

**(1916) 12 CAL CK 0017**  
**In the Calcutta High Court**

Narain Chandra Dalal

APPELLANT

Vs

Maharaja Manindra Chandra Nandi and Others

RESPONDENT

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**Date of Decision :** 13-12-1916

**Acts Referred:**

Bengal Tenancy Act, 1885 — Section 23, 50

**Citation :** 37 Ind. Cas. 999

**Hon'ble Judges :** Walmsley, J;D. Chatterjee, J

**Bench :** Division Bench

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## Judgement

1. Two points have been argued in this case first, that the Judge was wrong in holding that the presumption of fixity u/s 50 of the Bengal Tenancy Act has been rebutted by the fact that the rent was increased from Rs. 3-3-0 odd to Rs. 3-4-0 odd and secondly, that he was wrong in holding that the defendant in this case had exceeded his rights under the law in building a suitable house for himself on a holding whatever its nature was.

2. With regard to the first point, we do not think it necessary to go into the matter in this case, as it seems to us that the finding of the learned Judge that there has been a variation at the time of the dakhil kharij, seems to be a finding of fact.

3. With regard to the second point, we think that the learned Judge is clearly wrong. Upon the learned Judge's own finding the defendant is an occupancy raiyat, and if he is an occupancy raiyat, then u/s 23 of the Bengal Tenancy Act he may use the land in any manner which does not materially impair the value of the land or render it unfit for the purposes of the tenancy. Now, the purpose of the tenancy was gardening. It is not found that the building of the house in question upon 1 cottah and a quarter out of 40 cottahs of land is in any way impairing the value of the land or rendering it unfit for the purposes of the tenancy, that is gardening.

4. In the next place, u/s 76, Clause (f), the raiyat is entitled to erect a suitable

dwelling-house for himself and his family together with all necessary out offices. It has been held in the case of Hari Kishore Barna Sarma v. Baroda Kishore Acharja Chowdhry 8 C.W.N. 754 : 31 C. 1014. that the building need not be suitable to the holding; it must be suitable under the circumstances of the raiyat who makes the building. In the present case the building is not held to be unsuitable to the person who built it.

5. In this connection we may refer to the remarks of their Lordships of the Privy Council in Hari Mohan Misser v. Surendra Narayan Singh (5). That was a case of land taken for agricultural purposes on which an indigo factory consisting of pucca houses was built. The High Court held that the raiyat had exceeded his rights in building the factory and that this was not within the purposes of the tenancy. The learned Judges said: "Where, as in this case, land has been let out for agricultural purposes generally, the erection of an indigo factory on a part of such land must render it unfit for the purpose of the tenancy, because, the purpose of the tenancy being the cultivation of crops, that is agricultural purposes, the portion of the land built upon will evidently be unfit for such purposes." With regard to this, their Lordships of the Privy Council observed "the proposition of law is laid down broadly, without reference to the circumstances of individual cases, without regard to the size of the holding, or of the area withdrawn from actual cultivation or to the effect of such withdrawal upon the fitness of the holding, taken as a whole, for profitable cultivation."

6. In the present case the learned Judge in the Court below has not taken all these matters into consideration and we think that he is clearly wrong. The house is built for dwelling purposes, upon his finding by an occupancy raiyat; but he does not find that it has impaired in any way the value of the property or that the house is unsuitable to the circumstances of the raiyat. Under the circumstances, he was not justified in ordering its demolition.

7. There is another matter which must be adverted to in this connection. The house had been almost finished when the zamindar took notice of it. The house must have cost a good deal to the party who built it. This circumstance ought to have been taken into account before ordering a demolition. We think that the tenant in this case has not exceeded his right in building a pucca house on a very insignificant portion of his tenancy.

8. We accordingly allow the appeal, set aside the judgment of the lower Appellate Court and restore that of the first Court with costs throughout.