

(1917) 08 CAL CK 0009

Calcutta High Court

Case No: None

Secretary of State for India in  
Council

APPELLANT

Vs

Gangadhar Nanda

RESPONDENT

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**Date of Decision:** Aug. 22, 1917**Acts Referred:**

- Bengal Tenancy Act, 1885 - Section 104H, 104H(2)
- Limitation Act, 1908 - Section 15(2)

**Citation:** 45 Ind. Cas. 228**Hon'ble Judges:** Walmsley, J; Asutosh Mookerjee, J**Bench:** Division Bench

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**Judgement**

1. This is an appeal by the Secretary of State for India in Council against a decree in a suit instituted by the respondent on the 16th May 1910, u/s 104H of the Bengal Tenancy Act. The lands in suit are comprised in three villages--Dakhin Baraj, Uttar Dighe and Dhai Knkusria. The settlement roll, to which exception was taken by the plaintiff, was published, in the case of the first village on the 2nd June 1910, and in the case of the other two villages on the 17th June 1910. As regards the claim in respect of the first village, objection is taken that the suit is barred under Sub-section (2) of Section 104H, which provides that a suit under Sub-section (1) must be instituted within 6 months of the date of the certificate of final publication of the Record of Rights. This objection does not apply to the second and third villages, and for the reasons assigned in our judgment in Secretary of State v. Digambar Nanda 45 Ind. Cas. 43 : 27 C.L.J. 834 [Appeal from Original Decree No. 252 of 1913] the case must be remitted to the Subordinate Judge for investigation, whether the plaintiff is an occupancy raiyat or a non-occupancy raiyat in respect of the lands comprised in these two villages and for ascertainment of fair and equitable rent payable in respect thereof, In respect of the lands of the village Dakhin Baraj, however, the question of limitation requires careful consideration.

2. The Record of Rights was finally published on the 2nd June 1910. The suit was instituted on the 1st December 1910, after the expiry of the period of six months prescribed by Section 104H, Sub-section (2). The plaintiff claims the benefit of Section 15, Sub-section (2), of the Indian Limitation Act, which provides that in computing the period of limitation prescribed for any suit, of which notice has been given in accordance with the requirements of any enactment for the time being in force the period of such notice shall be excluded. In the case before us, the plaintiff served a notice as required by Section 80 of the Code of 1908, which provides that no suit shall be instituted against the Secretary of State for India in Council until after the expiration of two months next after notice in writing has been delivered or left at the office of a Secretary to the Local Government or the Collector of the District. Consequently if section 15, Sub-section (2), of the Indian Limitation Act is held applicable to the case before us, it is plain that the suit is not open to objection on the ground of limitation. Now the term "prescribed", as used in Sub-section (2) of section 15, read with Section 3, obviously means "prescribed by the First Schedule to the Indian Limitation Act"; consequently, this provision cannot, by its own force, extend the period of six months mentioned in Section 104H, Sub-section (2) of the Bengal Tenancy Act. The plaintiff-respondent has thus been forced to argue that section 29 of the Indian Limitation Act and Sections 184 and 185 of the Bengal Tenancy Act make section 15 Sub-section (2) of the Indian Limitation Act applicable to suits under section 104H of the Bengal Tenancy Act. In our opinion there is no force in this contention.

3. Section 29(1)(6) provides that nothing in the Indian Limitation Act shall affect or alter any period of limitation specially prescribed for any suit, appeal or application by any special law or local law now or hereinafter in force in British India. Section 184 of the Bengal Tenancy Act provides that the suits, appeals and applications specified in the Third Schedule annexed to the Act shall be instituted within the time prescribed in that Schedule for them respectively, and every such suit or appeal instituted or application made after the period of limitation so prescribed shall be dismissed, although limitation has not been pleaded. Section 185, Sub-section (1), then lays down that Sections 7, 8 and 9 of the Indian Limitation Act, 1877, shall not apply to suits or applications mentioned in section 184. Section 185, subsection (2), next provides that subject to the provisions of Chapter XVI of the Bengal Tenancy Act, the provisions of the Indian Limitation Act, 1877, shall apply to all suits, appeals and applications mentioned in section 184; that if, suits, appeals and applications specified in the Third Schedule. It is plain beyond reasonable controversy that section 15 (2) of the Indian Limitation Act, which is made applicable to suits, appeals and applications mentioned in the Third Schedule annexed to the Bengal Tenancy Act, by virtue of section 185. Sub-section (2), cannot possibly apply to suits instituted u/s 104H, which are not mentioned in the Third Schedule. This view is supported by the decision in *Radha Shyam Kar v. Dinabandhu Biswal* 20 Ind. Cas. 760 : 18 C.L.J. 533 : 18 C.W.N. 31, where it was ruled that Section 18 of the Indian Limitation Act

does not apply to an application u/s 174, Bengal Tenancy Act. Much stress, however, has been laid on the decision of a Full Bench of the Allahabad High Court in *Dropadi v. Hira Lal* 16 Ind. Cas. 149: 34 A. 496 : 10 A.L.J. 3, where a question arose as to the applicability of the provisions of the Indian Limitation Act to proceedings in insolvency. That case is clearly distinguishable; but it may be observed that the decision has not always been regarded with favour: *Thakur Prasad v. Punno Lal* 20 I C. 673 : 35 A. 410 : 11 A.L.J. 603; *Munjuluri Sivaramayya v. Singumahanti Bujanga Rao* 30 Ind. Cas. 703 : 18 M L.T. 200 : 39 M. 593; *Abu Baker Sahib v. Secretary of State for India* 5 Ind. Cas. 884 : 34 M. 505 : 7 M.L.T. 132 : 20 M.L.J. 283 F.B.). There is also no analogy between the case before us and the decisions in *Sharoop Das Mondal v. Joggessur Roy Chowdhry* 26 C. 564 : 3 C.W.N. 464 : 13 Ind. Dec. (N.S.) 962; *Dulhin Mothura Koer v. Bansidhar Singh* 10 Ind. Cas. 880 : 16 C.W.N. 904 : IB C.L.J. 83 and *Srinivasa Aiyangr v. Secretary of State* 18 Ind. Cas. 617 : 38 M. 92 : 24 M.L.J. 41. A question of the description now before us must be determined by a reference to the terms of the Special Statute, and on a plain reading of the provisions of Section 185, Bengal Tenancy Act, taken along with Section 15, Sub-section (2) of the Indian Limitation Act, we feel no doubt whatever that Section 15(2) cannot possibly be applied to extend the period of six months provided for the institution of suits u/s 104H of the Bengal Tenancy Act. In our opinion, the suit is barred by limitation in respect of the lands comprised in village Dakhin Baraj.

4. The result is that this appeal is allowed and the decree of the Subordinate Judge set aside. The suit will stand dismissed in respect of the lands in village Dakhin Baraj. With regard to the lands of Utter Dighe and Dhai Kukusria, the decree of this Court will declare that the plaintiff is a raiyat and not a tenure holder and the case will be remitted to the Subordinate Judge to determine whether the plaintiff is an occupancy raiyat or a non-occupancy raiyat and then to ascertain the amount of fair and equitable rent payable by him according to his status. Each party will pay his own costs both here and in the Court below up to the present stage. The costs after remand will abide the result.