

1962

November, 9.

THE SUPREME COURT REPORTS

ANANGA BIJOY MITTRA

v.

TATA IRON & STEEL CO., LTD.

(B. P. SINHA, C. J., P. B. GAJENDRAGADKAR,
K. N. WANCHOO, K. C. DAS GUPTA
and J. C. SHAH, JJ.)

Land Tenure—Application for lease—Lease granted—Ascertainment of the purpose of lease—Terms of application for lease to be looked into—Agricultural tenant—Definition of—Monthly tenancy—Undertaking to abide by house building rules—Not a Raiyat—Liable to eviction—Chotanagpur Tenancy Act, 1908 (Ben. 6 of 1908), ss. 4(2), 6.

The predecessor in interest of the present appellant applied to the land officer of the respondents for the settlement of the subject matter of dispute, situated in Jamshedpur. The land was let out to him as tenant from month to month at a rent of Re. 1/- per month. There was no document creating the lease. The application for settlement contained averments to the effect that the applicant wanted it "for garden purposes" that he agreed to hold the land "on monthly tenancy" and that he would abide by the "house building rules". Following a notice to quit the respondents who are the owners of the plot filed a suit for eviction of the appellant and for arrears of rent. The defence raised was that there was no monthly tenancy and the lease was for agricultural and horticultural purposes and the appellant was an agricultural tenant within the meaning of ss. 4 and 6 of the Chotanagpur Tenancy Act who has fixity of tenure. The trial court upheld the contention and on appeal it was confirmed by the Subordinate Judge. On second appeal the High Court of Patna held that the lease was not for agricultural purposes and ordered eviction. The present appeal is by way of special leave granted by this Court.

The main contention before this Court was that since the application for lease made it clear that the land was for "garden

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purpose" the appellant was raiyat within the meaning of s. 6 of the Act.

Held, that the statement of the purpose had to be considered alongwith the other facts mentioned in the document, viz. that the application was for a monthly tenancy, and that the applicant agreed to abide by the house building rules. On such consideration, it was clear that the lease was not for horticultural or agricultural purposes.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 286 of 1960.

Appeal by special leave from the judgment and decree dated March 26, 1958, of the Patna High Court in Second Appeal No. 1330 of 1954.

N. C. Chatterjee and R. C. Prasad, for the appellant.

S. N. Andley and S. P. Varma, for the respondent No. 1.

1962. November 9. The Judgment of the Court was delivered by

Das Gupta, J.

DAS GUPTA, J.—The subject-matter of this litigation is a plot of land measuring 1267 sq. ft. in the Sakchi New Planning area in the town of Jamshedpur. On June 23, 1937, Abdul Gani, through whom the present appellant claims to be interested in the land, applied for settlement of this plot of land to the Land Officer of the owner of the land, the Tata Iron and Steel Company Ltd. The application was allowed and the land was let out to Abdul Gani as a tenant from month to month at a rent of Re. 1/- per month. The suit out of which this appeal has arisen was brought in 1949 for ejection of the tenant after determination of the tenancy by a notice to quit the premises. There was also a prayer for arrears of rent at Re 1/- per month.

The defence of Abdul Gani was that he was an agriculturist tenant as contemplated under the

Chotanagpur Tenancy Act and not a monthly tenant and that no monthly rent was paid for the land. It was also pleaded that the lease being for agricultural and horticultural purposes at an annual rent, the defendant acquired a valid occupancy right and was not liable to ejectment. The present appellant was added as a defendant by an order dated May 25, 1953. He also filed a written statement contending that by operation of the provisions of Chotanagpur Tenancy Act, Abdul Gani had acquired occupancy right, that the purpose for which settlement was made with Abdul Gani could not create a monthly tenancy and the plaintiff was not entitled to Khas possession.

The Trial Court (The Additional Munsif, Jamshedpur), accepted the defence plea that the tenancy created in favour of Abdul Gani was agricultural, that Abdul Gani had acquired an occupancy raiyat's right therein and as the tenancy Act was governed by the Chotanagpur Tenancy Act the suit was not triable by a civil court. Accordingly, he dismissed the suit.

On appeal, the Subordinate Judge, Singhbhum, agreed with the findings of the Trial Court that the holding was agricultural and therefore governed by the Chotanagpur Tenancy Act and accordingly affirmed the judgment and decree of the Trial Court.

The High Court of Judicature at Patna however came to the conclusion in Second Appeal that the lease was not for agricultural and horticultural purposes and there was no question of the defendant having acquired the right of occupancy in the land. The High Court allowed the appeal, set aside the judgment and decree of the courts below and decreed the plaintiff's suit.

Against this decision of the High Court this appeal has been filed by special leave granted by this Court.

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In support of the appeal it is urged before us by Mr. N. C. Chatterjee, that the High Court erred in holding that the lease was not for agricultural or horticultural purposes. He points out that the application for lease of the land mentions "garden purpose" as the purpose of the tenancy and argues that that is sufficient to make Abdul Gani a raiyat within the meaning of s. 6 of the Chotanagpur Tenancy Act. Section 4 of the Act states that for the purpose of this Act there shall be four classes of tenants, namely, (1) tenure-holders, (2) raiyats, (3) under-raiyats and (4) Munderi Khunt-kattidars. Admittedly and obviously, Abdul Gani was not a tenant under classes 1, 3 and 4 and the only way he could come within the ambit of Chotanagpur Tenancy Act was by being a "raiyat" as mentioned in class (2). "Raiyat" is defined in s. 6 of this Act 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 the successors-in-interest of persons who have acquired such a right....." It has been settled by a number of decisions of the Calcutta and the Patna High Courts that the purpose of planting an orchard comes within "the purpose of cultivation." If it appears that Abdul Gani took lease of the land in dispute for the purpose of growing an orchard he clearly became a raiyat under the Chotanagpur Tenancy Act. While there is no document creating the lease we have, in the present case, Abdul Gani's application for lease and the landlord's order granting the lease. The application is in these words :—

"I beg to apply for a plot of land measuring 1267 sq.ft. in Sakchi New Planning for Garden Purpose and for permission to retain one step in the east side.

I agree to hold the land on monthly tenancy and to abide by the terms and conditions of the

Company and the house building rules. I also agree to abide by the rules and bye-laws of the Jamshedpur Notified Area Committee in force from time to time.

I agree to pay the security deposit to be fixed by you in respect of my tenancy as soon as the plot is allotted to me and shall submit the plan of my proposed house for approval of the Chief Town Engineer before I start construction.

I therefore request that you will kindly allot me a plot of land in the above mentioned Basti on your usual terms."

Mr. Chatterjee fastens on the words "for garden purpose" and argues that that shows clearly that the purpose was to grow an orchard. It will not be proper however to look only at this one phrase "for garden purpose" and to ignore the rest of the document. It has to be noticed that after stating in the first sentence that he wanted the land "for garden purpose" Abdul Gani stated in the next paragraph that he agreed to hold the land "on monthly tenancy" and again that he agreed "to abide by the terms and conditions of the Company and the house building rules." It is difficult to conceive of a lease for cultivation being taken on a monthly tenancy. It is even more difficult to understand why Abdul Gani would agree "to abide by the house building rules" if the purpose was only to grow an orchard. These two facts, namely, that the land would be held on monthly tenancy and the tenant would abide by the house-building rules, have to be considered along with the earlier statement that the land was being applied "for garden purpose." The terms of the application for lease are, in our opinion, sufficient to show that the lease was not for an agricultural or horticultural purpose. In view of this, it is unnecessary to investigate how the land was actually used. It may be mentioned however that if one did examine the evidence to

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find out such user, it becomes clear that while a part of the land was used for growing some guava trees and some flowers, a pacca room was also erected on a portion of the land. On a consideration of all these things we find ourselves in agreement with the High Court that the purpose of the lease was not agricultural or horticultural.

We have, therefore, come to the conclusion that the High Court was right in decreeing the plaintiff's suit. The appeal is accordingly dismissed with costs.

Appeal dismissed.

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VIRUPAXAPPA VEERAPPA KADAMPUR

v.

THE STATE OF MYSORE

(S. J. IMAM, K. C. DAS GUPTA and
RAGHUBAR DAYAL, JJ.)

Criminal Law—Police Officer preparing false report—“Act done under colour of duty”, Meaning of—Statute providing time limit for prosecution—Validity of conviction—Indian Penal Code 1860 (Act 45 of 1860), s. 218—Bombay Police Act, 1951 (Bom. 22 of 1951), ss. 64, 161(1).

The appellant, a Head Constable, was charged with an offence under s. 218 of the Indian Penal Code. The prosecution case was that on February 23, 1954, on receipt of information that some persons were attempting to smuggle *Ganja*, the appellant caught N with a bundle containing 15 packets of *Ganja* and seized them, that he then prepared a *Panchnama* in which he incorrectly showed the seizure of 9 packets of *Ganja* only, and that on the next day he, however, prepared a new report in which it was falsely recited that the person with the bundle ran away on seeing the police after throwing away the bundle containing 9 packets of *Ganja* only. The allegation against the appellant was that he prepared a false report with