

(1908) 02 CAL CK 0027
In the Calcutta High Court

Suraj Prosad Sukul and Others

APPELLANT

Vs

Midnapur Zemindari Company Ltd.

RESPONDENT

Date of Decision : 21-02-1908

Acts Referred:

Bengal Tenancy Act, 1885 — Section 7

Citation : 77 Ind. Cas. 954

Hon'ble Judges : Sharfuddin, J; Rampini, J

Bench : Division Bench

Judgement

1. This is an appeal against a decision of the District Judge of Midnapore, dated the 7th February 1906.

2. The appeal arises out of a suit for enhancement of the rent of a tenure u/s 7 of the Bengal Tenancy Act; The Subordinate Judge enhanced the rent from Rs. 667-15 to Rs. 1,242 which he considered to be fair and equitable rent. He found that there was no customary rate and assessed the gross rental of the tenure at Rs. 2,237-10-2 and after deducting Es. 7? per cent, as the cost of collections, allowed the tenure-holder a profit of 40 per cent, of the collections, and gave the balance of Rs. 60 per cent, as enhancement payable to the landlord.

2. There was an appeal to the District Judge, and the District Judge affirmed the decree of the First Court.

3. The defendants now appeal to this Court and urge that by their kabuliyat of 1875, the rate of rent was fixed, in perpetuity and that they were not bound to pay any further rent for the land for which they then agreed to pay rent but that they were only liable to pay additional rent for additional land and liable to pay rent for this additional land only at the rate fixed in the kabuliyat. Then it is urged that the learned District Judge has made a mistake in his decree if as he says 60 per cent, should be the profit allowed to the tenure-holder. It is farther urged that the District Judge has not allowed a sufficient amount for the cost of the collections. No attempt is made to improve the finding of the lower Appellate

Court as to the gross collections of the tenure.

4. Looking at the terms of the kabuliyat we see nothing in it which makes the rate of rent a fixed rate that cannot be enhanced. We do not think that the rate is fixed in perpetuity. The stipulation that the tenure-holder is to pay rent for lands besides those mentioned in the kabuliyat which may be under his cultivation, or which may be found to be excess lands upon measurement at the rate mentioned in the kabuliyat does not seem to imply that the rate of rent is to be fixed in perpetuity. The learned Counsel for the appellants urges that this rate was fixed by the decree of the Principal Sudder Ameen dated the 30th December 1861. That is so but there is nothing in this decree which leads, us to suppose that the rate then fixed was fixed in perpetuity. This decree is dated 1861 and the kabuliyat is dated 1875, fourteen years later. The fact of, the decree having been given in 1861 for an enhanced rate of rent shows that the rent of this tenure was not a fixed rate but an enhanceable rent. We may also mention that the terms of the kabuliyat in this case are very similar to the terms of the kabuliyat in the case of *Ram Kumar Singh v. Robert, Watson & Co.* 9 C.W.N. 334, and the rent of the tenure to which the kabuliyat in that case related was held to be enhanceable. We, therefore, affirm the decision of the lower Appellate Court and hold that the rent and the rate of rent fixed in the kabuliyat in the present case are enhanceable.

5. The learned District Judge has made a clerical mistake in saying that the profit allowed to the tenure-holder on the gross collections is 60 per cent. This profit has been allowed to the landlord by the Subordinate Judge and the balance of Rs. 40 is the profit allowed to the tenure-holder. We see no reason to think that too low a rate has been allowed for the costs of collection.

6. On the whole we think, Seeing that there is no proof of any customary rate, the rate allowed is fair and equitable.

7. The appeal is dismissed with costs.