CALCUTTA HIGH COURT

Ram Lal Dubey

Vs

Secretary of State

(A Mookerjee, C.J. Carnduff, J.)

11.04.1912

JUDGMENT

A Mookerjee, C.J.

1. The sole point in controversy in this appeal is whether the plaintiff-appellant has forfeited his right to renewal of a lease granted on the 1st April 1899 for a term of five years under the Arable Waste Land Rules. After the expiry of the lease on the 31st March 1904, the plaintiff made an application for renewal on the 9th April following. Proceedings were then taken for the survey and measurement of the land, which did not terminate till the 13th December 1905. On that date, the Sattlement Officer called upon the plaintiff to execute a kabuliyat within the 3rd January 1906; the plaintiff complied with the requisition on the very next day. The records were thereupon submitted to the Deputy Commissioner, who, however, refused sanction on the ground that the plaintiff was not a suitable tenant. On the 16th January 1908, the plaintiff commenced this action for declaration that he was entitled to a renewal of the lease. The claim was resisted on the ground that the plaintiff had not applied for renewal before the expiry of the term and was consequently not entitled to a resettlement under Clause 8 of the preliminary lease granted to him in 1899. It was also contended on behalf of the Secretary of State that by breach of the other conditions in the preliminary lease the plaintiff had forfeited his right to re-settlement. The Court of first instance overrnled all these contentions and made a decree in favour of the plaintiff. Upon appeal, the District Judge has confined his attention to one question only, namely, whether upon a true construction of the preliminary lease the plaintiff had forfeited his right to renewal of the lease by reason of his failure to make an application in that behalf before the expiry of the term. This question the District Judge has answered in favour of the defendant; in our opinion, his view cannot be supported.

2. Clause (8) of the lease authorises the Deputy Commissioner to enter at all times upon all lands that are used for agricultural purposes, with a view to inspection and measurement. The same clause also entitles the tenant at any time to apply for inspection and measurement. But it provides that in the latter contingency, if the tenant makes an application of this character before

the expiry of the term of the lease, the costs of the measurement shall be payable by him as rent. Clause (8) further makes it obligatory upon the Deputy Commissioner to inspect and measure the land upon the expiry of the term of the lease. It then lays down that if upon measurement it is found that a moiety of the land is covered by homestead or is used for agricultural purposes or that a portion of the same is allowed to be uncultivated according to the good practice adopted in cultivation or has been properly used in any other way for the purposes of cultivation, the original lessee, subject to the rules set forth, will at all times be entitled to have the lease renewed for such additional period as corresponds to the last date of the term of the settlement, and after that for the term of every new settlement of the Taluk. Clause (10) provides that if no application is made for a renewed lease before the expiry of the term of the preliminary lease, the lessee may be allowed to hold the land as a tenant at will so long as the Deputy Commissioner does not make any other arrangement, but cannot be allowed to hold the same in any other manner. The learned Government Pleader has contended that the terms of Clauses 8 and 10 taken together indicate that the lessee has no claim to a re-settlement of the land comprised in the preliminary lease, unless he has, before the expiry of the term thereof, made an application in that well founded. What determines the right of the lessee to claim re-settlement is not the fact of an application before the expiry of the term but the diligence he has displayed during the subsistence of the term. If half of the land has been reclaimed, he has a right to re-settlement. If half of the land has not been reclaimed, notwithstanding an application made prior to the expiry of the term of the preliminary lease, he has no claim to a re-settlement. The present case is, therefore, distinguishable from the class of cases in which there is an unconditional covenant for renewal expressly requiring the lessee to notify to the lessor his intention to take a renewal before the determination of the term; when that is the case, the lessee loses his right if he fails to give notice in time: *Bayly v. Leomimter Corporation*[1] *Wight v. Hopetoun*[2] *and Nicholson v. Smith*[3] But it is worthy of note that, even in that class of oases, relief will be granted against failure to give notice in time, under special circumstances: *Ross (Earl) v. Worsop*[4] *and Statham v. Liverpool Dock Co*[5]. *and Hunter v. Hopetoun*[6] In the case before us, there was no express provision for notice of renewal before expiration of term, and, as renewal could not be claimed merely at the option of the lessee, the rule that where the lease is silent as to the time of application for renewal, it should be made a reasonable time before expiration of the term, cannot be applied: *Lewis v. Stephenson*[7] *and Jaggi Lal v. Cooper*[8] Much reliance was placed by the respondent on Clause 10; that clause, in our opinion, does not militate against the view we take; it was inserted to provide for the contingency that the lessee might continue in possession pending inspection and measurement of the land. In the absence of such a provision, the lessee might ultimately" put forward a claim that he had acquired the status of an occupancy or non occupancy raiyat or that he was entitled to remain in occupation till an adequate notice to quit had been served upon him. The effect of Clause 10 is to place him in the position of a tenant at will, so that if the land is not ultimately settled with him, he has to quit the premises as soon as the new comer is ready to enter into occupation. The ground upon suit cannot, therefore, be supported.

3. The result is that this appeal is allowed, the decree of the District Judge set aside and the case

remanded to him in order that the other points which arise in the appeal may be considered. Here we may add that it was contended on behalf of the Secretary of State that as the plaintiff, during the continuance of the preliminary lease, broke a condition of the lease, he has forfeited his right to a re-settlement. This question will be open for consideration by the District Judge and may be of great importance in view of the decisions in *Job v. Banister* [9]*Finch v. Underwood*[10] *and Greville v. Parker*[11] which affirm the doctrine that where the renewal is made conditional on the observance of his covenants by the lessee, but not otherwise *Hare v. Burges*[12] such observance is a condition precedent to the right of renewal, and, the right of renewal is not enforceable, if at the time for renewal, there is a subsisting breach of covenant. The costs of this appeal will abide the result.

Cases Referred.

1(1792) IV es. J. 476; 3 Bro. C.C. 529 ; 30 E.B. 446
2(Earl) (1886) 4 Macq H.L. 729
3(1882) 22 Ch. D. 640 ; 52 L.J. Ch. 191 ; 47 L T. 650 ; 31 W.R. 471
4(1741) 1 Brown P.C. 281; 1 E.R. 568
5(1830) 3 Y. & J. 565
6(Earl) (1865) 13 L.T. 130 ; 4 Macq. 979 ; 140 B.R. 406
7(1898) 67 L. J.Q.B. 296 ; 78 L.T. 165
827 A. 696 ; A.W.N. (1905) 154
9(1836) 2 K. & J. 374 ; 69 E.R. 827 ; 110 R.R. 273
10(1876) 2 Ch. D. 310 ; 45 L. J. Ch. 522 ; 34 L.T. 779 ; 24 W.R. 657
11(1910) A.C. 335 ; 79 L.J.P.C. 86 ; 10 L.T. 380 ; 26 T.L.R. 375 (P.C)
12(1857) 5 W.R. (Eng.) 585 ; 109 R.R. 915