

(1879) 03 CAL CK 0016
In the Calcutta High Court

Rampria Debea

APPELLANT

Vs

Gunnes Chunder Hazra

RESPONDENT

Date of Decision : 18-03-1879

Acts Referred:

Citation : (1880) ILR (Cal) 53

Hon'ble Judges : Mitter, J; Birch, J

Bench : Division Bench

Judgement

Mitter, J.—The defendant in this case is owner of some 800 bigas contained in 56 plots scattered over four villages within the plaintiff's patni taluks, The plaintiff, considering himself entitled to enhance the rent of the lands in the possession of the defendant, served him with a notice, and the first point we have to consider in this appeal is, whether the notice is such as the law requires.

2. The Courts below differ upon this point, the Subordinate Judge being of opinion that the notice is bad because it does not give any information to the ryot as to the ground of enhancement applicable to each of the plots in dispute.

3. The District Judge considers that the notice is sufficient, in that it gave the defendant the information to which he was entitled by law, viz., that enhanced rent was claimed for the ensuing year, and that it was claimed on all the grounds mentioned in the law, and he goes on to say—"I think the object of the law is sufficiently fulfilled (the object not being to throw technical difficulties in the way of a zamindar) by a notice which lets the ryots know in good time that enhanced rent is demanded, and on what general grounds."

4. We have referred to the notice, and we find that the heading of it is a mere abstract of Section 18 of the Rent Act. Below this is a schedule of the 56 plots of land held by the defendant in the four villages, and we cannot say that such a notice is sufficient, and such as the law contemplates. In the case of so large and scattered a holding as this is, it may give the zemindar some trouble to frame a proper notice, but the law protects the tenant to the extent of requiring the

landlord to give the tenant such a notice as shall enable him to understand upon which of his holdings enhanced rent is demanded, and on what ground. The same grounds cannot be applicable to all the lands in all the four villages, and the tenant is entitled to know what case he has to meet.

5. The Judge cites, in support of his view that the notice is a good and sufficient notice, the case *Shib Narain Ghose v. Aukhil Chunder Mookerjee* (22 W.R., 485). But in that case it was held that the notice, so far as it was a notice to the tenant that the productive power of the land had increased, was bad, and that if a proprietor sought to base enhancement on the increased productive powers of the land, there ought to be a special declaration in the notice of the particular cause of increase. It is there said: "If for instance a ryot has a large holding comprising land of various descriptions, one part may be capable of being improved by improved facilities of irrigation, and another part by means of an opposite character, viz., by improving the drainage, it cannot in such a case be held that a notice, merely in the words of the second clause of Section 18, sufficiently informs the ryot as to the zemindar's claim. We think a landlord is bound to inform his tenant by written notice of the specific grounds on which he claims to enhance, and that the mere words of the clause are not to be considered sufficient notice in all cases. On these grounds, we would hold that the notice in this case, so far as it is a notice under the second clause of Section 18, and based on the increased productive powers of the soil, is bad; but that so far as it is based on the other part of the clause, viz., the increased value of the produce arising from a general rise in prices, it is a good notice, and in that case reference is made to the judgment of the late Chief Justice in the case of *Banee Madhub Chowdhry v. Tara Prosunno Bose* (21 W.R., 33), which supports the view we take of this case.

6. We have next to consider whether this is a case in which a declaratory decree ought to be given. To withhold or grant such decrees is entirely in the discretion of the Courts, and it seems to us that this is a case in which it is not desirable that a declaratory decree should be given. There has not, we think, been a sufficiently searching enquiry in this case as to the origin and duration of the tenancy. We agree with the lower Courts in holding that no reliance can be placed upon the potta which the defendant has produced. But it does not follow that the failure on the part of the defendant to prove the potta he has set up justifies a decree being passed against him. It is urged here (and though we cannot entertain the objection in special appeal, it ought to be a subject of enquiry in a case such as this) that for the proper decision of the case, it was necessary to find whether the defendant was not protected from enhancement by reason of the tenure having been held at an uniform rate since the permanent settlement.

7. The notice is bad, and all the points which arise in the case have not been tried. This being so, we think that a declaratory decree ought not to be passed in this case. The suit must, therefore, be dismissed with costs in all the Courts.