liquidate the entire arrears due. The parties intended that in case of arrears accruing for one year the Zemindar would be at liberty to take khas possession and not to sell. The technical meaning in this particular case seems to be an erroneous guide to the real one leading to a meaning contrary to what the party intended to convey by it and the technical meaning in such circumstances ceases to answer its purpose. As was observed by Sir Thomas Plumer, Master of the Rolls, in the case of *Cholmondeley v. Clinton* (1820) 2 J & W 81, at pp. 91, 92 and 93:

There is no case or dictum to be found which requires the Court to adopt the technical sense in opposition to the actual meaning of the party: on the contrary, the authorities uniformly demand the preference to be given to intent, over technical import and form.

11. There is no authority which compels us to hold that we should adhere to the technical meaning notwithstanding the manifestation of a contrary intent by the clear terms of the kabuliyat. Two cases however have been cited before us, as they were before the trial Court, in support of the view that the use of the words putni taluk" in Ex. E were sufficient to attract the provisions of Regulation 8 of 1819. (1) A decision of their Lordships of the Judicial Committee in *Brindaban v. Brindaban* (1874) 1 IA 178. A case reported in -Sevester's Reports, Vol. II, p. 173. In the former case neither the Putni lease nor any copy of it appeared in the record but the plaintiff in his plaint described the tenure as a putni taluk and his own tenure as a durputni and their Lordships of the Judicial Committee said with reference to this state of facts this:

Their Lordships are of opinion that under the description "putni taluk" and "durputni taluk" it must be prima facie intended that the tenure called a putni tenure was a tenure transferable by Sale, and upon the creation of which it was stipulated by the terms of the engagements interchanged that in case of an arrear accruing, the estate might be brought to sale. If so according to the terms of Regulation 8 of 1819 the tenure might not only be brought to sale, but it might be sold free from encumbrances.

12. In this case it is to be observed that the putni was created subsequent to the enactment of the putni Regulations and as no document was produced the presumption that the words putni taluk bore the meaning ascribed to it by the Regulation was not displaced or rebutted. These two circumstances distinguish the present case from the case before the Judicial Committee. In the case in Sevester's report it appears that the parties mutually agreed on the one hand to create and on the other to accept a tenure which they called a putni taluk without actual words limiting or defining it as something of a separate kind, and in such circumstances it was held that the parties intended to make the taluk a putni taluk within the meaning of Regulation 8 which had come into force about seven years before the creation of the putni. This case therefore is also distinguishable from the present.

13. In the case of *Nirod Chandra v. Hari Har Chakravarty* AIR 1920 Cal 594, Sir Ashutosh Mookerjee, Acting Chief Justice, Fletcher, J., concurring observed that the use of the expression "putni taluk" in the contract of tenancy does not necessarily create a putni taluk, in other words a taluk subject to the summary procedure for realization of rent provided by the putni Regulation. In that case the question was as to whether the tenure was merely hereditary or was held on a rent fixed in perpetuity and the learned Chief Justice pointed out that while there were expressions which show that the tenure was mourashi there was nothing to show that the tenure was intended to be mokarari. The position therefore is this that while the use of the expression "putni taluk" prima facie imports a putni within the meaning of the putni regulation, that prima facie position is displaced by anything in the document creating the putni which would lead to the conclusion that no power of sale by summary process was reserved to the zamindar. The terms of the document before us are clear and no power to transfer by way of sale is given to the Putnidar.

14. It has next been argued that in any event the use of the expression "putni taluk" in the document renders the document ambiguous and that therefore it is necessary to examine the conduct of the parties to see how the words were understood by the parties. And documentary evidence has been placed before us to show that the predecessor of the plaintiffs one Mathura Mohan Pal Choudhury as durputnidar made a deposit u/s 13 of the Putni Regulation to avoid the Putni sale and reference is made to Ex. 30 dated 8th June 1874, where a recital to that effect is to be found: see p. 15, part. 11 of the paper book lines 1 to 10. Reference has also been made to the practice in the Sherista of the Maharaja of treating this tenure as a putni tenure within the meaning of the Regulation. There can be no question that one of the most settled rules of law for the Construction of ambiguities in ancient instrument is that you may resort to contemporaneous usage to ascertain the meaning of the deed. As was observed by Lord Sugden with reference to such ambiguity in ancient instruments: "Tell me what you have done under such a deed and I will tell you what that deed means." See *Attorney-General v. Drummond* 1 Dr and War 353, see also *Watcham v. Attorney-General of the East African Protectorate* (1919) AC 533,

which was cited at the Bar. This rule however has no application to the present case for the terms of Ex. E are absolutely clear and in such a case the subsequent conduct of the parties is an irrelevant consideration. In this connection the following observation of their Lordships of the Judicial Committee of the Privy Council in the very recent case of the AIR 1934 58 (Privy Council) may be usefully cited. Lord Alness delivering the judgment of their Lordships expressed himself thus:

The only answer made by counsel for respondent 1 to this argument was that the conduct of the parties after the lease was signed, in accordance with which each lessor for a time accepted several payments of royalties, controls the stipulations in the lease, and vouches an agreement between parties to vary its terms. Their Lordships have no hesitation in rejecting this contention. The facts do not support it. Nay, more; it sins against the familiar principle affirmed in the case of *N. E. Ry. Co. v. Hastings* (1900) AC 260, that where the words in a deed are clear as they are in this case the subsequent conduct of parties is an irrelevant consideration.

15. Having regard to these considerations we are of opinion that on a true construction of the kabuliyat of 1818 it must be held that notwithstanding the use of the expression putni taluk the other clear terms of the kabuliyat show that it was a permanent hereditary taluk of a very different kind to which the putni regulation does not apply. We are in entire agreement with the Subordinate Judge on his finding on this issue and we think that the putni sale cannot be sustained on this ground alone. In this view it would not have been necessary to decide the other issues in the case but for the recent pronouncement of their Lordships of the Judicial Committee that it is the duty of the High Court Judges to pronounce their opinions on all important issues in cases before them. In the case of *Muhammad Sule-man v. Birendra Chandra Singh* AIR 1922 PC 405, at p. 252 (of 50 Cal) their Lordships referred to their own remarks in the case of *Tara Kanta v. Padmamani* (1863) 10 MIA 476 at p. 488 to the following effect:

The Courts below, in appealable cases, by forbearing from deciding on all the issues joined, not infrequently oblige this committee to recommend that a cause be remanded which might otherwise be finally decided on appeal. This is certainly a serious evil to the parties litigant, as it may involve the expense of a second appeal as well as that of another hearing below. It is much to be desired therefore that in appealable cases the Courts below, should, as far as may be practicable, pronounce their opinions on all the important points.

16. We now proceed to deal with the findings of the Subordinate Judge on Issue No. 8 as they have been attacked by the appellant. The case of the plaintiffs is that M. Pal Choudhury, one of the biggest darpatnidars within the disputed patni, tendered the arrears dues before the lot was called up for sale on 17th November 1927 and he was thus entitled to stay the final sale under the provisions of Section 13, Clause 2 of the Regulation. The Subordinate Judge after considering the evidence of Mr. Durno, the learned Collector who held the sale,

and his order on the petition dated 17th November 1927 and the evidence of the Maharaja's manager, has come to the conclusion that the provisions of Section 13, Clause 2 had been complied with and that the Collector was bound to stay the sale. It was argued for the appellant that it should have been held on the evidence of the Collector that the money was not produced. On 17th November the order which Mr. Durno made is to the following effect: "Pat up for sale. Agent refuses to take the money": see p. 124, part. 11 (Ex. 48) ; but while deposing in Court more than two years after on 1st December 1929 Mr. Durno states that he refused firstly because the money was not produced and secondly, that the payment at the time was contrary to the law. The Subordinate Judge rightly points out that it is hardly possible to reconcile these two reasons and as such the first reason recorded on the petition must be taken to have been working in the mind of the Collector when he passed the order. Besides the Manager, Kanti Bhusan, states that "when Chandra Babu presented the petition the Collector asked me whether I would accept the money." It appears further on the evidence of the Superintendent Hari Pada, P. W. 20, that under orders of M. Pal Choudhury a cheque of Rs. 15,000 was cashed in the Imperial Bank on 15th November 1927. It is not a matter of surprise that the recollection of the Collector who is a busy officer could not be very precise at the end of two years of the event he was deposing to and it is therefore right to trust to his written note of the event on the day when it occurred. We agree with the Subordinate Judge that the money was tendered to the Collector for payment to the zamindar, and that the money was really tendered before the lot was called up for sale. Another point was raised in connection with this tender and it was said that the tender must be made to the civil Court. The word "Court" should not be strictly construed, for, as has been pointed out by Field, J. in *Tarini Debi v. Shyama Gharan* (1882) 8 Cal 954, if a strictly literal construction were put upon the words "into Court" u/s 13, Clause 2 no payment effectual to stay the sale could be made, for the Court has nothing to do with patni sales which are managed by the Collector.

17. We are therefore of opinion that issue 8 has been rightly decided by the Subordinate Judge in favour of the plaintiffs. The result of this finding is that the sale held is contrary to the provisions of the Regulation assuming the Regulation was applicable to the present case. We proceed now to the consideration of Issue 9, and this refers to the provisions of the Regulations regarding the service of the notices for sale. The necessity of accurately conforming to the provisions of the Regulations has been laid down authoritatively by the Judicial Committee in the case of the *Maharaja of Burdwan v. Tara Sundari Devi* (1883) 9 Cal 619.

18. The first irregularity complained of by the plaintiffs is that the Maharaja filed a separate petition for sale for each separate putni in arrears and caused the same to be stuck up at the Collector's Court and his own Sudder Cutchery, a separate sale notice for each putni, and this was said to be in contravention of Section 8 read with Section 10 of the Regulation. Section 8, Clause 2 of the Putni Regulation read with Section 10 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 1st of Agrahayan 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. The effect of these two sections is that the notice that will be stuck up in the cutchery of the Collector, like the petition, must contain specification of the balances that may be due to the zamindar concerned from all the putnidars 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 zamindar to be similarly, published at the the cutchery or at the principal town or village upon the land of the defaulter. That this is the true legal position has been determined in the case of Bhupen-dra Narain Singh v. Madar Bux AIR 1921 Cal 296 a decision which has been affirmed by the Judicial Committee of the Privy Council in appeal: see Bhupendra Narayan singh v. Madar Bux . The notice which has been produced in this case does not fulfil the requirements of the Regulation. It does not contain a specification of the balances due from all the putnidars under the Maharaja who are named in Ex. N. P. 136, Vol. 2. It mentions only the putni now in suit though it is clear on the evidence that there were several "astam" cases in which the Maharaja was interested. (The notice is to be found at pp. 121 and 122 of the paper book, part 2.) This case is sought to be distinguished on behalf of the appellant on the ground that the rule laid down in this case applies where the putnis are held under one touzi number. It is said that the putni in question was the only putni which was held under one touzi No. 334. There is no foundation for this distinction. Section 8, Clause 2 does not say that a petition to the Collector should contain a specification of any balances due to the zamindar on account of the expired year from all or any putni talukdars under one touzi, but it says that it must contain a specification of balances due from all or any putni talukdars, and in the case of Bhupendra Narain Singh v. Madar Bux AIR 1921 Cal 296 Sir Ashutosh Mookerjee, J., at p. 401 (of 34 C L J) in delivering the judgment of the Court states clearly that the notice to be stuck up must contain specification of the balances that may be due to the zamin-dar concerned from all the putnidars under him. We agree with the Subordinate Judge that this was an irregularity which vitiated the sale.

19. The next irregularity complained of is that there was no service of notice on the cutchery of the defaulting putnidar within the tenure. The putnidars allege that they have a cutchery at Chapra, another village within the putni mahal: the defendant denied this and said that is the cutchery of the plaintiffs in respect of their darputni. The Record of Rights shows that the cutchery which is dag No. 1353 of the khas khatian of the putnidars in village Chapra has been recorded as their cutcherybari with two huts and one well. The presumption arising from the entry in the Record of Rights is not rebutted by the evidence on the side of the plaintiffs to the effect that rents payable by the darputnidar to the putnidars are realized at Kantal-pota which is outside the putni tenure. It is beyond question that the non-publication of the notice in the putni-dar's cutchery within the defaulting tenure is a non-compliance within the provisions of the Regulation

which renders the sale void: see *Maharani of Burdwan v. Mrityunjay Singh* (1887) 14 Cal 365.

20. The next irregularity which is complained of is that there has been no service in the mufussil and considerable criticism has been directed against the conclusion of the Subordinate Judge on this part of the case. The fact of the service or publication at the mufussil depends solely on the testimony of the peon Abdul Jabbar. (After considering the evidence, His Lordship held that the important formalities prescribed by the Regulations were not complied with, and that the sale is bad even if the putni Regulation applies to the case. The judgment then proceeded.) We now proceed to deal with Issue 14 which raises the question as to whether the rule prescribed in Section 10 was duly observed in conducting the sale. The plaintiffs maintained that the lots were not called up successively as is required by the section. Mr. Durno, the Collector, says in his evidence that each case was taken up in the order as it was entered in the register as far as he remembered. We do not see any reason to think that Mr. Durno's recollection is at fault so far as this particular matter is concerned. Reference has been made by the Subordinate Judge to the sale petition register, Ex. 54, to show that it corroborates the plaintiff's case on the-point. We do not find in the register anything which conflicts with his testimony. We do not agree with the Subordinate Judge and we hold that the-lots were called up successively.

21. The next objection is that the Revenue Peshkar does not say that he looked into the kabuliyat in order to see that the balance remaining unpaid exceeded a four annas" proportion of the demand up to the date of the sale. Kanti Babu however says that the kabuliyat was looked into and it seems from the evidence of the Revenue Peshkar, p. 143, lines 29 and 30, that the Revenue Peshkar was not asked any question about this at all in cross-examination. He says that the statement was looked into and the balance of arrears was seen and in such circumstances we cannot agree with the Subordinate Judge that there was any irregularity in this respect. The next irregularity complained of is that the Collector did not give sufficient time to the other bidder to bid, but Mr. Durno says that it took 3 or 4 minutes when the first bid was made and the sale was closed. We must accept the evidence of the Collector and we are of opinion that the Subordinate Judge was wrong in holding that sufficient opportunity was not given to the bidders.

22. The result is that, while we disagree with the Subordinate Judge in his conclusions with regard to Issue 14, we affirm his findings on Issues 6, 8 and 9. It follows that the appeals fail and that the sale must be set aside having regard to our findings on Issues 6,8 and 9 in affirmance of the findings of the Court below. All these seven appeals are dismissed with costs. The costs in the six appeals other than 8 of 1933 are to be paid to the plaintiffs-respondents and in appeal No. 8 of 1933 the costs are to be paid to the respondent Badhika Ranjan Lahiri. We assess the hearing fee in Appeal No. 8 of 1933, which is valued at less than Rs. 5,000 at five gold mohurs. The application in connexion with appeal No.

205 is not pressed and is rejected.

Patterson, J.

23. I agree.