

(1922) 07 CAL CK 0003**Calcutta High Court****Case No:** None

Raja Reshee Case Law

APPELLANT

Vs

Trailochya Mohata and Others

RESPONDENT

Date of Decision: July 10, 1922**Acts Referred:**

- Bengal Tenancy Act, 1885 - Section 30(b)

Citation: AIR 1923 Cal 370 : 76 Ind. Cas. 492**Hon'ble Judges:** Walmsley, J; Ghose, J**Bench:** Division Bench**Judgement**

1. This appeal arises out of proceedings taken by the landlords who are the appellants, u/s 105 of the Bengal Tenancy Act for settlement of fair and equitable rent with regard to lands held by the respondents, under them. The respondents did not appear and we had not had the advantage of hearing any argument on their behalf. The appeal relates to lands described as serials Nos. 1, 12, 15, 37, 38, 55 and 56 and the only question raised is whether there should be an enhancement of rent on the ground of rise in the price of staple food crops. The Revenue Officer allowed enhancement of one-anna in the rupee for the land in serial No. 1 and this rate has been increased to 1 1/2 anna by the Special Judge, who observed that he allowed enhancement at that rate, as half of the area was patit. It is contended on behalf of the appellant that, Under the provisions of the Act, the landlord is entitled to enhancement of rent even with regard to patit lands and the Special Judge is, therefore, in error in taking into consideration the fact that a portion of the land was patit in settling fair rent. We are of opinion that it was, open to the learned Judge to take into consideration all the circumstances including the condition of the land in fixing a fair and equitable rent, assuming that the plaintiff can question in second appeal the decision of the Special Judge settling a rent. The appeal with regard to the lands in serial No. 1, therefore, fails.

2. With respect to the other lands the Special Judge affirmed the decision of the Revenue Officer and refused to allow any enhancement for there lands as they consisted of homestead, udbast and doba. The appellants contend that the incidents of the tenancy with regard to these lands are to be regulated by the provisions of the Bengal Tenancy Act. u/s 182, as there is no local custom or usage, and the defendants having been recorded as occupancy raiyats, their rent is liable to be enhance on the ground claimed u/s 30(b) of the Act. Neither the Revenue Officer nor the Special Judge has given any reasons for their decision. This question whether the rent of an occupancy raiyat of homestead lauds is liable to enhancement u/s 30(b) of the Act was decided by a Division Bench of this Court in appeal from Appellate Decree No. 1012 of 1920, and, as no reason has been shown to the contrary, we hold, following that decision, that if the tenants are occupancy raiyats, the rent of these lands is liable to be enhanced as contended for. We, therefore, set aside the judgment of the Special Judge only with regard to lands in serials Nos. 12, 15, 37, 38, 55 and 56 and send the case back to the Revenue Officer for a finding as regards the status of the tenants as to these lands, and, if he finds that the incidents of the tenancy are governed by the provisions of the Bengal Tenancy Act relating to occupancy raiyats, for settling a fair and equitable rent in accordance with the provisions laid down in Chapter V of the Act. The patties will be at liberty to give fresh evidence at the discretion of the Revenue Officer. There will be no costs of this appeal. The costs of the lower Courts with regard to those lands will abide the result.