
(1949) 02 FED CK 0001

In the Federal Court

Auckland Jute Co. Ltd.

APPELLANT

Vs

Tulsichandra Goswami

RESPONDENT

Date of Decision : 03-02-1949

Acts Referred:

Citation : 1949 FCR 201

Hon'ble Judges : Justice Hari Lal Kania, Justice Fazl Ali, Justice Patanjali Sastri, Justice Mukherjea, Justice Mehar Chand Mahajan

Bench : Full Bench

Judgement

Sir Harilal Kania, C.J.—I have read the judgment prepared by Mukherjea J. in this appeal and agree with his conclusion and line of reasoning.

2. As it is conceded that no proceedings under Chapter X, Part II, of the Bengal Tenancy Act were taken in the matter and also that s. 191 of the

Bengal Tenancy Act is inapplicable, as the lands in question are not held as agricultural lands, the only questions which remain for decision by this

Court are:

(1) Whether the Collector, overriding the contract between the parties, had authority to fix the rent in respect of the alluvial lands, under Bengal

Regulation VII of 1822 read with Bengal Alluvial Lands Settlement Act (Act XXXI of 1858); and

(2) What is the effect of an entry made by the Collector under section 9 of Regulation VII of 1822?

3. As regards the first question, it seems to me that the whole scheme of Regulation VII of 1822 was to ascertain facts, as it was found that the

previous settlement of revenue was made on incorrect data. The Regulation was

therefore passed to enable the Collector and Revenue authorities

to find out the actual rents received by the landlords and when it was not easy to ascertain the same, to find out what was the customary rent in the

locality. This appears to have been considered the proper data on which the revenue payable to Government could be more equitably fixed.

Reading the Regulation as a whole, I do not think it empowers the Collector, when he finds a certain amount paid actually as rent, to fix either a

higher or a lower rent. His duty was merely to ascertain and not to fix any fair or equitable rent. Such construction put on the wording of s. 9 of

Regulation VII of 1822 in *Ishur Chandra Sarkar v. Troylukhya Nath* (1913) 17 C.W.N. 865 and *Jagadindra Nath Boy v. Mohendra Nath*

Mazumdar (1919) 23 C.W.N. 587 is correct. Act XXXI of 1858 is limited to alluvial lands and in s. 2 thereof the word "determine" is used. As

those lands came into existence for the first time, there could not be any previous rents in respect thereof. The word "determine" is, under the

circumstances, appropriate to be used, although it does not empower the Collector to fix any other rent if some agreement in respect of such

alluvial land is found to exist. Section 2 of Act XXXI of 1858 does not expressly enlarge the powers, of the Collector and read as a supplement to

Regulation VII of 1822, does not enlarge the powers deemed to exist in the Collector in respect of the alluvial lands. The provisions in Regulation

VII of 1822 relating to appeals etc. do not affect the powers of the Collector under s. 9. In *Kumar Chandra Singh Dudhuria v. Midnapore*

Zamindary Co. (1942) 69 I.A. 51, although the newly formed alluvial land was treated as a separate estate under Act XXXI of 1858, the rent of

the tenants was fixed under the Bengal Tenancy Act. In my opinion, therefore, when an agreement in respect of rent as between a landlord and

tenant exists, the Collector has no power under s. 9 of Regulation VII of 1822 or under s. 2 of Act XXXI of 1868 to fix (i.e., ascertain or

determine) any other rent for the lands in question. Those sections define the limits of his jurisdiction and if he does anything beyond those limits, his

conclusion is not binding on the landlord or the tenant.

4. On the second question, the entry, which the Collector is authorised to make, as a result of his enquiries, acquires a presumptive value of its

correctness provided he has acted within the powers given to him by the

Regulation. If however he has chosen to exceed those powers and fixed what he considers reasonable or fair rent (which is not the actual rent the tenant is under a contract to pay), in my opinion, the entry made in the record of rights in the excessive exercise of the Collector's powers has not the probative value given to it by the section. Assuming that an entry in fact is found in the record of rights, at best it has a presumptive value and either party who is aggrieved is entitled to show that the entry is incorrect and is not made in the proper exercise of the powers of the Collector. This can be done, as stated in the section itself, in two ways: (1) by mutual agreement subsequently made between the parties; or (2) as a result of contest in a regular suit. The expression "regular suit" in the section is used in contrast to a summary suit or a revenue suit. It means a suit in a Court having ordinary civil jurisdiction. In such a suit, the correctness or the binding nature of such an entry could be challenged either by the plaintiff filing a suit or by the defendant by way of defence. I do not think the words used in the section limit the right to challenge the entry only to the plaintiff. The section does not exclude the right of a defendant by way of defence to contest the accuracy of the entry. The effect of an entry made under Act XXXI of 1858 is not higher. It has the same probative value as an entry made under Regulation VII of 1822.

5. Under the circumstances, in my opinion, it was open to the appellants to challenge the correctness of the entry and its binding nature on them in the suit filed by the respondent to recover rent from them. I find nothing in Regulation VII of 1822 or Act XXXI of 1858 to prevent such defence being raised. It may be noticed that while the accuracy or binding nature of such an entry is contemplated to be contested in a regular suit, unlike provisions found in other Acts in similar circumstances, no provision prescribing a time within which such a suit has to be brought, is found in the Regulation. That supports the view that these objections could be raised by way of defence also.

6. In my opinion, the learned Judges who decided the appeal were in error in disregarding the decision of their Court in *Dhirendra Chandra Rai v. Nawab Khaja Habibullah* (1925) 29 C.W.N. 505 . That case was decided on the correct interpretation of the relevant provisions of these two legislations. I am therefore of the opinion that the appeal should be allowed and

the decree of the District Judge of 24-Parganas restored. That will result in the respondent's suit being dismissed with costs throughout.

Fazl Ali, J.

7. I agree with the conclusion arrived at by my brother Mukherjea and also with most of the reasonings upon which it is based. As I am however

inclined to construe s. 2 of Act XXXI of 1858 somewhat differently, I wish to add a short judgment of my own.

8. Section 2 of Act XXXI of 1858, which admittedly governs the present case, runs as follows:

It shall be the duty of all officers making settlements of such land, whether the land be settled separately or incorporated with the original estate, to

ascertain and record all such rights, according to the rules prescribed in Regulation VII of 1822 and to determine whether any and what additional

rent shall be payable in respect of the alluvial land by the person or persons entitled to any under-tenure in the original estate.

9. Now, whatever may be the powers of a settlement officer under Regulation VII of 1822, it seems to me that the words ""determine whether any

and what additional rent shall be payable in respect of the alluvial land"" are wide enough to cover a case where the land has been newly formed

and no rent is paid for it by the tenant. In such a case, the settlement authorities can, in my opinion, fix a proper rent on the data available to them.

Act XXXI of 1858 expressly states that ""the provisions of Regulation VII of 1822 so far as the same may be applicable are hereby declared to

extend to all settlements made under this Act."" By virtue of this statement, not only those provisions of the Regulation which lay down the

procedure for making the settlement but also the provision contained in the last para, of s. 9(1) is made applicable to a settlement made under Act

XXXI of 1858. This last para, runs as follows:

The information collected on the above points shall be so arranged and recorded as to admit of an immediate reference hereafter by the Courts, of

Judicature, it being understood and declared that all decisions on the demands of the Zamindars shall hereafter be regulated by the rates of rent and

modes of payment avowed and ascertained at the settlement and recorded in the Collector's proceedings until distinctly altered by mutual

agreement or after full investigation in a regular suit.

10. By virtue of this provision, the record of the Collector must be taken to be prima, facie correct and the courts of law are bound to act upon it

till it is altered or held to be incorrect; but the correctness or propriety of an entry in the record can be challenged by means of a regular suit. That

being so it is open to the appellant in the present case to challenge the correctness of the entry as to rent of the land with which we are concerned

in the present suit. I am not prepared to hold that the present suit is not a regular suit, merely because it is a suit for rent. I agree with the view

expressed by Mukherjea J. that the expression ""regular suit"" as used in Regulation VII of 1822 means a suit which is not to be decided summarily

but is to be decided by a competent civil Court according to the procedure applicable to ordinary suits and is a suit in which the rights of the

parties can be finally determined. As there is nothing in Regulation VII of 1822 or Act XXXI of 1858 to empower the settlement officer to ignore

an existing contract between the parties as to rent, the entry in the settlement record which is contrary to the terms of such a contract must be held

to be incorrect and the contract between the parties must be given effect to. The contract between the parties in this case was that new accretions

would be held by the lessee free of rent till they attain the level of the high land originally settled under the patta as it existed in 1907. Whether the

land in question has attained the level referred to in the contract is a question of fact and must be decided with reference to the finding of the

learned District Judge who was the final Court of appeal. That finding in my opinion, though somewhat clumsily expressed, cannot be said to be

not in accordance with law and I do not agree with the learned Advocate for the respondent that the District Judge in arriving at it has misdirected

himself on the question of onus of proof. In this view, I agree that the appeal should be allowed.

Patanjali Sastri J.

11. I agree that this appeal should be allowed. I have, however, reached that conclusion on grounds somewhat different from those indicated in the

judgments of my learned colleagues which I have had the advantage of reading.

12. The appellant company is the assignee of a permanent leasehold interest created by the respondent's predecessor in title by a registered

istimarari mokurrari patta dated 6th May, 1907. The lease was granted for the

erection of jute mills and other factories on the demised lands which consisted partly of a parcel of high land and partly of chur land adjoining the river Hooghly, for which different rates of selami and rent were charged. The patta contained, inter alia, a stipulation that the lessee was to hold any future alluvial addition to the chur land free of rent, provided, nevertheless, that, if at any, time thereafter any portion of the chur land or of the future accretions should attain the same level as the high land demised under the patta, then selami and rent should be paid at the rate fixed for the high land.

13. A large block of alluvial land having accreted to the demised chur land in course of time, proceedings were initiated by the Diara Officer (as the officer concerned with the settlement of such land is called), District 24-Parganas, for the settlement of the new accretion, among other lands

similarly formed in the District and a notification (Ex. II) was issued under the Bengal Alluvion and Diluvion Act (IX of 1847) to all the landlords

and tenants having interest in such lands that new alluvial increments were liable to assessment for Government revenue under s. 3 of the Bengal

Regulation II of 1819 and that "the rent of all under-tenures in such lands is under s. 2 of the Bengal Act XXXI of 1858 or under s. 104 of the

Bengal Tenancy Act (VIII of 1885) liable to determination." Objections, if any, were to be presented on or before a specified date, but no

objection having been raised on behalf of the company, the Diara Officer made his final report on 22-1-1932 whereby the new accretion was

settled with the respondent as a separate estate for a term of 15 years on the basis of the rental assets assessed by him. These included a sum of

Rs. 495 per annum determined as the rent payable by the appellant in respect of the land here in question at the rate of Rs. 45 per acre or Rs. 15

per bhiga which was duly entered in Khatian No. 556 (Ex. IV). The ground on which this rent of Rs. 495 was fixed appears from the Diara

Assessment Roll (Ex. D) wherein the stipulations in the patta of 1907 regarding the payment of selami and rent were referred to and it was stated

Subsequently by another patta dated 30th September, 1913, the chur land of Khatian No. 2 settled with the Mill (vide Notice Kh. 2). So this is to

be assessed at Rs. 16 per bhiga." This later patta has not been placed on record in the present proceedings. It was not suggested that it related to

the land in dispute, nor was it explained why the Diara Officer based his determination of rent for the land on that patta. It is, however, reasonably clear that he did not give effect to the terms of the patta of 1907 under which in no event was a rent of Rs. 15 per bhiga payable for future accretions.

14. It was on the basis of the entry in the Khatian aforesaid that the respondent brought the suit for the recovery of rent at Rs. 495 per annum for the period from 1342 to 1345 B.S. in respect of the new alluvial land. The main defence was that the Diara Officer had no jurisdiction, either under Regulation VII of 1822 or under Act XXXI of 1858, to settle rents so as to bind the appellant but was authorized only to ascertain and record existing rents. In particular, he had no power to settle rents in such a manner as to conflict with an existing contract or to enhance rents as he must be taken to have done in the present case, for no rent was payable for the land in question which had not yet attained the level of the demised high land. It was also alleged that the entry in the Khatian was "wrong and erroneous" and could not impose any liability on the appellant to pay the rent mentioned therein. On these allegations the issues raised the competence of the Revenue Officer to settle rents so as to bind the appellant and the correctness of the entry in the Khatian in suit.

15. The High Court, agreeing with the trial Judge, came to the conclusion that the provisions of Act XXXI of 1858 read with Regulation VII of 1822 empowered the Diara Officer to settle and determine rents payable by under-tenants and not merely to record existing rights. The learned Judges (Biswas and Das JJ.) also held that s. 191 of the Bengal Tenancy Act was applicable to non-agricultural tenancies as well and that its application to this case was not excluded by reason of the patta comprising asli lands also. Therefore, even if the Revenue Officer disregarded the patta, his decision would bind the appellant, as it had not been set aside in a regular suit brought for the purpose. The general effect of their judgment will be found in the following passage:

If the tenant's contention be that the patta could not be superseded or touched at all, it was for the tenant to rely on it before the Revenue Officer.

Notification Ex. 2 was duly served on the respondents and they had ample opportunity to raise the point. If the respondents were aggrieved by the

determination of rent by the Revenue Officer, they had the right to appeal before the Board. They had also the right to raise the question by a

regular suit. This they did not do. At one stage of the hearing we thought that it might be possible to stay these proceedings on the respondents

now filing a suit to get the decision of the Revenue Officer set aside. Even taking the institution of the suit, out of which the present appeal arises, as

the starting point of limitation, more than 6 years have elapsed and any suit contemplated by Regulation VII of 1822 will now be barred. In these

circumstances it seems to us that the principle of finality deduced by their Lordships of the Judicial Committee from the provision of Chapter X,

Part II, of the Bengal Tenancy Act in the case of *Kumar Chandra Singh Dudhoria v. The Midnapore Zemindary Co. Ltd.* (1942) 69 I.A. 51 is

equally "applicable to this case. It seems to us that the provisions of Regulation VII of 1822 regarding appeal to the Board and the right of suit are

in pari materia with those contained in Part II of Chapter X and the consequences of not availing oneself of the remedies specified in both

enactments must be the same.

16. At the hearing of this appeal before us Mr. Chakravarti appearing for the respondent conceded that s. 191 of the Bengal Tenancy Act was not

applicable to non-agricultural tenancies such as the one created by the patta of 1907 and he made no attempt to support that part of the judgment

of the High Court which placed reliance upon that section. He maintained, however, that the Diara Officer in settling newly formed chur lands

under Act XXXI of 1858 had jurisdiction to determine the additional rents, if any, payable for such land by the under-tenants and that his

determination in the present case was, under the provisions of Regulation VII of 1822, final and conclusive, no suit having been brought by the

appellant for the alteration of the Khatian. On the other hand, Mr. Pyarelal Banerjee on behalf of the appellant, contended that the only duty with

which the Diara Officer was charged under those statutory provisions was to ascertain and record existing rents for the purpose of settling the

revenue payable to Government and that he had no power to settle rents as between the zamindar and the tenants and in particular, to enhance

rents in contravention of the terms of contracts of tenancy. Any such settlement of rent made by the Officer in the course of proceedings under the

said statutes was void as being in excess of his powers and should be ignored. In my opinion neither of these extreme contentions is correct. I think

that the Diara Officer has power under these statutes to settle rents and where necessary, to enhance them, but such settlement is not finally binding

on the tenant but has a presumptive value until it is displaced by countervailing proof in a regular suit.

17. The governing provisions are those of Act XXXI of 1358 which, as its title shows, were passed to make ""further provision for the settlement of

land gained by alluvion in Bengal"". By s. 1 the Act provides for the settlement of lands gained by alluvion either by assessing the revenue payable

thereon and adding it to the juma of the original estate where the proprietor agrees to such a course, or, if he objects to such an arrangement, by

assessing and settling the lands as a separate estate with a separate juma. Section 2 is important and reads as follows:

2. Nothing contained in the preceding section shall affect the rights of any under-tenant in any alluvial land under the provisions of clause 1, Section

4, Regulation XI, 1825. It shall be the duty of all officers making settlements of such land, whether the land be settled separately or incorporated

with the original estate, to ascertain and record all such rights, according to the rules prescribed in Regulation VII, 1822; and to determine whether

any and what additional rent shall be payable in respect of the alluvial land by the person or persons entitled to any under-tenure in the original

estate.

The provisions of the said Regulation, so far as the same may be applicable, are hereby declared to extend to all settlements made under this Act.

18. It will be seen that the section lays a two-fold duty on the Settlement Officer: He is to ascertain and record the rights of under-tenants in alluvial

lands under the Bengal Alluvion and Diluvion Regulation of 1825 (which provides that lands gained by alluvion should be considered an increment

to the tenure of the person to whose estate it may be annexed, subject, however, to the liability to the payment of any additional rent where such

land is annexed to a subordinate tenure). He is also to ""determine whether any or what additional rent shall be payable"" by the under-tenant in such

cases. Now, whether or not the expression ""ascertain and record"" means anything more than finding out and recording things as they exist, it is

arguable that the "determination" contemplated must involve a finding as to whether additional rent is payable and if so, a settlement; of such rent, for, there must have been many cases of such newly formed accretions which had not previously paid any rent. The Settlement Officer must, in that view, necessarily have the power to settle the additional rent payable by the under-tenant in respect of such lands. As, however, the provisions of Regulation VII of 1822 are made applicable to the settlement of alluvial accretions under the Act, it would be more satisfactory to read the provisions of the two statutes together and arrive at a conclusion on the point, rather than base the decision on a narrow verbal distinction. I will accordingly proceed to consider the scope of the powers of the Revenue Officer prosecuting the detailed investigation prescribed by s. 9 of the Regulation.

19. In construing the words of a statute, especially an ancient statute like Regulation VII of 1822, it is necessary and relevant, as pointed out by Lord Blackburn in *River Wear Commissioners v. Adamson* (1877) 2 App. Can. 743, 762, 763, "to enquire what the circumstances were with reference to which the words were used and what was the object, appearing from those circumstances, which the person using them had in view; for the meaning of the words varies according to the circumstances with respect to which they were used". The primary purpose of the Regulation, as its title shows, is to declare the principles according to which the settlement of revenue was to be made in certain territories which had recently come under the control of the East India Company. It would appear that the Board of Directors were contemplating the introduction of permanent settlement in these territories and for that purpose they required the fullest information regarding the internal conditions of the country, such as the extent of cultivated and cultivable lands, local tenures and usages, rates of rent and the modes of their collection and distribution, etc. (see Field's Introduction to the Bengal Code, para. 42). Accordingly, the Regulation by its title declared one of its objects to be "defining, settling and recording the rights and obligations of the various classes and persons possessing an interest in the land or in the rent or produce thereof". This to my mind, is a clear enough indication that the statute contemplates the "settlement" of rents either as being the "right" of landlord or the "obligation

of the tenant for they are undoubtedly persons ""possessing an interest in the land or in the rent or produce thereof"". The preamble too states that"" in revising the existing settlement the efforts of the Revenue Officers should be chiefly directed not; to any general and extensive enhancement of the juma but to the objects of equalising the public burthens and of ascertaining, settling or recording the rights, interests, privileges and properties ""of all persons and classes owning, occupying, managing or cultivating the land"". It then refers to the intention of the Government to make a new settlement ""combining with the revision of the Government juma and the deliberate investigation of the facts by the determination of which its amount must be regulated, a full enquiry into and a careful settlement of the rights and interests of all classes connected with the land"". This implies that while ""a general and extensive enhancement"" of the juma was to be avoided such enhancement of it as might be necessary for ""equalizing the public burthens"" was not ruled out. It also indicates that, the amount of the new juma was to be regulated by the results of the enquiry and settlement to be made by the Revenue Officers. In my opinion, all this makes it reasonably plain that the Settlement Officer was to be entrusted, while revising the existing settlements, with the duty of settling rents, for the revised junta must be based on a ""careful settlement"" of the landholder's rights, the most important of which is the recovery of rent from his tenants. In other words, it was considered that a careful settlement of rents was necessary as the revenue payable during the period of the fresh settlement was to be based on a proper evaluation of the rental assets of the proprietor.

20. These declared objects were given effect to by s. 9 which provides for a ""detailed investigation"" by Collectors and other Revenue Officers making and revising settlements and lays upon them the duty of ""ascertaining and recording the fullest possible information in regard to landed tenures etc."" The section also directs ""the formation of as accurate a record as possible . . . of the rates of rent per bhiga of each description of land or kind of produce demandable from the resident cultivators"" and finally it provides that the ""information collected on the above points shall be so arranged and recorded as to admit of an immediate reference hereafter by the courts of judicature, it being understood and declared that all

decisions on the demands of the zamindars shall hereafter be regulated by the rates of rent and modes of payment avowed and ascertained at the settlement and recorded in the Collector's proceedings until distinctly altered by mutual agreement or after full investigation in a regular suit". Great stress was laid by Mr. Banerjee on the words "ascertaining and recording" and "information collected" as supporting the view that the scope of the investigation under s. 9 did not extend beyond finding out and recording things as they existed. "Ascertaining" or "collecting information" are not technical or specialised words and I fail to see why they should exclude the idea of determination or settlement of proper rent. In those early days when internal conditions were more or less unsettled, "ascertaining", as Mr. Field justly remarks, "too often involved determining what was indeterminate". Nor is the phrase "information collected and recorded" in any way inconsistent with such information consisting of things settled or determined by the Revenue Officers. On the other hand the passages quoted above clearly indicate, in my opinion, that such officers were intended to have the power of settling and where necessary, of enhancing rents, though "a general and extensive enhancement" was not contemplated.

21. One or two illustrations may serve to make the position clear. Suppose the Revenue Officer found that, in a particular estate in respect of which he was making a new settlement, the tenants were in possession of much larger areas than what they were paying rents for, or that they were paying rents much below the pargana or customary rates, what rents was the officer to enter in his record? Liability to pay increased rent for increase in area (which in the earlier Rent Acts was regarded as a ground of enhancement) was an accepted principle recognised by Regulation XI of 1825 [vide s. 4 (1)] and similarly, liability to pay rent at the pargana rates was sanctioned by ancient custom. If, nevertheless, the Revenue Officer was to enter only the existing rents in his record, the public revenue would suffer, for, as we have seen, the Regulation declared, that the revised Government juma "must be regulated" by the facts determined at the investigation carried out by the Revenue Officer making the settlement. In other word's, the settlement of Government revenue was to be based on the facts "ascertained and recorded" under s. 9. The Regulation nowhere contemplates that the Settlement Officers should conduct the "detailed investigation" prescribed by that section on two

different lines and form two "records", one for the purpose of assessing Government revenue and another containing entries of existing rents. If the assessment of public revenue at the revised settlements and indeed, a contemplated permanent settlement were to be based on the Revenue Officers' records, as they were intended to be, it could not, as it seems to me, have been intended that their powers should be restricted to noting down the rents actually being paid by the tenants. Such a restriction of their power, besides depriving their records of much of their practical value, would render it difficult if not impossible "to equalise the burthens" which was one of the objects to which "in revising the existing settlement, the efforts of the Revenue Officers should be chiefly directed". Furthermore, if the Settlement Officer's record were only to contain entries of rents which were, being actually paid by the tenants, there would be no need for enacting a rule of presumption as to the correctness of such entries and providing for a right of challenge in a regular suit. Neither the tenant who in that case would continue to pay the same rent as before, nor the zamindar who was till then content to receive that rent, would think of questioning the correctness of the Settlement Officer's record in such circumstances. On the other hand, would it not be reasonable to infer that this provision was made because the officer was given the power to settle rents, altering them where necessary and the exercise of such power might give rise to disputes. These considerations seem to me to afford cogent reasons for rejecting the view that the Settlement Officer acting under s. 9 of Regulation VII of 1822 had power only to find out and record the existing rates of rent. I have already endeavoured to show that expressions used in different places in the Regulation are also apt to support the wider construction.

22. Reference was made to the Bengal Rent Acts, such as Act X of 1859, Act VIII of 1869, Act III of 1878 and Act VIII of 1879 as showing that, whenever the Legislature contemplated that revenue officers should have the power of enhancing rents, express provisions were made in that behalf and stringent safeguards were inserted confining such power to specific grounds and it was said that, in the absence of such provisions in Act XXXI of 1858 or Regulation VII of 1822, the Revenue Officer acting under these statutes was not competent to exercise such power.

Reliance was also placed on several decisions of the Calcutta High Court such as *Akshaya Kumar Dutt v. Shama Charan Patitanda* I.L.R. (1889)

Cal. 586 , *Ishur Chandra Sarhar v. Troylukhya Nath Sinha* (1913) 17 C.W.N. 865, *Jagadindra Nath Roy v. Mohendra Nath Mazumdar* (1919)

23 C.W.N. 121 and *Dhirendra Chandra Rai and Others. Nawab Khaja Habibullah and Others* (1925) 29 C.W.N. 505 where it was held that the

Settlement Officer acting under Regulation VII of 1822 had no power to settle or enhance, rents but could only record the existing rates of rent.

23. It is not, in my view, a correct approach to the true interpretation of the provisions of s. 9 of Regulation VII of 1822 to examine the Rent Acts

passed many years later to see how the power of enhancement of rent was restricted and what conditions were stipulated as pre-requisites for its

exercise in those statutes and then to consider whether it could have been intended in the earlier legislation that the Revenue Officers should

exercise that power without such restrictions and conditions. It would rather seem that these officers had such power but abused it by an

inconsiderate and injudicious exercise thereof and the later statutes provided those safeguards in order to prevent such abuse. Act III of 1878, for

instance, declared that it was expedient to define and limit the powers of Settlement Officers and imposed certain limitations on such power, but at

the same time provided that, where in the course of any settlement proceedings conducted under Regulation VII of 1822, "a higher rent has been

recorded as demandable from any under-tenant than was previously paid by him, such rent shall be deemed to have been correctly enhanced until

the contrary is proved". It is worthy of note that this provision, while setting at rest whatever doubts there might have been reading the manner in

which the power of enhancement had been exercised, did not seek to remove any doubt as to the existence of such power which was assumed.

This Act was repealed next year by Act X of 1879 which by s. 4 provided that the limitations and conditions imposed on the power of

enhancement of rent by ss. 13, 14 and 17 of Act X of 1858 shall not affect any settlement proceedings under Regulation VII of 1822. Thus, the

later legislative enactments, so far from supporting a restrictive construction as to the scope and extent of the powers of the Settlement Officer,

would seem to accept the position that the Officer had the power, under the Regulation, of enhancing the rents payable by the tenants.

24. As regards the decisions referred to above, it is interesting to find that in the earlier cases the learned Judges, while holding that the enhanced rate recorded by the Settlement Officer under Regulation VII of 1822 could not be enforced against the tenant unless he had assented to such enhancement, based their decision not on the lack of power in the Officer to settle or enhance rents but on the non-observance of the conditions imposed by the later statutes, which were held to qualify his powers under the Regulation. In *J.P. D'Silva v. Raj Coomar Dutt and Others* 16 W.R. (Civ. Rul.) 153 for instance, where the plaintiff sued for rent on the basis of the rate recorded by the Settlement Officer, the defence was that, no notice of enhancement as required by s. 13 of Act X of 1859 having been issued by the plaintiff, the defendant was not liable to pay the rent at the enhanced rate. In upholding the plea, the ground of decision was thus expressed by Norman C.J. "Whatever, therefore, might have been the effect of a re-settlement and re-assessment under s. 7 of Regulation VII of 1882 and of the record of the Collector made at the time of such re-settlement under s. 9 of the same Regulation with reference to the rights of under-tenants before the passing of Act X of 1859, we think that to provisions of ss. 7 and 9 of Regulation VII of 1822 must now be read as qualified by s. 13 of Act X of 1859". The same view was taken in *Akshaya Kumar Dutt v. Shama Charan Patitanda* I.L.R (1889) Cal. 586, following the earlier decision. In *Ishur Chandra Sarkar v. Troylukhya Nath Sinha* (1913) 17 C.W.N. 865, however, Mullick J. for the first time struck a new note and expressed the view that Regulation VII of 1822 did not authorise the settlement of fair rents. Referring to the earlier decisions he remarked "Whatever may have been the view previously held by some Courts it is clear that since Act X of 1859 came into operation, this Court has always held that the provisions of ss. 7 and 8 of Regulation VII of 1822 must be read as qualified by Act X of 1859 and subsequent Rent Acts". This would be a sufficient and satisfactory ground of decision in that case. The learned Judge proceeded, however, to express his opinion that "all that the Settlement Officer is entitled to do is to record the existing rents" and found support for it in the history of settlement law in Bengal. He apparently regarded the restrictions and conditions imposed on the exercise of the power of enhancement in later legislation as so inseparable a feature of the power that it could not well have existed without

those restrictions and conditions. He did not advert to any of the considerations to which reference has been made above, nor did he make any attempt to construe the relevant words and expressions used in different parts of the Regulation. Jenkins C.J. in a brief judgment contented himself with the remark that ""as the proceedings were under Regulation VII of 1822 and not under the Tenancy Act, the defendant was not bound by the enhancement of rent in the absence of his assent"", which was also the ratio decidendi in the earlier cases. The view of Mullick J., however, was adopted in the subsequent decisions without further examination of the subject until the learned Judges in the present case reconsidered the point and reviewed the decisions, but, in my opinion, went too far in the other direction in holding that the settlement of rent under Regulation VII of 1822 had the same consequence as a settlement under the Bengal Tenancy Act.

25. It was next argued that, even if the Settlement Officer was authorised to settle additional rents payable by under-tenants in an estate it was only for the purpose of assessing the estate to Government revenue and that such settlement could not create any obligation binding on the tenant to pay the rent. The decision in *Dhirendra Ch. Rai and Others v. Nawab Khaja Habibullah and Others* (1925) 29 C.W.N. 505, to which our attention was drawn, no doubt supports this contention. The facts of that case were more or less similar to those before us, except that the tenancy there in question was agricultural. The claim of the proprietor for rent on the basis of the Diara Officer's determination was rejected on the ground that such determination was only for assessment of revenue and not for fixing liability on the under-tenant. The learned Judges referred to the repeal of the last para, of cl. (1) of s. 4 of Regulation XI of 1825 by the Bengal Tenancy Act, s. 52 of which has made provision for increase of rent for increase in area. No proceedings having been taken under the latter provision and no rent having been settled under Chapter X, Part II, of the Bengal Tenancy Act, it was held that ""there does not appear to be any provision in the law under which it would be obligatory"" on the tenant to pay the rent determined by the Diara Officer. The learned Judges dismissed s. 9 of Regulation VII of 1822, which was also relied on before them, with the remark that ""the Collector was not empowered under that section to determine any rent so as to fix the under-tenant with liability to pay

the amount fixed on his landlord but he was only to record existing rights." This decision was dissented from in the judgment under appeal. The decision may, however, be supported on the ground that, as the tenancy there in question was agricultural and fell within the scope of the Bengal Tenancy Act, the provisions of s. 52 and Chapter X, Part II, thereof must be taken to form a code in respect of the matters to which they relate and must exclusively govern the case, the provisions of other statutes which would otherwise have application being regarded as qualified or superseded to that extent. But where, as in the present case, the tenancy is non-agricultural the position is different and the observations of the learned Judges in that case regarding the scope and effect of s. 2 of Act XXXI of 1858 and s. 9 of Regulation VII of 1822 seem to me to be open to question.

26. It may be conceded that the language of the second para. of s. 2 cannot be read as creating a liability in the under-tenant to pay the rent determined by the Settlement Officer. His determination could no more create a liability than a decree of a civil Court. The source of the obligation must be sought elsewhere. The learned Judges apparently thought that the source was to be found in the last para, of cl. (1) of s. 4 of Regulation XI of 1825 and that para., having been repealed by the Bengal Tenancy Act, the determination by the Settlement Officer under s. 2 of Act XXXI of 1858 was considered ineffectual by itself to "fasten liability" on the under-tenant and to have no significance except for the purpose of assessment of revenue. This view overlooks that the provision in Regulation XI of 1825 referred to above did not purport to impose any liability. It is a proviso to the earlier provision in the clause that land gained by alluvion shall be considered an increment to the tenure of the person to whose land it was annexed and it states that such person shall not be considered "exempt from the payment of any increase of rent to which he may be justly liable" by his "engagements" or by "established usage." In other words, it merely saves pre-existing liabilities founded on contract, express or implied, or on custom. The repeal of this proviso could not, therefore, affect the position as regards the Settlement Officer's determination of additional rent under s. 2 of Act XXXI of 1858. If the under-tenure was held under a contract, the officer was to determine whether any or what

additional rent was payable under the terms of that contract. Where there was no contract, he was to base his determination on customary rights.

In either case his determination had operative force as between the proprietor and the under-tenant also and could not be ignored as having no

significance except for purposes of assessment of revenue. It would indeed be unfair to the landlord that the rental assets of his estate should be

determined and revenue based thereon, without such determination having any practical value vis-a-vis his tenants and that is why it has been the

legislative practice in this country from very early times to authorise the use of the information regarding the rents and other particulars ascertained

and recorded by the Settlement Officer, though primarily for purposes of assessment of revenue, also for the adjudication of disputes between the

landlord and the tenant and attach to such information varying degrees of probative value. This brings us to the consideration of the question: What

is the effect of the determination of the Diara Officer recorded by him in the Settlement Khatian (Ex. IV) on which the suit was brought V The

answer turns on the true interpretation of the relevant provisions of Regulation VII of 1822 which, by s. 2 of Act XXXI of 1858, "so far as the

same may be applicable are hereby declared to extend to all settlements made under this Act.

27. I may mention here, only to dismiss, the suggestion of the appellant's counsel that the words "settlements made under this Act" refer only to

settlements or land revenue and not to the determination of the Settlement Officer as regards additional rent. The expression clearly refers to the

settlement of alluvial land as could be seen from the title, the preamble and the provisions of the Act, all of which contain references to such

settlements. As the determination of additional rent is made "part of the duty of all officers making settlement of such land" the provisions of

Regulation VII of 1822 must also be attracted to such determination.

28. The relevant portions of the Regulation are contained in the preamble and s. 9. The preamble declares inter alia, that "it is the desire of

Government that the proceedings held and the records formed by the Collectors when making settlements or otherwise specially employed in

conducting enquiries of the above nature should be such as that all demands, claims and suits may be adjudicated and determined according to the

facts therein stated until the same shall have been formally altered or it shall be shown by the result of a full investigation in a regular suit that the proceeding or record of the Collector was erroneous or incomplete." The concluding portion of cl. (1) of s. 9 gives effect to this desire by enacting the provision quoted above as to the demands of the zamindars being regulated by the rates of rent and modes of payment recorded in the Collector's proceedings "until distinctly altered by mutual agreement or after full investigation in a regular suit," i.e., a suit not governed by summary proceedings. It was argued by Mr. Chakravarty on behalf of the respondent that this provision meant that the rates of rent recorded by the Settlement Officer must be regarded by courts adjudicating on zamindar's demands for rent as conclusive where the tenant failed to bring a regular suit for alteration of the Settlement Officer's record and that, no such suit having admittedly been brought by the appellant company in the present case, the respondent's claim for rent based on the Khatian must be decreed. On the other hand, it was urged by Mr. Banerjee (as an alternative to his extreme contention that the Settlement Officer's determination of rent was a nullity and should be ignored, which I have already rejected) that the provision aforesaid did not render it necessary that the tenant challenging the correctness of the rate of rent recorded by the Settlement Officer should sue as plaintiff for an alteration of such rate but that it was open to him in the landlord's suit for rent, where such suit is brought as a regular suit in a civil court, to plead by way of defence, that the record of the Officer was erroneous. The respondent having brought this suit as a regular suit in a civil court the appellant, it was claimed, could show that the entry in the Khatian No. 556 was erroneous. This aspect of the matter, does not appear to have been presented to the High Court, for the learned Judges make no reference to it in their judgment. They were apparently pressed with the two extreme contentions referred to earlier in this judgment, as indeed we were during the greater part of the debate and they accepted the contention of the landlord and rejected that of the tenant. We have accordingly to decide the point now raised by Mr. Banerjee, without the advantage of having before us the views of the learned Judges of the High Court.

29. The respondent's contention, as already stated, found favour with the High Court, but I am unable to accede to it. The learned Judges

observed "that the provisions of Regulation VII of 1822 regarding appeal to the Board and the right of suit are in pari materia with those contained

in Part II of Chapter X and the consequences of not availing oneself of the remedies specified in both enactments must be the same," and they

referred to *Kumar Chandra Singh Dudhuria v. The Midnapore Zemindary Co. Ltd.* (1942) 69 I.A. 51 as showing what those consequences should

be. A close analysis of the provisions of the Regulation shows that this view is not correct. A right of appeal to the Revenue Board is no doubt

conferred by para. 1 of s. 29 of the Regulation and it is provided in para. 5 that the decision of the Board shall be final. But such right could arise

only in respect of the decisions of Collectors in suits of which the Collectors are empowered to take cognizance, such as summary suits for rents

and the like referred to in ss. 20 and 21. The provisions of Rule 29 have thus no application to the determinations of the Collector and other

Revenue Officers conducting investigations under s. 9. Nor are the provisions in the Regulation as to the right of challenge in civil suits similar to

those in Chapter X of Part II of the Bengal Tenancy Act. Section 104-H of that Act provides that "any person aggrieved by an entry of a rent

settled" may institute a suit in the civil court contesting the settlement and a period of limitation is also provided for such suit. Subject to the result of

such suit s. 104-J raises an irrebuttable presumption that the rent was correctly settled and it is not open to the defendant in a suit for rent to prove

the contrary. It was in view of these provisions that the Privy Council held in *Kumar Chandra Singh Dudhuria v. The Midnapore Zamindary Co.*

Ltd. (1942) 69 L.A. 51, that failure to institute any suit under s. 104-H of the Act within the prescribed period resulted in the disputed entry of rent

becoming conclusive. In the Regulation, however, different forms of words are used in providing for a right of challenge in a civil court. In regard to

particulars recorded under s. 9, the form used, as already indicated, is "until distinctly altered after full investigation in a regular suit," which is

different from the form adopted in s. 104-H of the Bengal Tenancy Act, that is to say, whereas the latter provision makes it necessary for the party

aggrieved by the settlement and desiring to contest it to institute a suit in the civil court, cl. (1) of s. 9 is so worded as to admit of the Settlement

Officer's entry of rent being challenged even by way of defence in a suit brought by the landlord for rent, provided of course, such suit is brought

as a regular suit in a civil court. The distinction between the two forms is further emphasised by the fact that, in certain other cases, the Regulation

itself has adopted the other form. For instance, in s. 14 (1) the Collector is empowered to decide certain questions in the first instance, "leaving the

party who may deem himself aggrieved to seek redress by a regular suit in the courts to try his right." In clause (4) of the same section, the

Collector is authorised to restore a person to possession if he had been wrongfully dispossessed in the preceding year and it is provided "that the

opposite party shall in such case be left to bring a regular suit in court to try the question of right." The provision in s. 9, however, does no more

than raise a presumption of correctness of the record made by the Settlement Officer until it is proved by evidence to be incorrect in a regular suit.

30. The question accordingly arises whether the appellant in the present case has shown that the entry in the Khatian on which the suit was based

was wrongly made. This point was raised by Issue No. 2. The appellant's main ground of attack was that the Diara Officer was bound to give

effect to the terms of the patta of 1907 according to which the appellant was entitled to hold the newly formed chur rent-free till it attained the level

of the high land demised under the patta, which, according to his case, it had not attained before the suit. The patta was before the officer but,

though he referred to its terms in the Diara Assessment Roll (Ex. D), he fixed the rent for the new land on the basis of another patta apparently

relating to some other land. This contention of the appellant in my opinion is bound to prevail. Mr. Chakravarti having conceded that s. 191 of the

Bengal Tenancy Act has no application to the case, there is no provision of law which entitles the Diara Officer to disregard or override the

contractual rights of parties and he cannot any more than a Settlement Officer acting under Chapter X, Part II, of the Bengal Tenancy Act [see

Kumar Chandra Singh Dudhuria v. The Midnapore Zemindary Co. Ltd. (1942) L.B. 69 L.A. 51 settle rents payable by tenants in such manner as

to conflict with existing contracts. It follows that the entry in the Khatian No. 556 on which the respondent's claim in the suit was based must be

held to be erroneous. In this view it is unnecessary to deal with the question of levels especially as the suit has not been based on the contract

embodied in the patta of 1907.

31. I concur in the order as to costs.

Mahajan, J.

32. I agree with the judgment delivered by my brother Mukherjea J. As we are differing from the judgment of the High Court and the matter

concerns the interpretation of a statute, I would add a few observations of my own.

33. There is no decision of this Court or of their Lordships of the Privy Council on the question that falls for decision in the present appeal. There

are, however, earlier decisions of the High Court of Calcutta on the construction of Regulation VII of 1822 and Act XXXI of 1858 which are

contrary to the view expressed by the two learned Judges of the High Court of Calcutta in their decision under appeal. Without referring the matter

to a Full Bench (which procedure should have been appositely adopted) the learned Judges either declined to follow the reasoning adopted in

these decisions or attempted to distinguish them on grounds which seem to me superficial. The decision they eventually gave is in these terms:

On a plain reading of Regulation VII of 1822 uninfluenced by any judicial interpretation, it is easily possible to hold that settlement of the rights of

under-tenants is within the purview of Regulation VII of 1822 and that the duty of the Collector is not only to ascertain the assets for the purpose

of fixing the revenue but also to define and settle rents payable by under-tenants and that subject to a right of suit in the Civil Court, the scheme of

the Regulation is to take the decision of the Revenue Authorities final. If, however, there be any doubt in the matter under that Regulation, the

language of Act XXXI of 1858 appears to us to be quite clear and explicit. The portion of section 2 of that Act quoted clearly enjoins that it shall

be the duty of the Revenue Officer to ascertain and record all such rights and to determine whether any and what additional rent shall be payable in

respect of alluvial land by the person or persons entitled to any under-tenure in the original estate.... In our opinion the provisions of Act XXXI of

1858 read with Regulation VII of 1822 in terms clearly contemplate the settling and determination of the rent payable by the under-tenants and not

merely the recording of existing rights, as contended by Mr. A.N. Bose.

34. The point canvassed before the High Court and before us was whether on the facts and the circumstances of this case the Revenue Officer had

jurisdiction to settle fair and equitable rent which would be binding on the respondent and whether such settlement could supersede the contract

between the parties. This point has to be answered on the language of Regulation VII of 1822 and Act XXXI of 1858. Reliance was placed in the

High Court on section 191 of the Bengal Tenancy Act as authorising the Revenue Officer to settle fair and equitable rents even in cases where they

were determined by a contract. This contention was given up in this Court, as it could not be supported, the Act admittedly having no application

to cases of tenancies of a non-agricultural character.

35. Section 9 of Regulation VII of 1822 deals with the duties of Collectors and other officers exercising powers of Collector on the occasion of

making and revising settlement of the land revenue. It is said in this section that it will be their duty to unite with the adjustment of the assessment

and the investigation of the extent and produce of the lands, the object of ascertaining and recording the fullest possible information in regard to

land tenures, the rights, interests and privileges of the various classes of the agricultural community and that:

For this purpose, their proceedings shall embrace the formation of as accurate a record as possible, of all local usage connected with land tenure,

as full as practicable a specification of all persons enjoying the possession and property of the soil, or vested with any heritable or transferable

interest in the land or the rents of it, care being taken to distinguish the different modes of possession and property and the real nature and extent of

the interests held, more especially where several persons may hold interests in the same subject-matter of different kinds or degrees.

36. It is quite clear from the phraseology employed in the section, that the Collectors were enjoined with the duty of preparing as accurate a record

as possible of the matters mentioned and they had to ascertain the fullest possible information on the rights of the tenants, their interests, etc. The

section nowhere enjoins on the Collectors a duty of fixing fair or equitable rents between tenants and the proprietors. It does not confer jurisdiction

on them to enhance or abate rents. The preamble to the regulation is in the following terms:

And whereas, a moderate assessment being equally conducive to the true interests of Government and to the well being of its subjects, it is the

wish and intention of Government, that in revising the existing settlement, the efforts of the Revenue Officers" should chiefly be directed not to any general and extensive enhancement of the Jumma, but to the objects of equalising the public burthens and of ascertaining, settling and recording the rights, interests, privileges and properties of all persons and classes owning, occupying, managing, or cultivating the lands, or gathering or disposing of its produce, or collecting or appropriating the rent or revenue payable on account of land, or the produce of land, or paying, or receiving any cesses, contributions, or perquisites to or from any persons resident in or owning, occupying, or holding parcel of any village or mohaul....

37. Emphasis was laid on the expression ""settling"", for supporting the contention that it was the duty of the Collector to determine rents payable by tenants after an adjudication and thus fix fair and equitable rents of holdings. The word ""settle"" has not been repeated in section 9 of the Regulation and any reference to the preamble, when the language of the section is different, would not, in my opinion, be permissible. Moreover, the word settle"" in the context in which it has been used does not convey the meaning that it includes within its scope the power to enhance and abate rents or to determine fair and equitable rents. In order to get true information and ascertain existing rents the Revenue Officer may have to determine or settle what the customary or existing rent is, one party asserting one rate of customary rent and the other party alleging a different rate. Moreover, even the dictionary meaning of the word ""settle"" does not warrant the view that its use simpliciter implies a power to fix fair and equitable rents or a power to enhance them.

38. The section, in my view, mainly concerns itself with laying down the duties of the Collectors and says that they should collect the fullest possible information in regard to all matters for the purpose of preparing as accurate a record as possible and this was its main purpose. The Collector was not constituted an arbiter of rents and the section does not make his decision conclusive on the point. A power to enhance or abate rents or to fix them on equitable basis has to be conferred specifically or the language employed should be such from which it can be readily inferred. Words employed in the section neither expressly nor implicitly lead to that conclusion. The sentence in the preamble on which stress was laid does not

concern landlords and tenants alone. It concerns all persons having any interest in land or any privilege in it and settling their rights only means

ascertaining their existing status. After having stated the duties of the Collectors in this matter the section proceeds to enact that:

The information collected on the above points should be so arranged and recorded, as to admit of an immediate reference hereafter by the courts

of judicature; it being understood and declared, that all decisions on the demands of the zamindars shall hereafter be regulated by the rates of rent

and modes of payment avowed and ascertained at the settlement and recorded in the Collector's proceedings, until altered by mutual agreement,

or after full investigation in a regular suit.

39. The plain construction of the words above cited is that the information collected and recorded in the record of rights prepared in accordance

with the provisions of the section was to be presumptive evidence of the facts stated therein and the Courts were to decide disputes in accordance

with the entries until those entries were either altered by mutual agreement subsequently or were proved unreliable at an investigation in a regular

suit.

40. Emphasis was laid by the learned counsel for the respondent on the words "All decisions on the demands of zamindars shall hereafter be

regulated by the rates of rents and modes of payment ascertained at the settlement until altered after full investigation in a regular suit." The learned

counsel wished to read this phrase as synonymous with the language: "The decision of the Revenue Officer on all demands of zamindars shall be

conclusive till set aside by a regular suit at the instance of the aggrieved party.

41. In my opinion this contention cannot be sustained and the language used in this section cannot bear the construction sought to be put upon it.

All that the section says is that the rents ascertained at the settlement shall be the basis of decisions in regard to demands by zamindars till these

rents are altered after full investigation in a regular suit. A zamindar could not demand rent beyond that recorded in the record unless he proved

that the entry was erroneous and this could only be done during a regular suit. It was immaterial whether that suit was by a landlord or by a tenant.

The language employed is not similar to that employed in Order XXI, Rule 63, of the Code of Civil Procedure or other similar phraseology

employed in other statutes. No finality was given to any decision of the Collector, but it was said that the ascertainment made by him of rents will

regulate a decision of a Civil Court till such ascertainment was found on full investigation in a Court of law to be erroneous. The jurisdiction of Civil

Court was kept alive and not ousted by the Regulation regarding the matters cited in the record of rights.

42. The learned Judges of the High Court were impressed with the arguments which they accepted that the regulation was a self-contained law on

the question of determination and settlement of rents that from the decision of the Collector under s. 9 a right was conferred on the aggrieved party

to appeal to the Board of Revenue; that a further right of suit was given to avoid such a decision and till that was done the decision was final. If the

assumption that the ascertainment by the Collector of rents amounted to a decision by him and that the aggrieved party has a right of appeal as well

as a right of suit within a time prescribed for such a decision and further that the regulation is an exhaustive code of relations between the landlord

and tenant is correct, then no exception can be taken to the view expressed by the High Court. There is however no justification for either of these

assumptions. No judicial determination of any question by the Collector is contemplated by the provisions of s. 9 of the Regulation. It is however

true that in the process of ascertaining rents etc., he has to arrive at certain conclusions and those conclusions had to be the basis of forming the

record of rights but that does not amount to a decision in the true sense of the term. As regards the right of appeal it was conceded before us that

no appeal lay to the Board of Revenue against the entries made by Collectors in the record of rights under s. 9 and that the jurisdiction of the Civil

Courts to examine the question of correctness of the entries in regular suits was not ousted. No procedure was prescribed within the four corners

of the Regulation for this purpose. That being so, the Regulation cannot be held to be an exhaustive code regulating the relations of landlords and

tenants.

43. It was argued that under s. 20 of the Regulation an aggrieved party could raise the question of enhancement of rent by a summary suit before

the Revenue Officer and that under s. 30 he was at liberty to institute a complaint in a regular suit before the Civil Court. In my judgment reference

to these sections is based on a misconception as to their true scope and purpose.

44. Section 20 enacts that it shall be competent to the Government to restrict the authority of Collectors or to vest such of the Collectors as it thinks fit with special authority to receive and try and determine in the first instance, subject to regular suit, all or any of the questions of the nature specified in the aforesaid sections, though such Collectors may not be engaged in the settle merit of land revenue. Section 9 is not in the list of aforesaid sections"" and hence Government could not confer on Collectors not engaged in the duty of making a settlement of land revenue authority to hear summary suits about matters noted in s. 9. Then the section states that it shall be competent to Government to vest in such of the Collectors as it thinks fit authority to receive, try and determine by summary process, all suits for rent which maybe preferred by zamindars, talookdars or other sudder malguzars or farmers of land against any dependant talookdar, zamindar, under-renter, ryat, or other under-tenant of whatever denomination, as well as all applications by ryats and the under-tenant contesting the demand of a sudder malguzar or farmer,"" and all complaints preferred by ryats or other under-tenants of whatever description, against landholders or farmers of land on account of excessive demands or undue exaction of rent whether levied by distrait or otherwise, as well as all suits relative to the adjustment of accounts between landholders and farmers of land or under-tenants of whatever description and generally complaints of any deviation from the regulation, or from the established usage of the country relative to the matters aforesaid, or any violation of subsisting engagements in disputes respecting the rent and occupancy of land, between landlords or farmers of land and their under-tenants of whatever denomination. This section empowers the Government to confer jurisdiction on such Collectors as it thinks fit to try summarily disputes that may arise between a landlord and a tenant in regard to rent. It does not concern itself with the correction of entries made in a record of rights under s. 9. It confers no authority on these Collectors to correct those entries. Within s. 9 itself the mode and manner of correcting these entries has been enacted and the procedure of a summary suit under s. 20 is not contemplated for their alteration. This section says in dear terms that they can only be altered by mutual agreement,

or by investigation in a regular suit and that being so, the reference to s. 20 by the learned counsel in support of his contention is not very helpful. It

may also be observed that the last part of s. 20 above cited indicates that such powers were to be conferred for the purpose of checking any

deviations from the Regulation or from the existing engagements and not for enhancement of rents or for abatement of rents that stood decided by

usage or contract.

45. Section 30, to which reference was made, reads as follows:

All persons having claims or complaints to prefer of the nature of those made cognizable by collectors under the provisions of this regulation and

not wishing to avail themselves of the summary process authorized in that court, shall be at liberty to institute their claims or complaints in the first

instance by a regular suit before the local moonsiff, or in the zillah or city adawlut, or provincial court of the division, according as the suit may be

cognizable in these courts respectively, under the general regulations for the administration of civil justice.

46. A plain reading of the section indicates that it enables a person, if he is so minded, to have recourse to a civil suit in the first instance without

being obliged to take the remedy of a summary suit. This section has no relevancy to the question involved in this case. As no summary suits were

contemplated for correcting entries made in the revenue records prepared under the provisions of s. 9 of the Regulation, s. 30 which concerns itself

only with cases where a summary suit could be filed under s. 20 of the Regulation cannot be pressed in service to support the contention of the

respondents.

47. Section 31 of the Regulation places the matter beyond doubt when it says that when a regular suit is filed to alter a summary judgment passed

by a Collector, the proceedings held on the summary inquiry shall be called by precept for the Court and filed on the record of the case. In the

result neither s. 20 nor s. 30 of the Regulation has any bearing on the question of enhancement or abatement of rents and these do not confer

jurisdiction on the Collectors in the matter of fixing of fair and equitable rents. The Revenue Officer cannot act in the matter of enhancement of

rents unless he is conferred jurisdiction to do so by statute. The summary suits contemplated by s. 20 are of the nature that usually arise between

landlords and tenants in the ordinary way in view of their existing contracts or according to customs, usage, etc. and cover cases of illegal exactions

raised by the proprietors on the tenants. The concluding portion of s. 20 (1) fully supports this view.

48. In expressing the above opinion I am fortified by the trend of later legislation enacted in the various Tenancy Acts in different provinces in

India. Whenever it was intended by the legislature to confer jurisdiction on a Collector or on a revenue authority in the matter of enhancement or

abatement of rent, enactment for that purpose was made in express terms. The power was not considered covered under the general powers

preparing record of rights or of ascertaining the existing state of affairs. Reference may be made to s. 52 of the Bengal Tenancy Act in this

connection. It may also be observed that unless jurisdiction of the Civil Court is expressly ousted, the decision of a Revenue Officer or a Collector

on such matters cannot be binding or conclusive and in whatever form or in whatever action the matter arises before a Civil Court, it has

jurisdiction to decide it. By way of illustration, s. 104 of the Bengal Tenancy Act may be cited. It states:

In every case in which a settlement of land revenue is being, or is about to be made, the Revenue Officer shall, after publication of the draft of the

record of rights under s. 103-A, sub-s. (1), settle fair and equitable rents for tenants of every class.

49. Section 104-H then says:

Any person aggrieved by an entry of rent settled in a Settlement Rent-roll prepared under ss. 104-A to 104-F and incorporated in a record of

rights finally.....may institute a suit in the civil Court which would have jurisdiction to entertain a suit for the possession of the land to which the

entry relates or in respect of which the omission was made.

Such suit must be instituted within six months from the date of the certificate of final publication of the record of rights....

Save as provided in this section, no suit shall be brought in any civil Court in respect of the settlement of any rent or the omission to settle any rent

under ss. 104-A to 104-F.

50. The Code has been made exhaustive by these provisions and unless a party takes the remedy provided therein, the entries in the record of

rights are conclusive. No such procedure has been provided for in Regulation VII of 1822. Sections 105, 106 and 109 of the Bengal Tenancy Act

furnish another illustration on the same point. These sections are in these terms:

105 "When in any case in which a settlement of land revenue is not being made or is not about to be made, either the landlord or the tenant applies,

within four months from the date of the certificate of the final publication of the record of rights, for a settlement of rent the Revenue Officer shall

settle a fair and equitable rent in respect of the land held by the tenant.

106 "A suit may be instituted before a Revenue Officer at any time within four months from the date of the certificate of the.....decision of any

dispute regarding any entry which a Revenue Officer has made in or any omission which the said officer has made in the said record.

109 "A Civil Court shall not entertain any application or suit concerning any matter which is or has already been the subject of an application made

in suit instituted or proceedings taken under ss. 105 to 108.

51. From these provisions it is quite clear that when it is intended by the legislature to make the decision of a Revenue Officer binding it is

necessary to enact specifically and clearly on the point and to lay down a procedure of contesting his decisions No such thing has been done by

Regulation VII of 1822. All that, the Regulation did was to make presumptive evidence the entries made in the record of rights prepared in

accordance with the provisions of s. 9 of the Regulation, till they were proved incorrect in the course of any regular civil suit. That being the scope

of the Regulation, in my opinion, the High Court was in error when it held that on the plain reading of the Regulation uninfluenced by any judicial

interpretation it was permissible to conclude that the duty of a Collector under the Regulation was to settle rents and that subject to the right of suit

in a Civil Court the scheme of the Regulation was to make the decision of the Revenue Officer final.

52. It is next convenient to deal with the second branch of the argument accepted by the High Court on the basis of Act XXXI of 1858. This Act

was enacted to make provision for settlement of lands gained by alluvion in the Presidency of Fort William in Bengal. That was its primary object.

In the second paragraph of s. 2 it was further provided that:

It shall be the duty of all officers making settlements of such lands to ascertain

and record all such rights according to the rules prescribed in

Regulation VII of 1822 and to determine whether any and what additional rent shall be payable in respect of the alluvial land by the person entitled

to any under-tenure in the original estate.

The provisions of the said Regulation, so far as the same may be applicable, are hereby declared to extend to all settlements made under this Act.

53. The last part of this section has no bearing on the question of determination of additional rents. It makes the provision of Regulation VII of

1822 applicable so far as is possible to the operations of the revenue authority in making settlement of revenue under Act XXXI of 1858. It is not

possible to argue that the word "settlement" in this part of the section is synonymous with the expression "determination of additional rent".

Settlement" is a well known term, meaning settlement of land revenue. The sole question for decision under this section is whether the powers

given by it qua determination of additional rents include within its ambit power of enhancement of the existing rents in respect of alluvial lands and if

so, whether such determination is binding on the tenant. The last point can admit of no doubt. If under Regulation VII of 1822 the decision of the

Revenue authority is not conclusive and can be challenged by the tenant whenever raised in a Civil Court during a suit, a fortiori any determination

made by an officer under this Act is similarly assailable. I am, however, further of the opinion that the power conferred by the use of the words "to

determine whether any and what additional rent shall be payable in respect of the alluvial land" on the Revenue Officer does not include within its

scope the power of interference with an existing contract. Where rent of alluvial land that subsequently accretes to a holding has already been

determined between the parties, no occasion arises for determination of rent for alluvial land. The true construction of these words is that the

Revenue Officer was given power to fix additional rent for additional land recovered by alluvion in cases where no rent had been fixed for that

land. The clause presumes that for the additional land recovered by alluvion no rent is already payable by the tenant to the landlord and therefore

for this additional land some rent has to be fixed but it does not contemplate cases where either by express agreement between the parties it has

been provided that when alluvial land would accrete to a holding no rent will be

charged for it or that rent at a particular rate will be payable for that land. The agreement than for the land no rent is payable between landlord and tenant will be binding on them, though for revenue assessment the Revenue Officer may in such a case determine additional rent for the accreted land that has come to a Holding by alluvion. The language construed strictly does not include within its scope the question of enhancement or abatement of rents already fixed between the parties and so payable. The draftsman of the section never thought that any one will fix in advance rent for land that was under water and regarding which it was never known whether it will accrete to any particular holding.

54. In my judgment therefore the High Court was in error when it held that s. 2 of Act XXXI of 1868 authorised a Revenue Officer to settle and determine finally the rents payable by a tenant to a landlord as equitable and fair qua alluvial lands.

55. The key to the High Court judgment is furnished in the following passage occurring therein:

If the determination of rent is not to be binding on under-tenants, why is there provision for issuing notification to under-tenants and why is a right of appeal to the Board or a right of suit given to the aggrieved under-tenant?

56. Notification to the under-tenant was obviously necessary even if the object of the regulation was to ascertain the existing rents. Right of appeal

to the Board has not been given by the Regulation as already stated. A reference to that right seems to have been made under some

misapprehension As regards the right of suit, it has not been stated that within a prescribed period of time the decision of the Revenue Officer has

to be challenged and if not so challenged it would assume finality and cannot be questioned in a Civil Court. The matter is left at large and the

Regulation therefore is not exhaustive law on this point. The High Court has read something more in the language of s. 9 than is said by the law-

making authority No power was conferred by the Regulation on the Collector to override a contract, even under the Bengal Tenancy Act s. 191, it

has been held by their Lordships of the Privy Council that in determining a fair and equitable rent the Revenue Officer cannot override a contract

arrived at before the Act was passed But once he has done so, the procedure to be adopted to get redress against the wrong decision is the one

laid down in the Bengal Tenancy Act. I feel satisfied that the Division Bench of the Calcutta High Court was not justified in reaching a decision in

this case against the earlier decisions of that Court. Those decisions had been delivered by very learned and eminent Judges and unless cogent

ground existed for departing from them, these should have been followed.

Mukherjea, J.

57. This appeal is directed against a judgment of a Division Bench of the Calcutta High Court dated August 25, 1945, passed in Second Appeal

No. 795 of 1941 and it arises out of a suit commenced by the respondent plaintiff for recovery of arrears of rent alleged to be due by the appellant

defendant in respect of certain alluvial lands, formed by recession of the river Hooghly and constituting an accretion to an already existing chur.

58. To appreciate the points in controversy in this appeal, it will be necessary to state a few facts. By a registered Potta dated May 6, 1907, Raja

Kishorilal Goswami, the predecessor of the plaintiff, granted a permanent mokarari lease to a company known as Colonial Trading Company of

Trieste, of two parcels of land abutting on the river Hooghly and situated in village Jugaddal within the 24-Parganas Collectorate. The first of these

plots was high land, measuring 96 bighas and it was settled at a selami of Rs. 500 per bigha with a fixed annual rental of Rs. 25 per bigha. The

second plot was a piece of chur land situated contiguously to the first and it had an area of about 19 bighas. The yearly rental fixed in respect of

this plot was Rs. 15 a bigha and the selami paid was Rs. 300 per bigha. There was a further stipulation in the Potta that if in future any new lands

were formed as contiguous accretions to the chur land demised by the Potta, the lessee would be entitled to hold the same free of rent; Provided

nevertheless that if at any time hereafter any portion of the chur land or future accretions thereto should attain a level equal to or higher than that of

the high land, through natural causes, selami and rent would be payable for such lands at the same rates as were fixed for the high land; The

purpose of the lease, as stated in the document, was to enable the lessee to erect a jute mill or other factory on the demised land. It is admitted that

the Colonial Trading Company transferred their lease-hold interest under the Potta to the defendant-appellant by a deed of assignment dated

August 25, 1908.

59. It appears that in course of time a tract of land measuring about 33 bighas accreted to the demised chur lands by the fluvial action of the river

Hooghly. These alluvial accretions were the subject of a Dira proceeding started under Bengal Act IX of 1847 in the year 1931 and they were

formed into a separate estate bearing Touzi No. 3226 of the 24-Parganas Collectorate which was settled temporarily with the plaintiff's

predecessor. While assessing revenue on the new estate, the Revenue Officer settled the rent payable by the defendant lessee to the plaintiff for the

accreted lands, purporting to do so under Regulation VII of 1822 and the C.S. Khatian shows that Rs. 495 per year was fixed as the fair and

equitable rent for the 33 bighas of land at the rate of Rs. 15 per bigha, that being the rate fixed for the chur lands in the Potta of 1907. It was on

the basis of this Settlement Khatian that the present suit was brought by the Receiver in charge of the plaintiff's estate, claiming rent from the

defendant for the accreted lands at the rate of Rs. 495 a year from the years 1342 to 1345 B.S. together with interest due on the same. In the

plaint, it was stated that the rent was settled by the Settlement Officer under Chapter X, Part II, of the Bengal Tenancy Act.

60. The suit was contested by the defendant company who averred in their written statement that they were not aware of any proceeding for

settlement of rent under Chapter X, Part II, of the Bengal Tenancy Act and the lands being non-agricultural lands, the Revenue Officer was not

competent in law to settle fair and equitable rents under the Bengal Tenancy Act. It was contended further that under the terms of the Potta, no

rent was payable in respect of the suit lands as they had not attained the level of the high lands through natural processes and that the entry in the

Settlement Khatian, which ignored the contract between the parties was erroneous and could not impose any legal liability on the defendant to pay

the rent mentioned therein.

61. After the written statement was filed, the plaintiff applied for and obtained an order for amendment of the plaint by which reference to Chapter

X of the Bengal Tenancy Act as was made in the plaint, was deleted and it was stated in its place that the rent had been settled by the Revenue

Officer under "appropriate regulations and laws". The trial proceeded on the footing that the rent was settled under Regulation VII of 1822 and s.

191 of the Bengal Tenancy Act and Mr. Chakravarty, appearing for the plaintiff respondent, stated at the outset that it was not his client's case

that there was any proceeding under Chapter X of the Bengal Tenancy Act....

62. The Subordinate Judge, who heard the suit, decided it substantially in favour of the plaintiff and with the exception of the claim for rent for the

year 1342 B.S. which was held to be time barred, the rest of the plaintiff's claim was allowed. It was held by the Subordinate Judge that the

proceedings for settlement of rent were not ultra vires and that the Revenue authorities were competent to settle fair and equitable rent under

Regulation VII of 1822 and s. 191 of the Bengal Tenancy Act as was indicated in Rule 660 of the Bengal Settlement Manual. In the opinion of the

Subordinate Judge, the provision of s. 191 of the Bengal Tenancy Act could be attracted to this case even though the lease was not an agricultural

one. The Subordinate Judge further found that the rent settled did not contravene the terms of contract between the parties as were embodied in

the Potta of 1907 inasmuch as the present level of the lands in suit was much higher than that of the firm land as it existed in 1907.

63. Against this decision, an appeal was taken by the defendant to the Court of the District Judge, 24-Parganas. The appeal was allowed and the

District Judge reversed the decision of the trial Court and dismissed the plaintiff's suit. In the opinion of the District Judge, s. 191 of the Bengal

Tenancy Act had no application to the facts of the present case and the Settlement Officer apparently did not purport to act under that section. He

purported to settle rent under Regulation VII of 1822 which empowers the Revenue Officer to record the existing rights and not to settle rents

payable by the tenants to their landlords. The District Judge further found, differing from the trial Court, that the evidence adduced by the plaintiff

regarding the level of the suit land being equal to or higher than the high land of the Potta was altogether worthless and it could not be said that the

condition laid down in the Potta was fulfilled.

64. The plaintiff thereupon filed a second appeal to the High Court of Calcutta and the appeal was heard by a Division Bench consisting of Biswas

and Das JJ. The learned Judges allowed the appeal and reversing the decision of the District Judge restored that of the trial Court. Being aggrieved

by this decision, the defendant prayed for and obtained leave to file an appeal to

the Judicial Committee. Before, however, the records of the case could be transmitted to England, the powers of this Court were enlarged by Act I of 1948 and in accordance with the provisions of that Act, the appeal has now come up before this Court for hearings

65. Two questions, it seems, were canvassed before the High Court and decided by it. The first and the primary question was whether the

Revenue Officer had jurisdiction to settle and determine rents payable by the under-tenant to the proprietor, under the provision of Regulation VII

of 1822 read with s. 2 of Act XXXI of 1858 and make such determination binding upon the tenant. The second question was whether in such a

case the Settlement Officer could override any already existing contract between the parties. Both the questions were answered by the High Court

in favour of the plaintiff.

66. On the first question, the learned Judges were confronted with a large number of decided authorities of their own Court which uniformly took

the view that in proceedings under Regulation VII of 1822 the Settlement Officer was only empowered to record the existing rates of rent in the

villages and not to settle rents which he considered fair and equitable for the different classes of tenants. The High Court expressed the opinion that

this interpretation was not borne out by the plain language of the Regulation and even if the matter was not *res integra*, these cases were

distinguishable on the ground that in none of them the effect of s. 2 of Act XXXI of 1858 was considered. There was at least one decided

authority which the learned Judges could not omit referring to in their judgment, where it was expressly held by a Division Bench of the Calcutta

High Court that the determination of additional rent as contemplated by s. 2 of Act XXXI of 1858 could not be made legally binding on the tenant.

The High Court brushed aside this decision, pronouncing the view expressed therein to be unsound in law and contrary to the express language of

the section. On the other question, the High Court held that s. 191 of the Bengal Tenancy Act was not limited in its application to agricultural

tenancies and even though the lands in the present case were not agricultural, the Revenue Officer could, under s. 191 of the Bengal Tenancy Act,

settle rent in supersession of any contract existing between the parties.

67. During the hearing of this appeal, Mr. Chakravarty, on behalf of the

respondent, conceded that s. 191 of the Bengal Tenancy Act has no application to non-agricultural leases and that he would not, rely on this part of the judgment of the High Court for purposes of his case. The controversy before us, therefore, centres primarily round the point as to whether the rent fixed by the Settlement Officer in respect of the lands in suit under Regulation VII of 1822 read with s. 2 of Act XXXI of 1858 was binding on and legally enforceable against the tenant in spite of the fact that the tenant was not an assenting party to the fixing of the rent and there was already a contract existing between the parties which regulated the payment of rent in respect to the lands.

68. For a proper determination of the point, it would be necessary, first of all, to ascertain precisely what powers can be exercised by the Revenue authorities acting under Regulation. VII of 1822 and also under s. 2 of Act XXXI of 1858 and whether those powers extend to fixing of rents payable by tenants in such manner as to make such settlement binding on the tenants.

69. A subsidiary question would also require consideration viz., what legal effect is to be given to the record of a Settlement Officer prepared under Regulation VII of 1822 although it appears that the officer purported to settle fair and equitable rents payable by tenants instead of ascertaining merely what the rents are.

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70. Now Regulation VII of 1822 is a piece of ancient legislation which was brought into existence in the early days of British rule in India. For the purpose of appreciating the scope and object of an old statute like this and for explaining its language which may be susceptible of different meanings, it may be useful to remember the well known historical facts that lead to the passing of this enactment. It is a settled canon of constitution that the interpreter should place himself construction that the interpreter should place himself as far as possible in the position of these whose was he is interpreting and the meaning of certain words an terms used in an ancient document or a statute can be properly explained only by reference to the circumstances existing at the time when was enacted or the document was written Maxwell on Interpretation of states p. 23 (9th Edition).

71. The permanent settlement of Bengal was concluded in the year 1973. In

1801 a number of districts were ""ceded"" to the East India Company by the King of Oudh in order to enable the Company to maintain troops for the protection of the king. Two years latter, as a result of Lord Lake's campaign considerable territories in the north-western part of India were wrested from the Marhathas and the districts of Cuttuck and Pataspur were added to the lower Bengal. The question of settlement of these ceded and conquered territories soon came to the front. The first result of inquiries with a view to the settlement of these new districts was to create an impressments that the permanent settlement of 1973 was made hastily and the insufficient information. Subsequent experience confirmed this impression and the result was that revenue settlement of these territories was made for short periods on temporary basis and the Court of Directors resolved, that before they could decide on any stable settlement, it was essential that they should have full information not only respecting the general nature and resources of the districts, the extent of the land cultivated and capable of cultivation and the quality and value of the produce, but a full and particular detail of all local tenures and usages, of the rates of rent and the modes in which it was collected and distributed, of the constitution of village communities and in fact of all matters relating to the internal condition of the country. It was to give effect to this resolution that Regulation VII of 1822 was passed (vide Field's Introduction to the Bengal Regulations, pp. 43-44). The Regulation being found to be useful, it was extended to settlement of all lands and interests not included in the permanent settlement, by Regulation IX of 1825. Though repealed in other provinces, in Bengal it remains even to this day, subject to certain modifications, the basic law of the temporary settlement system.

72. The full title of the Regulation and its lengthy preamble give a clear idea of the objects it was intended to secure. The main object undoubtedly was to declare the principles, according to which the settlement of revenue was to be made in the new provinces. The preamble stated that the wish and intention of the Government were that in revising the existing settlement, the efforts of the Revenue Officers should be directed not to any extensive enhancement of the jama but to the objects of equalising the public burthens and of ascertaining settling and recording the rights, interests, privileges and properties of all persons and classes possessing interest in the

lands or in the rent or produce thereof. In the third place, it was stated that it was the desire of the Government that the proceedings held and the records formed by the Collectors should be such that all demands, claims and suits might be adjudged and determined according to the facts stated therein unless they were formally altered or shown to be incorrect after full investigation in a regular suit.

73. To carry out these objects, elaborate provisions are made in the different sections of the Regulation. We are not concerned with many of these sections for our present purpose. Section 3 of Regulation VII of 1822 prescribes how settlements are to be made on the expiry of the existing leases. Section 4, upon which some stress was laid on behalf of the respondent, contemplates cases where there are several parties interested in the land and it provides that in such cases if settlement is made with one of them, the interests of the others should be recognised and protected. It has really no bearing on the question before us. Section 9, cl. (1), which is material to the present case lays down the nature and scope of the investigation that is to be made by the Collectors in making and revising settlements. The first paragraph of cl. (1) lays a duty on the Collectors and other officers on the occasion of making or revising settlements of land revenue, to unite, with the adjustment of the assessment and the investigation of the extent and produce of the lands, the object of ascertaining and recording the fullest possible information in regard to landed tenures, the rights, interests and privileges of the various classes of the agricultural community. For this purpose their proceedings shall embrace the formation of as accurate a record as possible of all local usages connected with landed tenures, as full as practicable a specification of all persons enjoying the possession and property of the soil . . . care being taken to distinguish the different modes of possession and property....more especially where several persons may hold interests in the subject matter of different kinds or degrees. The details of the records that have to be prepared where the pattidari or bhaiyachara systems of tenure prevail in the locality are then set out in the paragraph that follows. It is next said that ""A record shall likewise be formed of the rates per bigha of each description of land or kind of produce demandable from the resident cultivators not claiming any transferable property in the soil, whether possessing

the right of occupancy or not". The only other material provision in this clause is contained in the last paragraph which runs as follows: "The information collected on the above points shall be so arranged and recorded as to admit of an immediate reference hereafter by the Courts of Judicature, it being understood and declared that all decisions on the demands of the zamindars shall hereafter be regulated by the rates of rent and modes of payment avowed and ascertained at the settlement and recorded in the Collectors proceedings until distinctly altered by mutual agreement or after full investigation in a regular suit.

74. The High Court is of opinion that the provisions of s. 9 of the Regulation taken along with what is said in the preamble would definitely show that the duties of the Collector under the Regulation are not merely to ascertain and record existing rights with a view to ascertain the assets for the purpose of fixing the revenue but also to fix and determine rents payable by under tenants and that subject to a right of suit in a civil court, the decision of the revenue authorities on these matters is final. I do not think that this is the proper view to take on the language of the section.

75. Regulation VII of 1822 is an enactment relating to settlement of land revenue and not to settlement of rent. Unlike the rent Acts of later years, it does not purport to regulate the relations between landlord and tenant and does not lay down the conditions under which rents could be enhanced.

The record-of-rights that has got to be prepared under the provisions of this Regulation is solely for the purpose of revenue settlement. Instead of proceeding to an estimated lump sum settlement without a survey and enquiry into details as was done in 1793, it directs a survey and enquiry into the rights in every village and field for the purpose of determining the net rental or produce of the land on the basis of which revenue could be assessed. The different kinds of interests in the lands are recorded with a view to enable the authorities to decide with whom the settlement should be made and it affords protection also to the holders of these interests with whom no revenue engagement is made. The Revenue Officer has undoubtedly to record the rates of rent of each description of land in the village or the shares of produce demandable from, the cultivators; but there are rates at which rents are actually paid or crops are delivered by the tenants. There are no words in the Regulation as we find in the later

rent laws which entitle the Settlement Officer to fix and settle rents payable by tenants in excess of what was actually paid and that, in spite of any contract to the contrary existing between the landlord and the tenant. The learned Judges of the High Court laid stress on the passage in the preamble to the Regulation which speaks of "ascertaining, settling and recording the rights, interests and privileges of different classes or persons by the Collectors and also on the last paragraph of cl. (1) of s. 9 which says inter alia that "all decisions on the demands of the zamindar shall hereafter be regulated by the rates of rent and modes of payment avowed and ascertained at the settlement and recorded in the Collector's proceedings until distinctly altered by mutual agreement, or after full investigation in a regular suit". These words, in my opinion, show that the Collector is to settle and ascertain the existing rates and record them in his proceedings. The word "settling" implies the idea of removing doubts and placing things in a secure and undisputed position and "ascertaining" might involve determination of what was indeterminate before. There may be doubts or uncertainty regarding the rates at which rents are actually paid for particular classes of land in particular villages and at the time when the Regulation was passed contractual rent was practically unknown, the payment of rent being regulated by Pargunah or customary rates. It may be that neither the landlord nor the tenant was willing to help the Settlement authorities and acquaint them with the real state of affairs. In such circumstances, it would be the duty of the officer to make investigation and the findings arrived at by him on a result of the investigation would form part of his record. The rights thus ascertained would be taken by Courts of Law to be correct and they shall be bound to decide any dispute between the parties on the basis thereof unless the record is altered by mutual agreement or by judicial pronouncement in a regularly instituted suit.

76. That this is the correct view of the powers of the Settlement authorities acting under Regulation VII of 1822 would be clear when we look to the subsequent rent legislation in Bengal. In Bengal Act X of 1859, which was the first attempt to codify the law relating to agricultural tenancies in Bengal, definite provisions were made specifying the grounds upon which alone landlords could claim enhancement of rents paid by the tenants (vide s. 17). Identical provisions are to be found in Bengal Act VIII of 1869 (vide s. 18) by which the procedure in suits between landlord and

tenant was amended and rent suits which were triable by Collectors under Act X of 1859 were made cognisable exclusively by Civil Courts. In

1878, an Act was passed (Act III of 1878) which laid down in clear terms that in settlement proceedings under Regulation VII of 1822 no rent

shall be recorded higher than the rent previously payable by the tenants except on some one or more of the grounds specified in s. 17 of Act X of

1859 or s. 18 of Act VIII of 1869. It appears that the passing of this Act was necessitated by the fact that the Settlement authorities acting under

Regulation VII of 1822 had in some instances erroneously undertaken to settle fair and equitable rent and thereby enhanced the rent payable by

the tenants. Section 3 of this Act provides that these enhanced rents recorded by the Settlement Officer shall be presumed to be valid unless the

contrary is proved. But in order that validity may attach to rents thus recorded, it is necessary that a notice of enhancement should be served on

each rayat or a jummahandi published under s. 4 and s. 5 requires that the grounds of enhancement shall be specified in any such notice or

jummabandi. The tenant is given the right under the proviso to s. 3 to institute a suit contesting his liability to pay the enhanced rent within three

months from the date of the service of such notice. This shows that the legislature never contemplated that the Settlement Officer could alter and

enhance the existing rents in a proceeding under Regulation VII of 1822. Powers were given to such officer to do so by this Act when specific

grounds existed as contemplated by the rent Acts of 1859 and 1869 and the procedure indicated in it was followed. This Act did not, it seems,

work satisfactorily and in the next year it was repealed and substituted by another Act which is known as the Bengal Rent Settlement Act (Act

VIII of 1879) which made clear and specific provisions under which a Settlement Officer, in course of a proceeding for settlement of land revenue,

could increase the existing rents paid by tenants and make such enhancement binding upon them. The grounds on which such rents could be

enhanced are stated in s. 6 and the rules for the determination of rent are elaborated in s. 7. Section 10 provides that every tenant and rayat shall

be liable to pay the rent recorded as demandable from him under this Act unless it shall be proved in any suit instituted by such under-tenants or

rayat to contest his liability to pay the same that such rent has not been assessed in accordance with the provisions of the Act. It is to be noted that

there was no provision in this Act under which the Settlement Officer could ignore any contract between the parties in the matter of settlement of

rent and in the case of *Prianath Das v. Bam Taran Chatterji* (1903) 30 I.A. 159 : 30 Cal. 811 which was a case where rent was settled under this

Act, the Privy Council held that if the landlord who granted the lease himself took revenue settlement of the estate, he could not demand rent in

contravention of the terms of the contract even though such rent was fixed by the Settlement Officer. The Bengal Rent Settlement Act has been

repealed so far as Bengal is concerned by the Bengal Tenancy Act of 1885 and Chapter X, Part II, of the Bengal Tenancy Act with the

modifications introduced since then, now contains the, law relating to settlement of fair and equitable rent by revenue officers for all classes of

tenants when settlement of land revenue is being or is about to be made and there is an express provision in this Act under which the Revenue

authorities can ignore a contract between the parties if the contract was entered into subsequent to the passing of the Act.

77. Mr. Chakravarty argues that the provisions in the Bengal Tenancy Act relating to settlement of fair and equitable rent by revenue officers must

certainly be taken to be the law at the present day so far as the agricultural tenancies are concerned and the provisions of Regulation VII of 1822

must, to that extent be deemed to have been impliedly repealed and substituted by those of the Bengal Tenancy Act. It is said, however, that the

Bengal Tenancy Act does not apply to non-agricultural tenancies and as regards fixing of rents for non-agricultural lands the provisions have still to

be found in Regulation VII of 1822, no provision being made for them in any of the rent Acts. This contention is unsound and cannot be accepted.

As has been said already, Regulation VII of 1822 empowers the revenue officers only to record existing rents. In order that the revenue officer

might settle rents and enhance them when grounds of enhancement did exist, definite provisions were made in the various rent Acts and definite

procedure was laid down in each of them which had to be scrupulously followed before such determination could be binding on the tenant. It is

true that neither the Bengal Tenancy Act nor any of the preceding rent Acts applies to non-agricultural lands and the conclusion, I think, must be

that with regard to these lands the legislature intended that the rent should be regulated exclusively by contract between the parties, obviously for

the reason that non-agricultural tenants do not require that protection which the law thinks proper to give to agricultural tenants in rural Bengal.

There may certainly be both agricultural and non-agricultural lands within an estate which is the subject-matter of revenue settlement. The revenue

officer would have to assess revenue on the basis of rents payable by the non-agricultural tenants also, which may or may not be the same which

the tenants are actually paying. But the tenants could not be compelled in law to pay such rent which the revenue officer determines for revenue

purposes and as between the landlord and the tenant the rent payable would be fixed exclusively by agreement between the parties. In my opinion,

therefore, the long string of decisions referred to in the judgment appealed from did interpret the provisions of Regulation VII of 1822 quite

correctly and the law laid down there is perfectly sound and should not be departed from.

78. I will now turn to the provision of s. 2 of Act XXXI of 1858 upon which so much stress has been laid by the learned Judges of the High Court.

Act XXXI of 1858 was introduced for removing doubts which were felt by the revenue authorities respecting the proper course to be followed in

the settlement of land added by alluvial accession to estates paying revenue to Government. Under Regulation XI of 1825 whenever land is gained

by gradual accession whether from the recess of a river or of the sea, it shall be considered an increment to the estate or tenure to which it is

attached. The proprietor of the estate, however, can be assessed to additional revenue for the added land and the tenant, to whose tenancy it is an

increment, is liable to pay additional rent for it. Act XXXI of 1858 is a small Act of two sections. The first section lays down the two alternative

courses open to the revenue authorities while making settlement of the alluvial lands. The revenue assessed on the alluvial lands may be added to

the jumma of the original estate or a new estate may be formed out of the added lands which is to be treated as a separate estate, no matter

whether it is settled with the original proprietor or let in farm. Section 2 so far as is material for our present purpose runs as follows:

It shall be the duty of all officers making settlements of such land, whether the land be settled separately or incorporated with the original estate, to

ascertain and record all such rights, according to the rules prescribed in Regulation VII of 1822; and to determine whether any and what additional

rent shall be payable in respect of the alluvial land by the person or persons entitled to any under-tenure in the original estate.

The provisions of the said Regulation, so far as the same may be applicable, are hereby declared to extend to all settlements made under this Act.

79. Thus in making the revenue settlement of the alluvial lands the Settlement Officer has got to prepare a record of rights in accordance with the

provisions of Regulation VII of 1822. He is to ascertain and record the rights in exactly the same way as is contemplated by the Regulation. The

additional thing that is necessary under the section is that he must determine whether any and what additional rent shall be payable in respect of the

alluvial land by the person or persons entitled to an under-tenure in the original estate. It is to be noticed that this clause speaks not of enhanced

rent but of additional rent which is to be determined in respect of the additional area attached to the original tenancy of the under-tenure holder by

alluvial process and with regard to which presumably no rent could have been paid till then. To evaluate the assets for purposes of fixing the

revenue, the revenue officer has undoubtedly to fix additional rental for these additional lands but there is nothing in the section which makes such

determination legally binding on and enforceable against the tenant. The Act which is in the nature of a supplementary legislation does not lay down

any procedure for settlement of fair rent for the additional lands in a manner which would make it binding upon the tenants. The position, therefore,

is that the determination of additional rent as contemplated by s. 2 of Act XXXI of 1858 is only for revenue purposes and it does not create any

legal obligation vis-a-vis the landlord and the tenant. In the absence of any agreement between the landlord and the tenant relating to the rent for

the additional lands, the proper procedure for determination of such rent, which would be binding on the tenant, would be by way of a suit under s.

52 of the Bengal Tenancy Act where that Act is applicable. On this point again I am of opinion that the case of *Dhirendra Chandra Rai v. Nawab*

Khaja Habibulla (1925) 29 C.W.N. 505 was rightly decided and the learned Judges of the High Court were wrong in holding that this decision

was unsound.

80. It remains now to consider the other question raised on behalf of the respondent and which relates to the legal effect to be attached to the

record of a Settlement officer acting under Regulation VII of 1822 even if such record has been erroneously made. Mr. Chakravarty argues that

under Regulation VII of 1822 an entry as to rent payable by a tenant even if improper has got a presumptive value and it would be binding on

Courts of Law unless it is altered by mutual agreement or by judicial pronouncement in a regular suit. The entry as to rent that has been made in the present case, it is argued, must, therefore, be held binding unless it is set aside in an appropriate manner which the Regulation contemplates.

81. It is true that a presumption of validity attaches to the record of the Collector under the provision of s. 9 of Regulation VII of 1822 and Courts

of Law are bound to act upon them till they are altered or held to be incorrect but this presumption, in my opinion, will arise only when the

Revenue Officer purports to record existing rights. If the officer arrogates to himself the authority to determine what the proper rent should be and

not merely what it actually is, he would be acting beyond his powers as conferred by the Regulation and a settlement of rent made by him would

not be, binding on Courts of Law and would not have to be set aside by a regular suit. It appears from the record of the Settlement Officer in the

present case that he was assuming that he had jurisdiction to alter rents and he expressed opinion that the existing rents paid for the non-agricultural

lands by the mill companies were sufficiently high. He took an average of these rates and settled that as rent for the current period, Mr.

Chakravarty points out that the Settlement Officer has not purported to enhance the existing rent. He has, in fact, settled rents for the lands in suit

at the rates specified in the Potta itself for chur lands. It is argued that if in giving effect to his view of the contract between the parties the

Settlement Officer has committed an error, still the record made by him would be binding on the parties until it is rectified in the manner indicated in

the Regulation.

82. Without accepting the correctness of this argument, but assuming it to be sound, it seems to me that the propriety of the entry relating to rent

which has been recorded by the Settlement Officer and which has only a presumptive value, can be challenged in this very suit where the landlord

has made a claim for rent on the basis of such an entry. The expression ""regular suit"" as used in Regulation VII of 1822 means, in my opinion, a suit

in a Civil Court which is decided not summarily but after proper investigation by the Judge himself. The word "regular" implies that the proceeding is (sic) a summary one. Various provisions are to be found in the Regulation, according to which decisions in summary proceedings could be set aside or contested in regular suits. Under the Regulations which were in force previous to 1822, the rent suits were triable by Civil Courts or Zilla Judges though in certain matters relating to distraint and other things the Judge could act summarily on reports given by the Collectors. Under Regulation VIII of 1831 summary suits for rents could be brought before a Collector of Revenue and his decision was final subject to the right of the aggrieved party to bring a regular suit contesting its validity in a Civil Court. Under Act X of 1859, exclusive jurisdiction in rent suits was given to the Collectors but this was again taken away and restored to Civil Courts by Act VIII of 1869. There is no doubt in my mind that the rent suit, which has been brought in the Court of the Subordinate Judge in the present case, would answer to the description of a regular suit as given in the Regulation and it seems to me that it is open to the defendant to challenge the validity of the entry relating to rent as settled by the Revenue Officer by way of defence in this suit. The language of s. 9 of Regulation VII of 1822 does not warrant the conclusion that the party aggrieved by the entry must have to bring a suit as plaintiff and could not challenge the validity of the same by way of defence in a suit instituted against him by the other side in whose favour the entry stands, nor does it prescribe any period of time within which the record must be challenged. There could be no question of limitation in a case like this, as the law of limitation bars a suit and not a defence.

83. The question now is whether the recording of rent by the Settlement Officer in respect of the disputed lands has been a correct one having regard to the contract between the parties which the officer was bound to give effect to if he was authorised only to record the existing rent. Under the Potta as stated already, the new accretions could be held by the lessees free of rent till they attained the level of the high land of the Potta as it existed in 1907. According to the trial Judge, this Condition in the Potta was fulfilled and the Subordinate Judge is of opinion that the present level of the accreted land is much higher than that of the high land in 1907. On appeal this finding was reversed and it was held by the District Judge that

the evidence adduced on this point on the plaintiff's side was thoroughly worthless. In my opinion, this is a finding of fact which would be binding

on us particularly for the reason that it was not challenged before the High Court in second appeal. I am not much impressed by the argument of

Mr. Chakravarty that in coming to this conclusion the District Judge misdirected himself on the question of onus of proof and laid the burden of

proof wrongly on the plaintiff. It was undoubtedly the defendant's case in the written statement that under the terms of the Potta the suit lands

could not be assessed to rent so long as they had not risen to the level of the high lands by natural processes. For the purpose of proving this, the

defendant took out a commission for local investigation and besides the Commissioner's report, there was oral evidence adduced on both sides.

The trial Judge in deciding this point in favour of the plaintiff relied mainly on the evidence of the witnesses whom the plaintiff examined and he also

made certain calculations of his own on the basis of certain facts disclosed by the Commissioner's report and other materials on the record. The

District Judge in reversing the findings of the trial Court pronounced the evidence of the plaintiff's witnesses to be unworthy of credence and further

held that the calculations of the trial Judge were based upon unreliable data. In a case like this, where evidence was adduced by both parties and

where it could not be said that the evidence was evenly balanced, the question of onus is not at all material even if we assume that the onus really

lay on the defendant. The strongest thing against the plaintiff is that he did not assail the findings of the District Judge before the High Court in

second appeal and has not even taken this point in this statement of case lodged in this Court.

84. I may mention here that if the condition in the Potta relating to the level of the accreted lands has A actually been fulfilled, it would not only be

not necessary for the plaintiff but would be positively against his interest to claim rent on the basis of the C.S. Khatian. The Potta fixes the rate of

rent at Rs. 25 per bigha if and when the alluvial lands reached the height of the firm land and if this required level has already been reached then the

claim should not have been Rs. 15 per bigha as has been settled by the Revenue Officer and claimed by the plaintiff but Rs. 25 per bigha as the

Potta itself lays down. Therefore, the entry in the C.S. Khatian regarding the rent payable for the lands in suit should be held to be wrong and the

plaintiff's suit brought on the basis of that entry must fail.

85. In my opinion, the appeal should be allowed and the case remitted to the High Court with a direction that in place of the judgment and decree

of that Court, those of the District Judge should be substituted and the plaintiff's suit dismissed with costs in all the Courts.