
(1917) 06 CAL CK 0033
In the Calcutta High Court

Genu Sheikh and Others

APPELLANT

Vs

Taramani Choudhurani

RESPONDENT

Date of Decision : 27-06-1917

Acts Referred:

Bengal Tenancy Act, 1885 — Section 105, 50(2)

Citation : 41 Ind. Cas. 259

Hon'ble Judges : Chitty, J;Beachcroft, J

Bench : Division Bench

Judgement

Chitty, J.—I agree in the judgment about to be delivered by Mr. Justice Beachcroft.

Beachcroft, J.

2. This is an appeal by the tenant defendants in proceedings u/s 105 of the Bengal Tenancy Act The Assistant Settlement Officer without going into the details of the holdings of the various tenants decided in general terms that the tenants were entitled to the presumption provided for in Section 50 of the Act. On appeal the learned Special Judge remanded the case to the Assistant Settlement Officer, for the purpose of deciding which tenants held at fixed rents and of disposing of the applications in view of the other considerations affecting enhancement of rent, which arose in the case.

3. The learned Special Judge rightly held that the case of each tenancy must be considered separately. He further made certain observations with regard to the fixity of rent, and it is these remarks that have been called in question in the present appeal.

4. For the respondents it has been argued that no appeal lies. In my opinion it is not necessary to decide this point for whether an appeal does or does not lie, the appeal should be dismissed. For it is conceded by the appellants that the order of remand was a proper order, though objection is taken to the lines on which the enquiry ordered should proceed, as indicated in the learned Judge's judgment.

Now if we find that the learned Judge has laid down wrong principles for the guidance of the Settlement Officer, in my opinion we ought to indicate in what respect the learned Judge is in error, whether the present appeal does or does not lie, to obviate the possibility of the further enquiry being subsequently challenged on the ground of the same error in law.

5. The learned Judge has pointed out that various rates of rent obtain in the locality for various classes of land. He has further found as a fact that lands in the village have been re-classified and alterations made with the effect generally of alterations in rent. In such cases of alteration he has held, and the correctness of this part of his judgment is not and cannot be disputed, that there cannot be a presumption of fixity of rent. He has also held, in my opinion rightly, that the holding must be regarded as the unit.

6. The part of his judgment to which exception has been taken is that part in which he says that the presumption of Section 50 cannot be applied except in cases where the tenant can show that in the twenty years preceding the application there has been no change of rent or only such slight variations as are of no account. It appears that the holdings of some of the tenants originally included land, referred to as jaliland, which has become incapable of cultivation and in respect of which the tenants got abatement of rent. In such cases it is possible that the proposition stated by the learned Judge is in too wide terms. For though there may have been a change of rent it is possible there has been no change in the rate of rent. If a holding has been held at a certain rate and abatement has been given in respect of a portion of the holding which has gone out of cultivation and the abatement bears to the whole rent the same proportion that the land given up does to the whole area, it is obvious there has been no alteration in the rate of rent, though there has been an alteration in the rent itself. In such a case Section 50 (2) of the Act will apply. But obviously this will not be the case if the holding includes various classes of land assessed at different rates of rent.

7. No other point is urged.

8. The appeal should, in my opinion, be dismissed, each party bearing their or his own costs respectively.