
(1941) 07 CAL CK 0006
In the Calcutta High Court

Nagendra Chandra Lahiri and Others

APPELLANT

Vs

Moulvi Muhammad Abdus Sobhan Saheb and Others

RESPONDENT

Date of Decision : 10-07-1941

Acts Referred:

Bengal Tenancy Act, 1885 — Section 88

Citation : AIR 1942 Cal 142

Hon'ble Judges : Henderson, J

Bench : Division Bench

Judgement

Henderson, J.—This rule has arisen in connexion with proceedings u/s 88, Bengal Tenancy Act. The question for consideration is whether Section 75A, Sub-section (2) has any application to a decree for enhancement made by a revenue officer tinder Section 105, Ben. Ten. Act. In the present case the actual enhancement was decreed before this section came into force but the decree of the appellate Court was made after it. The only way in which the question can be brought within the range of Section 115 is to contend that by misunderstanding the law the Munsif has apportioned a rent which does not exist. I will therefore proceed upon that point of view. The relevant words of the Sub-section are as follows:

All decrees and orders enhancing rent passed under any of the provisions of this Act are hereby declared to be inoperative from the date of such decree or order until the expiry of the ten years referred to in Sub-section (1).

2. The Sub-section therefore has nothing to do with the rights of the landlord; it merely restrains him from enforcing them for a certain period. There can be no question that in this case the rent was actually enhanced by a decree made under the provisions of this Act. The case therefore appears to be within the terms of the section. Mr. Lahiri relies upon the fact that Section 105 directs the revenue officer to settle a fair and equitable rent. That appears to me to be quite irrelevant. In carrying out his duties under that section he may enhance it, maintain the existing rent or reduce it. If he enhances it, the provisions of the new section m attracted at once. To differ from the learned Subordinate Judge

would lead to most extraordinary results. The landlords in districts where settlement operations were going on would be able to enforce enhancements while landlords in other districts would not be able to do so. Even in the former case of districts where settlement operations are going on a landlord's right to enforce enhancements would depend upon the mere accident whether he filed an application u/s 105 or whether he instituted an ordinary suit. I cannot believe that such could have been the intention of the Legislature. I have no doubt that the learned Subordinate Judge was correct. The rule is accordingly discharged. As the opposite party did not appear, I make no order as to costs.