

In Re: Petition of Protap Chunder Ghose Vs. Protap Chunder Ghose

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Court : Kolkata

Decided On : Apr-20-1882

Reported in : (1882)ILR8Cal848

Judge : Prinsep and ;O'Kinealy, JJ.

Appellant : In Re: Petition of Protap Chunder Ghose;kally Churn Dutt and ors.

Respondent : Protap Chunder Ghose

Judgement :

Prinsep, J.

1. In this case Protap Chunder Ghose, the proprietor of certain property in the 24-Parganas, applied, under Section 38 of Beng. Act VIII of 1869, to the Civil Court in that district, to have a survey made and the tenures and under-tenures recorded according to the provisions of the Rent Law.

2. This application was admitted, and a copy of the order was transmitted to the Collector, directing him to undertake the survey. When the papers came in from the Ameen, an objection was raised by Jadub Chunder Ghose, one of the tenure-holders, as to whether the record was such a record as was contemplated under the Act, and it was urged that, before the record could be considered complete, a khatean should be prepared, from which the parties interested could obtain knowledge of the amount of land recorded in their names, so as to enable them to

raise any objection that they might deem necessary against the survey. Several orders were passed on this subject, but it is only now necessary for us to refer to the order of the 2nd of June 1881. On that date the Collector reported to the Subordinate Judge, that the Court Ameen had run away; that he had not made the khatean; and that, until such khatean was prepared, he, the Collector, was of opinion, that no order could be passed under Section 38. Subsequently, on the 15th June, the zamindar appeared before the Collector, and though he offered to pay the amount necessary to write out the khatean, at the same time he raised several objections to the decision at which the Collector had arrived. On the 23rd June following, the Collector sent a copy of this petition to the Subordinate Judge, asking for his instructions. The Collector then changed the opinion he had previously expressed on the 2nd June, and stated to the Subordinate Judge that the chittas and map were the only papers necessary for the survey and record of rights. On the next day, the Subordinate Judge answered that he concurred in the opinion expressed by the Collector. In pursuance of an order of that date, the Collector forwarded the papers to the Civil Court on the 30th June following.

3. All these orders were passed *ex parte*, and no notice was given of the application of the 15th June to the other side, and we may observe that the orders of the 2nd June, which were also passed *ex parte*, are open to the same objection. It appears to us that this is not the procedure which should be adopted by the Collector in deciding the objections raised to his order in proceedings under Section 38 of Beng. Act VIII of 1869. We are of opinion, that whenever objections are raised, unless they are at once disallowed, they cannot be dealt with in the absence of any party likely to be injuriously affected by the order sought for. The order of the Collector of the 2nd June, holding that a khatean was necessary, was clearly one of this description and should not have been passed in the absence of the zamindar: and a portion of the order of 15th June, revoking the previous order, should not have been passed without notice to the tenure holder, whose application for information of the result of the survey led to its being passed. We accordingly set aside the proceedings of the Collector and remand the case with directions that he shall procure the papers from the Subordinate Judge and then fix a day and decide in the presence of both parties, whether in his opinion a khatean is necessary for the record of rights under Section 38, and whether the

proceedings of the Ameen ought to be sanctioned. If the Collector is of opinion that no khatean is necessary, and he sanctions the proceedings of the Ameen, then the date of such order, will be considered the date on which the survey proceedings are sanctioned, and the parties will have fifteen days from that date to object. But if, on the contrary, he thinks that the preparation of a khatean is necessary to carry out the provisions of the law, then the date from which the fifteen days will run will be the date on which he sanctions the entire proceedings taken under the orders of the Civil Court, after receipt of this khatean or on conclusion of any further enquiry that he may think necessary. Under the circumstances we make no orders as to the costs of this appeal.

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