

CALCUTTA HIGH COURT

Radha Charan Chandra

Vs

Maharaja Ranjit Singh

(A Mookerjee, Beachcroft, JJ.)

08.08.1917

JUDGMENT

A Mookerjee, J.

1. This is an appeal by the defendants in a suit for assessment of rent and for recovery of arrears at the rate assessed. The lands in suit were originally Chowkidari Chakran and were situated within the ambit of the Patni granted by the plaintiff to the predecessors-in-interest of the defendants on the 12th June 1854. On the 12th September 1899 the lands were resumed under the provisions of the Village Chowkidari Act, 1870, and were transferred to the plaintiff as the Zemindar. The plaintiff thereupon settled the lands with tenants. In 1904 the Putnidars instituted a suit for ejectment on the allegation that they were, under the terms of the Putni lease, entitled to possession of those lands. In that litigation they were successful. The Zamindar now seeks to have rent assessed on those lands and to recover arrears with cesses and interest. It has not been argued before us that the Putnidars are entitled to retain possession of those lands, upon payment to the plaintiff of the exact amount assessed by the Collector under the Village Chowkidari Act. It is indeed conceded that the plaintiff as Zemindar is entitled to receive an additional amount. The question in controversy is as to the principle on which the additional amount should be determined. The Court of first instance held that the plaintiff was entitled to recover from the defendants rent calculated according to the following method: first, determine the annual value of the land as calculated by the Collector under the Village Chowkidari Act; then, deduct therefrom one half; the balance represents the amount payable by the Zamindar into the Chowkidari fund; the defendants, should pay to the Zemindar one-half of this balance, This amount was calculated at Rs. 23-8 annually. On appeal, the District Judge has held that the plaintiff is entitled to have rent assessed on the basis of actual profits of these lands; he has found that the annual income is Rs. 190, and has on this ground determined Rs. 71 8-0 as the amount annually payable by the defendants. We are of opinion that the view taken by the District Judge cannot be supported.

2. Section 51 of the Village Chowkidari Act provides that the order of transfer shall operate to transfer to the Zamindar the land therein mentioned, subject to the amount therein mentioned and subject to all contracts theretofore made in respect of, under, or by virtue of which any person other than the Zemindar may have any right to any land, portion of his estate or tenure, in the place in which such land may be situate. Schedule C furnishes the form of the order of transfer and shows that the effect of the transfer is to vest the property in the Zamindar, subject to the

payment of the annual assessment to the Chowkidari fund and abas subject to all contracts binding him in respect of any lands, portions of the said Zamindari situated within the said village. The effect of the transfer is thus to make the Zemindar hold the property subject to the rights previously created by him in favour of subordinate holders. What then is the principle on which the assessment is based, so far as the Zamindar is concerned? Section 49 provides that all lands transferred under Section 48 shall be subject to assessment which shall be fixed at one-half of the annual value of such land according to the average rates of letting land similar in quality in the neighbourhood of such land, and such assessment shall be made by the punchayat of the village. Section 50 then provides that such assessment when made by the punchayat shall be submitted to the Collector of the district and he or any other officer exercising the powers of a Collector may approve, or revise and approve the same, provided that it shall be lawful for the Zamindar to contest the assessment before it is so approved, and after such approval the Collector of the district shall, by an order under his hand in the form in Schedule C, transfer to such Zemindar such land subject to the assessment so approved. Consequently the assessment is made on the basis of the annual value calculated according to the average rates of letting land similar in quality in the neighbourhood, and, the Zemindar is allowed an opportunity to contest the propriety of such assessment. In these circumstances, we are of opinion that while the annual value, is taken as the measure which determines the assessment payable by the Zemindar to the Government, an entirely different basis should not be adopted to determine the amount payable by the Putnidar to the Zemindar. This is subject to the reservation that the rights of the Zamindar and Putnidar must be governed by the terms of the special contract between them. But in the absence of such special terms, the same basis of calculation should be adopted, as between the State and the Zemindar on the one hand and the Zemindar and the Putnidar on the other hand. The view we take is supported by the decision in *Harak Chand Babu v. Charu Chandra Singha*¹ The principle strictly applicable to cases of this character was laid down in the case of *Hari Narain Mozumdar v. Mukund Lal Mundal*² which was followed in *Rajendra Nath v. Hira Lal*³ and *Gopendra Chandra Mitter v. Taraprasanna Mukerjee*⁴ that principle is that the rights of the parties as between themselves must be regulated by the conditions under which the Putni was created: *Kazi Nawaz Khoda v. Surendra Nath De*⁵ Where, however, definite information is not available as to the exact mode in which the Putni rent was originally settled, the principle we have explained may partly regulate the rights and obligations of the Zemindar and Putnidar. The result is that this appeal is allowed, the decree of the lower Appellate Court set aside and that of the Court of first instance restored. This order will carry costs both here and in the Court of Appeal, below.

Cases Referred.

18 Ind Cas. 7(sic)6 : 13 C.L.J. 102 : 5 C.W.N. 5
24 C.W.N. 8(sic)4
37 Ind. Cas 554 : 14 C W.N. 995
47 Ind Cas. 790 : 14 C.W.N. 1049. 37 C. 598
55 C.L.J. 33 : 34 C. 109 : 11 C.W.N. 20(sic)