

PRIVY COUNCIL

Rajah Bhupendra Narayan Singh

Vs.

Narapat Singh (PC)

Privy Council Appeal No. 170 of 1924

(Lords Phillimore Carson and Sir John Edge JJ.)

07.07.1925

JUDGMENT

LORD CARSON J.

1. This is a consolidated appeal by special leave from one judgment and 18 decrees dated the 27th February, 1922, of the High Court of Judicature at Fort William in Bengal. Each of the 18 decrees though relating to a distinct subject-matter, raises the same question for decision. Each suit was a suit to recover possession from the defendant (who is the present appellant) the Zamindar of certain villages in Putni settlement of Chaukidari Chakran lands which had been resumed by the Government under the provisions of Bengal Act VI of 1870, and were transferred to the Zamindar subject to the payment of rent assessed on the lands in accordance with Section 51 of the Act. The plaintiffs (respondents) alleged that by a pottah dated 13th November, 1853, the predecessors in title of the appellant Zamindar granted five villages in Putni settlement at the annual rent of Rs. 4,589 to one Krishna Chandra, from whom the plaintiffs derived title. It was further alleged by the plaintiffs, and it is not now in dispute that at the time of the Putni settlement there were certain lands in every village which were Chaukidari Chakran lands, and were held and enjoyed by the Chaukidars in lieu of their salaries, and that such lands which had been transferred as aforesaid by the Collector form part of the lands of the Putnidar under the said pattah of 13th November, 1853. The appellant, on the other hand, denied that under the terms of the said pattah the plaintiffs had any title to the Chaukidari Chakran lands released by the Government, and that in any event the plaintiffs were not entitled to get possession thereof without paying some rent in addition to the annual rent of Rs. 4,589 fixed in the pattah.

2. All the suits were tried by the Munsiff of Rampurhat, who by his judgment dated

30th September 1910, held that the disputed property was included in Putni settlement, and that the plaintiffs were entitled to obtain Khas or actual possession of the lands in suit, but that they could not do so without paying an additional rent to the Zamindar, and he concluded his judgment in the following terms:-

"The plaintiffs' putni lease appears to cover all the lands within the boundaries of the mahals, but the profits of the Chaukidari lands were not taken into account in determining the rent payable by the Putnidar. The plaintiffs must be held to pay a higher amount for the resumed lands than that which has been assessed for Chaukidari purposes on these lands by the Collector as by the resumption the lands were enfranchised and the Putnidars would get the land free from the burden of the public service. The principle has been laid down in 4 Calcutta Weekly Notes, page 814, the Putnidar is bound to pay to the Zamindar such a rent for these lands as corresponds to the proportion between the gross collection and the Putni rent formerly payable by him."

3. On an appeal and cross appeal to the District Judge of Birbhum the decree and order of the Munsiff was by a judgment of 13th September 1919, affirmed. The plaintiff, now respondent, appealed to the High Court of Judicature against so much of the order as adjudged that the plaintiff should pay to the defendant No. 1 such increased Putni rent over the Douk Jumma as may be proportionate to the increase of the present collection over what it had been at the time at which the Putni Mahal was created. The learned Judges of the High Court allowed the appeals of the plaintiff and made decrees setting aside that part of the decision of the District Judge which declared the Zamindar entitled to obtain additional rents from the plaintiff, and the only question to be considered on the present appeal by the appellant Zamindar against the said order is as to whether such increased rent is or is not payable. It has not been disputed, and indeed it was so stated by the judgment of the High Court that by a long series of decisions the Zamindar's right to a share of the rents and profits in addition to the amount payable to the Chaukidari fund under the provisions of Act VI of 1870 was established :-

"These decisions," say the learned Judges, "have recently been considered and followed in the case of *Maharaja Bijoy Chand v. Krishna* which was decided in December, 1920, and no useful purpose would we think be served by going through them again. They undoubtedly do support the contention urged before us on behalf of the Zamindar respondent and it is useless to suggest that they are in the main distinguishable from the cases before us."

4. The learned Judges, however, held that the series of decisions laying down this principle could no longer be supported having regard to the decisions of this Board in two cases, viz. : *Raja Ranjit Singh v. Kali Dasi Debi*, Their Lordships cannot agree with the appellate Court that either of the cases referred to has the effect attributed to it by the learned Judges. In the first of these cases where it is to be observed the order was in substantially the same form as in the present case, all that this Board decided was that a putni grant by a Zamindar of his interest in lands includes his interest in Chaukidari Chakran lands within the boundaries of the grant, and that upon there being resumed and transferred to the Zamindar under Bengal Act VI of 1870 the Patnidar or Darpatnidar holding from him is entitled under Section 51 of that Act to possession. The Patnidar did not in that case challenge the validity of so much of the order appealed from as rendered the decrees for possession subject to the fixing of a fair and reasonable assessment. In giving the judgment of the Board, Lord Parker of Waddington added : " It is satisfaction to find that the view above expressed is that hitherto universally adopted in the Indian Court."

5. In the second of the above mentioned cases referred to by the Judges of the appellate Court, the only point decided was that upon the transfer of Chaukidari Chakran lands situated within the villages to the Zamindar an action by the Patnidars for declarations that such lands formed parcel of the patni mahal, and that they were entitled to a settlement and Khas possession was not an action for specific performance of contract within Article 113 of Schedule II of the Indian Limitation Act, 1877, but a suit for possession of immovable property within Article 114. Their Lordships can find nothing in the judgment in any wise affecting the point raised upon the present appeal. The Board has examined the record in that case, and it is to be observed that the order appealed from as in the former case, recognised the right of the Zamindar to have a rent fixed for the Chaukidari Chakran lands in question, and that this part of the order was not questioned or appealed from in the case before the Board, and the judgment appealed from was in their Lordships' opinion correct.

6. In a case decided by the High Court of Calcutta in 1924, *Pryambada Debi v. Monohar Mukhopadhyaya*, the learned Judges refused to follow the decision appealed from in the present case, holding that the appellate Court had misread or had not appreciated the two judgments of the Privy Council on which they had based their decisions. Their Lordships agree with this view, and are of opinion that the Court below was in error in holding that the cases referred to before the Privy Council made any change in the law as to the right of the Zamindar to have a rent fixed under the

circumstances existing in the present case. It was, how ever, argued in the present case before the Board that under Section 51 of Act VI of 1870 the Patnidar is entitled to hold the lands rent free, or without paying additional rent for them. Their Lordships cannot accept this view. The peculiar character of Chaukidari Chakran lands, and how they came to be included, without paying rent, in the various Putni Pattahs, as is found in the present case, has been frequently discussed before the Board as in the cases referred to and others and as Lord Buckmaster says in *Ranjit Singh v. Maharaj Bahadur Singh, (supra)* :-

"It does not follow that because the rights originally arose by virtue of a grant declared to be a contract within the meaning of Section 51 they are, therefore, rights, contractual in the sense that contract by its terms creates and regulates the personal obligations and duties of the grantor in the circumstances that have arisen. At the time when the putni grants were made the resumption of the grant Chaukidari Chakran lands was not even contemplated and the grant necessarily contains no reference whatever to the circumstances that would arise and the relationships that would exist in the event of the Government resuming possession."

7. Their Lordships, therefore, see no reason for interfering with the long series of authorities commencing as far back as the year 1900, which have established the right of the Zamindar to have an additional rent fixed for such lands, nor can their Lordships overlook the fact that in the cases already referred to before this Board no exception was taken by the Putnidar to the fixing of such rents as a condition of being put into possession.

8. Their Lordships are, therefore, of opinion that this appeal should be allowed, that the decrees appealed from should be set aside, except so far as they confirm the decrees of the lower appellate Court, and that such last-mentioned decrees should be restored. The respondent should pay the costs of this appeal and of the appeals in the High Court. Their Lordships will humbly advise His Majesty accordingly.

Appeal allowed.

Cases Referred.

(1921) 34 CLJ 275 : 66 IC 357

AIR 1917 PC 8: 44 Cal 841 : 44 IA 117 : 21 CWN 609 : 32 MLJ 565 : 15 ALJ 390 : 25 CLJ 499 : 19 Bom LR 462 : (1917) MWN 459 : 6 LW 101 : 2 PLW 1 : 22 MLT

489 (PC) and Ranjit Singh v. Maharaj Bahadur Singh, AIR 1918 PC 85: 46 Cal 173 :
45 IA 162 : 16 ALJ 964 : 25 MLT 8 : 29 CLJ 193 : 21 Bom LR 506 : 10 LW 83 : 35
MLJ 728 : 23 CWN 198 (PC).

AIR 1925 Calcutta 651 : 29 CWN 328