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[724] MACLEAN, C. J. The question submitted to us is this :— " When an appeal is pending to the High Court against a preliminary order made in a Subordinate Court under section 215A of the Civil procedure Code, has the High Court jurisdiction to stay the carrying out of such order pending the hearing of the appeal?" I have no hesitation in answering the question in the affirmative. Apart from the question whether the case falls within section 545 of the Code of Civil Procedure the Court, which has *seizin* of the appeal, can make an order staying proceedings pending its hearing. 31 C. 722=8 C. W. N. 572.

With this expression of opinion, the rule must go back to the referring Court. The costs of this reference are made costs in the rule.

PRINSEP, J. I am of the same opinion.

GHOSE, J. I agree.

HARINGTON, J. I agree.

BRETT, J. I agree.

31 C. 725=(8 C. W. N. 605.)

[725] APPELLATE CIVIL.

Before Mr. Justice Geidt and Mr. Justice Mitra.

SARAT CHANDRA ROY CHOWDHRY *v.* ASIMAN BIBI. *

[9th May, 1904.]

Revenue Sale—Revenue Sale Law (Act XI of 1859) s. 37.—The words " under the law in force" in the proviso to that section meaning of—Ejectment suit—Lands—Rent Act (X of 1859)—Occupancy raiyat—Bengal Tenancy Act (VIII of 1885) ss. 20, 21 and 195, cl. (c).

The words " under the laws in force " in the proviso to section 37 of Act XI of 1859, have reference to assessment or enhancement of rent, and not to the rules as to the mode of acquisition of occupancy rights, and mean " under the laws for the time being in force."

A purchaser of an entire estate sold for arrears of revenue, sued the cultivating raiyats in ejectment. The defendants contended that their interests were protected by the proviso to section 37 of Act XI of 1859.

It was found that the holdings of the defendants consisted of land held by them partly for more than twelve years and partly for less than twelve years, at the date of the sale, and that the two classes of lands were undistinguishable.

Upon an objection that the defendants " under the law in force," *i.e.*, Act X of 1859 could not acquire rights of occupancy to all the lands held by them and as such they were not protected by the proviso to section 37 of Act XI of 1859 :

Held, that the defendants were protected by the proviso to section 37 of Act XI of 1859, inasmuch as they were settled raiyats under s. 20 of the Bengal Tenancy Act (VIII of 1885), the law for the time being in force, and had under s. 21 of the said Act occupancy rights in all lands for the time being held by them.

[Fol : 42 C. 745.]

SECOND APPEAL by the plaintiff Sarat Chandra Roy Chowdhry. The minor defendant, Asiman Bibi, as respondent, was represented by her father and guardian Saniruddi Mondal.

This appeal arose out of an action brought by the plaintiff for ejectment and in the alternative for assessment of rent against [726] the

* Appeal from Appellate Decree No. 2317 of 1900, against the decree of Alfred F. Steinberg, District Judge of Rajshahye, dated the 2nd of January 1900, reversing the decree of Raj Narain Mukherjee, Munsiff of Nawabgunge, dated the 10th of October 1898.

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defendants, who were actual cultivators of a certain holding. The plaintiff's allegation was that Taraf Shyampur Paharpur within Pergana Shereshabad, District Maldah, was sold by auction in January 1891 for arrears of revenue and he purchased it and obtained a sale certificate from the Collector on the 28th February 1891; that the Collector of Maldah put him in possession of the said Mahal according to law on the 25th April 1891 and he had been since holding possession of the said Mahal; that the defendant being a tenant in Mouza Churkisti appertaining to the said Mahal was not entitled to hold possession of the land in dispute, inasmuch as he (the plaintiff) was entitled to khas possession of all the lands in the estate being the purchaser at a revenue sale.

The defence of the defendant mainly was that, he being an occupancy raiyat, his interest was protected by the provisions of section 37 of Act XI of 1859. The Court of First Instance having found that the holding of the defendant consisted of land held by him partly for more than twelve and partly for less than twelve years, decreed ejectment.

On appeal the District Judge of Rajshahye reversed the decision of the First Court, on the ground that the defendant was protected by the provisions of section 37 of Act XI of 1859, as he was a settled raiyat under s. 20 of the Bengal Tenancy Act (VIII of 1885) and had under s. 21 of the Act occupancy rights in the lands for the time being held by him in each particular village irrespective of the period of occupation of each particular piece of land.

The *Advocate-General* (Mr. *J. T. Woodroffe*) (with him Dr. *Rash Behary Ghosh* and Babu *Umakali Mookerjee*) for the appellant:—The question in this case is whether the defendant acquired a right of occupancy to the holding, and is protected by the proviso to section 37 of Act XI of 1859. The finding of the Court below is that the holding of the defendant consists of land, held by him partly for more than twelve years and partly for less than twelve years. Whether the defendant acquired a right of occupancy to his holding will depend upon the construction of the words "under the law in force" in the proviso to section 37 of Act XI [727] of 1859. Words "laws in force" mean laws in force at the time when the Act was passed, and at that time Rent Act X of 1859 was in force. Section 6 of Act X of 1859 defines what is a right of occupancy, and the defendant has not acquired a right of occupancy to his holding according to that definition. Act VIII of 1869 has the same definition of a right of occupancy. Section 195, cl. (c) of the Bengal Tenancy Act, says that nothing in this Act shall affect any enactment relating to the avoidance of tenancies and incumbrances by a sale for arrears of Government revenue. The effect of that clause will have to be considered in this case. The words of a statute must be understood in the sense, which it bore at the time when it was passed. [MITRA, J. Is it your contention that Act X of 1859 applies?] Yes. [MITRA, J. I find that there is a difficulty in your way. It appears that Act XI of 1859 got the assent of the Governor-General in Council on the 4th May 1859, and Act X of 1859 came into operation on the 1st August 1859—so your argument falls to the ground.] The words of a Statute are to be construed in the way one has to construe them the day after the Act is passed: See *Sharpe* v. *Wakefield* (1), *The Gas Light and Coke Company* v. *Hardy* (2) and *The Longford* (3).

(1) (1888) L. R. 22 Q. B D. 239, 242.
(2) (1886) L. R. 17 Q. B. D. 619, 621.
(3) (1888) L. R. 14 P. D. 34.

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Babu *Digambur Chatterjee*, for the respondent:—The words " law in force " cannot mean Act X of 1859 as that Act was not in force when Act XI of 1859 came into operation. Law in force must mean law that may be in force at any time. In the case of *Purnanund Asrum* v. *Rookinee Gooptani* (1) it was held that enhancement must be under the law when the proceeding was taken. The words " law in force " refer to rights of occupancy. The whole is a qualifying word for a right of occupancy : See the unreported decision of MR. JUSTICE BANERJEE in S. A. No. 1072 of 1900. Section 195, cl. (*c*) of the Bengal Tenancy Act does not take away the force of my contention, because it only provides for the rights of avoiding tenures, which will remain the same.

The *Advocate-General* in reply.

[728] MITRA, J. The plaintiff is the purchaser of an entire estate sold for arrears of land revenue under Act XI of 1859. He seeks to eject the defendants, who are actual cultivators, on the ground that their interests have been avoided by the sale. They on the other hand plead that, notwithstanding the sale, their interests are protected by the proviso to section 37 of the Act of 1859.

The Lower Courts have found that the holdings of the defendants consist of lands held by them partly for more than twelve years and partly for less than twelve years. The first Court, however, held that the two classes of lands were undistinguishable on the spot and decreed ejectment and mesne profits on the ground that the defendants having failed to make out, with respect to any specific parcel or parcels of land, their occupation as raiyats for more than twelve years before the sale, were not protected under the proviso to section 37. The Court of first appeal did not disturb the finding of fact arrived at by the first Court, but assuming it to be correct came to the conclusion that the defendants were protected as they were " settled raiyats " under section 20 of the Bengal Tenancy Act, 1885, and had under section 21 of the Act, occupancy rights in all lands for the time being held by them in each particular village irrespective of the period of occupation of each particular piece of land.

The plaintiff has preferred these second appeals and the main contention raised for him is that the defendants are not entitled to take advantage of the provisions contained in sections 20 and 21 of the Bengal Tenancy Act and that their defences must fail on their failure to make out the existence of rights of occupancy as created by Act X of 1859, the only law contemplated by the framers of Act XI of 1859.

The purchaser of an entire estate sold under Act XI of 1859 is entitled to forthwith eject all under-tenants with certain exceptions, and one of these exceptions relates to raiyats with rights of occupancy at fixed rents or at rents assessable according to fixed rules under the *laws in force*. Is the expression " right of occupancy " limited to the right that could be acquired under the rules laid down in Act X of 1859, or does it also cover **[729]** " right of occupancy " that might be acquired under laws promulgated since 1859 ?

The history of the laws made for the protection of the raiyats in Bengal and of the sale laws in particular so far as they refer to them seems to indicate that the Legislature did not in enacting the proviso to section 37 of Act XI of 1859 relating to occupancy raiyats intend to

(1) (1878) I. L. R 4 Cal. 793.

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limit the right as contended for by the appellant. If it were so, appropriate expressions indicative of the limited purpose could have been used.

The framers of the Regulation Code of 1793 started with the idea that *khudkasht* raiyats were not liable to ejectment, if they agreed to pay rent at the pargana rate "the rate of *Nirekbundy* of the pargana" (Regulation VIII of 1793, section 60, clause 2.) Ejectment of raiyats was practically unknown in those days and the enhancement of the rents of *khudkasht* raiyats beyond the pargana rates was practically forbidden. The Code of 1793 therefore dealt largely with the relative rights of the proprietors of estates and dependent talukdars and other intermediate holders and farmers of revenue and had little to say about the actual cultivators or raiyats. A distinction was however made between *khudkasht* raiyats, *i.e.*, resident cultivators and *paikast* raiyats or non-resident cultivators. The former, as we have seen, were protected from eviction, provided they paid rent at the customary rate; the latter were liable to ejectment at the option of the landlord. By section 8 of Regulation I of 1793, the Governor-General in Council retained the power to enact laws necessary for the protection and welfare of the raiyats and other cultivators of the soil. No laws were, however, enacted for the protection of raiyats other than *khudkasht* until the year 1859. During the period between 1793 and 1859 the difference between the two classes of raiyats had become thinner and thinner and by the middle of the last century it was found that legislation was urgently needed for the protection of the raiyats of the latter class.

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Act X of 1859 swept away the distinction that had previously been made between *khudkasht* and *paikast* raiyats and a new classification of raiyats was introduced by it. Raiyats were divided by the Act into two classes, raiyats having rights of [730] occupancy and raiyats not having rights of occupancy. Section 6 of the Act provided that all raiyats holding and cultivating land for twelve years and upwards would have a right of occupancy. Section 8 laid down that other raiyats would not have the right. Raiyats with rights of occupancy were subdivided into raiyats holding at fixed rates and raiyats not holding at fixed rates. A raiyat holding at a uniform rent, from the Permanent Settlement of 1793, was not liable to pay enhanced rents (sec. 3), while the other class of occupancy raiyats might under circumstances be made to pay rents at enhanced rates (sec. 17), but they were not liable to be ejected except for non-payment of rent. Residence in the village ceased to be a cause of superiority of status, and freedom from ejectment at the will of the landlord was a privilege due not to residence in the village, but to the period of occupation of land as raiyat.

The earlier laws about sales for arrears of land revenue, viz., Regulation XI of 1822, Act XII of 1841, and Act I of 1845 exempted from liability to cancellation on sale for arrears all *bona fide* engagements made by the defendants with *khudkasht* raiyats. No protection was given to *paikast* raiyats. The abolition however of the distinction between these two classes by Act X of 1859 necessitated an alteration in the sale law as to avoidance of encumbrances. Act XI of 1859 accordingly embodied in the proviso to section 37 the necessary corollary to the change in the law as to the status of raiyats. Instead of *bona fide* engagement with *khudkasht* raiyats we have in the proviso to section 37 the words "eject any raiyats having a right of occupancy at a fixed rent or at a rent assessable according to fixed rates under the laws in force."

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The privilege which *khudkasht* raiyats had was extended to *paikast* raiyats as well, if they could show occupation for 12 years. But as is clear from subsequent legislation, *i.e.*, Act VIII of 1885, the framers of Act X of 1859 had omitted to safeguard the rights of all *khudkasht* raiyats and had practically taken away a right, which the latter had by customary law and the Regulations and Acts passed since 1793. Length of possession had very little to do with their status and *khudkasht* raiyats occupying land for less than twelve years lost by Acts X and XI of 1859 the right they had [731] which is freedom from eviction notwithstanding occupation for a smaller number of years.

Act VIII of 1885 however partly restored to *khudkasht* raiyats the right, which was taken away by Act X of 1859. The "settled raiyats" have now certain privileges as to holding land irrespective of the length of their occupation of such land. These privileges are given by sections 20 and 21 of the Act. The means of the acquisition of rights of occupancy are enlarged in one sense, but only restored to another. I am therefore of opinion that, unless there is anything in the proviso to section 37 of Act XI of 1859 to limit its operation to rights acquired by the means indicated in Act X of 1859 the proviso should be extended to rights denoted by the same name though acquired by the extended means indicated in Act VIII of 1885.

The proviso to section 37 protects rights of occupancy. The expression is general and the same general expression is used in Act X of 1859 as well as Act VIII of 1885. There is nothing in the latter Act to indicate that its operation as to the extended means of acquisition of the right of occupancy should not affect a purchaser at a sale for arrears of Government revenue. We ought to give a beneficial construction to the Statute, a construction which tends to protect rights created by the law and to advance the remedy. The increased bundle of rights which the expression now imports fits in with the object of the proviso to section 37, *i.e.*, the protection of statutory rights notwithstanding sale for arrears.

Stress has been laid on section 195, clause (*c*) of the Bengal Tenancy Act, which lays down :—"Nothing in this Act shall affect any enactment relating to the avoidance of tenancies and incumbrances by a sale for arrears of Government revenue. But the extended connotation of the expression "right of occupancy" does not affect Act XI of 1859 so far as it relates to avoidance of tenancies and encumbrances. The defendants do not say that the provisions contained in Chapter XIV of the Bengal Tenancy Act relating to avoidance of encumbrances should have been adopted by the plaintiff. They do not ask for protection under section 160 of the Act or say that the procedure as to avoidance of encumbrances as laid down in section 167 of the [732] Act should be adopted. They submit to the application of section 37 of Act XI of 1859.

The discussion at the Bar has also turned upon the words "under the laws in force" in the proviso to section 37 as contra-distinguished from the words used in the preceding clause "any law for the time being in force." I am of opinion, however, that the discussion is not relevant, as it seems to me to be clear that the use of these expressions has relation to rules of enhancement of rent and not to the character of the holdings protected from eviction. The penultimate clause of section 37 refers to enhancement of rent of lands held on leases whereon dwelling-houses, manufactories or other permanent buildings have been erected or whereon gardens, tanks, &c., have been made, and such

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enhancement is said to be regulated by *any law for the time being in force*. The last clause of the section containing the proviso takes away from the purchaser the right to eject occupancy raiyats or to enhance their rents at his pleasure. It speaks of two classes of occupancy raiyats —(1) raiyats having rights of occupancy at fixed rents, and (2) raiyats whose rents are not fixed, but whose rents are liable to assessment according to rules prescribed by *the laws in force*, and not otherwise. Speaking of enhancement of rent where that is possible, *i.e.*, of the second class, the right to enhance is limited according to rules prescribed in "such laws." The expression "such laws in the last clause must necessarily refer to *the laws in force for the time being*. Having used the "expression for the time being" in the penultimate clause the framers of the Act evidently thought it unnecessary to repeat it in the last clause. The reference to laws in force in both the clauses cannot but be to assessment or enhancement of rent and not to the rules as to the mode of acquisition of occupancy rights.

The only other question argued in these appeals relates to the rate of interest on the arrears of rent decreed to the plaintiff. Interest has been allowed at 6 per cent. per annum. The contention on behalf of the plaintiff appellant is that 12 per cent. per annum is the legal rate under section 67 of the Bengal Tenancy Act and there was no reason why it should be reduced to 6 per cent. We are of opinion that this contention is right. [733] The section provides that arrears of rent shall carry interest at 12 per cent. per annum.

We accordingly modify the decrees of the Lower Appellate Court to this extent. The modification, however, is slight and cannot effect the question of costs. The appellant must pay the costs of the respondents.

GEIDT, J. The appellant, a purchaser at a sale for arrears of Government revenue, sued to eject the respondents from their holdings. The lower Appellate Court has held them to be occupancy raiyats and has refused to eject them not only from the lands, which they have held in the village for 12 years, but from other land which they have held for less than that time on the ground that they have acquired occupancy rights in the latter class of lands under section 21 (1) of the Bengal Tenancy Act.

It is contended on behalf of the appellant that he is entitled to eject the respondents from all land, which they have not held continuously for 12 years and the main question to be decided in these appeals is whether that contention is correct.

The purchaser of an estate under Act XI of 1859 by section 37 of that Act acquires the estate free from all incumbrances imposed since the permanent settlement and is entitled to avoid and annul all under-tenures and forthwith to eject all under-tenants with certain exceptions, with which we are not now concerned. At the end of the section is a proviso and the construction of certain words in that proviso is the main matter that was debated at the hearing of these appeals. The words to be interpreted are the following :—

"Provided always that nothing in this section shall be construed to entitle any such purchaser to eject any raiyat having right of occupancy at a rent assessable according to fixed rules under the laws in force." The learned Advocate-General on behalf of the appellant contends that the expression "raiyat having a right of occupancy" must be read as referring only to such raiyats as would have right of occupancy under the laws in force at the time that Act

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XI of 1859 came into operation, and that the expression cannot be construed as the learned [734] District Judge has construed it, to mean a raiyat having a right of occupancy under the laws for the time being in force. In support of this contention the learned Advocate-General quotes clause (c) of section 195 of the Bengal Tenancy Act which lays down that " nothing in this Act shall affect any enactment relating to the avoidance of tenancies and incumbrances by a sale for arrears of Government revenue." On behalf of the respondents it is urged that the words " under the laws in force " means " under the laws in force for the time being " and that they qualify not merely the words " at a rent assessable according to fixed rules " but the whole phrase " a right of occupancy at a rent assessable according to fixed rules."

The learned Advocate-General founded his argument on the rule observed in Courts of law that an Act must be construed as if it was being interpreted the day after it was passed, a rule quoted by Lord Esher in *The Longford* (1). If this rule be observed in the present instance, then the proviso according to the appellant can apply only to those raiyats, who could acquire occupancy rights the day after Act XI of 1859 came into force. But I would observe that this argument proceeds not on an interpretation, but on an application of the Act. No doubt, if a Court had to decide on the day after the Act was passed whether any particular raiyats were protected by the proviso it could only hold that those raiyats were protected, who had acquired at that time a right of occupancy. The question could hardly arise at that time whether a right of occupancy meant a right of occupancy according to the laws then in force, or a right of occupancy according to the laws for the time being in force, but if we suppose that such a question could have arisen the answer would have been governed by the same considerations as are presented to us on the present appeal. In the case of *The Longford* just cited, the question was whether an action *in rem* could be brought against *The Longford* without a month's notice being given, and the answer to this depended on the construction of an enactment that no action in any of His Majesty's Courts of Law to which the Dublin Steam Packet Co. shall be liable in respect of any damage or injury done to other [735] vessels should be brought against the said Company, unless one month's notice should have been given in writing. The ground of the decision in all the judgments delivered in that case was that " action " in the above enactment did not apply to actions *in rem*. Lord Esher, M. R., however also based his judgment partly on the rule that an Act must be construed as if one were interpreting it the day after it was passed and he observed that at the date of the enactment then under consideration the Admiralty Court was not a Court of law and therefore the action against *The Longford* brought in that Court was not barred by the absence of a month's notice. The learned Advocate-General does not press the analogy of this case so far as to say that only those rights of occupancy in existence at the time of the passing of the Revenue Sale Law are protected, but he would extend the protection to the same *kinds* of occupancy right, and would exclude all *kinds* of occupancy right that were not then in existence.

The terms " right of occupancy " and " occupancy raiyats " are, so far as I know, peculiar to Indian Law in the sense in which they are there used and they occur as was conceded in the course of the

(1) (1888) I. L. R. 14 P. D. 34.

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argument in no legislative enactment before Act X of 1859. That Act however as was pointed out by my learned brother at the hearing, although it received the Governor-General's assent on the 29th April 1859 only came into force on the 1st of August of that year. But the Revenue Sale Law, Act XI of 1859, which we are now considering received the Governor-General's assent on the 4th May 1859 and from the wording of section 3 and from the fact that no term for its commencement was fixed, seems to have come into operation at once. If this account be correct the conclusion to which the learned Advocate-General's argument would lead us would be this :—That though there was on the Statute Book an Act not yet in operation dealing with occupancy rights, the Revenue Sale Law in according protection to occupancy rights was intended to protect only such rights as could be acquired under a Law that would be displaced within three months of the coming into effect of the former law. But the use of the term "right of occupancy" in section 37 of the Revenue Sale Law identical with the term used for the first time in the Rent Act previously passed seems to [736] make it clear that the occupancy rights to be protected after the Rent Law came into operation, would be those that were created or recognised by that law. This consideration is of itself sufficient to show that the interpretation which the appellant would put on the words which I have quoted from section 37 is not correct.

'Right of occupancy' and 'occupancy raiyats' are terms well understood. An occupancy raiyat is one whose holding is not limited to any particular term and who cannot be ejected, except under a decree of Court. He is opposed on the one hand to a tenant, who holds for a definite term, and on the other hand to a tenant-at-will. The right of occupancy has substantially the same meaning now as it had when the Revenue Sale Law was passed. It is true that a right of occupancy can be acquired more easily now and by other methods than was possible in 1859. But the right considered in the abstract is the same and the idea denoted by the term is the same. The method by which the right is acquired makes no difference in the right, when it is once acquired. I would therefore hold that the word right of occupancy in section 37 covers the right of occupancy now in existence. This view of the law is in accordance with the rule of construction on which the appellants rely that an Act must be construed as if it were being interpreted the day after it came into force, and it does not conflict with section 195 (*c*) of the Tenancy Act. The Revenue Sale Law is in no way affected by that Act. No form of tenancy is protected, which was voidable under that law. A right of occupancy was protected by section 37 and it is the same right of occupancy which is protected, if the view before enunciated is correct.

I am of opinion that the judgment appealed against is correct in holding that the respondents cannot be ejected from any lands to which they have acquired a right of occupancy in the manner provided by the Bengal Tenancy Act.

I agree with Mr. Justice Mitra in the modification which he proposes to make in the decrees of the Lower Court as to the rate of interest, and also in the order as to costs.

Appeal dismissed.