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**(1929) 02 PAT CK 0026**  
**In the Patna High Court**

Nirmal Kumar and Another

APPELLANT

Vs

Gauri Prasad Singh

RESPONDENT

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**Date of Decision :** 25-02-1929

**Acts Referred:**

Bengal Tenancy Act, 1885 — Section 30(b), 32, 35

**Citation :** AIR 1929 Patna 348

**Hon'ble Judges :** Fazl Ali, J; Das, J

**Bench :** Full Bench

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**Judgement**

Das, J.—These analogous appeals arise out of suits instituted by the appellants for enhancement of rent u/s 30(b), Ben. Ten. Act. The Court of first instance enhanced the rent at the rate of 0-4-6 par rupee. He thought that according to the rules laid down in Section 32 of the Act "the rate would not be less than this," but he granted enhancement at the rate of 0-4-6 per rupee on the ground that enhancements of other holdings in the village have been allowed at that rate. On appeal the learned District Judge for all practical purposes reversed the decision of the Court of first instance and allowed enhancement at the rate of 0-2-0 in the rupee and directed

the same to be gradual, i.e. the rent shall rise at the rate of six pies in the rupee every year till the maximum of two annas in the rupee is reached.

2. In taking this view the learned District Judge acted upon his reading of the Commissioner's report which according to him found that

the major part of the lands was found to be unalterable, full of thorns and bushes and jungly and partly sandy.

In a later part of his judgment he says:

there could not be any gainsaying that the lands for the most part were barren and unfit for yielding good or even moderate crops.

3. He referred to the case of Raja Resheecase Law Vs. Chintamoni Dalai and

Another, upon which the learned Munsif based his decision without making any attempt to formulate an answer to that decision.

4. It is necessary first to consider whether the learned District Judge is right in his view that the major part of the lands has been found by the Commissioner to be unculturable. Now in suit No. 74 of 1925 out of which second appeal No. 950 of 1926 arises we are concerned with 244 bighas 16 cottas of land. The tenants held this large block of land at a rent of Rs. 586 per annum. The defendants in their written statement contended that out of this area 19 bighas were jungle and 28 bighas 7 cottas were unculturable. The Commissioner has found that 19 bighas is jungle and only 7 bighas 8 cottas unculturable. In other words, the Commissioner has found that out of 244 bighas 16 cottas 26 bighas 8 cottas are not culturable lands. In suit No. 76 of 1925 out of which second appeal No. 951 of 1926 arises, the tenants held 25 bighas 8 cottas at a rent of Rs. 54 per annum.

5. They contended in their written statement that 15 bighas out of the area held by them was waste land. The Commissioner reports that only one bigha 5 cottas is unculturable. In suit No. 78 of 1925 out of which second appeal No. 952 of 1926 arises, the tenants held 38 bighas 13 cottas of land. The tenants did not in their written statement allege that any portion of the lands held by them was unculturable, but they did contend that the lands were of a bad quality and that therefore rent should not be enhanced. The Commissioner found that no portion of these lands is unculturable. Having regard to what the tenants themselves stated in their written statement and what the Commissioner has actually found, it is in my opinion ridiculous to suggest that

the major part of the lands was found to be unculturable, full of thorns and bushes and jungly and partly sandy.

6. This being the position, the judgment of the learned District Judge cannot be sustained. I would further point out that whether the land is good or bad has nothing whatever to do with the question of enhancement u/s 30(b), Ben. Ten. Act, and I think that for this proposition, the decision to which the learned Munsif refers is ample authority.

7. There is a tendency in the Subordinate Courts to rely upon Section 35, Ben. Ten. Act, as giving them unrestricted discretion to deprive the landlords of what is justly and properly due to them. For myself I deplore this tendency, for, though a Court may be generous to the tenant, it must at the same time be just to the landlords. I would allow the appeals, set aside the judgment and the decrees passed by the Court below and remand the cases to that Court for disposal according to law.

Fazl Ali, J.

I agree.