

(1917) 12 CAL CK 0021

Calcutta High Court

Case No: None

Dharani Kanta Lahiri Chaudhuri
and Others

APPELLANT

Vs

Amir Sheikh and Others

RESPONDENT

Date of Decision: Dec. 7, 1917

Acts Referred:

- Bengal Tenancy Act, 1885 - Section 105, 109A

Citation: 44 Ind. Cas. 152

Hon'ble Judges: Teunon, J; Newbould, J

Bench: Division Bench

Judgement

In S.A. No. 176 of 1913.

1. In this case it appears that the landlord appellant made an application u/s 105 of the Bengal Tenancy Act for the settlement of fair rents in the case of each of a large number of tenants. The application came on for hearing before the Settlement Officer and judgment was delivered on the 23rd August 1912. At the close of the judgment the Settlement Officer says this: "It is now necessary to prepare schedules on the basis of the findings and in accordance with the directions given above for all the tenancies of those cases except the tenancies regarding which the claim was withdrawn. Office to prepare the schedules and to put them up. The schedules will show the fair rent settled." In accordance with that order a schedule was prepared, approved and signed by the Settlement Officer on the 14th September 1912. Then followed the Civil Court vacation. On the reopening day, the 12th November 1912, the plaintiff-landlord presented an appeal against the fair rents settled in the cases of 148 of the tenants whose tenancies were included in the schedule, to which reference has been made. The learned Special Judge dismissed that appeal on the ground that it was barred by limitation.

2. It is not contested before us in this appeal that if time is to be taken as running from the 23rd August 1912, the date of the judgment, the appeal to the District Judge was barred, but it is contended that in taking that date as the starting point and not the 14th September 1912, the date on which the schedules were prepared and signed, the learned Judge has fallen into error. On behalf of the respondents it is not suggested that if 14th September be taken the appeal to the District Judge is within time. Thus the one question for our determination is whether time should be taken as running from the 23rd of August, the date of the judgment, or from the 14th of September, the date of the schedule. The learned District Judge says that the 23rd August, must be taken because by Section 109A of the Act the appeal lies not against a decree or a schedule but against a decision of the Revenue Officer and the schedule in his opinion forms no part of that decision.

3. Now when we turn to Section 105 we find that what the Revenue Officer is required to do is to settle fair rent in respect of the land held by the tenant, that is to say, "by each tenant. No doubt in his judgment of the 23rd August 1912 the Revenue Officer did arrive at certain findings and did lay down certain principles in accordance with which fair rents were to be ascertained, but it is clear that until the fair rent to be thus calculated had been ascertained, there was in fact no decision in the case of any one of the tenants and no settlement of the rent which he had to pay. The schedule settling the rents is clearly a part of the decision and in fact read with the judgment is the decision.

4. If any doubt can possibly remain on this point, it would be removed by a reference to the statutory rules framed by the Bengal Government under the provisions of Sections 39, 61, 134 and 189 of the Bengal Tenancy Act. Rule 63 of those rules to be found in part III, which deals with the settlement of fair rents, says in its Sub-rule (9): "it shall not be necessary for the Revenue Officer to draw up a separate decree with regard to fair rent settled but the entry in his decision or schedule attached thereto with regard to the fair rent settled shall be held to be a decree." That rule reproduces Rule 62 (9) of Chapter VI of the Rules framed by the Government of Eastern Bengal and Assam under the provisions of the sections already referred to on the 24th August 1909, which in the years 1912 to 1914 were in force in the District of Mymensingh.

5. When we next turn to Schedule III of the Bengal Tenancy Act, Part II, we find that for appeals to the Court of the District Judge or Special Judge the period of limitation is 30 days from the decree or order under the Act. From this also it would appear that the schedule is in effect the decree.

6. Whether, however, the schedule be or be not a decree, it is clear that without the schedule the decision remains incomplete and uncertain in the case of each tenant and the schedule is thus an essential part of the decision.

7. For these reasons we set aside the order of the Special Judge in this case and return the appeal to be presented to him in order that it may be heard and disposed of on the merits in accordance with law.

In S.A. Nos. 436, 574 And 2403 to 2410 of 1913.

8. These appeals are governed by the judgment just delivered in S.A. No. 176 of 1913. The order of the Special Judge in each of those cases is set aside and the appeals returned to him in order that they may be heard and disposed of on the merits in accordance with law.

In S.A. No. 906 to 914 of 1913.

9. These appeals are also governed by the judgment just delivered in S.A. No. 176 of 1913. True it is that the dates are somewhat different, but when due allowance is made for the time requisite for taking copies and for the days in which the Courts were closed those appeals were well within time, taking time as running from the date on which the schedules were prepared and signed. The order of the Special Judge in each of these cases is set aside and the appeals returned to him in order that they may be heard and determined on the merits.

10. The applications connected with these Appeals Nos. 176, 436, 574, 2403 to 2410 and 906 to 914 of 1913 are all rejected. Costs in all the above appeals will abide the result. We assess the hearing fee in each of the appeals valued at burns not exceeding Rs. 200 at one gold mohur and in each of the other appeals at two gold mohurs.