

**(1943) 03 CAL CK 0021**  
**In the Calcutta High Court**

Sk. Abdul Aziz and Another

APPELLANT

Vs

Maharaj Uday Chand Mahatab and Others

RESPONDENT

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**Date of Decision :** 05-03-1943

**Acts Referred:**

Bengal Tenancy Act, 1885 — Section 168A(2)

**Citation :** AIR 1943 Cal 358

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**Judgement**

1. This is an appeal on behalf of the judgment-debtors and it is directed against an appellate order of B.S. Simson Esqr., District Judge of Hooghly, dated 23rd August 1941, reversing an order of the Munsif, first Court, of that place made on an application u/s 168A(2), Ben. Ten. Act. The material facts are not disputed and may be shortly stated as follows : The Maharaja of Burdwan, who is respondent in this appeal, obtained a decree against the appellants and their cosharers for arrears of rent due in respect of a putni taluk held by the latter under him. The decree was for arrears of rent due for the years 1842 to 1344 B.S. and was obtained in December 1939. The putni itself was sold under Regn. 8 of 1819 on 15th November 1938 and was purchased by a stranger. The rent suit which was instituted after the sale, was for recovery of antecedent balances of the putni rent which would not be paid out of the sale proceeds of the tenure u/s 17 of the Patni Regulation. The decree-holder put the decree into execution and as the tenure was already sold, he attached certain immovable properties belonging to the judgment-debtors. Pending these execution proceedings Section 168A, Ben. Ten. Act, came into force and the judgment, debtors made an application under Clause (2) of that section for release of the attached properties on payment of necessary costs. The trial Court granted the prayer, being of opinion that Section 168A, Ben. Ten. Act, prevented the decree-holder from proceeding ; against other properties of the judgment-debtors. On appeal, the judgment was reversed and the application of the judgment-debtors was refused, it being held by the District Judge that Section 168A, Ben. Ten. Act, was ultra vires of the Provincial Legislature and if intra vires was applicable to putni tenures. It is the propriety of this judgment that has been challenged before us

in this second appeal.

2. Now so far as the question of ultra vires is concerned it has now been held in a series of decisions of this Court that Section 168A, Ben. Ten. Act, is a valid piece of legislation which it was not beyond the power of the Provincial Legislature to enact and that it is not repugnant to the provisions of any existing Indian law. We may refer in this connexion to the cases in *Satish Chandra Hui and Others Vs. Sudhir Krishna Ghosh and Others*, , *Satish Chandra Bandopadhyaya Vs. Bishnupada Pal and Others*, and *Sree Sreejut Maharaja Sir Bir Bikram Kishore Manikya Bahadur Vs. Tafazzal Hossain and Others*, . In the first of these cases it was further held that there was nothing in Section 168A, Ben. Ten. Act, which affected the provisions of the Patni Regulation. Both the grounds therefore upon which e the learned District Judge based his decision are prima facie untenable. Dr. Basak who appears for the respondent did not seriously press the question of ultra vires though he did not actually give it up and he has attempted to support the decision of the District Judge substantially on two grounds. He has argued in the first place that as the defendants in the rent suit had ceased to be tenants at the date when the suit was instituted the decree which was obtained in the suit was not a decree for arrears of rent within the meaning of Section 168A, Ben. Ten. Act, and consequently that section is inapplicable. It is further said in support of this contention that under the proviso to Section 17, Clause (3) of the Patni Regulation the claim for antecedent balances which remained due after the sale of the patni was no longer realisable as rent but would become a money claim pure and simple. The second argument of Dr. Basak is that if antecedent balances were realisable as rent, Section 168A, Ben. Ten. Act, would be repugnant to the provisions of Section 17 of the Patni Regulation and u/s 195, Ben. Ten. Act, the latter would prevail.

3. So far as the first point is concerned it is clear from the language of Section 168A(i), Ben. Ten. Act, that it purports to deal, not with a rent decree proper in its technical sense but with a decree for arrears of rent as understood ordinarily and it is immaterial whether it has the effect of a rent decree or a money decree in law. It will be seen that Section 168A finds a place in chap. 14, Ben. Ten. Act, and if the expression "decree for arrears of rent" stood alone it could have been legitimately argued that the section was limited to rent decrees proper in respect to which the procedure laid down in chap. 14, Ben. Ten. Act, was available to the landlord decree-holders. But the words "having the effect of a rent decree or a money decree" which occur immediately after this expression place it beyond doubt that the Legislature did not intend to use the expression in the technical sense of a decree which could only be executed in the manner laid down in Chap. 14, Ben. Ten. Act. What is necessary therefore to attract the operation of the section is that the decree must be for arrears of rent. Dr. Basak argues that there could not be a decree for rent unless the plaintiff and the defendant in the suit occupied the position of landlord and tenant respectively and as in the present case the defendants had ceased to be tenants at the time when the suit was brought it was not a suit for rent within the meaning of the Bengal Tenancy Act

at all. This argument though plausible at first sight does not appear to us to be sound. Rent is defined in Section 3(13), Ben. Ten. Act, to mean "whatever is lawfully payable or deliverable in money or kind by a tenant to his landlord on account of use or occupation of the land held by the tenant."

4. Thus there are two essential characteristics which differentiate rent from other forms of debt, viz., rent is due for the use and occupation of the land and secondly it is payable to the person under whom the land is held. It is perfectly true that the Bengal Tenancy Act as its preamble shows, is an Act relating to landlord and tenant and the liability to pay rent is a necessary implication of the subsistence of the relationship of landlord and tenant between two parties. But though the claim for rent must have its basis on a relationship of landlord and tenant between the parties it is not necessary that this relationship must continue down to the date of the suit or date of the decree. All that is necessary is that the defendant must be a tenant of the plaintiff in respect of the holding or tenure during the entire period for which rent is claimed and as the outgoing landlord may bring a suit for rent for the period prior to the date of transfer if the right to recover back rents was not vested in the transferee so a suit for rent would lie against an ex-tenant whose interest in the tenancy had ceased, provided he was in occupation of the land as tenant during the period in suit, The decree in either case can be executed only as a money decree against the defendant personally and the plaintiff would not be entitled to proceed against the tenure vide *Arthur Henry Forbes v. Maharaj Bahadur Singh* AIR 1914 P.C. 111; but as the decree cannot but be a decree for recovery of arrears of rent it would, in our opinion, come within the mischief of Section 168A, Ben. Ten. Act, which includes within its scope a decree for rent which is executable only as a money decree.

5. The proviso to Section 17(3) of the Patni Regulation does not, in our opinion, really alter the position. Section 17 of the Patni Regulation lays down the manner in which the sale proceeds of a putni are to be disposed of after a sale is held under the Regulation. Sub-section (2) provides that one per cent, of the sale proceeds is to be carried to the account of the Government for the purpose of meeting the expenses of the establishment which the Government has to keep for carrying into effect the provisions of the Regulation. Sub-section (3) lays down that the balance on account of which the sale was held was then to be made good out of the sale proceeds with interest and all charges incurred in bringing the taluk to sale. Upon this clause a proviso is engrafted which says that no former balances beyond those of the current year or of that immediately expired, if the sale be at the commencement of the following year, shall be included in the demand to be thus satisfied. If the zemindar omitted to avail himself of the provisions within his reach for having such antecedent balances satisfied at the time, they will become in fact merely personal debts of the individual talukdar and must be recovered in the same way as other debts by a regular suit in the Court. What this proviso means is that after a putni sale is held under the provisions of Regulation 8 of 1819, the antecedent balances, if

any, that remain unsatisfied could not be recovered either out of sale proceeds or by a fresh process of summary sale directed against the tenure itself in the hands of the purchaser. The remedy of the landlord would be to recover these arrears in the ordinary way by instituting a suit against the tenure-holder personally. It cannot be argued that the effect of this proviso is that such arrears cease to be rent and become converted into an ordinary money claim. The object of this proviso was to make a distinction between the right of summary sale that the landlord enjoyed under the Regulation and his ordinary rights to recover rent by instituting a suit in a Court of law. The right of summary sale can be exercised only in respect of demands for a certain specified period and the rest would be recoverable by suit alone. The claim, however, would not cease to be a claim for rent as defined in the Bengal Tenancy Act.

6. The other contention of Dr. Basak cannot, also, in our opinion, be accepted. The proviso says that the antecedent balances should be recovered by a suit and not by sale of the tenure under the provisions of the Patni Regulation., Section 168A, Ben. Ten. Act, does not in any way affect the right of instituting a suit or obtaining a decree. The only restriction that it imposes is upon the mode of execution of the decree and as no particular mode of execution is prescribed by the Patni Regulation it cannot be said that Section 168A, Ben. Ten. Act, affects any provision of the Putni Regulation within the meaning of Section 195, Ben. Ten. Act. It is true that in a case of this character the new section is likely to operate harshly upon the interest of the landlord and the decree which a landlord might recover after the putni sale may turn out to be altogether unexecutable. But this is a matter for the Legislature to consider. We cannot refuse to give effect to the plain words of the section. After all, the hardship can be mitigated to a considerable extent if the landlord does not allow the arrears to accumulate and avails himself of the processes open to him under the Regulation at proper time.

7. The result is that the appeal is allowed. The order of the District Judge is set aside and that of the trial Judge restored. There will be no order as to costs in this Court. The appellants will get their costs in the Courts below. Leave to appeal in the Federal Court u/s 205, Government of India Act, is granted.