Calcutta High Court
Secretary Of State For India In ... vs Digambar Nanda And Ors. on 27 August, 1917
Equivalent citations: 45 Ind Cas 939
Bench: A Mookerjee, Beachcroft
JUDGMENT

1. This is an appeal by the Secretary of State for India in Council from the decree in a suit instituted by the respondents to obtain a lease from Government in respect of an area of 18,510 bighas of land. Tha facts material for the determination of the questions raised before us are not in controversy. On the 13th May 1872 a settlement was made with Bholanath Nanda (predecessor of the plaintiffs), which was to continue from 1278 till the next measurement and settlement of rent. The settlement proceedings were completed about the year 1878, and on the 5th August 1878 a patta was granted to Bholantah Nanda for a term of (22) twenty-two years from 1285 to 130:) at a progressive rate of rent. This lease contained a covenant in the following terms:

If you agree to pay the enhanced rent which will be fixed at the time of resettlement in future, the Government will h

2. The evidence shows'that when the term of the leass came to an end in the year 1306 (1899-1900), settlement operations were still in progress, and, as a result, the lease was renewed for a term of ore year only on the 28th May 1900; this lease contained a covenant in the same terms as the lease of the 5th August 1878. The tenancy was subsequently renewed from year to year, and the last of the series of annual leases was granted on the 6th January 1908. By the time that the term of this lease expired, the settlement operations had been concluded, and, on the 19th March 1909, the plaintiffs, (representatives of the original grantee) presented a petition to the Collector praying that the original lease might be renewed. On the 23rd March 1909 this application was rejected by the Collector, and his order was confirmed by the Commissioner on appeal. On the 15th December 1909 the Board of Revenue, however, reversed the order of the Commissioner, and directed that the petitioners should be offered a renewal of the lease, at enhanced rent, for one year only with effect from the 1st April 1910, the new lease not to contain a clause for renewal. The plaintiffs refused to accept a renewal of the tenancy on these terms, and instituted the present suit on the 30th May 1912. In the plaint, they prayed that the defendant might be directed to renew the lease of 1878 with a covenant for renewal or to execute a permanent lease. The Subordinate Judge has decreed the suit in part and has held that the plaintiffs are entitled to a lease for the period extending from the last Settlement up to the completion of the next periodical Settlement on the same terms as the lease of 1878 and at the rent assessed at the last Settlement minus a profit of 20 per cent., but that there will be no clause about renewal in the new lease. The Secretary of State for India in Council has appealed against the decree on the ground that the plaintiffs ca-nnot claim a renewal of the lease as a matter of right and that the suit should, have been entirely dismissed. The plaintiffs have, on the other hand, presented a memorandum of cross objections and have contended that they were entitled to a lease for twenty-two years with a covenant for renewal, if not to a permanent lease. The memorandum of appeal by the Secretary of State was valued at Rs. 10,280 (that is, at the same figure as the original suit) and Court fees were paid ad valorem thereon; this could be justified only on the hypothesis that the relief granted to the plaintiffs was all that they sought in their plaint. The

memorandum of cross-objections also was valued by the plaintiffs-respondents at Rs. 10,280 (apparently on the assumption that the relief granted to them by the decree was entiily valueless) but no Court-fee was paid on the memorandum, on the ground that the Court-fee paid by the appellant fully covered the value of the suit. We ruled at the hearing of this appeal that the memorandum of cross-objections must be properly valued and Court-fees paid thereon ad valorem. Order XLI, Rule 22 (2) of the Civil Procedure Code, 1908, shows that a memorandum of cross-objections must conform to the requirements of Order XLI, Rule 1, so far as they relate to the forms and contents of a memorandum of appeal, and Article 1 of Schedule I to the the Indian Court Fees Act, 1870, as amended in i 908, indicates that Court-fees must be paid on a memorandum of cross-objections precisely in the same manner as on a plaint in a suit or on a memorandum of appeal. It is thus impossible to sustain the view that a respondent who has presented a memorandum of cross-objections is excused from the payment of Court-fees thereon, merely because the appellant may have paid more than adequate Court-fees on the memorandum of appeal. In our opinion, it is incumbent upon the respondent of value the relief claimed by way of crossobjection and to pay Court-fees accordingly. This view is confirmed by the fact that under Order XLI, Rule 22 (4), the cross-objection may be heard, even though the appeal is withdrawn or dismissed for default, which indicates that, under the present Code, the memorandum of cross-objections stands, for some purposes at least, in the same position as the memorandum of appeal. In conformity with this expression of our opinion, the respondents have valued their cross-objections at Rs. 5,000 and have paid the deficit Court-fees due. The appeal and cross-objections must consequently now be considered on the merits.

3. There can be no room for reasonable doubt that the clause in the lease set out above embodied in essence a covenant for renewal, In th'e absence of such a clause, the grantor would have been at liberty, on the expigy of the term of the lease, to settle the land on any terms with any person he might choose; hence, if the construction were accepted that the clause was intended merely to reserve liberty to CASES. 941 the Government to make a re-settlement with the lessee at enhanced rent, it would be obviously superfluous. It is not necessary for our present purpose to determine, whether, notwithstanding this clause in the lease, the Government might not, on the expiry of the term, decide not to settle the lands with anybody. This much is plain that if the Government did decide to resettle the land,?, the first offer would have to be made to the settlement-holder whose term had expired and a settlement would have to be made with him if he should agree to pay the enhanced rent; in other words, he had the option of refusal. In the case before us, the Revenue Authorities did actually decide that the land should be re settled, and, in this contingency, the plaintiff was entitled to have the land settled with him at the enhanced rent. The decisions of this Court in the cases of Secretary of State v. Forbes 17 Ind. Cas. 180 : 16 C.L.J. 217 and Lani Mia v. Muhammad Easin Mia 33 lud. Cas. 448 : 20 C.W.N. 948 show that where there is a covenant for renewal, if the option does not state the terms of renewal, the new lease would be for the same period and on the same terms as the original lease in respect of all the essential conditions thereof, except as to the covenant for renewal itself. This view is in conformity with what is recognised as well-settled doctrine in England. Consequently in the case before us, immediately on the expiry of the lease of the 5th August 1878, the lessee became entitled to a fresh lease on the same terms as before, except as to the amount of rent and the covenant for renewal. "No fresh grant, however, was made as we have seen, and the tandnaney was renewed from year to year during a period of nine

years. If nothing were known as to the reasons which moved the parties to adopt such a course, the inference might, perhaps, have been legitimately drawn that the lessee abandoned the right of the renewal which he possessed under the lease of the 5th August 1878. It is indisputable, however, that the tenancy was renewed from year to year, because the Settlement operations had not been completed and the amount of rent payable under the new arrangement had not yet been ascertained. The parties plainly intended that the grant of the new lease should be postponed till the fresh settlement then in progress, had been completed. This is clear from the decision of the Boaftl of Revenue given on the 15th December 1909; but the lease which was then offered to the plaintiffs was a lease for a term of one year only. In our opinion, the plaintiffs were not bound to accept the offer thus made. They were entitled to a renewal for the same period and on the same conditions as were to be found in the lease of the 5th August 1878, subject to the reservation that they were liable to pay the enhanced rent and could not claim the insertion of covenant for renewal in the new lease. This in substance is all that they are entitled to have in the present suit, and the (Subordinate Judge has made a decree accordingly. But the plaintiffs and the defendant have both attacked th\s decree. The plaintiffs contend that they are entitled to a lease for 22 years with a covenant for renewal, that is, in substance, a lease in perpetuity though not at fixed rent. The defendant, on the other hand, contends that the suit should be dismissed as the plaintiffs are not entitled, as a matter of right, to a fresh lease at all. For the reasons already assigned, neither of these extreme views can be sustained on principle. On a true construction of the lease of the 5th August 1878, we hold that it was a grant to continued till the next Survey and Settlement proceedings which happened to follow the previous one at an interval of 22 years. In this view the plaintiffs are entitled now to a lease to continue till the completion of the next periodical Settlement, as the trial Court has decreed.

4. The result is that the appeal as well as the cross-objections must stand dismissed, and there will be no order for costs in this Court.