

(1921) 12 CAL CK 0005
In the Calcutta High Court

Uday Chandra Basu and Others

APPELLANT

Vs

Mahammad Ali Bepari and Others

RESPONDENT

Date of Decision : 13-12-1921

Acts Referred:

Bengal Tenancy Act, 1885 — Section 105, 105A, 60

Citation : 65 Ind. Cas. 589

Hon'ble Judges : Suhrawardy, J; Ghose, J

Bench : Division Bench

Judgement

1. In this case the only question raised on behalf of the appellants, who were the petitioners before the Settlement Officer, is whether they are precluded from having a fair and equitable rent settled with regard to the land in the occupation of their tenants, the defendants, opposite parties, on the grounds of excess area and that the rate of rent is lower than the prevailing rate and also on account of rise of prices of staple food crops.

2. The proceedings were started under Sections 105 and 105 A of the Bengal Tenancy Act. The record was finally published on the 26th September 1917. The Assistant Settlement Officer dismissed the application and on appeal the Special Judge has affirmed the decision.

3. The first question for decision, as stated in the judgment of the learned Special Judge, was (1) "whether the defendants rent is consolidated? Is there any excess area and can plaintiffs get any increase on that count?" The learned Judge has found, and we agree with his finding, that the landlord has not been able to show that the tenants are occupying more land than what they got at the time when, they were let into the land, Two Kubliyats have been produced in this case dated the 2nd and 3rd of Agrahayan 1282 B.S. The landlords' case was that the tenancy commenced from those dates. The tenants alleged no, these kabuliyats were only confirmatory of the lease of the land which they held from before. The leases were for a term of three years which would come to an end in 1284. Upon the terms of the leases there is no doubt that they were in

confirmation of the tenancy which existed from before.

4. Then, the second and third questions that arose for determination in the Court of the learned Judge were, "whether the plaintiffs can get enhancement on the ground of rise in prices of staple food crops and what would be the fair and equitable rent and from which year will it take effect?" The learned Judge has decided these two questions against the landlord on the ground that the defendants were paying rent at a uniform rate for more than 20 years for these lands and, therefore, the presumption u/s 50 of the Bengal Tenancy Act was in their favour that they were holding the lands from the time of the Permanent Settlement at a uniform rate of rent and the rent was, therefore, not liable to enhancement on the grounds stated.

5. The question before us is, whether it should be considered, having regard to the terms of the kabuliyats mentioned above, that the presumption u/s 50 of the Bengal Tenancy Act does not arise in this particular case. The terms specially referred to are: "That after the termination of the period of settlement we shall take a fresh settlement on a proper rent." Then, towards the end, it is further stated in the kabuliyat that "we shall enjoy the "tenancy for a fixed term under the conditions stated above and to this effect we execute this raiyati kabuliyat for a fixed period." The contention on the part of the appellants is that whatever might be the origin of the original tenancy, that came to an end at the expiration of 1284 B.S., the fact that the tenants held over from that time should be held to be under a new tenancy created when the period mentioned in the kabuliyat expired and, therefore, the presumption u/s 50 of the Bengal Tenancy Act has been rebutted. It is contended, on the other, hand, that as the landlords did not exercise their right to take possession of the tenure or to alter the rent after the expiration of the term of the kabuliyats these kabuliyats were never acted upon and that the tenancy which existed from before the date of the kabuliyats continued throughout, and so the presumption u/s 50 of the Bengal Tenancy Act has not been rebutted. It is also contended that a new tenancy cannot be inferred from the fact that the landlords did not take any step to exercise their right under the terms of the kabuliyats after the expiration of the period mentioned therein. We may state that no authority has been cited which really covers the point now in controversy. We are of opinion that, on general principles, when a tenant holds over after the expiration of the term of the tenancy it is considered to a new tenancy coming into operation after the date of the expiration of the term of the previous tenancy; and we have not been referred to any authority that this general principle should not apply to this case. The kabuliyats, we may state were executed before the Bengal Tenancy Act came into operation and the term mentioned therein also expired before that date. There was nothing to prevent the landlords from enforcing the terms of the Kabuliyat after the expiration of the year 1284 B.S. and the fact that they did not take possession or otherwise alter any of the terms of the previous tenancy gives rise to this inference that anew tenancy commenced from after that date upon the same terms as regards payment of rent and other stipulations except the

stipulation with regard to the period of settlement. That being so the origin of the present tenant should be considered to be from the year 1285 B.S. and, in our opinion, the presumption u/s 60 of the Bengal Tenancy Act has been rebutted in this case.

6. We think therefore, that the landlords are entitled to have fair and equitable rent settled under the provisions of the Bengal Tenancy Act. The case is, therefore, sent back to the Court of first instance for fixing a fair and equitable rent.

7. Costs to abide the result. We assess the hearing fee in this Court at one gold mohur.