

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Maharaja Bahadur Sir Jotindra Mohun Tagore v. Bibi Jarao Kumari, from the High Court of Judicature at Fort William in Bengal; delivered the 28th November 1905.*

Present at the Hearing :

LORD MACNAGHTEN.

SIR FORD NORTH.

SIR ANDREW SCOBLE.

SIR ARTHUR WILSON.

[*Delivered by Sir Arthur Wilson.*]

This is an Appeal from a Judgment and Decree of the High Court at Calcutta, dated the 6th August 1903, which set aside in part a previous Decree of the Subordinate Judge of Hooghly. The Appeal raises a question as to the construction of two Putni Kabuliyats, read in connection with the Putni Regulation VIII. of 1819.

That Regulation, after describing the nature of a Putni tenure, and laying down certain rules with regard to it, enacted in Section 3 (3) " In case of an arrear occurring upon any tenure " of the description alluded to in the first " clause of this Section, it shall not be liable to " be cancelled for the same, but the tenure shall " be brought to sale by public auction, and the " holder of the tenure will be entitled to any " excess in the proceeds of such sale beyond the " amount of the arrear of rent due . . . ;" and a summary method of sale was provided.

Prior to 1885 the Defendant, now Respondent, held certain properties of the Plaintiff-Appellant

in Putni tenure. In May 1885, a fresh arrangement was made, in substitution for the old, the terms of which were embodied in a Kabuliyat dated the 29th of that month, which said :—

“ I take from you in Putni the entire interests in the  
 “ remaining mahals [*i.e.*, 8 annas of Mahomed Aminpur] . . .  
 “ by fixing the annual jumma at Rs. 6,000 on the conditions  
 “ given below, and by way of security for payment of this  
 “ jumma I hypothecate to you the properties mentioned in  
 “ Schedule No. 2 . . . .

“ 1. The annual jumma of this Putni Mahal is fixed at  
 “ Rs. 6,000. I shall pay to you the same without any varia-  
 “ tion by four kists as mentioned in the schedule at your house  
 “ . . . by means of chalans, kist by kist, and shall take  
 “ dakhilas bearing your seal for the same . . .

“ 2. Besides the said Putni rent I take upon myself the duty  
 “ of depositing into the Collectorate of the said district, the  
 “ Government revenue of Rs. 40,156 14 annas 9½ pies fixed for  
 “ the 8-anna share of the said Mahomed Aminpur. Agreeably  
 “ to the same I shall pay into the Collectorate of the said  
 “ district the said amount of revenue, kist by kist, and shall  
 “ produce before you at Calcutta the chalan for the same,  
 “ bearing seal and signature (of the Collectorate) two days  
 “ before the last payment of the kist.”

Clause 3 provided for the payment of interest on any part of the Putni rent of Rs. 6,000 in arrear.

“ 4. If I fail to produce before you after depositing the  
 “ Government revenue . . . in the Collectorate the chalan  
 “ of the deposit of the money . . . two days before the last  
 “ payment of the kist you will be able to deposit in the  
 “ Collectorate the amount of revenue payable by me within  
 “ the said two days’ time; and on your paying into the  
 “ Collectorate the amount of Government revenue payable by  
 “ me within the said two days’ time, the Putni contract, which  
 “ is hereby made with you, *i.e.*, between you and me, shall  
 “ become null and void; and you will be able to take khas  
 “ possession of this Putni Mahal; and you will realize by sale  
 “ of my properties, &c., the amount of Government revenue  
 “ deposited by you with interest and costs. . . .

“ Besides the said Putni rent I shall pay to you by four  
 “ equal instalments, along with the Putni rent, the amount  
 “ of road cess and public works cess payable from my Putni  
 “ Mahal,” with interest in case of default.

“ 6. I shall pay with the Putni rent at intervals of every  
 “ six months, the amount of dak-cess that will be fixed  
 “ for the said Putni Mahal from time to time,” with interest  
 in case of default.

Clause 8 dealt with certain maintenance charges upon the share held in Putni, created by a former Zemindar, as to which it was said:—

“ These charges are left to be borne by me . . . . That amount shall have no connection with the Putni rent, and if I do not pay to the persons to whom the same may be due and you have to pay them the same, you shall also realise the said amount with the consequential damages that you may sustain by sale at auction of my properties, pledged by way of security for payment of the rent for the Putni in question and of my other properties moveable and immoveable.

“ 9. If the aforesaid Putni rent of Rs. 6,000 and road cess, public works cess, dak-cess and interest on every kind of money due should fall in arrears, you will be able to realise the whole amount due to you with costs by sale at auction of my said Putni Mahal, on instituting proceedings against me, on the occasion of each of the two six-monthly instalments in course of the year under the provisions of Regulation 8 of 1819 . . . .

“ 10. If the whole amount due to you be not realised by the sale of my Putni Mahal, under Regulation 8 of 1819, you will be able to realise the unrealised balance, on the amount of a defaulted kist by sale of the properties hypothecated . . . . and of my other properties, moveable or immoveable, on instituting a suit against me under the law in force for realisation of arrears of rent.”

On the 15th August 1893 a new agreement was entered into which was embodied in an Ekrar Kabuliyat of that date, by which the Respondent agreed to pay a further sum of Rs. 1,000 a year for the Putni holding to which the former Kabuliyat related.

In the fresh Kabuliyat it was said:—

“ Having according to the said proposal agreed to pay an additional rent of Rs. 1,000 in respect of the Putni which I took . . . . on the condition of paying to you, Maharaja, a putni jumma of Rs. 6,000 per year, and of Rs. 40,156. 14 into the Collectorate, year by year, kist by kist, as Government revenue for the said 8-anna share, I hereby promise and declare in writing, that from the present year I shall pay Rs. 1,000 in excess as jumma for my said putni taluk.”

Before the Kabuliyat of the 29th May 1885, the Bengal Tenancy Act, VIII. of 1885, was passed, and it came into operation later in the

same year. That Act contained a definition of rent (Section 3):—

“Rent means whatever is lawfully payable or deliverable in money or kind by a tenant to his landlord on account of the use or occupation of the land held by the tenant.”

This definition seems to express very clearly the meaning of the word “rent” as it would be understood without any statutory definition.

The Respondent made default in payment of two kists of Government revenue and in some instalments of the Rs. 7,000 rent and cesses. In or before May 1901 the Appellant petitioned the Collector of Hooghly for sale of the Putni, under the provisions of the Regulation, in order to recover the arrears due, including therein the amount of the Government revenue, as to which the Respondent had made default, and which the Appellant had been obliged to pay. On the 3rd of May 1901 the Respondent filed an objection to the petition, on the ground that the Government revenue formed no part of the rent of the Putni, and therefore was not recoverable under the Regulation, and the objection was sustained by the Collector.

On the 7th June 1901 the Appellant instituted the present suit in the Court of the Subordinate Judge. In his plaint he stated the facts and asked (1) for a money decree; (2) that the Court should construe the documents and declare which of the sums in arrear were to be taken as rent, for which the Putni might be sold under the Regulation. The Subordinate Judge made the money decree as asked for and declared, amongst other things, that the Government revenue payable by the Putnidar was a part of the jumma of the Putni and was recoverable as such by sale under the Regulation.

Against this Decree the present Respondent appealed to the High Court, and that Court set

aside so much of the Decree as contained the declaration above referred to. Against that decision of the High Court the present Appeal has been brought.

Had the question turned entirely upon the Kabuliyat of 1885, the matter would, in their Lordships' opinion, have been clear. The payment by the Putnidar of the Government revenue is no doubt a part of the consideration to be rendered by her for the enjoyment of the tenure, but it is not money payable to the landlord. Nor is it provided in that document that it is to be dealt with in the same manner as rent, as is provided in the case of cesses. And what is most significant of all, a special mode of enforcing the obligation to pay Government revenue is provided, namely the cancellation of the tenure in case of default; and that is the precise sanction which the law has forbidden by the terms of the Regulation in the case of rent.

But the argument for the Appellant was based mainly on the second Kabuliyat, that of 1893. It was contended that the words "on the condition of paying to you a Putni jumma of Rs. 6,000 per year, and of Rs. 40,156 14. into the Collectorate, year by year, kist by kist, as Government revenue for the said 8-anna share," had the effect of making the Government revenue a part of the jumma. But even if those words had been used of the new arrangement then being entered into, they would not, in their Lordships' opinion, have properly borne the construction contended for. But in fact those words form part of a mere recital of the arrangement previously existing, and the nature of that previous arrangement is properly to be ascertained from the Kabuliyat of 1885.

For these reasons their Lordships are of opinion that the contention of the Appellant

cannot be maintained. They will humbly advise His Majesty that the Appeal should be dismissed. The Appellant will pay the costs.

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