

(1919) 04 CAL CK 0027
In the Calcutta High Court

Srimanta Kumar Chakrabarty and Others	APPELLANT
Vs	
Sabar Ali Howladar and Others	RESPONDENT

Date of Decision : 02-04-1919

Acts Referred:

Bengal Tenancy Act, 1885 — Section 105, 50, 6

Citation : 52 Ind. Cas. 702

Hon'ble Judges : Asutosh Chaudhuri, J

Bench : Single Bench

Judgement

Asutosh Chaudhuri, J.—This appeal arises out of a suit u/s 105 of the Bengal Tenancy Act for settlement of fair and equitable rent in respect of a tenure in the possession of the defendants. The tenure was created in the year 1233. The superior talukdar granted a howla pattah to the predecessor in interest of the defendants, which is Exhibit A. It was in respect of 4 1/2 kanis of land at the rental of Rs. 2 per kani of Rs 9 sicca. The howla right was made expressly hereditary.

2. There is no specific clause in the patlah about the fixity of rent. The defendants have paid at the rate of Rs. 9 sicca all this time. From that the learned Subordinate Judge has come to the conclusion that the rent is to be considered as moharari. He has relied upon the case in Purna Chandra Ghose v. Collector of Khulna 17 C.W.N. 208) and the case of Ram Dayal Giri v. Midnapur Zemindary Co., Ltd. 7 Ind. Cas. 785 : 15 C.W.N. 263. As regards the first case it is based upon a finding that the pattah was a confirmatory one, in the sense that the tenancy was in existence before the pattah was granted, that is to say, it was not shown that the tenancy was created for the first time when the pattah was executed. As regards the case of Ram Dayal Giri v. Midnapur Zemindary Co., Ltd. 7 Ind. Cas. 785 : 15 C.W.N. 263 the basis of the decision was this, that for some 60 year, although there were transfers and several successions, the same rate was uniformly maintained. The admitted object of the lease in that case was to extend cultivation over jungle lands. New lands were added to the original

cultivation but in every instance the same rate Rs. 54-0 was paid. They held that in those circumstances the inference of fixity of rental was legitimate. But there are no transactions in this case, The mere fact that the land lord has chosen to take the same rent for a great number of years in respect of a tenure created for the first time in the year 1233 does not by itself show that the rent was a fixed rent. A presumption of that kind only arises u/s 50, of the Act. When there are express limitations in the Act with regard to the right of the landlord such as are to be found in Sections 6 and 50 of the Bangal Tenancy Act, its would be extending the limitations if it be held that the mere fact that the landlord has not realized rent at a higher rate for some years is by itself sufficient to raise a presumption of fixity. One frequently comes across documents of this character where there is an express provision about the fixity of rent. The mere fast that a heritable tenure is created does not by itself mean that a mokarari rate is also created.

3. I, therefore, hold that the landlord is entitled to have a fair and equitable rent assessed with regard to the plot of land in suit. That being so, the matter is remanded to the Appellate Court for a decision as to what would be fair and equitable rent.

4. Having regard to the fact that the defendants had been paying at an unvarying rate, I think that fact ought to be taken into account in awarding costs in this case. I, therefore, direct that each party do bear his own costs in this Court. The order for costs in the lower Courts will stand.