
(1923) 07 CAL CK 0018
In the Calcutta High Court

Bijoy Chand Mahatab

APPELLANT

Vs

Akhil Bhuiya

RESPONDENT

Date of Decision : 10-07-1923

Acts Referred:

Bengal Tenancy Act, 1885 — Section 50(2)

Citation : (1924) ILR (Cal) 314

Hon'ble Judges : Panton, J;Chatterjea, J

Bench : Division Bench

Judgement

Chatterjea and Panton, JJ.—These seventy appeals arise out of as many cases for settlement of fair rents under Chapter X of the Bengal Tenancy Act. In 14 of these cases the lands are entirely hajabadi and in the remaining 56 cases the lands are described partly as hajabadi and partly as raiyati. With respect to the hajabadi 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 hajabadi tenancies in the 14 cases nor in respect of the hajabadi 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 facie 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; 4 bighas described as raiyati at a rent of Rs. 16 and 3 bighas hajabadi 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 the hajabadi portion, namely, Rs. 8. 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 Radha Gobind Roy v. Kyamutoollah Talookdar (1874) 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 is paid in years of flood instead of Rs. 24, the rent. In cases of pure hajabadi tenancies no rent is paid at all in those years, not because the landlord does not realize 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 hajabadi 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.

8. We assess the hearing fee at Rs. 70 (rupees seventy only) to be distributed equally in all the 70 cases.