
(1938) 01 CAL CK 0003
In the Calcutta High Court

Maharaja Srish Chandra Nandi

APPELLANT

Vs

Doa Mahammad Byapari and Others

RESPONDENT

Date of Decision : 06-01-1938

Acts Referred:

Bengal Tenancy Act, 1885 — Section 105

Citation : AIR 1939 Cal 77

Hon'ble Judges : Nasim Ali, J

Bench : Division Bench

Judgement

Nasim Ali, J.—This appeal arises out of a proceeding u/s 105, Bengal Tenancy Act, for settlement of fair and equitable rent of a tenure. The defence of the tenure-holder is that the tenure is a permanent one and its rent is not liable to be enhanced. The Settlement Officer as well as the learned Special Judge have accepted the defence of the tenants that the tenure is a permanent one. They have however agreed in overruling the defence that the rent of the tenure is not liable to be enhanced. The Courts below accordingly have enhanced the rent of the tenure u/s 7, Bengal Tenancy Act. The landlord appeals to this Court.

2. The only point, canvassed before me by Dr. Basak appearing on behalf of the appellant is that the Courts below were wrong in coming to the conclusion that the tenure in question is a permanent one. It appears that certain tenancies were purchased by defendant 1 and his father. These tenancies were not transferable without the consent of the landlord. The purchasers did not acquire any right on the basis of their purchases and the landlord became entitled to take khas possession from the purchasers. Thereupon defendant 1 for himself and on behalf of his minor sons executed a kabuliat in favour of the landlord on 18th Pous 1322 B.S. corresponding to 3rd January 1916 by which he took a new settlement of the lands which are covered by the tenancies previously purchased. The point for determination is whether by this lease a permanent tenure was created. Before proceeding further it is necessary to notice one argument on behalf of the respondents that this lease is only a confirmatory one and did not

create a new tenancy. It is clear from the recitals of this document that the original tenancies which were purchased were not transferable without the consent of the landlords, that the landlord did not recognize the transfer and had a right to take khas possession of his lands. It is also conceded by the learned advocate appearing on behalf of the tenant-defendants that the rent reserved by the lease was higher than the rent which was payable for the original tenancies purchased by defendant 1 and his father. There can be no doubt therefore that a new tenancy was created by the lease of the year 1922 B.S.

3. From the recitals in the lease it appears that the lessee made a prayer to the landlord for taking a new settlement for a period of three years and that in accordance with that prayer a lease for three years from 1322 to 1324 B.S. was given. It further appears from this lease that at the end of the term, that is the period of three years the lessee had the right to take a new settlement of lands covered by the lease as well as any excess land which would come into his possession and so long as this new settlement is not made the lessee would pay rent for the excess lands also at the rate mentioned in the lease. The learned advocate for the respondent contended that this covenant in the lease was a covenant for perpetual renewal and consequently this lease created a tenure not for a limited time and therefore is a permanent lease. This contention has no substance inasmuch as it is not stated that the lessee would have the right of a perpetual renewal. In fact it is not even stated for what period the new lease will run.

Where there is a covenant for renewal, if the option does not state the terms of renewal, the new lease would be for the same period and on the same terms as the original lease in respect of all the essential conditions thereof, except as to the covenant for renewal itself : Per Mookerji J. in *Secy. Of State v. Digambar Nanda* A.I.R 1919 Cal. 620.

4. The leanings of Court is always against perpetual renewals. In order to establish this construction the intention has to be unequivocally expressed. There is nothing in this lease to show that the parties ever intended perpetual renewal. Under these circumstances, I have not the least doubt in my mind that by this lease the parties intended only one renewal and for a period of three years only. The lease therefore did not create a tenure for an unlimited period. The Courts below are therefore wrong in holding that the tenure in question is a permanent tenure. The finding of the Courts below, that the tenure in question is a permanent tenure is therefore set aside. The result therefore is that this appeal is allowed. The judgment and decree of the lower Appellate Court in so far as it declares the tenure to be a permanent tenure are set aside and in lieu thereof it is declared that the tenure in question is a non-permanent tenure. The appellant will get his costs in all Courts. The hearing fee in this Court is assessed at three gold mohurs.