

(1949) 08 CAL CK 0039

In the Calcutta High Court

Case No : Appeal from Original Decree No. 287 of 1945

Nirmal Kumar Ghosh

APPELLANT

Vs

Ajit Kumar Banerji

RESPONDENT

Date of Decision : 23-08-1949

Acts Referred:

Citation : (1949) 08 CAL CK 0039

Final Decision : Allowed

Judgement

Das Gupta, J.—A revenue-officer, acting under Part II of Chapter X of the Bengal Tenancy Act, settled the rent payable by the Respondents at Rs. 14.090-5 annas, to take effect from April 1, 1943. The rent which had been payable by these tenants prior to this settlement was Rs. 8.762. The revenue payable by Kumar Narendra Nath Mitra, the predecessor of the present Appellants now on the record, under whom the Defendants held these lands was formerly Rs. 2,797, but the new revenue fixed was Rs. 10,524. Kumar Narendra Nath Mitra, represented by the Manager of the Court of Wards, brought the action, out of which this appeal has arisen, for recovery of rent at the rate settled by the revenue-officer, namely, at the rate of Rs. 14,090-5 annas.

2. The main defences taken to this claim of rent were that, in the first place, the Plaintiff landlord was not entitled to get the rent settled by the revenue-officer which contravened the terms of the lease by which the tenancy was governed and secondly, that, in any case, the settlement of rent made by the revenue-officer was an enhancement within the meaning of Section 75A of the Bengal Tenancy Act and so the rent thus settled cannot be recovered.

3. The learned Subordinate Judge rejected the first plea of the Defendants and held that, as the tenants Defendants had not challenged the settlement of rent as made by the revenue-officer by any suit u/s 104H of the Bengal Tenancy Act, they were liable to pay rent at the settled rate, but accepted the defence plea as regards the bar of Section 75A of the Bengal Tenancy Act and held that the rent settled could not be recovered till August 27, 1947 and so decreed the suit at the

pre-existing rate of Rs. 8,762 per annum with the usual cesses, education cess and interest.

4. The only question which arises in appeal by the landlord is whether Section 75A of the Bengal Tenancy Act is an obstacle in the way of the landlord realising rent for the period in suit at the rate at which rent was settled by the revenue-officer.

5. The provision of Section 75A of the Bengal Tenancy Act, which, according to the learned Subordinate Judge and the learned advocate for the Respondents, stands in the way of the landlord realising rent runs thus:

75A(1) All the provisions of this Act relating to enhancement of rent of hereby suspended for a period of ten years with effect from August 27, 1937.

6. It is quite clear that, on the face of it, this provision that all the provisions of this Act relating to enhancement of rent are suspended will have the effect of suspending or, in other words, temporarily repealing those sections of this Act which relate to enhancement of rent. There can be no doubt thus that the provisions of Sections 6, 7, 8 and 9, which relate to enhancement of rent of tenure-holders, Sections 27 to 36, which relate to enhancement of rent of occupancy raiyats and other sections, which relate to enhancement of rent of other classes of tenants, shall cease to have operation for the period mentioned in Section 75A, namely, from August 27, 1937 to August 26, 1947.

7. The question whether Section 75A will have any application to cases where, in settling rent u/s 105 of the Bengal Tenancy Act, the revenue-officer fixes higher rent came up for consideration before this Court in two cases. In the case of *Nagendra Chandra Lahiri v. Abdus Sobhan* ILR (1942) 1 Cal. 58 Henderson J., held that, when in carrying out his duties u/s 105 of the Bengal Tenancy Act, the revenue-officer, while settling the rent, enhances it, the provisions of Section 75A are attracted at once. The ground for this decision, as given by his Lordship, was that if any other view was held, the extraordinary result would follow that the landlords in districts where settlement operations were going on would be able to enforce enhancements, while the landlord, in other districts, would not be able to do so and that even in the case of districts where settlement operations were going on, the landlord's right to enforce enhancement would depend upon the mere accident whether he filed an application u/s 105 or whether he instituted an ordinary suit. Henderson J. said that he could not believe that such could have been the intention of the legislature. In *Nagendra Chandra Lahiri and Others Vs. Probhat Chandra Deb and Others*, , Biswas J. also held that enhancement of rent in proceedings for settlement of fair and equitable rent should be regarded as enhancement of rent in accordance with the provisions of the Act within the meaning of Section 75A. His Lordship pointed out that Sub-section (4) of Section 105 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. He proceeded to

observe that there was a similar provision in Section 104D for cases where a settlement of land revenue was being or was about to be made and that the fact that in settling rents under Chapter X, whether under Part II or under Part III, 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, is in fact distinctly recognised under Part II in Section 104A, Sub-section (1), Clause (d), the proviso to the section making express reference to the provisions of the Act regarding enhancement.

8. We have examined with some care the provisions of Section 105 of the Bengal Tenancy Act and also, what really concerns us more in the present case, the provisions of Sub-section (1)(d) of Section 104A and of Section 104D of the Bengal Tenancy Act. It will be convenient to set out the provisions here:

Section 104A(1)(d) runs thus:

The revenue-officer may settle all or any of the rents by maintaining the existing rentals recorded in the record-of-rights as published u/s 103A, Sub-section (7), or by enhancing or reducing such rentals:

Provided that, in making any such settlement, regard shall be had to the principles, laid down in Sections 6 to 9 (both inclusive), 27 to 36 (both inclusive), 38, 39, 43, 50 to 52 (both inclusive), 180 and 191.

Section 104D runs thus:

In framing a Table of Rates u/s 104B and in settling rents u/s 104C the revenue-officer shall be guided by such rules as the Provincial Government may make in this behalf and shall, so far as may be and subject to the proviso to the said Section 104C, have regard to the general principles of this Act regulating the enhancement or reduction of rents.

9. A consideration of these provisions clearly shows that in deciding at what figure to settle the rent, the revenue-officer is required by the law as laid down in these sections to have regard to the principles laid down in certain sections of the Act as regards the conditions under which and the limits up to which enhancement could be granted and also to have regard to the general principles of the Act regulating the enhancement or reduction of rents. At first sight, it no doubt seems that if, in settling a new rent, the revenue-officer has actually increased the amount payable by the tenant from what it was, his act of settlement is an enhancement of rent, but on more careful consideration it seems clear that what the revenue-officer has done in a case of this nature is not directing that the old rent payable be increased to this new rent but he has actually wiped cut the old rent and substituted in its place a new figure as the amount of rent payable. In my judgment, the fact that the rent settled is higher than the old rent does not make the act of settlement of the rent an act of enhancement of rent.

10. The cases which Biswas J. and Henderson J. decided were all under Part III

of the Bengal Tenancy Act, where a settlement of land revenue was not being made or was not about to be made. Those cases would not bring out the absurdity which would result if the view is accepted that the settlement of rent being an enhancement within the meaning of Section 75A of the Bengal Tenancy Act would remain inoperative for a period of ten years as mentioned in the section. In cases under Part III of Chap. X of the Act, it is easy to see that positions as have arisen in the present case may frequently occur. Here the revenue has been enhanced from Rs. 2,797 to Rs. 10,524. This the landlord is bound to pay without the protection of Section 75A. If his tenant can get the benefit of Section 75A, the position in this case will be that the landlord would realise only Rs. 8,762 from his tenant, but would have to pay to the Government the higher amount of Rs. 10,524. If this absurd result was the inevitable consequence of the act of the legislature in enacting Section 75A, this Court could not and would not refuse to give the tenant the benefit of Section 75A in spite of such absurd result; but as I read Section 75A, it seems clear to me that there is no reason for extending the ordinary meaning of the words "provisions of this Act relating to enhancement of rent" to the "provisions for settlement of rent" merely because in settling the rent, a higher figure might be fixed. In its ordinary grammatical sense the words "All provisions of this Act relating to enhancement of rent" would mean only such provisions which regulate the enhancement of rent and would not include such other provisions, the operations of which might or would necessitate the consideration of sections actually dealing with enhancement of rent.

11. It was argued, however, by Mr. Sen on behalf of the Respondents that, as the result of Section 75A of the Act is a temporary repeal of the provisions of enhancement of rent, it would necessarily follow from the proviso to Section 104A(1)(d) that the revenue-officer cannot for this period enhance the rent. According to Mr. Sen, on a proper interpretation of the provisions of Section 104A(1)(d), the revenue-officer can settle a rent 1 higher than the previous rent, only as long as the provisions as regards enhancement in the Bengal Tenancy Act are in operation. I am unable to accept this view. It was contended by Mr. Ghose, on behalf of the Appellant, that the temporary repeal of ss. 6 to 9 of the Bengal Tenancy Act would not affect the operation of Sections 6 to 9 for the purpose of Section 104A(1)(d), on the principle that--

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,

as propounded by Lord Selbourne in the case of *Mary Seward v. The Owner of the "Vera Cruz"* (1884) 10 App. Cas. 59.

12. I do not think that this principle can be applied to a case like the present where the later legislation merely inserts a new provision in an old Act providing

that certain sections will be temporarily repealed or suspended. All the same, I am unable to agree with Mr. Sen that the result of this temporary repeal will be that the revenue-officer cannot fix rent at a higher figure. It seems clear to me that the proviso that "in making "any such settlement, regard shall be had to the principles laid "down in Sections 6 to 9", etc., has merely the effect of limiting the discretion of the revenue-officer in settling a rent higher than the old rent. If the sections are made inoperative for a certain period the worst that happens is that this limit is taken away. The question might indeed be raised that when the proviso says that regard shall be had to the principles laid down in certain sections, it is possible to pay regard to these principles, even though the sections may themselves be inoperative. "Whether or not that is so, there can be no doubt, in my opinion, that the effect of Section 75A of the Bengal Tenancy Act in temporarily repealing certain sections including Sections 6 to 9, which are sections relating to enhancement of rent of tenure-holders, does not in any way Stand in the way of the revenue-officer fixing a rent higher than the previous rent.

13. It is to be remembered also that, even if it were true that the revenue-officer was debarred by the temporary repeal of Sections 6 to 9 of the Bengal Tenancy Act from settling the rent at a higher figure than the old figure, that would not, ipso facto make his act void and inoperative in law. On the contrary, it is clear from the provisions of Section 104H and Section 104H of the Bengal Tenancy Act that if the revenue-officer has acted illegally in fixing a rent higher than the old figure, the proper remedy of the tenant lay in bringing a suit u/s 104H of the Bengal Tenancy Act and the result of the tenant not having done so is that he is bound to pay the rent as settled. It is hardly necessary in this connection to refer to the authority of the Privy Council decision in Chandra Singh Dudhoria v. Midnapur Zemindary Co., Ltd. ILR (1942) 2 Cal. 1 : L.R. 69 IndAp 51. That was a case where on a claim to recover the rent fixed u/s 104 of the Bengal Tenancy Act, it was pleaded by the tenant Defendant that, in view of the special stipulations in the patni lease, the permanent rent thereby fixed covered the accretion which formed the new estate and the Appellants were not entitled to any additional rent. It was held that the entry of rent settled in the Settlement Rent Roll prepared under Sections 104A to 104F of the Bengal Tenancy Act included a decision as to liability to the payment of rent and the Respondents having failed to institute within the prescribed period any suit u/s 104H of the Act, their liability for the rent must be deemed to have been correctly settled by virtue of the provisions of Section 104J of the Act. Their Lordships held that the Settlement Officer was not entitled to disregard or to alter existing contractual rights, but was bound to regard them and to give effect to his view of them and a defence that he has not taken the correct view would properly form the subject of a civil suit instituted u/s 104H within the period thereby prescribed and as no such suit had been brought within the prescribed period their Lordships held that the liability of the Defendants for rent must be deemed to have been correctly settled by virtue of the provisions of Section 104J of the Act. Applying the

principle laid down in the above case to the present case. I have no hesitation in holding that supposing the consequence of the enactment of Section 75A was that, the revenue-officer could not in law settle the rent at a figure higher than the old rent but he did so, the defence that his act was against the provisions of law could well form the subject matter of a suit u/s 104H of the Act and the Defendants not having brought any suit u/s 104H within six months as prescribed therein, they can no longer question their liability to pay rent as settled by the revenue-officer rightly or wrongly.

14. An argument was sought to be founded by Mr. Sen on the word "order" appearing in Section 75A(2)(a). That sub-section runs thus:

All decrees and orders enhancing rent passed under any of the provisions of this Act on or after the twenty-seventh day of August, 1937 and before the date of the commencement of the Bengal Tenancy (Amendment) Act, 1938, are hereby declared to be inoperative from the date of such decree or order....

15. Mr. Sen argues that the "orders enhancing rent" could have reference to the Order 9 of the revenue-officer settling , rent, because any other orders passed by the court would be covered by the word "decrees" and contends that, if this argument is accepted, it should be held that the legislature intending to protect orders passed by revenue-officers settling rent in Sub-section (2) also intended to protect such orders by the provision of Sub-section (1). I am unable to agree that the words "orders enhancing rent" are intended to cover "orders passed by "revenue-officers settling rent". I agree that, unless such an interpretation be given, the words ""orders enhancing rent" do not add anything substantially to the words "all decrees "enhancing rent"; but, as I have already said, I fail to see how an order wiping out the old rent and fixing a new rent altogether can be called to be an "order enhancing rent".

16. If we accept Mr. Sen's argument, that the use of the word "order" in Sub-section (2) should not be considered superfluous and should be interpreted to cover orders of revenue officers settling rents at a higher figure than before, it would be reasonable, I agree, to hold that the legislature intended to give similar protection to tenants even as regards future settlements of rents by revenue-officers. The language used in Sub-section (1) of Section 75A does not, however, give effect to such intention; it suspends all provisions relating to enhancement of rent. The sections of the Act which provide for settlement of new rent, are clearly not provisions of the Act relating to enhancement of rent. There is no ambiguity here; and we shall not be justified in extending the ordinary meaning of the words used by the legislature, for giving effect to the supposed intention.

17. I am, therefore, unable to agree with the learned Subordinate Judge that the provision of Section 75A of the Bengal Tenancy Act puts any obstacle in the way of the landlord realising rent at the new rate fixed.

18. I would, accordingly, allow this appeal and in modification of the judgment and decree passed by the learned Subordinate Judge, order that the Plaintiff's

suit be decreed in full for rent at the rate of Rs. 14,090-5 and the usual cesses, education cess and interest. The Appellant would get their costs from the Respondents throughout.

Guha, J.

19. I agree.