

(1942) 08 PAT CK 0005

In the Patna High Court

Sir Kameshwar Singh Bahadur

APPELLANT

Vs

Dhunman Gope and Others

RESPONDENT

Date of Decision : 04-08-1942

Acts Referred:

Bihar Restoration of Bakasht Lands and Reduction of Arrears of Rent Act, 1938 —
Section 16

Bihar Tenancy Act, 1885 — Section 112A(1)(a), 112A(1)(b)

Citation : AIR 1943 Patna 73

Hon'ble Judges : Harries, C.J.; Manohar Lall, J

Bench : Full Bench

Judgement

Manohar Lall, J.—This is an appeal by the landlord decree-holder who is dissatisfied with the decision of the Courts below by which they have held that the judgment-debtor is entitled to have the rent decree scaled down to the amount fixed by the Rent Reduction Officer in a proceeding u/s 16, Bihar Restoration of Bakasht Land and Reduction of Arrears of Rent Act (Act 9 of 1938), hereinafter to be referred to as the Act.

2. The facts are these. In 1938 the appellant instituted a rent suit for recovery of arrears of rent for 1343 and 1344 Fasli. The suit was decreed by the Munsif on 1st September of the same year. On 12th August 1939 the tenant-judgment-debtor filed a petition u/s 16 of the Act before the Collector and asked for reduction of arrears of rent for 1343 and 1344 Fasli--the tenant is an occupancy raiyat. The Collector allowed the reduction of rent by an order dated 12th April 1940 from Bs.80 to Rs. 20, as we are informed. On 29th July 1940 the appellant executed the decree. The tenant objected that he is liable to pay only Rs. 54-3-6 which was the amount fixed as the result of the reduction proceedings by the Collector. The appellant objected that he is not bound by the order of the Rent Reduction Officer as the order was ultra vires. The learned Munsif by an order dated 15th January 1941 held that the civil Court had no jurisdiction to enter into the question as to whether the order of the Rent Reduction Officer was ultra vires and he thought that he was conclusively bound by the order and, therefore,

directed the judgment-debtor to deposit Rs. 54-3-6 otherwise the property would be sold.

3. Against this decision there was an appeal to the learned District Judge of Darbhanga who on 28th July 1941 apparently held that the civil Court had jurisdiction to determine whether the order of the Rent Reduction Officer was ultra vires or not, but was of the opinion that the order was a proper order in a proceeding to which Section 16 of the Act applied and dismissed the appeal. Accordingly the second appeal has been preferred to this Court by the landlord. The judgment-debtor has not appeared to oppose the appeal. The only question to be decided is whether Section 16 of the Act applied and not whether the order is the correct order passed under that section.

4. The question of the construction of Sections 15 and 16 of the Act is always a matter of some difficulty because of the confused and ill-expressed drafting of these two sections. Section 15 provides by Clause (a) that a landlord shall not be entitled to recover from the raiyat of an occupancy holding any arrears of rent in excess of the amount at which the rent had been settled or reduced in a proceeding u/s 112 or in a proceeding u/s 112A, Sub-section (1), Sub-clauses (a), (b), (d) or (e), Bihar Tenancy Act--to omit the other Acts which have no application to the present case. By Sub-clause (b) it is provided that where the rent of an occupancy holding has not been so settled or reduced then the landlord of such occupancy holdings shall not, in any suit or proceeding instituted before or after the date on which this Section comes into force, in respect of the arrears of rent for any period before 1st Asin 1345 Fasli, be entitled to recover from the raiyat any arrears of rent due in respect of such holding at a rate in excess of the rent which would have been settled in a proceeding taken u/s 112A, Sub-section (1), Sub-clauses (a), (b) or (d). The result of these provisions is that an occupancy raiyat is given full relief by proceedings under Sections 112 or 112A, Sub-section (1), Sub-clauses (a), (b), (d) or (e) if he has taken the precaution to institute such proceedings and also the full benefit of the provisions of Sections 112 and 112A, Sub-section (1), Sub-clauses (a), (b) or (d) if he has not taken the precaution to institute these proceedings, but in the latter case only with regard to the arrears of rent before the first day of Asin 1845 Fasli. Then comes Section 16 of the Act which says by the first Clause that

Notwithstanding anything to the contrary contained in any law, where any arrears of rent are due to a landlord in respect of a holding other than a holding referred to in Section 15 for any period ending before 1st of Asin 1345 Fasli, corresponding to Asin Badi, 1 of 1994 Sambat, the raiyat may make an application to the Collector for the reduction of such arrears.

6. The critical words to be examined are "in respect of a holding other than a holding referred to in Section 15." I ask myself: "What is the holding referred to in Section 15?" The answer is clear that it is an occupancy holding. It follows, therefore, that an occupancy holding which is at a cash rental is not contemplated by Section 16, Sub-clause (1) of the Act at all. The learned District

Judge was of the opinion that the holding referred to in Section 15 means only the occupancy holding of which the rent has been settled or reduced u/s 112 or Section 112A, Sub-section (1), Sub-clauses (a), (b), (d) or (e). He also took the view that the tenant could not have applied under Clauses (a) or (b) and he could not have applied under Clause (d) either because he could not get any relief from that clause. He, therefore, concluded that the holding of the raiyat in this case was not the holding referred to in Section 15 of the Act. When I find that the words of Section 16, Sub-clause (1) are quite plain, I refuse to be guided by any extraneous consideration. The plain words of the Section are "a holding other than a holding referred to in Section 15." The holding referred to in Section 15 is an occupancy holding. If the Legislature intended to mean that an occupancy raiyat could apply u/s 16(1) of the Act, they would have used a different phraseology. It must also be observed that the Collector can reduce the arrears of rent u/s 18(4)(a) of the Act on an application being made u/s 16(1) only if he is satisfied that

the means and circumstances of the raiyat were affected by any fall in prices during the period beginning with 1st January 1929 and ending with 31st December 1936.

7. I cannot imagine that the object of the Legislature was that after complete relief was given to an occupancy raiyat by the application of Sections 112 or 112A, whether proceedings thereunder were instituted or not, he is to be given still further relief upon the ground that his means and circumstances have been affected by any fall in price during the interval of eight years.

8. The intention on the other hand seems to be that by Section 16 and the subsequent provisions of the Act relief should be given to those raiyats who are not occupancy raiyats where their means and circumstances have been affected by any fall in price in that period of eight years. For these reasons I am of opinion that the decision of the Courts below was erroneous. The appeal succeeds and the orders of the Courts below are set aside. The appellant will now be entitled to execute his decree which he obtained in September 1938. The appellant is entitled to his costs in the Courts below but not in this Court as the respondent has not appeared to oppose the appeal.

Harries, C.J.

9. I agree. Section 15 certainly applies to occupancy raiyats holding at a cash rent and that being so such a holding is not within Section 16. Such occupancy tenants are given relief by Section 15 and if they can obtain no such relief under that Section they cannot fall back on Section 16.