

(1928) 04 CAL CK 0011
In the Calcutta High Court

Kailash Sundari Dasi and Others

APPELLANT

Vs

Midnapur Zemindary Co. Ltd.

RESPONDENT

Date of Decision : 20-04-1928

Acts Referred:

Bengal Tenancy Act, 1885 — Section 105, 109A

Citation : AIR 1929 Cal 47

Hon'ble Judges : Suhrawardy, J;Garlick, J

Bench : Full Bench

Judgement

Suhrawardy, J.—These appeals on behalf of the tenants arise out of proceedings u/s 105, Ben. Ten. Act, for settlement of fair and equitable rents u/s 30, Ben. Ten. Act, on the ground of rise in the price of staple food crops. The defence of the defendants was based upon many grounds with which we are not now concerned. The main ground on which these appeals have been pressed is with reference to the rate of rent on which enhancement has been allowed by the Court below u/s 30, Ben. Ten. Act. The plaintiffs' case is that the real rent payable by the tenants of the mouzah was at the rate of Re. 1 per bigha; but in consideration of the defendants cultivating indigo it was reduced to 10 annas per bigha. They accordingly claimed enhancement of rent u/s 30 on Re. 1 per bigha. The tenants said that they were liable to pay rent only at the rate of 10 annas per bigha and the enhancement, if any, should be allowed on that rent. The Assistant Settlement Officer was of opinion that the rent on which enhancement should be allowed ought to be the rent entered in the settlement records and paid by the tenants at the time when that record was prepared, namely, 10 annas per bigha. The learned Special Judge on appeal by the plaintiffs has held that the actual rent for which the tenants are liable is at the rate of Re. 1 a bigha and he has allowed enhancement upon that rent.

2. It appears that this mouzah at one time belonged to one Mr. Sills. The rate of rent at that time was 5 annas odd per bigha. Mr. Hills attempted to enhance the rent of the tenants and for that purpose brought suits against some of the

leading tenants. Those suits were in the nature of test suits. They were carried up to the High Court and Mr. Hills got a decree in this Court at Re. 1 per bigha. Since then there have been several jamabandis, one in 1293 B.S., and another in 1309 -- which were accepted by the tenants and they show that the rent was Re. 1 a bigha but that remission or allowance was made of 7 annas in the rupee and latterly 6 annas in the rupee in view of the willingness of the tenants to cultivate indigo for the landlords. This remission is described in the landlords' papers as mahakup or temporary remission of rent. The tenants ceased to cultivate indigo from 1305 and hence the plaintiffs claimed that they were entitled to realize the full rent from the defendants and enhancement should be calculated upon that rate. The lower appellate Court has accepted the plaintiffs' contention and held that the tenants are liable to pay rent at the rate of Re. 1 per bigha and allowed enhancement at the rate of 2 annas 6 pies in the rupee on that rate. The tenants have appealed and the ground pressed on their behalf will appear from the discussion of the points raised in the cases.

3. On behalf of the respondents a preliminary objection is taken that no appeals lie in these cases u/s 109-A, Ben. Ten. Act. Section 109-A makes all decisions of the Special Judge subject to appeal to this Court except those settling a rent." Now the question to be considered is whether the decision in these cases is one which can be called settling a rent. What the Special Judge has done is to find out what the original rent payable by the tenant was and then he has proceeded to settle fair and equitable rent u/s 105 read with Section 30, Ben. Ten. Act. In my opinion the decision of the Special Judge in these cases is not what may be said to be a decision settling a rent pure and simple. He has done something more than that; that is, he has found what the real rent payable by the tenants is "Settling a rent" has been given, as will appear from an examination of the several sections of the Act, a technical meaning. Ordinarily "settle" would mean decide something which was previously unsettled. Where there was no rent fixed in the Record-of-Rights or where the rent mentioned in the Record-of-Rights is accepted as correct and increase or abatement is demanded thereupon on one of the grounds mentioned in the Act, the decision of the Settlement Officer in such and similar cases would be a decision settling a rent. In the present cases the Special Judge has found what the actual rent payable by the tenants is. That is not exactly settling a rent. That cannot be settling a rent in the sense in which the words are used in Section 105, Ben. Ten. Act. "Settling a rent" must be distinguished from settling a dispute relating to rent. In *Ramani Pershad Naraini Singh v. Adaiya Gossain* [1904] 31 Cal. 380, the learned Judges were called upon to assign a meaning to the expression "a decision settling a rent" and they observed:

The words "a decision settling a rent" do not in our opinion mean and include any decision upon the question what is or what ought to be the rent. They mean only a decision settling a rent in the sense of settling a fair and equitable rent in place of the existing rent and the words do not include a decision determining, what the existing rent is.

4. The decision of the Special Judge in these cases therefore is not a decision settling a rent as it purports to be. In this view it must be held that second appeals lie to this Court and the preliminary objection ought to be overruled.

5. The real question that calls for determination is on what rent the enhancement u/s 30 should be allowed. The Assistant Settlement Officer was of opinion that it should be allowed upon the existing rent by which he means the rent which the tenants are at present paying. The learned Special Judge is of opinion that the rent which the tenants are liable to pay should be the existing rent i.e. "rent which the tenant is liable to pay. I have considered this matter carefully and in my opinion the contention of the landlord should be accepted. u/s 105(4), Ben. Ten. Act, the Revenue Officer shall presume, until the contrary is proved, that the "existing" rent is fair and equitable. u/s 32(b) the rent enhanced u/s 30 shall bear to the "previous" rent the same proportion etc.

6. Now the expression "existing rent" in 105 and the expression "previous rent" in Section 32 seem to have been used in the same sense or they may be taken to have been used in the same sense. The existing rent is the rent which the tenant is liable to pay under contract with the landlord. It is possible that the landlord for some reason or other may not have realized the full amount of rent. It is also possible that the landlord may not have realized any rent at all. In the latter case it is hardly reasonable to say that by existing rent is meant no rent. But it is argued that by existing rent should be understood the rent entered in the Record-of-Rights and the Revenue Officer has no jurisdiction u/s 105 to adopt any other rent as the existing rent. This argument is in my opinion unsound. u/s 105 the Revenue Officer is entitled to enquire as to the existing rent as it is one of the questions which he is entitled to investigate u/s 105-A(f). The word "conditions" may include that on some considerations the landlord allowed remission to the tenant from the amount of rent which the tenants had rendered themselves bound to pay under the contract of tenancy. Even if that is not so, it is certainly a question which can be determined u/s 106. And it is clear that u/s 105, the Revenue Officer is entitled in order to settle fair and equitable rent to determine all questions that may arise u/s 105-A or Section 106. *Nawab Bahadur of Murshidabad v. Ahmed Hossain* [1917] 44 Cal. 78. In *Aktowli v. Tarak Nath Ghose* [1912] 16 C.L.J. 328 the learned Judges overruled the contention that a proceeding u/s 105 can be instituted only when there is no rent payable by the tenants to the landlord: that is when no rent has been fixed by agreement of parties. They were of opinion that Section 105 was applicable not only when no rent had been fixed but also when rent had been fixed by agreement of parties. I do not find any difficulty in holding that the Revenue Officer in the present cases had jurisdiction to enquire into the rent payable by the tenants under agreement with the landlords. In my judgment the existing rent or the previous rent means the actual rent which the tenants are liable to pay under an agreement with the landlord .

7. The learned Special Judge, however, has not considered all the points that

require consideration in the present case. He has nowhere said, as he is required to do u/s 105 (4) or u/s 35, Ben. Ten. Act, that the rent he has fixed is in the circumstances fair and equitable. In proceedings for settling fair and equitable rent it is not enough to find that there has been an increase in the price of staple food crops but it is also necessary to find that the rent settled by the Court is fair and equitable taking all circumstances into consideration. In these cases the Assistant Settlement Officer has observed that the existing rents paid by the tenants are already higher than the rates in the neighbouring mouzas. In some cases the learned Assistant Settlement Officer holds that the rents paid by these tenants are double the rates prevailing in the neighbouring mouzas. In some cases the tenants say that the rents paid by them are too high considering the nature of the lands held by them in the beels. The Special Judge when raising the rent now paid by the tenants from 10-annas per bigha to Re. 1 per bigha is required more than in ordinary cases to enquire whether the rent fixed by him which comes to about double the rent now paid by the tenants is fair and equitable and whether the Court shall in these cases decree any enhancement which may be unfair or inequitable. These cases therefore must go back to the learned Judge for consideration of all the circumstances in these cases and for finding if these cases are proper cases in which enhancement should be allowed u/s 30 even though there has been a rise in the price of staple food crops. I may mention that the present proceedings were not for the purpose of correction of an entry in the Record-of-Rights relating to rent. The plaintiff's claim is to enhance the rent u/s 30 on the existing rent. If the Court therefore holds that in the circumstances of these cases the plaintiffs are not entitled to claim any enhancement on the ground that it would not be fair and equitable, the plaintiffs' application should be dismissed. If on the other hand the Court holds that the plaintiffs are entitled to some enhancement the Court of appeal below would determine what enhancement should be allowed as fair and equitable and on what rent.

8. As the cases are going back for a consideration of these points it seems to me to be fair that another question on which the two lower Courts have differed be reconsidered. The documents upon which the learned Special Judge has relied for his finding that the landlord granted mahakup of 6-annas or 7-annas in the rupee on condition of the tenants growing indigo and that the tenants agreed to such arrangement are the jamabandis of 1293 and 1309. With regard to the jamabandis of 1293, the first Court accepted it presumably on the ground that it is more than 30 years old. But with regard to the jamabandi of 1309 that Court says that there is no evidence to prove that the signatures upon those papers were those of the defendants or their predecessors. The learned Subordinate Judge says that the jamabandis of 1293 and 1305 were signed by the tenant defendants; but he has given no reason nor has he discussed the evidence to show that the observation on those documents made by the trial Court was not justified. The learned Judge therefore will consider the question as to whether the defendants in these cases are bound by any agreement with the landlord to

pay the full rant when demanded from them. As regards the other issues raised they must be taken to have been finally settled by the decision of the Court below.

9. The result is that the decrees of the Special Judge are set aside and the cases sent back to that officer for a rehearing of the appeal on the points indicated above on the evidence on the record. Costs will be at the discretion of the lower appellate Court. We assess the. hearing fee in this Court at one gold mohur.

Garlick, J.

10. I agree.