

## CIVIL RULE.

Before Mookerjee and Cuming JJ.

1916

MANMATHA NATH MITTER

Aug. 28

v.

DISTRICT JUDGE, 24-PARGANAS.\*

*Sale for Arrears of Rent—Purchase of putni—Opposition to purchaser's possession—Application for proclamation—The District Judge or the Collector, the proper authority to issue proclamation—Rent Recovery (Under-Tenures) Act (Beng. VIII of 1865), s. 3—Repealing Act (XVI of 1874)—Regulations VIII of 1819, ss. 8, 9, 15 (2; I of 1820 and VII of 1832, s. 16.*

Clause (2) of section 15 of Regulation VIII of 1819 has not been affected by s. 3 of Beng. Act VIII of 1865.

Proceedings taken to annul the sale of certain *putni* lands sold for arrears of rent having terminated in favour of the purchaser and the sale having become final and conclusive, the purchaser in attempting to realise the rents from the cultivators of the lands comprised in the tenure purchased by him was opposed in his attempt by some of the intermediate holders who claimed interest between the late *putnidar* and the cultivators. Thereupon, he applied to the District Judge to issue a proclamation under s. 15 of the Putni Regulation VIII of 1819. The District Judge returned the application and directed that it should be made to the Collector who was the proper authority to issue the proclamation.

*Held*, that the view taken by the District Judge was erroneous and that he had failed to exercise the jurisdiction still vested in him by law under clause 2 of section 15 of the Putni Regulation VIII of 1819.

RULE obtained on behalf of Manmatha Nath Mitter, the petitioner.

One Manmatha Nath Mitter was the proprietor of estate No. 93 of the 24-Parganas Collectorate and under him was the *putni* of Salgaria Jugdia. On the

\* Civil Rule No. 694 of 1916, against the order of H. P. Duval, District Judge of 24-Parganas, dated Aug. 21, 1916.

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16th May, 1910, at an *astami* sale, held for arrears of rent, Manmatha Nath Mitter purchased the said *putni*. The sale having become final and conclusive, the purchaser through his officers went to realise the rents from the cultivators of the holdings purchased by him, but was unable to realise such rents on account of the opposition of some of the intermediate holders who claimed interest between the late *putni-dar* and the cultivators. On the 10th August, 1916, the purchaser applied to the District Magistrate of the 24-Parganas for the issue of a proclamation under s. 15 of the Putni Regulation VIII of 1819, but the said District Judge returned the application to the purchaser the following day and ordered that it should be presented to the Collector, who, he held, was the authority who would issue the proclamation. Thereupon, the purchaser applied to the High Court for a Rule on the District Judge of the 24-Parganas to set aside this order.

*Babu Narendra Chandra Bose*, for the petitioner, referred to the Putni Regulation VIII of 1819, to the Rent Recovery (Under-Tenure) Act VIII of 1865 and to Regulations I of 1820 and VII of 1832, and submitted that the District Judge had erred in refusing to issue the proclamation and directing that the petitioner's application should be presented to the Collector. The District Judge was the proper authority to deal with this application.

*The Senior Government Pleader (Babu Ram Charan Mitra)*, for the District Judge, submitted that he was inclined to take the same view.

MOOKERJEE AND CUMING JJ. This Rule raises an important question of first impression as to the true effect of section 3 of Beng. Act VIII of 1865, upon the

second clause of section 15 of Regulation VIII of 1819. The clause in question describes the procedure to be followed in case of opposition to the new purchaser of the *putni*, when he proceeds to take possession of the land covered by his purchase. The clause lays down that if the late incumbent himself or the holders of the tenures or assignments derived from the late incumbent and intermediate between him and the actual cultivators shall attempt to offer opposition or to interfere with the collections of the new purchaser from the land composing his purchase, the latter shall be at liberty to apply immediately to the *Civil Court* for the aid of the public officers in obtaining possession of his rights. Section 3 of Beng. Act VIII of 1865 provides that the sale for the recovery of arrears of rent of *putni taluks* and other saleable under-tenures of the nature defined in clause (2) of section 8 of Regulation VIII of 1819 shall be conducted by the Collector of Land Revenue in whose jurisdiction, as defined by Act VI of 1853, the lands lie, and all acts *preparatory to or connected with* the sale of such under-tenures as aforesaid, which by Regulation VIII of 1819 and Regulation I of 1820 the Judge is required to perform shall be performed by the said Collector. The question thus arises, whether the effect of section 3 is to make it obligatory upon the purchaser, when he seeks to proceed under the second clause of section 15 of the Regulation, to apply, not to the District Judge but to the Collector.

The answer to the question in controversy depends upon the true meaning of the expression "*acts preparatory to or connected with the sale*" in section 3 of Beng. Act VIII of 1865. Instances of acts preparatory to or connected with the sale were contained in sections 8 and 9 of the Regulation as originally framed. Section 8 required the zemindar, when he desired to sell

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a *putni* for arrears of rent, to present a petition to the Civil Court of the District and a similar one to the Collector. Section 9 contained a provision that the sale should be made by the Registrar of the Civil Court or, in his absence, by the person in charge of the office of Judge or of Magistrate of the District. These were clearly acts preparatory to or connected with the sale, and the effect of section 3 was to render these provisions nugatory and to transfer the functions to the Collector. Now, can it be reasonably maintained in the case before us, that what the petitioner asks the District Judge to do is an act connected with the sale? We are of opinion that the question should be answered in the negative. The sale took place on the 16th May, 1910. Proceedings were taken to annul the sale and have terminated in favour of the purchaser. The sale has consequently become for all purposes final and conclusive. The purchaser now alleges that he is resisted in his attempt to take possession of the lands comprised in the tenure purchased by him. Can it be said, when he seeks the assistance of the District Judge under the second clause of section 15 of the Regulation, that the act to be performed is connected with the sale? Clearly not. It is an act subsequent to the sale, an act which can be performed only on the basis of a valid and concluded sale, no longer liable to be impeached. We must hold accordingly that clause (2) of section 15 of the Regulation has not been affected by section 3 of Beng. Act VIII of 1865. The view we take is confirmed by two circumstances. In the first place, Beng. Act VIII of 1865, as is explained in the preamble, was enacted because "doubts have arisen in consequence of the repeal of section 16 of Regulation VII of 1832 as to the authority by whom *putni taluks* and other saleable under-tenures of the nature defined in clause (1) of section 8 of Regulation

VIII of 1819 are to be sold for arrears of rent due to the proprietor on account thereof." There is no indication here that the Legislature intended that any alteration should be effected in the second clause of section 15. In the second place, that the Legislature had no such intention is conclusively proved by the provisions of Act XVI of 1874. That Act was passed for the purpose of repealing certain obsolete enactments, because, as explained in the preamble, "the enactments mentioned in the schedule to the Act had ceased to be in force otherwise than by express and specific repeal." In the schedule we find that certain expressions in sections 8 and 9 of the Putni Regulation which had become obsolete by reason of the provisions of section 3 of Beng. Act VIII of 1865, are expressly repealed. But clause (2) of section 15 is left untouched. If the Legislature had thought in 1874 that the provisions of clause (2) of section 15 had been affected by section 3 of Beng. Act VIII of 1865, no doubt that section also would have been suitably altered.

On these grounds, we hold that the view taken by the District Judge is erroneous and that he has failed to exercise the jurisdiction still vested in him by law, that is, under clause (2) of section 15 of the Putni Regulation. The Rule is made absolute and the order of the District Judge is set aside; the petition will be transmitted to the District Judge in order that he may take the necessary steps thereon in accordance with law.

O. M.

*Rule absolute.*

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