

Privy Council Appeal No. 33 of 1940

Patna Appeal No. 29 of 1939

Tikait Umed Narain Singh and another - - - *Appellants*

v.

The Equitable Coal Company Limited and others - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT PATNA

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL, DELIVERED THE 30TH JULY, 1941

Present at the Hearing:

LORD ATKIN

LORD RUSSELL OF KILLOWEN

SIR GEORGE RANKIN

[*Delivered by* LORD RUSSELL OF KILLOWEN]

This is an appeal from a judgment of the High Court of Judicature at Patna which affirmed the judgment of the trial judge. The suit was brought against the Equitable Coal Co., Ltd., for the recovery of certain demised land, together with mesne profits, upon the footing that upon the true construction of a lease to that company, and in the events which had happened, the first appellant, Tekait Umed Narain Singh (hereinafter called the appellant), as successor in title to the grantor of the lease, was entitled to recover khas possession.

The lease in question was dated the 29th October, 1872, and was granted to the company by one Sidhanath, the owner of the Gadi Karharbari estate, of which the demised lands formed part. While he was still a minor his guardians had entered into an arrangement with the company on the 4th July, 1864, under which the company had entered into possession of the lands in question. This transaction was evidenced by two registered documents of that date, an ekrinama executed by the company, and an amalnama executed by the guardians.

The two documents, though in some respects differently worded, contain substantially the same terms, for which reference need only be made to the amalnama.

By it, after stating (inter alia) that it was thought likely that there was a mine of coal in three named villages, forming part of the Gadi Karharbari estate, the guardians gave the company a mukarrari lease of the entirety of one of the named villages measuring 636 bighas, of 300 bighas in another of the named villages, and of 64 bighas in the third of the named villages, making 1,000 bighas in all at the annual rental of Rs.3,500, being Rs.3-8-0 per bigha. A premium of Rs.3,500 (at the rate of Rs.3-8-0 per bigha) was paid by the company, which was to possess the land with the entire surface and subsoil rights and by raising coal, and by cultivation and by collecting rent enjoy the same. The document then provided that

so long as it was not ascertained that there was coal in the lands, or so long as the company did not begin to raise coal from the lands, the full rent was not to be paid, but only Rs.375, at the rate of 6 annas per bigha; but when coal was ascertained or the company began to raise coal, the full rent at Rs.3-8-0 per bigha was to be paid. The rest of the document was in the following terms:—

“ Hence, first of all, it is your duty, you will go on doing whatever work is to be done such as setting agar, etc., for searching coal in those lands. After doing so if you can ascertain that there is coal in these lands, then from the time when you will finally come to know the same you will pay the full jama of the said land, as fixed. If coal exists in some portion of the land and not in the entire land, you will pay the jama for that quantity of land in which coal will exist at the rate of Rs. 3-8-0 per bigha from that time. The remaining land in which coal will not exist will revert to my khass possession; and if you want to take so many bighas of land as will be less than the entire quantity of land, mentioned in this amalnama due to non-existence of coal, as stated above, from any other right (possession?) of the minor, you will be competent to take the same also at the said proportionate jama. If you do not take land of any other place, the amount of consideration at the rate of Rs. 3-8-0 per bigha will be refunded to you for as many bighas of land as will fall short of the entire quantity of land, mentioned in this amalnama. Further, if there be no coal in the entire land, you will get refund of the entire amount of consideration. Further when the minor attains majority, he will give you a mukarrari patta, according to the terms cited in this amalnama. He will not be competent to raise any objection to that. If any of these terms is infringed, the minor as well as we shall be liable for paying the said Rs. 3,500 three thousand five hundred which we have received from you on account of consideration with interest thereon at 12 annas per cent. per month till realisation and for making up the loss or damage that you will sustain on account of engaging you in this uncertain matter for insignificant(?) time; and these liabilities will attach to the minors property. Be it further stated that so long as a patta is not given to you on the terms of this amalnama, this amalnama being treated like patta (*sic*), all the terms of the amalnama will take effect like the patta. To this effect, after taking from you an agreement in the shape of a kabuliyat corresponding to an agreement in the shape of an amalnama, this amalnama is given to you like a patta.”

In the year 1869 Sidhanath came of age; and on the 29th October, 1872, he executed a patta of the lands in question to the company.

By it he states his title to the lands in question, the giving of them during his minority by his guardians under the amalnama, the occupation of them by the company ever since, and that he has attained majority and is himself managing the estate. The document then proceeds as follows:—

“ I have approved the grant of the amalnama by my mother and guardians the Tikaitins, but the rate of Rs. 3-8-0 per bigha fixed after the work of coal was started was changed to Rs. 2-8-0, (rupees two annas eight only), per bigha with the consent of me and the mukarraridar. Therefore having agreed to and confirmed the settlement of the aforesaid lands, I considered it fair to give the same in mukarrari istimrari settlement to Mr. A. S. Hand Huff (?), manager and am-mukhtar for the Equitable Coal Company, residing at Chauki Danga, thana and sub-registry office Raniganj, pargana Shergarha (?), district registry and district Burdwan, and I declare that the said gentleman having remained as usual, in possession and occupation of the said lands shall continue to deposit in my kachhari without objection the aforesaid fixed rent of Rs. 375 three hundred and seventy-five rupees, annually at the rate of 6 annas a bigha, instalment by instalment year by year, until the work of (extracting) coal is started and shall not bring forward any sort of objection, and with effect from the date, month and year from which (torn), the annual rental of Rs. 2,500 (?), at the rate of Rs. 2-8-0, (rupees two and annas eight) a bigha, annually for the entire one thousand bighas of land, mentioned above, shall have to be paid into my kachhari and of my heirs and representatives, instalment by instalment, year by year, and the said mukarraridars shall continue to pay (the same), and shall not put forth any sort of objection, and at the time of the grant of the aforesaid amalnama the said Tikaitins (wives of Takaitis) received rupees three thousand five hundred Rs. 3,500 free

of interest by way of security from the said gentleman and brought the same to their use. Out of that amount of security rupees two thousand five hundred paid by the said Company remains with me as security free of interest for the execution of this mukarrari lease and the remaining Rs. 1,000 (one thousand rupees), out of the amount of security in respect of the previous amalnamah after adjustment up to this day is due by me, and the same shall be set off against the future rent until it is satisfied. I further declare that the said mukarraridars, and his heirs and representatives shall remain in possession and occupation of the lands mentioned above and shall carry on business in coal, etc., by settlement with tenants or otherwise as they may desire and appropriate whatever produce may be derived therefrom. I and my heirs shall have and have no claim or dispute save the (right) to receive the fixed rent. I therefore write these few lines by way of a mukarrari istimrari patta so that it may be of use when required."

Sidhanath died on the 13th October, 1898. On his death the appellant became entitled to the lands in question subject to the lease.

The point at issue between the parties may now be stated. The appellant claims that all the terms of the amalnama of 1864 (except such as are expressly or by necessary implication varied by or excluded from the patta of 1872), must be treated as incorporated in the patta, that among the terms so incorporated are the provisions of the amalnama that so much of the land as bears no coal is to revert to the lessor, that none of the land bears any coal or any coal worth mining, and that, therefore, under the provisions of the lease the appellant is entitled to recover possession of the lands.

The company on the other hand contends that the rights and liabilities of the parties are to be ascertained only by reference to the patta of 1872 and the corresponding kabulyat, and that the appellant has no right thereunder to recover possession of any part of the lands.

The Subordinate Judge dismissed the suit. The appellant appealed to the High Court which dismissed the appeal. The judgment of the High Court was delivered by Terrell, C.J., and their Lordships find themselves in complete agreement with it.

The confirmation by Sidhanath of the arrangement made by his guardians merely records his approval of their action. He was free, on attaining majority, to strike his own bargain with the company; and he did so by the patta of 1872. That patta and the kabulyat alone record the bargain between the parties, and govern their respective rights and liabilities. Assuming, in favour of the appellant, that the coal-bearing qualities of the land are what he alleges them to be, he has no right under the patta to recover possession of any part of the lands in suit.

Their Lordships will humbly advise His Majesty that this appeal should be dismissed.

The appellants must pay the costs of the first respondent, who alone has appeared.

In the Privy Council

TIKAIT UMED NARAIN SINGH and another

v.

**THE EQUITABLE COAL COMPANY
LIMITED and others**

DELIVERED BY
LORD RUSSELL OF KILLOWEN

Printed by His Majesty's Stationery Office Press,
DRURY LANE, W.C.2.

1941