PATNA HIGH COURT

Secretary of State

Vs

Babu Rajendra Prasad

(Wort and Dhavle, JJ.)

01.03.1937

JUDGMENT

Wort, J.

1. This is one of a number of appeals by the Secretary of State for India in Council arising out of actions in ejectment and relating to building plots in the Town of Daltonganj. There was an alternative claim in eaou case for settlement of a fair rent. This alternative claim has been granted in each case. In this action the claim for ejectment failed. The settlement of fair rent raises a question of jurisdiction and arises in these circumstances. In this case, the claim for ejectment failed and the Judge proceeded to settle a rent by way cf enhancement of the rent already being paid. In other cases the claim for ejectment succeeded and the Judge proceeded to fix a rent on payment of which the defendants could remain in possession. In those cases where the action for ejectment succeeded, a fair rent was settled by the Court at the instance of the plaintiff, as it was stated that there was no intention to eject the defendants, and although it was desired to have the decision of the Court on the merits of that question, on payment of a fair rent, the tenants would be allowed to remain in possession. There was no suggestion that the Court was exercising the jurisdiction to settle a fair and equitable rent or to enhance the rent under the Chota Nagpur Tenancy Act. Indeed, so far as enhancement was concerned, the Court proceeded to allow the plaintiffs claim for considerations which would not apply to the exercise of jurisdiction under that Act. Therefore, in neither case could it be suggested that the Court was exercising a statutory jurisdiction in that regard. The relationship of landlord and tenant which existed is, in the first instance, a matter of contract, and by assessing rent to be paid by the tenant, the Court purports to make a bargain between the parties--a jurisdiction which it does not possess. It is rather difficult to imagine how the Judge thought that he had jurisdiction in this matter as the question is an elementary one. If authority for the proposition that no such jurisdiction exists were needed, it is to be found in *Secretary of State v. Nistarini Annie Mitter*[1], where Sir Dawson Miller appears to have stated:

> As this was not a suit relating to the agricultural land governed by the Bengal Tenancy Act, the Court had no power to impose upon the parties a bargain not of their own making.

2. That matter is clear.' 1 leave for consideration the question which arises in this connection in

one other of the appeals which will be dealt with on the facts of that particular case. But so far as the question was one of making a bargain for the parties and not the interpretation of a contract or lease entered into by those parties, I hold that the claim for enhancement of rent or settlement of fair and equitable rent must fail in every case. I should have stated that part of this appeal, relates to the enhancement of rent towards which the appeal is directed. The appellant contends that the rate of enhancement is not sufficient, but this question for the reasons which I have stated does not arise. The land, the subject-matter of this dispute, is a part of the khas mahal. It formed part of a revenue-paying estate which was purchased by Government in default of paj merit of revenue about 120 years ago. There is no doubt that during the course of years the Town of Daltonganj, which was in all probability in its origin a village, developed into a town of some importance and became the headquarters of the Division. This and some other facts were proved in the case for the purpose of establishing a matter with which we now have no concern, that is, the increasing value of the land. The land in dispute was let to one Badrinath for building purposes at a date of which there is no evidence.' The defendants contend it was about 60 or 70 years ago; it measured "38 acre and was held at a rent of 13 annas 6 pies. In 1894, there commenced a settlement which was known as Mr. Sunder's settlement which was completed in 1896. The rent was enhanced under that settlement to ₹ 3. Subsequently Badrinath sold 21 acre leaving in hand '17, the area now in dispute. Government agreed to this transfer which was in 1908 and apportioned the rent for the balance at ₹ 1-5-0. The land appears to have been the subject-matter of a mortgage by Badrinath and in 1913 in execution of a mortgage decree defendants Nos. 3 to 5 purchased the land but were not recognized by the landlord. It was contended, therefore, that in any event they were trespassers and liable to ejectment. That point, however, I will deal with in a moment.

3. In 1926 there was a notification by Government calling upon the holders of building sites in Daltonganj including the holder of the plot in dispute, to execute leases at an increased rent. This the defendants failed to do, and in September 1928, a notice calling upon the defendants to quit on March 31, 1929, was issued. The learned Judge in the Court below has held that the notice was served personally on defendant No. 1 but was not served on defendant No. 2 nor was it served on defendants Nos. 3 to 5. Against this finding there is no appeal. Defendants Nos. 3 to 5 after their purchase in 1913 proceeded either to demolish or alter the buildings then on the land and submitted plans for alteration to the Deputy Commissioner as Chairman of the District Board, which were sanctioned by him. The learned Judge in the Court below has held that the defendants had a permanent right in the land by reason of the fact that the defendants were allowed to build and to erect permanent structures to the knowledge of the landlord. He has held, however, that no occupancy rights existed in the defendants as the Chota Nagpur Tenancy Act did not apply. As regards the latter question, the facts are as follows:

> It is admitted by both parties that the land was let out for building purposes. It was not pleaded in the written statement that rights existed under the Chota Nagpur Tenancy Act and the question appears to have been raised for the first time in the argument before the Judge in the Court below. The learned Judge has stated that it was not the contention of the parties that Badrinath was an agriculturist, nor is there any evidence to lead one to that conclusion. In those circumstances the Judge was undoubtedly right in coming to the conclusion that as the land was let out for building purposes, no occupancy rights in the

defendants existed. This is supported by the decision to which I have already referred in *Secretary of State v. Nistarini Annie Mitter*[2], The Government Pleader advances the argument that the learned Judge was wrong in coming to the conclusion that the defendants right was a permanent one. The learned Judge, relying upon the decision of the Calcutta High Court in *Mohoram Chaprasi v. Talamuddin Khan*[3] has come to the conclusion that the right was a permanent one. It appears that the Judge has based his conclusion on the presumption of a lost grant. By that I understand him to mean that the facts and circumstances of the case led to the inference that it was agreed by the landlord, when letting the land to Badrinath, that he should have a permanent lease. It is impossible to lay down any definite rule from what facts such inference could be drawn but the case upon which the learned Judge relies does not support his conclusion. In that case the facts that were established were first, the original tenant and his successor had been in occupation of the land for over 60 years; secondly, that the rent had never been varied; thirdly, that the tenancy had been treated by the landlord as heritable; and fourthly, that the land had been let out for residential purposes. Even assuming that those four facts were established, the inference would not be irresisitible, but in the case before us two facts, namely, the second and the third, have not been made out. Rent, as we have seen ii this case, has been varied from time to time. It was enhanced during Mr. Sunder's settlement, and 'he landlord in this case has treated it as liable to further enhancement by calling upon the defendants to execute leases at a higher rent. Had all the facts been established to which Mookerji, J. in that case referred, I do not agree that necessarily the inference of a permanent lease should be drawn, but in this case two at least of these four items are wanting as I have said.

4. The defendants have relied very strongly on what they have described as equitable estoppel. The fact upon which they rely to establish this proposition is that the landlord, the Government, stood by and allowed the person in possession to erect permanent buildings. They rely also upon the fact that the Deputy Commissioner, who was the Subordinate Judge, gave delivery of possession to defendants Nos. 3 to 5 on execution of a mortgage decree. They also rely upon the fact that, the Deputy Commissioner, in the capacity of Chairman of the Municipality, approved of the building plans of defendants Nos. 3 to 5. In my opinion we must rule out the last two facts. The Deputy Commissioner as Subordinate Judge was not acting as the agent1 for the landlord even supposing' that his action would have otherwise estopped the landlord nor was the Deputy Commissioner acting as the agent of the landlord in his capacity as the Chairman of the Municipality. No assistance therefore can be got from those two facts by the defendants.

5. We are, therefore, left with the fact that the tenant was allowed to erect buildings on the land to the knowledge of the landlord. I think the case in *Lala Beni Ram v. Kundan Lal*[4] is conclusive of this matter. In that case the landlord let out to five tenants six bighas of land for the term of the current settlement for the construction thereon of a saltpetre factory. There was an assignment by the landlords of their interests as also the interests of the tenants, and the tenants there relied upon the fact (hat after the completion of the saltpetre factory, for which the land was taken, the landlord saw that, from time to time the defendants and their ancestors were erecting houses and spending large sums of money thereon without any objection or prohibition, which, it was

alleged, induced the defendants and their ancestors to build. The Subordinate Judge in that case held that the saltpetre factory only went on for a few years and that since that date the land had been used for another purpose, namely, the building of shops, which the landlord did nothing to prohibit, and he applied the rule which he stated thus:

> If a man permits another to build upon the land, and with the knowledge that the building is being erected, stands by and does not prevent the other from doing so, then, no doubt, equity comes in, and by the rules of equity, which in this respect are the same as the rules of law, he cannot eject that other person.

6. The decision of the Subordinate Judge was confirmed by the Court of Appeal, the High Court. Lord Watson describes the statement of the principle upon which the Subordinate Judge relied, a principle to be found in *Gopi v. Bisheshwar*[5] as "loose and inadequate" and makes this observation:

> In order to raise the equitable estoppel which was enforced against the appellants by both the Appellate Courts below, it was incumbent upon the respondents to show that the conduct of the owner, whether consisting in abstinence from interfering or in active intervention, was sufficient to justify the legal inference that they had by plain implication contracted that the right of tenancy under which the lessees originally obtained possession of the land should be changed into a a perpetual right of occupation.

7. And Lord Watson held that:

> Their Lordships have had no difficulty in coming to the conclusion that the respondents have failed to discharge themselves of that onus.

8. Not only in this case, as I have stated, is there an abeence of the facts from which an inference of a permanent tenancy could be drawn, but there is equally an absence of evidence to establish "by plain implication" that the landlord had contracted that the right of tenancy under which the lessees originally obtained possession should be changed into a perpetual right of occupation. In my judgment, the defendants' claim to a permanent tenancy fails. But there is another matter to be considered before this appeal can be disposed of. If the defendants' rights were not permanent, what were they? In the first instance I have to note that the parties here contracted as landlord and tenant and it is not suggested that these lettings were by way of settlement of revenue and Mr. Sinhvon behalf of Government admits that the lettings were governed by the ordinary law of landlord and tenant. There was a suggestion on the part of the plaintiff that these lands were let out for periods of fifteen and thirty years; but there is no evidence to establish the fact that that was the oral agreement between the parties. The case is not governed by the Chota Nagpur Tenancy Act as I have said, nor is it governed by the Transfer of Property Act. The Crown Grants Act (XV of 1895) provides:

> Nothing in the Transfer of Property Act, 1882, contained shall apply or be deemed ever to have applied to any grant or transfer of land or of any interest therein heretofore made or hereafter to be made by or on behalf of Her Majesty the , Queen-Empress, her heirs or successors or on behalf of the Secretary of State for India in Council to, or in favour of,

any person whomsoever.

9. And it has been held in the decision to which I have already made two references that this Act applies to grants such as the one with which we are dealing. The matter, therefore, must be dealt with apart from the Transfer of Property Act. The defendants' predecessor went into possession without any agreement as to the renewal of the tenancy as there is a complete absence of evidence as to any contract with regard to that particular. By Common Law, applied as the rule of justice, equity and good conscience, in the absence of any provision in Indian Law in this regard, the tenants were tenants from year to year. We have noticed that the finding is that the notice was not served on defendant No. 2 and was not served on defendants Nos. 3 to5. Defendants Nos. 3 to 5 were transferees, there being nothing in the law of India to prevent the original grantee from assigning his interest in the land, and defendants Nos. 3 to 5 were therefore entitled to notice before ejectment. The Judge in the Court below has noticed that the Government did not agree with the mutation of the defendants' names after they had purchased and has held that such mutation was not obligatory in, this instance--a decision regarding the correctness of which there can be no doubt. The original grantee being entitled to assign as I have held, it was necessary to establish that notice had been served on defendants Nos. 3 to 5 which the landlord in this case has failed to do. In these circumstances, although the defendants had not a permanent interest, the plaintiff is not entitled to eject them. Whilst, therefore, setting aside the decision of the Subordinate Judge as to the enhancement of rent, I would dismiss the plaintiff's appeal but without costs

Dhavle, J.

10. This appeal arises out of a suit for ejectment from a non-agricultural holding in Daltonganj in the Palamau Government khas mahal. The case of the plaintiff, who is the appellant before us, was that the land'was in the lease of defendants Nos. 1 and 2 for residential purposes without a registered instrument' and carried an annual rent of Re. 1-5-0 payable by the official year ending March 31. In 1924 the plaintiff had a survey made of the town and fixed certain new rates for building sites in view of the growth of trade and rise in local values. A. new lease with the relevant rate was offered to defendants Nos. 1 and 2, the recorded lessees of the plaintiff, and also to defendants Nos. 3 to 5 who had acquired the holding from defendants Nos. 1 and 2 and were in occupation of it without the permission of the Deputy Commissioner. As none of the defendants accepted the offer the Deputy Commissioner gave them notice to quit, and on their failure to comply this suit was tiled for their ejectment, with a prayer in the alternative that a rent of Rs 10-3-0 per annum in accordance with the rate of ₹ 60 per acre fixed by the plaintiff in 1924 be declared payable by-defendants Nos. 3 to 5 "for a period of 30 years or till the next Settlement. Defendants Nos. 1 and 2 denied the plaintiff's case and said that defendants Nos. 3 to 5 had been unnecessarily impleaded, being trespassers; but they did not contest the suit Defendants Nos. 3 to 5 pleaded a title to the holding in virtue of an auction-purchase by their father in execution of a decree against Badrinath, the grandfather of defendants Nos. 1 and 2. They denied the plaintiff's right to raise the rent, and said that the lease was permanent, heritable and transferable, with a fixed rent. They also said that that plaintiff's claim to eject the defendants was "barred by the principle of estoppel, waiver and acquiescence," since he had stood by and raised' no objection to the construction of a substantial house on the site by their father at

considerable expense with the permission of the Deputy Commissioner as Chairman of the Daltonganj Municipality.

11. The learned Subordinate Judge found' that in the circumstances of the case there was a presumption of permanency' as regards the tenancy in favour of the' contesting defendants, and that the plaintiff was also barred from claiming ejectment by the principle of equitable estoppel. An issue had been framed as to the validity and legality of the notice that the plaintiff claimed to have served on the defendants , and though defendants Nos. 3 to 5, the contesting respondents' before us, do not appear to have objected in their written statement that they had not been' properly served With the notice, the learned Subordinate Judge found that ho notice had been served upon them, lie also found that no notice had been served upon defendant No. 2. But he negatived the. claim of these defendants to told at a fixed rent, without any enhancement, and found that a rent of ₹ 4-4-0 at the rate of ₹ 25 per acre, was fair and equitable. In the result he decreed the suit in part, disallowing the plaintiff's 'claim for ejectment and fixing the rent at ₹ 4-4-0 a year. It may be noticed incidentally that he did not deal with that part of the plaintiff's prayer in which the Court was asked to fix the rent, not without any term but "for a period of 30 years or till the next settlement." The plaintiff appeals and conteods that this was not a case-where a permanent tenancy could be properly inferred, and that there was no equitable estoppel to prevent the plaintiff from obtaining ejectment.

12. In paras. 9 and 13 of their written statement, defendants Nos. 3 to 5 (the contesting respondents) pleaded that the land, in suit had been originally settled with their predecessor-in-title, Badrinath, over 60 years ago, as a permanent lessee, for building purposes, at a fixed rent of Re. 1-5-0 per annum. No evidence was, however, given to show when the original settlement with Badrinath was made. The earliest indication on record is afforded by Ex. 6, the khatian of Sunder's Survey and Settlement, 18J 4- 95 to 1896-97, which shows that previously Badrinath had houses on three plots with an area of 0'38 acre, on a rent of Re. 0j13-t), and that this rent was raised to ₹ 3 in the proceedings of that settlement. Exhibit 2, the jamah an di register, shows that Mr. Sunder's Settlement was to run for 15 years from October 1, 1896, and that during the currency of this settlement Badrinath sold two of his plots, with an area of 0"21 acre, to one Dhanukdhari Lal who was recognized by the khas mahaj as a new tenant on an enhanced rent of ₹ 3-2-0, Badrinath continuing, as a tenant in respect of the balance of 0.17 acre on a rent of Re. 1-5-0. It appears from the evidence of plaintiff's first witness, the mutation clerk of the khas mahal, that the transfer of 0.21 acre to Dhanukdhari Lal was effected in 1908. The learned Subordinate Judge has clearly misread Ex. 2 in taking it to mean that Badri's rent was ₹ 3-2-0 for 0.38 acre. He has arrived at his finding of permanency of the tenancy of 0.17 acre on the authority of such cases as *Abdul Hakim Khan v. Elahi Baksha Shah*[6], *Pramathanath Das v. Champa Dasi*[7], and *Mohoram Chaprasi v. Telarauddin Khan*[8] Out of these cases the one that is most in the respondents' favour is Mohoram Chaprasis case 15 CLJ 220 : 13 Ind. Cas. 806 : 16 CWN 567 where Mookerjee, J., held that a tenancy could be inferred-to have been in its inception permanent, where its origin was unknown, the original tenant and his successor had been in occupation for over 60 years on a rent which was never varied, the tenancy was treated by the landlord as heritable and the land was let out for residential purposes. This view, which was carried still further by the same learned Judge in *Shoroshi v. Bhaglu Sah*[9] was criticized in Abdul Hakims case AIR 1925 Calcutta 309 : 29 CWN 138 : 52 C 43 : 85 Ind. Cas. 103, and can

hardly be accepted as sound having regard to the observations of Rankin, C.J. in *Kamal Kumar v. Nand Lal*[10], The mere circumstance that the tenant and his family have for a very long time been allowed to continue residing in the same place without any variation in the rate of rent is a circumstance which by itself is an insufficient foundation for holding that the tenant's right was permanent in its origin.

13. In the present case, moreover, the original rent of Re. 0-13-b' for 0'38 acre was changed to ₹ 3 in Sunder's Settlement, and the transfer of 021 acre to Dhanukdhari was only recognized by the plaintiff on an enhanced rent of ₹ 3-2-0 instead of ₹ 1 11-0. That the proportionate rent for 0'17 acre out of the total of ₹ 3 fixed by Mr. Sunder for 0'38 acre, has remained at Re. 1-5-0 since that settlement until the revision of 1921 plainly affords no reason whatsoever for presuming that the tenancy was permanent in character. For, that rent was fixed for a term of 15 years, though the fresh settlement or revision of rents in the case of old tenants or their heirs happened to be delayed till 1924. In arriving at the presumption of permanency, the learned Subordinate Judge also refers to the fact that the house built by the father of the contesting defendants on the land in suit is of a substantial character: but it must not be overlooked that this house was built not by the registered tenant, Badrinath, but by an execution purchaser to whom as defendant No. 3 himself states, recognition was refused by the landlord. Not having been built "long before any controversy arises" the house can lead to no inference that the tenancy was permanent. As to the non-recognition by the landlord, the learned Subordinate Judge cites *Naba Kumari Dibi v. Behari Lal Sen*[11] as an authority for the proposition that the non-recognition does not affect the rights of the respondents in any way. That may be, but the ruling in Naba Kumari's case 34 C 902 : 6 CLJ 122 : 11 CWN 865 : 34 IA 160 : 4 ALJ 570 : 9 Bom. LR 846 : 17 MLJ 397 : 2 MLT 433 again, has no application to the facts of this case, for it is not pretended that there are here (as there were in that case) any receipts for rent in which the respondents are shown as the occupiers paying the rent of the holding on their own account. Rent was obviously paid since the execution sale in the name of the recorded tenant, and recognition by the landlord as one of the considerations leading to an inference of permanency or equitable estoppel is wholly wanting.

14. The tenancy of 0 17 acre on a rent of Re. 1-5-0 is, strictly speaking, only established from 190& but it has been urged by the learned Advocate for the respondents that the arrangements of 1908 should not be regarded as creating a new tenancy since Badrinath had been Holding this plot of 0'17 acre from before. Even if this be conceded, the tenancy of 0'17 acre on a rent of Re. 1-5-0 per annum would only go back to Sunder's Settlement, and we know not only that before this Settlement the rent was much less bat also that the rent fixed by Mr. Sunder was only intended to remain in force for 15 years (see Ex. 2 and para. 351 of Sunder's Final Report). The learned Advocate has laid stress on the recognition of Dhanukdhari, who purchased 0.21 acre from Badrinath, by the landlord; but as I have already pointed out, this recognition was accompanied by an enhancement of the rent from Re. 1-110 to ₹ 3 2-0. Mr. Sunder's Settlement fixing a new rent of ₹ 3 for the whole holding for 15 years goes far by itself to negative the claim of a permanent tenancy. Even if it were possible to regard it as a solitary instance of unwilling submission by a permanent tenant entitled to hold on a fixed rent (as suggested by the learned Advocate) the enhancement on the transfer of Dhanukdhari gees further to negative a permanent tenancy as an inference from a transfer as of right among other considerations. The learned Advocate has also referred to the house built by Badrinath, a kutcha two-storied khapra house (as

P. W. No. 1 describes it)--which was re-constructed by the execution purchaser. This house is not referred to by the Subordinate Judge, nor did the respondents rely en it in their written statement as they did in para. 15 on their father's house. Badri's house can be of but little assistance to the respondents in showing that his tenancy with its unknown origin was permanent. For as Rankin, C. J. said in Kamal Kumaris case AIR 1929 Calcutta 37 : (1929) ILR 56 Cal 738. The fact that a tenancy was for residential purposes in no way involves of itself that the tenant's right to the land was to be permanent as the land could be used for kutcha structures to be erected by the tenant not structures such as the tenant could not without imprudence raise upon the land in the absence of a permanent right nor such as give notice to the landlord that the tenant claims a permanent right.

15. It was also suggested on behalf of the respondents that an inference arises against the plaintiff's case of a tenancy from year to year from the fact that their house was constructed or re-constructed with the permission of the Deputy Commissioner. But this permission was only obtained under the Municipal Act, and it is obvious that as Chairman of the Daltonganj Municipality, the Deputy Commissioner could not have refused permission merely because it was within his knowledge as an agent of the landlord that the land was not held on a permanent tenancy. Still less does it admit (assist?) the respondents that their father had obtained delivery of possession from the Court of the Deputy Commissioner Sub-Judge. The learned Advocate for the respondents also relied on the circumstance that in Sunder's khatian Badrinath was shown as "dakhilkar (occupancy)". The khatian, however, does not carry any specific presumption of correctness such as attaches to Record of Rights under the Bengal or the Chota Nagpur Tenancy Act, and the entry regarding Badrinath's status is inconsistent with the respondent's case that the land had been originally settled with Badrinath for building purposes. An occupancy right in Chota Nagpur is given by law to certain tenants of agricultural land and entitles them to cultivate the land or to occupy it in proper ways, without any limit of time, subject to the payment of a rent which is liable to enhancement from time to time on certain specified grounds but not by contract. Such a right can only arise in agricultural land, and it is nobody's case that Badrinath was ever a raiyat of the land in suit in the sense in which suits for the ejectment of ratyats or tenants of agricultural land have continued from 185y onwards to be excepted from cognizance of the Civil Courts in the Chota Nagpur Division. Mr. Sunder's classification of tenants purported to be in accordance with the principles of the Bengal Tenancy Act, although this Act had no application to Chota Nagpur (see para. 9 of the Government Resolution on and published with Sunder's Final Report). It is not distinguished between agricultural and non-agricultural holdings, as we see from the last page of ms appendix 1 (Tappa Kote). His description of Badrinath as dakhilkar or occupancy raiyat was plainly erroneous on the common case of the parties before us, and it is not altogether without significance that the respondents did not raise any issue below regarding the jurisdiction' of the Civil Court to try a suit for the ejectment of the heirs or successors of the so-called dakhilkar. Every consideration on which the learned Judge below raised the presumption of permanency thus fails on an examination of the facts of this case.

16. It is not clear what the learned Subordinate Judge had in mind when he held that the suit was barred by the principle of equitable estoppel. The learned Advocate for the respondents has suggested that estoppel arises because the defendants' house was constructed at least with the knowledge of the plaintiff. But that knowledge, such as it was, does not estop the plaintiff from denying that these defendants had any permanent right to the land; in asking for ejectment tie is not relying on any facts which were unknown to the defendants and of which it was his duty to

inform them. It is not the defendants' case that they were not aware of their actual rights but were misled by any representation made by the plaintiff; nor was the plaintiff under any obligation in these circumstances to warn them of their precarious right. If they built, they did so at their own risk notwithstanding the knowledge of the Deputy Commissioner that they (or rather their father) intended to build. There could be no estoppel by acquiescence unless these defendants showed that in spending money on the reconstruction of the house their father was acting under an honest though mistaken belief that he had a permanent right in the land and that the landlord knowing that he was acting under such belief, purposely abstained from interference with the view of claiming the building when erected. But this was not even alleged by them. It is therefore impossible to say that the conduct of the plaintiff as landlord in abstaining from interfering with the reconstruction of the house jus-tines the legal inference that he had, by plain implication, contracted that the right of tenancy under which Badrinath had originally obtained possession of the land should be changed into a permanent right. We have thus neither trie estoppel by representation that was found in *A.H. Forbes v. L.E. Ralli, AIR 1925 PC 146 : AIR 1925 PC 152 : AIR 1925 PC 146 : 87 Ind. Cas. 318* (SUPRA)nor the estoppel by acquiescence referred to in *Ramsden v. Dyson (1866) 1 HL 129 :12 Jur. 506 : 14 WR 926* (Supra)from which an implied contract of permanency could be inferred: see *Lala Beni Ram v. Kundan Lal 21 A 496 : 261 A 58 : 7 Sar. 523(Supra)*. In my opinion the learned Subordinate Judge was in error not only (as I have already shown) in drawing an inference or making a presumption of permanency of the tenancy but also in holding that there was any equitable estoppel.

17. In spite of his findings on these two points, the learned Subordinate Judge proceeded to assess a fair and equitable rent for the holding, apparently under the impression that Rule 28(6) of the Government Estates Manual, which speaks of regular civil suits for ejectment with an alternative prayer for enhancement, gave the Court jurisdiction to assess rent in such cases. But as was pointed out in *Secretary of State v. Nistarini Annie Mitter, AIR 1927 Patna 319(Supra)* the Court has no power to impose upon the parties a bargain not of their own making in a suit which does not relate to agricultural land governed by the (Bengal or) Chota Nagpur Tenancy Act:

> Once it is settled that the original bargain was for a permanent tenancy at a fixed rent, all question of enhancement is necessarily gone unless such proceeding is authorized by statute as was said by Lord Dunedin in *Afzalunnissa v. Abdul Karim* [12]As a matter of fact the" Government Pleader at first complained of the assessment made by the lower Court as arbitrarily low, but he finally conceded that the Court had no jurisdiction to make a bargain for the parties at all, nor was the contrary urged by the learned Advocate for the respondents in view of what was said in the case in *Secretary of State v. Nistarini Annie Mitter, AIR 1927 Patna 319*(Supra) Though the appellant is right in his contention that the lower Court erroneously held the tenancy to be permanent, he is still not entitled to ejectment in this suit. It is a tenancy from year to year that we are dealing with in this case, and the landlord can only terminate such a tenancy by serving a proper notice to quit. The Subordinate Judge has shown that no notice was served upon defendant No. 2, one of the recognized tenants, but that a notice had been left with his minor brother, defendant No. 1, nor upon defendants Nos. 3 to 5, as to whom the case made in the plaint was that these defendants were not entitled to any notice because they were not recorded as lessees of the holding but that notice had been served^ on them to avoid legal

objections. The Subordinate Judge's finding regarding non-service has not been assailed, and the mere circumstance that these defendants are not recorded as lessees is of little assistance to the landlord. For, if the tenancy be transferable, non-recognition by the landlord would not affect the rights of the transferees; and if it be assumed that the tenancy was non-transferable, the contesting defendants have been in possession of the holding to the exclusion of the recorded tenants, from 1913 onwards, and as they have done so to the knowledge of the plaintiff, the claim to eject them without notice on the footing that they art* trespassers could presumably be met by adverse possession of a tenancy interest for over 12 years. This aspect of the matter was, however, not gone into below, doubtless because the holding was non-agricultural; and nothing has been said before us to suggest that even in 1913 such holdings were non-transferable. It follows that though the appellant has succeeded in his contention as regards the nature of the tenancy, none of the three prayers made in the plaint can be allowed. The appeal, therefore, fails except in the matter of the assessment made by the lower Court which is without jurisdiction and must be set aside. The suit should now stand dismissed. In the circumstances 1 would make no order about costs, the course properly adopted by the lower Court.

Cases Referred.

1 AIR 1927 Pat 319
2AIR 1927 Pat 319
315 CLJ 220 : 13 Ind. Cas. 806 : 16 CWN 567
421 A 496 : 261 A 58 : 7 Sar. 523
51885 AWN 100
6AIR 1925 Calcutta 309 : 29 CWN 138 : 52 C 43 : 85 Ind. Cas. 10
7AIR 1929 Calcutta 473 : (1929) ILR 56 Cal 275 : 118 Ind. Cas. 353
815 CLJ 220 : 13 Ind. Cas. 806 : 16 CWN 567.
932 CLJ 85 : 57 Ind Cas. 877 : AIR 1920 Cal. 552
10AIR 1929 Calcutta 37 : (1929) ILR 56 Cal 738.
1134 C 902 : 6 CLJ 122 : 11 CWN 865 : 34 IA 160 : 4 ALJ 570 : 9 Bom. LR 846 : 17 MLJ 397 : 2 MLT 433
1247 C 1 : 50 Ind. Cas. 749 : AIR 1919 PC 11 : 46 IA 13 : 17 ALJ 608 : 36 MLJ 580 : 76 PWR 1915 : 1 UPLR (PC) 47 : 26 MLT 55 : 81 PR 1919 : 23 CWN 966 : (1919) MWN 494 : 30 CLJ 152 : 21 Bom. LR 891 : 65 PLR 1919 : 11 LW 17 : 13 Bur. LT 1.