Privy Council Appeal No. 83 *of* 1944
Bengal Appeals Nos. 27–29 *of* 1938

Prasanna Deb Raikat - - - - - - - - *Appellant*

v.

Tanjina Khatun and others - - - - - *Respondents*

Same - - - - - - - - - - - *Appellant*

v.

Tanjina Khatun and others - - - - - *Respondents*

Same - - - - - - - - - - - *Appellant*

v.

Tanjina Khatun and others - - - - - *Respondents*

Consolidated Appeals

FROM

THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 20TH NOVEMBER, 1945

Present at the Hearing:
LORD THANKERTON
LORD GODDARD
SIR JOHN BEAUMONT
[*Delivered by* LORD GODDARD]

These consolidated appeals arise out of proceedings taken by the appellant in the Court of the Deputy Collector, Siliguri, under The Bengal Rent Act, No. X of 1859, with the object of obtaining an increase of rent from the tenants of certain lands belonging to him in or near Siliguri, a town on the boundary of the districts of Jalpaiguri and Darjeeling. The Act, though no longer in force in the greater part of Bengal, is still effective in Siliguri which is in a scheduled district under the Scheduled District Act, No. XIV of 1874. The proceedings related to three holdings or Jotes, Suit No. 43 to Man Bhog, No. 44 to Nipur Bigha and No. 45 to Ranga Das. The tenants of the appellant on all these Jotes had let them out to under-tenants, receiving from the lettings rents far in excess of the very modest rents that they were paying to the appellant. The head rents had been raised from time to time, but at the date of the proceedings the rent of Man Bhog was Rs.16.14.0 and the tenants were in receipt of under rents amounting to Rs.896.3.11; for Nipur Bigha the landlord received a rent of Rs.22.8.0 against Rs.218.13.0 received by his tenants; and in the case of Ranga Das the figures were Rs.5.10.0 and Rs.110.11.0 respectively. By the combined effect of Sections 13, 14 and 17 of the The Bengal Rent Act the rents of the occupiers can be raised on some one of the following grounds, provided notice specifying the ground or grounds relied on has been served on the occupiers, namely:

(1) that the rate of rent is below the prevailing rate payable by the same class of raiyats for land of a similar description and with similar advantages in the places adjacent;

(2) that the value of the produce or the productive power of the land has been increased otherwise than by the agency or at the expense of the raiyat;

(3) that the raiyat is holding a greater quantity of land than that for which he is paying rent.

There is no express provision in the Act enabling a head landlord to take proceedings against his tenants who have sub-let and are not themselves occupiers, so reliance was placed on the provisions of Section 37 of the Civil Courts Act, No. XII of 1887, under which where an Act is silent the matter falls to be determined in accordance with justice, equity and good conscience, and it has not been contended that proceedings of this nature are not open under that section to a head landlord. In other words, the head landlord has the same right against his tenants as the latter have against their sub-tenants. It has also to be stated that under Section 2 of The Bengal Rent Act, 1862, in every suit for rent under the Act of 1859 if a defendant has without reasonable or justifiable cause neglected or refused to pay the amount of rent due by him or has not tendered or deposited the rent with the Collector before suit the Court may in addition to the rent award the plaintiff damages not exceeding 25 per cent. of the amount of rent decreed.

Neither facts nor figures were in dispute in any of the cases, and in that of Jote Man Bhog it was admitted that the land was situated in a built-up area and could not be described as agricultural land. On behalf of the tenants it was submitted that the Act only applied to an agricultural holding and that accordingly the Court had no jurisdiction to entertain a proceeding brought thereunder. The Deputy Collector rejected this contention, holding that the Act applied to tenancies of land of any description. His decision was reversed by the District Judge, whose judgment was upheld by the High Court. Both the District Judge and the High Court held that the Act applied only to agricultural land. The exact point was decided by the Calcutta High Court in 1872 in Ranee Doorga Soonduree Dossee v. Bibee Omdutoonissa, 18 W.R. 234, judgment being delivered by Sir Richard Couch. Apart from the consideration that their Lordships would hesitate to overrule a case decided so many years ago and which apparently was never questioned during the time when the Act applied to the whole Province, in their opinion the decision was right. Looking at the Act as a whole it seems that it was intended to apply to agricultural tenancies and cultivators and not to urban property, and they think it unnecessary to add anything to what the Chief Justice said in the case cited. With regard to the decree therefore in Suit 43 the appeal is dismissed.

The Jotes, the subject of Suits 44 and 45, Nipur Bigha and Ranga Das are both admittedly agricultural in character. The Deputy Collector passed a decree in favour of the appellant for 60 per cent. of the gross rents, and the cess in addition, the amount of which he wrongly stated, probably by an oversight. He also awarded the appellant 12½ per cent. of the rent by way of damages. The District Judge affirmed the judgment except in amount; he awarded the appellant 50 per cent. of the gross rents and corrected the amount of the cess, but awarded no damages. On appeal the High Court reversed his judgment in both cases, awarding the appellant only the rent he was receiving at the date of the institution of the suits, the cess and 12½ per cent. on the rent as damages.

The reasons for the High Court's decision appear to be two: first they held that the appellant could not succeed without proving what the customary rate of rent was in the neighbourhood, and secondly they held that the notice served by the appellant on the tenants was bad in that it did not make this a separate ground for seeking enhancement.

The notice as set out in the judgment of the High Court is in these terms: " At present the price of crops having increased and the productive powers of the soil having increased and the rate of your rent being very small in comparison with the income of the said jote according to the rate of rent of similar lands in the neighbourhood I am entitled to claim enhancement of rent from you." The High Court's observation on this

notice is that what is stated as a fourth ground in the plaint is really one of the two conditions of the third ground in the notice. No doubt the notice was written in the vernacular and it may well be that no conjunctive was used between the words " the said jote " and " according to the rate of rent," but in their Lordships' opinion it is perfectly plain that the notice ought to be read as containing four grounds and not three only, if for no other reason than that any other reading would be ungrammatical. The notice was so treated in the plaint; certainly no specific objection in the written statement was taken to it on the ground now taken by the High Court and the point does not appear to have been taken before the Deputy Collector. It does seem to have been argued before the District Judge, who, however, read it in the same way as do their Lordships and moreover there is not the slightest ground for suggesting, nor has it been suggested, that anyone was misled. Their Lordships are therefore unable to agree with the High Court on this point. In truth no point on the notice really arises. It was held to be bad because it did not give as a separate ground of objection that the rent was below that customary in the neighbourhood. If it was obligatory on the applicant to prove this and he failed to do so it was unnecessary to consider whether the notice ought to have set it out as a separate ground, while, if it was not, the fact that it was not so set out would be immaterial. Their Lordships are unable to agree with the High Court that it is in all cases necessary for the landlord who seeks an enhancement of rent to prove that the rent is below the prevailing rate. The Act says in terms that *some one* of the grounds mentioned in the Section is sufficient. It might well be that the productive power of a particular jote has been increased beyond all others in the neighbourhood. Provided one of the grounds mentioned in the Section exists that is sufficient.

In Their Lordships opinion the appeals in suits 44 and 45 should be allowed and the order of the District Judge restored and the respondents must pay the costs of these appeals to the High Court. The District Judge gave no damages presumably because he thought that until the amount of rent had been determined by the Court it could not be said that the defendants had unreasonably declined to pay, and if that was his reason their Lordships think there was much to be said for it. But after the date of his order different considerations arise, and it would seem fair that the appellant, who has been out of his rent for a long period should have interest by way of damages on what ought to have been paid. In addition therefore to the rent and cess fixed by the District Judge, their Lordships think that damages at 6 p.c. on the amount of the rent from the date of his order should be awarded and they will humbly advise His Majesty accordingly. The respondents will pay half the appellant's costs of this Appeal.

(16137) Wt. 8077—36 170 12/45 D.L. G. 338

In the Privy Council

PRASANNA DEB RAIKAT

v.

TANJINA KHATUN AND OTHERS

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DELIVERED BY LORD GODDARD

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