

(1923) 07 CAL CK 0064
In the Calcutta High Court

Bijoy Chand Mahatab

APPELLANT

Vs

Akhil Bhuia

RESPONDENT

Date of Decision : 10-07-1923

Acts Referred:

Bengal Tenancy Act, 1885 — Section 50(2)

Citation : AIR 1924 Cal 648

Judgement

1. These seventy appeals arise out of as many cases for settlement of fair rents under Chap. X of the Bengal Tenancy Act. In 14 of these cases the lands are entirely haja badi and in the remaining 56 cases the lands are described partly as haja badi and partly as raiyati. With respect to the haja badi lands the tenants according to a custom get an entire remission of the rent for the year in which there is a flood, and the question is whether any presumption can arise u/s 50, Clause 2 of the Bengal Tenancy Act in respect of such tenancies. Section 50 Clause (2) lays down that the presumption would arise if it is proved in any suit or other proceeding that a tenant and his predecessor-in-interest have held at a rent or rate of rent which has not been changed during the 20 years immediately before the institution of the suit or proceeding. The Courts below have held that the presumption does arise.

2. The plaintiff (the landlord) has appealed to this Court and relies upon the fact that, as no rent is paid in respect of the purely haja badi tenancies in the 14 cases nor in respect of the haja badi portion of the remaining 56 cases in years of flood, there is a change in the rent and the presumption therefore does not apply to such cases. Prima fade, there is a variation of the rent.

3. It has been contended, however, on behalf of the tenants-respondents that the words "held at a rent" in Section 50 does not mean that the rent shall be actually paid, that it is enough to show that the rent is payable. Reference is made to Section 102 which provides that the rent payable at the time when the record-of-rights is prepared is to be recorded in the record-of-rights.

4. It is true that it is not necessary to prove actual payment of rent provided the

tenancy is held at a uniform rent or rate of rent for 20 years before the suit. It is difficult, however, to see how it can be said that a particular rent is payable when that rent is not payable according to custom in the years of flood. To take a concrete case - a holding consists of 7 bighas, and 4 bighas are described as raiyati at a rent Rs. 16 and 3 bighas haja, badi at a rent of Rs. 8; in the years of flood only Rs. 16 is paid, the tenant getting a remission of the rent of haja badi portion, namely, Rs. 8. Section We do not see how, after taking the full benefit of the remission, the tenant can contend that the rent is not changed in those years.

5. The case of Radhagobinda Roy v. Kyamatoolya Talukdar 21 W.R. 401 is referred to in the judgment of the Court below. But there a portion of the lands having been rendered unculturable by the overflow of a river, an abatement of rent was allowed in a lump sum upon a lump jama. The abatement was proportionate in respect of the quantity of lands and the abatement was held not to vary the rent so as to debar the raiyat from the benefit of the presumption under Act X of 1859. It may be observed that the lands in respect of which proportionate abatement was granted in that case ceased to belong to the holding. The abatement was granted once for all and the rent proportionate to the remaining lands continued to be paid.

6. In the cases before us the abatement is taken every year in which there is flood and in the illustration given above a rent of Rs. 16 only in years of flood instead of Rs. 24, the entire rent. In cases of pure haja badi tenancies no rent is paid at all in those years, not because the landlord does not realise it, but according to some custom he cannot realise it. The expression "rent" is defined in the Act as something lawfully payable or deliverable to the landlord for the use and occupation of the land. Under the custom the rent lawfully payable for a particular year in which there is flood is not the full rent but a lesser sum, in respect of the mixed tenancies. The landlord cannot sue the tenant in a Court of law for rent in respect of the haja badi tenancies nor the full rent of mixed tenancies in years of flood. We do not think that Section 50, Clause (2) was intended to apply to cases like these where under a custom a tenant gets an abatement of rent from the landlord.

7. The decrees of the Courts below are set aside and these cases sent back to the Court of first instance in order that that Court may settle fair rents. Costs of these appeals will abide the result. We assess the hearing fee at Rs. 70 (rupees seventy only) to be distributed equally in all the 70 cases.