(1933) 04 CAL CK 0023

Calcutta High Court

Case No: None

Satis Chandra Mukhopadhya and Another		APPELLANT
	Vs	
Nuba Krishna Roy Chowdhury		RESPONDENT

Date of Decision: April 10, 1933

Citation: 146 Ind. Cas. 676

Hon'ble Judges: Pearson, J

Bench: Single Bench

Judgement

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Pearson, J.

In this case the opposite party instituted proceedings u/s 105, Bengal Tenancy Act, consequent upon the final publication of the Record of Rights. That publication took place on August Section 1931, according to which it appeared that the petitioner was liable to enhancement of rent. On December 4, 1931, an application was made by the landlord opposite party u/s 105, Bengal Tenancy Act, for enhancement. The petitioners as against that set up in those proceedings that they were not tenure holders liable to enhancement of rent but were raiyats with mokarari status. The written statement was filed on April 9, 1932, that is, a considerable period after the lapse of four months which is provided for in Section 106, Bengal Tenancy Act, under which the petitioners might have made a substantive application as against the entry in the Record of Rights had they been so advised. Now, on June 6, issues were settled. Issue No. 1 raised the question whether the petitioners were liable to enhancement of rent and went on to say: Is he a mokarari raiyat in respect of the disputed jama? What happened in those proceedings was that subsequently the landlords came before the court saying that there were certain defects in their application and that they wished for leave to withdraw the proceedings. The court thereupon made an order on June 6, refusing the petition for withdrawal and merely dismissing the case for non-prosecution. It seems that on that occasion objection

was raised by the petitioner in which they demanded that the question which they had raised as regards their mokarari status should be gone into, having been raised in the issue and that a finding should be arrived at upon that issue and the suit should then be dismissed.

2. The contention put forward by the opposite party before me, I think, may be summarised thus: that if the petitioners in a case like the present do not take advantage of the procedure laid down in Section 106 within the four months allowed by that section, then they cannot be allowed to have the matter decided by way of raising the issue in a written statement filed long after the four months had expired in answer to proceedings for enhancement of rent brought by the landlord. The question really seems to me to turn on the construction of the section in the Act, in particular Section 105-A. Section 105-A lays down:

Where, in any proceedings for the settlement of rents under this part any of the following issues arise: (e) Whether the tenant belongs to a class different from that to which he is shown in the Record of Rights as belonging, the Revenue Officer shall try and decide such issue and settle the rent accordingly.

3. Mr. Nasim Ali has said that issue only arises for determination as a matter of benefit to the landlord, that is, if the landlord steps out of the suit there is no room for any trial or decision on that issue for the benefit of the tenant. Upon the best consideration that I am able to give the matter it does seem to me that the petitioners'' contention is valid and if they are party to a proceeding of this kind under which the provisions of the law allow them to raise an issue as to whether they are or are not mokarari raiyats in respect of the disputed jama, that is an issue which the Revenue Officer shall try and decide. Even if the landlord fades away and refuses to go on with the suit, the actual result may be the same in so far that the proceedings are dismissed. But in the present case I think, as I say, that the issue is one which the petitioners tenants are entitled to have tried and determined even though the landlord ceases to take any further part in the proceedings. It is unnecessary to say anything else as to the form of the order according to what the finding of the court may be upon the issue.

4. I think that the proper order to make is that the Rule should be made absolute, the decree should be set aside and the matter remitted to the Assistant Settlement Officer for trial of the issue raised by the defendants and subsequent de-termination of the proceedings according to law. The hearing fee in this Rule is assessed at one gold mohur.