

(1928) 12 PAT CK 0016
In the Patna High Court

Enayat Khan and Others

APPELLANT

Vs

Rai Bepin Behari Bose and Others

RESPONDENT

Date of Decision : 14-12-1928

Acts Referred:

Bengal Tenancy Act, 1885 — Section 110, 40, 40(5)

Citation : AIR 1929 Patna 177 : 115 Ind. Cas. 195

Hon'ble Judges : James, J; Das, J

Bench : Division Bench

Judgement

Das, J.—These analogous appeals arise out of suits instituted by the respondents in First Appeal No. 73 of 1926 who are also the appellants in Second Appeals Nos. 1455, 1456 and 1457 of 1926 for recovery of bhauli rent for 1329-32 Fasli. It was admitted that the bhauli rents of the defendants were commuted under the provisions of Section 40 of the Bengal Tenancy Act. Under the order passed by the Commutation Officer in Bhado 1329 the commutation was to take effect from the beginning of the Fasli year 1329. The learned Subordinate Judge took the view that the Commutation Officer had no jurisdiction, to quote his words, "to give a retrospective effect to his order of commutation".

2. In this view he give the plaintiffs a decree in all the suits for bhauli rent claimed by them in respect of the year 1329. Far the other years he gave the plaintiffs a decree for nakdi rent, The defendants in one of the suits appeal to this Court as the suit as against these appellants was for a sum exceeding Rs. 5.000. The defendants in the remaining three suits appealed direct to the Court of the District Judge of Gaya. The learned District Judge of Gaya has reversed the decision of the learned Subordinate Judge holding that the Commutation Officer had jurisdiction to give retrospective effect to his order, In that view the learned District Judge has given the plaintiffs a decree for nakdi rent for all the years in suit. The plaintiffs appeal from the decision of the learned District Judge of Gaya to this Court.

3. In my opinion the decision of the learned Subordinate Judge of Gaya cannot

be supported, Section 40, para. (5) of the Bengal Tenancy Act provides as follows:

The order shall be in writing, shall state the grounds on which it is made, and the time from which it is to take effect, and shall be subject to appeal in like manner as if it were an order made in an ordinary revenue proceeding.

4. It will be noticed that the discretion of the Commutation Officer under para. (5) is unrestricted. He may have exercised a wrong discretion in giving retrospective effect to his order but, in my opinion, it is not a question of jurisdiction.

5. And the point will be made perfectly clear when reference is made to Section 110 and Section 154 of the Bengal Tenancy Act. Sections 104 and 105 authorise a Revenue Officer to settle rents under certain circumstances payable by the tenants to the landlord and Section 110 specifically provides that when a rent is so settled by a Revenue Officer under this Chapter "it shall take effect from the beginning of the agricultural year next after the date of the decision fixing the rent".

6. It is quite clear that in Section 110 the Legislature has not left in the discretion of the Revenue Officer but it has provided as clearly as it knows how to provide that the rent settled by a Revenue Officer shall take effect from a particular point of time. Section 154 provides that a decree for enhancement of rent under this Act, if passed in a suit instituted is the first eight months of as agricultural year, shall ordinarily take effect on the commencement of the agricultural year next following. It will be noticed that in Section 154 some discretion is left to the Court; but the Legislature indicated that the decree for enhancement of rent should ordinarily take effect from a particular point of time, but in Section 40, the discretion, as I have already mentioned, is unrestricted. It may be that under certain circumstances it is only just and right that the order of commutation should have retrospective effect; but I have no doubt whatever that the matter is entirely in the discretion of the Commutation Officer. Now if this is conceded, it follows that that order cannot be challenged on the ground that it was passed without jurisdiction. In my opinion the point has been very clearly and forcibly put in the judgment of the learned District Judge, dated the 28th June, 1926.

7. I would, therefore, vary the decree which is the subject matter of First Appeal No. 73 of 1926 by giving the plaintiffs a decree for nakdi rent for the year 1329. So far as the second appeals are concerned, they must stand dismissed. The plaintiffs are also entitled to damages on the amounts of rent at the rate of 18 percent, on the amount decreed. The appellants are entitled to their costs in First Appeal No. 73 of 1926, but as the second appeals were not pressed there will be no order for costs in those appeals.

James, J.

8. I agree.