Calcutta High Court
Badri Narayan Chetlangia vs Abdul Mandal And Ors. on 12 March, 1934
Equivalent citations: AIR 1935 Cal 97
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JUDGMENT M.C. Ghose, J.

1. Those are three appeals by the defendant landlord in throe suits which were instituted by three sets of utbandi tenants for fixing a "uniform annual money-rent under Section 180-A, Ben. Ten. Act. In the trial Court the three suits were tried together. In the lower appellate Court the appeals arising out of the three suits were heard together and they have been argued together in this Court. The trial Court upon consideration of all the evidence fixed the annual rent at Re. 1-4-0 per bigha. The District Judge in appeal affirmed the decree of the trial Court. The defendant landlord appeals to this Court and the main ground is that the Courts below were wrong to fix the annual rent at Re. 1-4-0 per bigha and that on a proper consideration of the facts and circumstances they should have fixed the rent at a higher sum per bigha. A preliminary objection has been taken by the learned advocate on behalf of the tenants respondents that no appeal lies in this Court inasmuch as the decision of the Courts below was merely a decision settling rent. Section 115-C, Ben. Ten Act, provides that an appeal shall lie to the High Court from a decision of a Special Judge in any case (not being a decision settling rent) which is a Court subordinate to the High Court within the meaning of Section 100, Civil P.C. It is clear from the wording of that section that no appeal lies to this Court from a decision settling rent. The rulings in Midnapore Zamindary Co., Ltd. v. Sridhar Mahata 1922 Cal 152, Sarat Chandra v. Taraprasanna 1923 Cal 141 and Nafar Chandra v. Bhiku Sheikh 1931 Cal 550 have been quoted by the learned advocate for the appellant to show that under certain circumstances there is an appeal from a decision settling rent.

2. The decisions in the cases cited show that where the fundamental question involved in a case is as to the status of a tenant whether he holds the land at a fixed rent or at a rent liable to enhancement or where there is a dispute between the parties as to the question of area upon which the rate of rent is to be calculated it is only in such cases that an appeal lies. The learned advocate for the landlord appellant has argued that in this case though there is no dispute as to area or whether the tenant is a mokurari tenant or his rent is liable to enhancement yet in deciding the question of rent the Courts considered for how long the tenants who were recorded in the cadastral survey settlement records as occupancy-raiyats had in fact held their tenancy as occupancy-raiyats. I am of opinion that a mere decision of the question for how many years these utbandi tenants had been occupancy-raiyats will not make the decision an appealable decision. In my opinion, the preliminary objection prevails and no appeal lies in this case. Having however heard the learned advocates in detail we think that we should express our opinion on the merits of the case.

3. It was argued in the first place that the Courts below were wrong in holding that the increases of rents made in 1311 1312 and 1313 were illegal enhancements. It is urged that under Section 180 an utbandi tenant is liable to pay such rents for his holding as may be agreed on between him and his landlord. From this it may be held that though the tenant was paying rent at Re. 1-1-0 per bigha in one year it is not illegal if he agrees to pay at Re. 1-7-0 per bigha in the second year and at Re. 1-14-0 per bigha in the third year. It appears that the learned District Judge was aware of the provisions of

Section 180 and as a judge of facts he came to the conclusion that these increases of rent within two years from Re. 1-1-0 to Re. 1-14-0 per bigha were unfair and inequitable and ought not to be taken into consideration in fixing the fair and equitable rent.

4. The next question urged was that the primary Court committed an error of law in not calculating the average amount of rent that was actually paid for the previous six years by the tenants. The argument is that in making a determination of the sum paid as rent it was obligatory on the trial Court to calculate the average of the rent that was paid for the previous six years. Sub-section 9, Section 180-A is explicit in the matter and the Courts below committed an error in thinking that this mutter of calculating the average rent for the last six years was left to the discretion of the Court. The point however has been conceded by the learned advocate for the respondents and it is stated that the average payment of rent will appear from the settlement Record of Rights which was finally published in 1922 about nine years before the institution of the suits. The rates recorded in the settlement Record of Rights vary in the same villages from Re. 1-1-0 to Re. 1-14-0 per bigha. It appears that the learned District Judge took an account of the rates in the Record of Rights in coming to the conclusion as to fair rent in these cases.

5. It was urged that the Courts below did not pay proper consideration to the kabuliats filed on behalf of the landlord. It is urged that many kabuliats were filed showing rents which the occupancy-raiyats had agreed to pay but that the Court only took into account a few of them. It appears that the trial Judge visited the locality and saw some of the lands in respect of which the landlord had got the kabuliats from different tenants. His conclusion was that the kabuliat rate at Re. 1-8-0 per bigha had been agreed to by the tenants who held lands mostly consisting of beel lands and better class of land with a sprinkling of average land here and there. The lower appellate Court accepted the view that the tenants who gave kabuliat rate probably did so because the lands were better lands or that they had other considerations for agreeing to pay rent at Re. 1-8-0 per bigha.

6. The next point urged is that the learned District Judge should have taken into consideration that no less than 31 of the tenants compromised their cases in the lower appellate Court agreeing to pay rent at the rate of Re. 1-8-0 per bigha. The learned Judge did not think fit to base his judgment on the ground that the tenants who voluntarily compromised with the landlord might have had their special ground for doing so. It was argued that the Courts below committed an error in paying attention to a village-note and to a certified copy of a compromise-decree Ex. 6. The village-note which has been shown to us appears to be a statistical note showing the average jamai rate of the mouza. The document is unsigned and though it was officially prepared it has little evidentiary value. Ex. 6 which is a copy of the solenama is of little evidentiary value inasmuch as we do not know what were the motives for the compromise. But it appears from the judgment of the learned District Judge that he did not pay much attention to these two documents in coming to his conclusion.

7. One of the grounds which carried weight with the Courts below was that though the tenants called for the old records of the landlord the landlord failed to produce them. For the non-production of these documents the Courts below came to the conclusion that the tenants who were recorded in the settlement records of 1922 as having acquired occupancy rights had possessed such occupancy rights in the years 1903 and 1904. It is urged that the Courts below were wrong to draw such an

inference from the mere non-production of the landlord's papers of those early years. Specially when an account is taken of the fact that when the tenants were called upon to produce their rent-receipts they failed to produce them. These are matters for consideration of the Court of facts. The inference drawn by the Courts below was an inference from facts and it cannot be said that inference was illegal. We should not quarrel with the decision. If these tenants were occupancy-raiyats in 1903 and 1904 then Section 29, Ben. Ten. Act., protected them against the enhancement which was made in 1903 1904 and 1905. If these tenants were in fact occupancy-raiyats in 1903 then though utbandi tenants they would have the protection as occupancy-raiyats. See in this connexion the case in Nafar Chandra v. Jatindra Nath 1929 Cal 614.

8. On the whole I am of opinion that the Courts below were within their discretion in fixing the annual rent at Re. 1-4-0 per bigha and that in doing this they were mainly carried by consideration of what appeared to them to be fair and equitable, and we do not see sufficient reason to disagree with them. In the result the appeals are dismissed with costs the hearing-fee being assessed at one gold mohur in each appeal. The cross-objections are not pressed and they are accordingly dismissed. The applications filed under Section 115, Civil P.C., are rejected.

Mallik, J.

9. I agree.