
(1942) 03 CAL CK 0046
In the Calcutta High Court

Nagendra Chandra Lahiri and Others

APPELLANT

Vs

Probhat Chandra Deb and Others

RESPONDENT

Date of Decision : 03-03-1942

Acts Referred:

Bengal Tenancy Act, 1885 — Section 105

Citation : AIR 1942 Cal 607

Hon'ble Judges : Biswas, J

Bench : Division Bench

Judgement

Biswas, J.—This is an appeal against the decision of the Special Judge of Rangpur, modifying that of the Assistant Settlement Officer, Gaibandha, in a proceeding u/s 105, Ben. Ten. Act. The plaintiff-appellants had applied for settlement of fair and equitable rent in respect of a tenure. The A.S.O's order shows that the matter had already once come up before the Special Judge, when he found that the rent was liable to enhancement, and he remanded the case in order that the enhancement might be determined u/s 7, Ben. Ten. Act. That gave rise to the further proceeding out of which the present appeal has arisen.

2. In the record of rights the existing rent was recorded as Rs. 258 per year, which the A.S.O. considered too low. He found the gross assets were Rs. 921-9-7 and deducting 15% thereof as collection charges, and allowing 60% of the balance as profit to the tenure-holders, he settled the fair rent at 40% of the net assets. He further directed that the enhancement was to take effect from 1st Baisakh, 1948 B.S.13255 This order was made presumably under the new Section 75A which had just come into force. Against this decision, the plaintiffs took an appeal to the Special Judge both as regards the enhancement granted and the date from which it was to take effect. As to the first point, the Special Judge reduced the tenure-holders' profit to 40%, and assessed the fair rent at 60% of the net assets. On the other point, he upheld the order of the A.S.O. The only question argued on the present appeal is as to the effect of Section 75A. It is contended, in the first place, that settlement of a fair and equitable rent under

Chap. 10, Ben. Ten. Act, is not enhancement of rent within the meaning of Section 75A, and secondly, that Section 75A being in the nature of a general provision, it cannot control the special provision contained in Section 110 as regards the date from which a rent settled under Chap. 10 is to take effect. In my opinion, both these contentions must be overruled.

3. As regards the first point, it will be seen that Section 105, Sub-section (4) expressly provides that in settling rents under this section, the Revenue Officer shall have regard to the rules laid down in the Act for the guidance of the Civil Court in increasing or reducing rents, as the case may be. There is a similar provision in Section 104D for leases where a settlement of land revenue is being or is about to be made. This presupposes that in settling rents under Chap. 10, whether under Part 2 or under Part 3, the Revenue Officer has the power to alter the rents as recorded in the finally published record of rights either by enhancing or by reducing the same. This is in fact distinctly recognized under Part 2 in Section 104A, Sub-section (1), Clause (d), the proviso to the section making express reference to the provisions of the Act regarding enhancement, such as Sections 6 to 9 (for tenure-holders), Sections 27 to 36 (for occupancy raiyats) and Section 43 (for non-occupancy raiyats) besides Sections 50 to 52 (alteration of rent for alteration in area). I do not see, therefore, why enhancement of rent in proceedings for settlement of rents should not be regarded as enhancement in accordance with the provisions of the Act within the meaning of Section 75A. Section 75A is quite general in its terms, and to limit its scope and effect in the way suggested would indeed be to defeat the express purpose of this provision. In my opinion, the first point raised on behalf of the appellants must, therefore, fail.

4. In support of the other point, namely, that Section 75A, though enacted later, cannot override the provisions of Section 110, Mr. Lahiri relies on the principle embodied in the well known maxim *generalia specialibus non derogant*, the general cannot derogate from the special, or as Lord Selborne put it in *Seward v. Vera Cruz* (1885) 10 A.C. 59 68:

Where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, you are not to hold that earlier and special legislation indirectly repealed, altered or derogated from merely by force of such general words, without any indication of a particular intention to do so.

5. It is said that Section 110, Ben. Ten. Act, which has been there from before the introduction of Section 75A under the amendment of 1938, is a special provision made by the Legislature as to the date from which rents settled under Chap. 10 (including enhancements) are to take effect, and that it cannot, therefore, be affected by the later legislation which only enacts a general suspension of all enhancements for a period of ten years. The reason of the rule is clear, and was thus stated by Wood, V.C. in *Fitzgerald v. Champneys* (1861) 30 L.J. 777 :

In passing the special Act the Legislature had their attention directed to the special case which the Act was meant to meet, and considered and provided for all the circumstances of that special case, and having done so, they are not to be considered, by a general enactment passed subsequently, and making no mention of any such intention, to have intended to derogate from that which, by their own special Act, they had thus carefully supervised and regulated.

6. As any standard book on the interpretation of statutes will show, the principle has been re-affirmed in numerous cases, and may be taken as firmly established. It will be seen, however, that the rule as laid down is not only not in conflict with, but clearly recognises the existence of another rule of construction, equally well settled, which is expressed by the maxim *leges posteriores priores contrarias abrogant*, an earlier enactment must give place to a later, if inconsistent therewith. This follows in fact from the undoubted authority which exists in the legislature to change, modify or abrogate an existing law. The only question is, where there are no express words of repeal, whether there is such a contrariety or repugnance between the two enactments that an intention to repeal cannot but be implied. It is quite true, as pointed out in *Dobbs v. Grand Junction Waterworks Co.* (1882) 9 Q.B.D. 151 repeal by implication is never to be favoured: it may be the necessary consequence of inconsistent legislation whenever it occurs, but must not be imputed to the legislature unless absolutely necessary. Where, however, the provisions of the later Act are so inconsistent with or repugnant to those of the earlier that the two cannot stand together, and effect cannot be given to both at the same time, there must, I think, be of necessity an implied repeal. It is not necessary to multiply authorities, but I shall content myself with one quotation which puts the matter quite clearly:

What words will constitute a repeal by implication it is impossible to say from authority or decided cases. If, on the one hand, the general presumption must be against such a repeal, on the ground that the intention to repeal, if any had existed, would have been declared in express terms, so, on the other, it is not necessary that any express reference be made to the statute which is to be repealed. The prior statute would, I conceive, be repealed by implication if its provisions were wholly incompatible with a subsequent one, or if the two statutes" together would lead to wholly absurd consequences, or if the entire subject-matter were taken away by the subsequent statute; perhaps the most difficult case for consideration is where the subject-matter has been so dealt with in subsequent statutes that according to all ordinary reasoning the particular provision in the prior statute could not. have been intended to subsist, and yet if it were subsisting no palpable absurdity would be occasioned." *The India* (1864) Bro. & L. 221.

7. Applying these tests in the present case, it cannot in my opinion be doubted that treating Section 110, Bengal Tenancy Act, as a special provision as to when a rent enhanced under Ch. 10 is to take effect, and Section 75A as a general enactment postponing the operation of all enhancements under the Act, the

former must still be held to be subject to the provisions of the latter. In enacting that all the provisions of the Act relating to enhancement shall be suspended for a specified period, and that all decrees and orders for enhancement passed under any of these provisions shall be inoperative for such period, the Legislature did in fact more than indicate a clear intention to affect all pre-existing provisions like those contained in Section 110 laying down or contemplating a different period for enhanced rents to come into force. This is not a case where the subsequent general enactment may be taken to have excluded from its operation the special provisions in the earlier legislation. To hold that Section 75A must be read subject to Section 110 would, in my opinion, be to defeat the object of the new provision. The second point urged on behalf of the appellants must consequently be also overruled.

8. In one sense it may be held that the A.S.O. had no jurisdiction in this case to make any order for enhancement, even though it was to take effect from after the expiry of the ten years' period referred to in Sub-section (1) of Section 75A. The order was made on 26th August 1938, and by virtue of the provisions of this section which were expressly made retrospective in operation with effect from 27th August 1937, the power to enhance must be deemed to have been non-existent on the date of the order. It is not necessary, however, to express any final opinion on this point. As regards the rate of enhancement granted, Mr. Lahiri recognised that the question as to the proper allowance to be made for collection charges or for the profits of the tenure-holders in computing the fair and equitable rent under sub-s, (3) of Section 7, was a question of fact, which could not be interfered with in second appeal. The result is that this appeal fails, and is dismissed. As the respondent did not appear, there will be no order as to costs. Leave; to appeal, under Clause 15 of the Letters Patent is granted.