

**(1951) 06 CAL CK 0014**  
**In the Calcutta High Court**  
**Case No : A.F.A.O. No. 49 of 1948**

Madhai Mondal

APPELLANT

Vs

Pran Krishna Biswas and Others

RESPONDENT

**Date of Decision :** 15-06-1951

**Acts Referred:**

Bengal Agricultural Debtors Act, 1936 — Section 37A(8)

**Citation :** AIR 1951 Cal 139

**Hon'ble Judges :** Roxburgh, J

**Bench :** Single Bench

**Advocate :** Jagannath Gangopadhyay, for the Appellant; Jitendra Kumar Sen Gupta and Jyotirindra Nath Das, for the Respondent

**Final Decision :** Allowed

## Judgement

Roxburgh, J.

1 This is an appeal against a decision of the subordinate Judge of Berhampore reversing a decision of the Munsif, First Court, Berhampore, in a case arising u/s 37 A (8), Bengal Agricultural Debtors Act.

2. The applicant, now appellant, obtained an award in a case where it was held that the debt had been extinguished by long possession of the land given in usufructuary mortgage. The Munsif granted the application & set aside the sale.

3. The lower appellate Court has followed the decision in the case of Bonamali Pramanik and Others Vs. Radhagobinda Ghosh, , & has held that the application must be dismissed on the ground that the Board had no jurisdiction. The learned Judge has remarked that the decision in the case of "Sukhendu Bikash v. Srish Chandra", 52 CWN 612, has no application to the case.

4. How the learned Judge was able to say this is beyond my comprehension. The latter case was, it is true, one which arose in revision of a District Judge's order u/s 40A of the Act, whereas the earlier case of Akram, J. arose, like the present

one, out of an application u/s 37 A (8) of the Act. Nevertheless the substantial point in issue in both the cases is the same, -- the jurisdiction of the Board to make an award in the case where the amount of the original debt is found to have been extinguished by the receipt of the usufruct of the land. The latter case, which is a decision of the Division Bench explicitly over-rules the decision of Akram, J. Far from that case not having any application to the present case; it is sufficient to dispose of it completely without further argument. If in these circumstances the Board can make an award, then it follows inevitably that the Munsif, to whom the application was made u/s 37 A (8) of the Act on the basis of an award, which must be held to be valid in view of the Bench decision, must set aside the sale & follow the provisions of Sub-section (8)

5. Some reference is made here to the terms of Sub-section (7) which ends with the words:

"After such an award has been made, the applicant shall be deemed to be a debtor." The learned Judge has also met this point asking rhetorically how can a person be a debtor if there is no debt. The answer, I think, is that it is the normal meaning of use of the word "deemed", in legislation, that by law something or someone is to be taken to be something or someone which in fact it or he is not. The rhetorical question in fact raises no difficulty. Again Sub-section (7) of Section 37A is clearly ancillary to Sub-section (5). It begins:

"For the purpose of an award made under Sub-section (5) (a) the debt shall be deemed..... "

Thereafter it gives the method of calculating the debt, which method incidentally may obviously in certain cases lead to the debt being ascertained to be zero or a negative amount In other words, the calculation may show that the original debt has been either extinguished, or overpaid. If a valid award can be made under Sub-section (5) where it is known that the debt has been extinguished or overpaid, there is nothing whatever in the terms of Sub-section (7), in my opinion, which will wipe out the effect of such an award for the purposes of Sub-section (8).

6. The result is that this appeal must be allowed. The order of the appeal Court is set aside & that of the trial Court restored.

7. The appellant is entitled to costs throughout. No order is necessary on the application.