Privy Council Appeal No. 83 of 1917

Bengal Appeal No. 2 of 1914

Debendra Nath Das - - - - - *Appellant,*

v.

Bibudhendra Mansingh Bhramarbar Roy (minor) - - - - - - *Respondent.*

FROM

THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 7TH FEBRUARY, 1918.

Present at the Hearing:

LORD BUCKMASTER.
MR. AMEER ALI.
SIR WALTER PHILLIMORE, BART.

[*Delivered by* MR. AMEER ALI.]

THE sole question involved in this appeal is whether the defendant-appellant is a "tenure-holder" or *raiyat* as defined in the Bengal Tenancy Act (VIII of 1885).

The defendant holds over 250 acres of land in the village of Goyalbank, forming part of the plaintiff's zemindari in the district of Cuttack, under a lease granted by the predecessor of the plaintiff in 1901 to one Gokulananda Chowdhury. In 1907 Gokulananda assigned the lease to the defendant.

The land covered by the lease became about the same time the subject of "record-of-rights" proceedings instituted by Government under chapter X of the Act.

These proceedings are taken by the revenue authorities before special officers for the ascertainment and record of all rights connected with the land within the ambit of the enquiry. At the initial stage of the proceedings the defendant was entered as a "tenure-holder," but subsequently on his objection the Assistant Settlement Officer recorded him as "a settled *raiyat* at a fixed rent."

The present suit has been brought under the provisions of section 106 on behalf of the zemindar for rectification of the entry by recording the defendant as a "tenure-holder." The suit was first heard by the Settlement Officer, who upheld

the plaintiff's contention as to the status of the defendant, and his decision was confirmed on appeal by the Special Judge of Cuttack. The defendant then preferred a second appeal to the High Court of Calcutta, which came for hearing before Richardson, J. The defendant renewed before that learned Judge his contention that under the terms of his lease he was entitled to be classed as a *raiyat*. Richardson, J., accepted his contention and reversed the order of the Special Judge, the effect of which was that the entry in the record-of-rights remained as made by the Assistant Settlement Officer.

An appeal was thereupon preferred by the respondent under section 15 of the Letters Patent, which came on for hearing before two Judges of the High Court, Jenkins, C.J., and Mookerjee, J., who, differing from Richardson, J., held, in concurrence with the Settlement Officer and the Special Judge, that the defendant was a tenure-holder. They accordingly reversed the order of that learned Judge, and restored the decree of the lower Courts for the rectification of the entry in the record of rights.

The present appeal to His Majesty in Council, which forms the sixth stage of this litigation, is an indication not merely of the persistency of the defendant, but also of the valuable rights that are attached to his claim, for, if he be a tenure-holder, persons holding under him would have the status of *raiyats* and would be entitled to acquire, after a certain efflux of time, the right of occupancy under the Act. Whereas, if he be a *raiyat*, those persons would only be *under-raiyats*, without the privileges or security afforded by the Act to *raiyats*.

For the purposes of the Tenancy Act, tenants are classed under three heads, viz., tenure-holders, *raiyats*, and *under-raiyats*, that is to say, tenants holding, whether mediately or immediately, under *raiyats*. *Raiyats*, again, are divided into three sub-classes, *i.e.*, (*a*) *raiyats* holding at fixed rates, (*b*) occupancy *raiyats*, and (*c*) non-occupancy *raiyats*. The defendant has been entered as a settled *raiyat* at a fixed rent, evidently on the ground that under the lease the rent payable by him is permanently fixed. But it is to be observed that fixity of rent is no criterion for the determination of the point at issue, for a tenure may be held at a fixed rent equally with a *raiyati* holding. The question must, therefore, be decided on other considerations.

Subsection (1) of section 5 defines a tenure-holder to mean :—

"Primarily a person who has acquired from a proprietor or from another tenure-holder a right to hold land for the purpose of collecting rents or bringing it under cultivation by establishing tenants on it, and includes also the successors in interest of persons who have acquired such a right."

And a *raiyat* is defined to mean :—

"Primarily a person who has acquired a right to hold land for the purpose of cultivating it by himself, or by members of his family, or by

hired servants, or with the aid of partners, and includes also the successors in interest of persons who have acquired such a right."

Subsection (4) provides certain rules for determining whether a tenant is a "tenure-holder" or "*raiyat*." Clause *b)* is important: it says, "The Court shall have regard to the purpose for which the right of tenancy was originally acquired." Subsection (5) is equally important. It provides that where the area held by a tenant exceeds 100 standard *bighas* (a little over 33 acres) "the tenant shall be presumed to be a tenure-holder until the contrary is proved." In determining the status, therefore, of a tenant, viz., whether he is a tenure-holder or a *raiyat*, two elements have to be borne in mind, *firstly*, the purpose for which the land was acquired, and, *secondly*, the extent of the tenure or holding. A close examination of the definition-clauses makes it quite obvious that both these elements are closely inter-related. The law assumes the *raiyat* to be the actual cultivator of the soil, either by his own labour or the labour of members of his family or by hired labourers, and it assumes also that ordinarily a larger area than 100 *bighas* would make cultivation by the personal agency of the tenant improbable. The presumption provided in subsection (5) of section 5 is founded on that hypothesis.

In the present case, the land held by the defendant amounts to more than 250 acres; the statutory presumption certainly applies to him. He seeks to rebut it by referring to the purpose for which the lease was granted. The terms of the document have been carefully examined by the Settlement Officer, the Special Judge, and the High Court. Their Lordships will, therefore, confine their remarks to its general features. It is an ordinary reclamation lease: it leases the land permanently to the lessee at a fixed rent to cultivate the same, after making it fit for cultivation at his own expense and by his own efforts. In other words, he is to reclaim the land at his own expense and bring it under cultivation. The sixth clause makes this quite clear. It says:—

> "You shall, by reserving water and raising bandhs [on the land leased,] make it fit for cultivation according to your will, and shall hold the same by cultivating it or having it cultivated, and you shall be competent to make such other arrangement or adopt such other convenient steps as you consider necessary for cultivating the same."

The employment of the agency for the cultivation is left entirely to the option of the lessee; the land was leased for cultivation, that is, for agricultural purposes, but the agency to be employed is to be determined by the lessee; he has the power to establish *raiyats* or under-lease it to others or cultivate it himself, if he can. It cannot be said that the purpose is, primarily or otherwise, that the demised land should be cultivated by his personal agency. At the best, the lease may be said to be equivocal. In their Lordships' opinion, the High Court and the lower Courts were perfectly right to look to the

attendant circumstances to judge of the purpose for which the lease was acquired and to determine the status of the defendant. Apart from the facts appearing in the lease to which the learned Judges of the High Court have referred as indicating that the land was being taken for purposes other than that of personal and direct cultivation as a *raiyat*, there is the outstanding circumstance that the land was leased to a man of means who appears to be a resident of another place for the purpose of reclamation and rendering fit for cultivation, the agency to be employed for carrying on the cultivation being left to his discretion.

Their Lordships think that the presumption under section 103B, on which the defendant relies, that an entry in a record of rights finally published "shall be presumed to be correct until it is proved by evidence to be incorrect," is fully rebutted by the circumstances to which the Courts in India have referred in arriving at the conclusion that the defendant was a tenure-holder and not a *raiyat*.

Their Lordships are of opinion that this appeal should be dismissed with costs and that they will humbly advise His Majesty accordingly.

In the Privy Council.

DEBENDRA NATH DAS

v.

BIBUDHENDRA MANSINGH
BHRAMARBAR ROY (MINOR).

DELIVERED BY
MR. AMEER ALI.

PRINTED AT THE FOREIGN OFFICE BY C. R. HARRISON.

1918.