

(1914) 12 CAL CK 0003
In the Calcutta High Court

Brojendro Kishore Rai Chaudhuri

APPELLANT

Vs

Khalil Nagarchi and Others

RESPONDENT

Date of Decision : 03-12-1914

Acts Referred:

Bengal Tenancy Act, 1885 — Section 101(1), 111, 30

Citation : AIR 1915 Cal 504 : 29 Ind. Cas. 885

Hon'ble Judges : Chapman, J; Asutosh Mookerjee, J

Bench : Division Bench

Judgement

1. This is an appeal by the plaintiff in a suit for enhancement of rent, instituted u/s 30 of the Bengal Tenancy Act. The question in controversy is, whether the suit is barred by the provisions of Section 111.

2. Section 111, we quote only so much thereof as is relevant to the question now before us, is in these terms: Where an order has been made u/s 101 directing the preparation of a Record of Rights, then, subject to the provisions of Section 104H, a Civil Court shall not, until three months after the final publication of the Record of Rights, entertain any suit for the alteration of the rent of any tenant in the area to which the Record of Rights applies." It is not disputed that on the 8th December 1908 an order was made by the then Local Government, that is, the Government of Eastern Bengal and Assam, under the provisions of Clause (1) of Section 101. That notification was in these terms: In the exercise of the powers conferred on him by Section 101(1) of the Bengal Tenancy Act as amended to date, and with the previous sanction of the Governor-General in Council, the Lieutenant-Governor of Eastern "Bengal and Assam is pleased to direct that a survey shall be made and Records of Rights prepared in respect of all lands which are comprised within the administrative boundaries of the District of Mymensingh as well as those revenue survey mouzahs which are comprised within the administrative boundaries of the Districts of Rangpore, Pubna, Bogra or Tipperah, but which fall wholly or partly within five miles from the main stream of any river which forms the administrative boundary of the District of

Mymensingh." The land in respect of which enhanced rent is claimed is situated within the District of Mymensingh, and it was accordingly argued by the tenant defendants before the Subordinate Judge that the suit was barred u/s 111 of the Bengal Tenancy Act. In answer, it was contended on behalf of the plaintiff landlord that the suit was not for the "alteration of the rent of the tenant" within the meaning of Section 111. The argument in substance was that a suit for the alteration of rent is a suit of the description contemplated by Section 52, which entitles the landlord to claim additional rent for additional land. This contention was very properly overruled by the Subordinate Judge. In our opinion, the expression "suit for alteration of rent" includes not merely a suit of the nature described in Section 52, but also a suit for enhancement of rent u/s 30. Indeed in this Court no serious endeavour has been made to controvert the view of the Subordinate Judge in this respect.

3. But it has been argued here that the notification of the 8th December 1908 does not contain an order u/s 101 as contemplated by Section 111. The argument is that the expression "local area" indicates a smaller area than an entire district. To support this contention reference has been made to the words estates, or tenure or part thereof which were introduced into Section 101 by Act VIII of 1898 B.C. In our opinion, these words do not tend to restrict the meaning of the expression "local area." "The term local area" is not defined in the Bengal Tenancy Act, and is obviously comprehensive enough to include an entire district. The term "local" is frequently applied to an area smaller than an entire estate or country as a whole. We are not called upon to determine in this case, whether the expression "local area" may include the entire province to which the Bengal Tenancy Act applies. What we have to decide is, whether the expression includes a district, and we feel no doubt that this question must be answered in the affirmative. It has been pressed upon us that in this view, an order of this description is likely to operate to the prejudice of landlords. It has been pointed out that many years may elapse before the operation of survey and settlement may be carried out pursuant to the orders of the Local Government and that during all these years the jurisdiction of the Civil Court to entertain suits for enhancement of rent would remain suspended by operation of Section 111. It may be conceded that this may be the possible result of a comprehensive order of the description now before us. But if there is any real hardship to landlords, it may be remedied in one of two ways. In the first place, the hardship may be avoided, if an order u/s 111 is made applicable to a smaller tract of land than an entire district. That, however, is a matter for the Local Government to consider if a representation is submitted to them. In the second place, the hardship may be avoided, if Section 111 were so modified as to be applicable only in cases where survey and settlement operations have actually been commenced in respect of a particular tract pursuant to an order u/s 101. That, however, is a matter for the Legislature to consider. But, so long as Section 111 stands as it now does, it is clearly open to the Local Government to issue a notification in terms of the notification of the 8th December 1908; and the effect of that notification is, u/s

111, to prevent the trial of the present suit by a Civil Court.

4. The result is that the decree of the Subordinate Judge is confirmed and this appeal dismissed.