

directly interested in the property, and because the leave of this Court was not first obtained. The conviction of Santok Chand cannot be allowed to stand.

1918
SANTOK
CHAND
v.
EMPEROR.

The case against Anup Chand is even weaker. There was no entrustment of property to him, and he could not be convicted of criminal breach of trust. He might have been found guilty of abetting that offence, if it had been committed by his master, Santok Chand, but in the circumstances it is clear that no such offence of abetment has been established. We accordingly make the Rule absolute, set aside the convictions and sentences on both the accused, and direct that the fines, if paid, be refunded.

E. H. M.

Rule absolute.

APPELLATE CIVIL.

Before Woodroffe and Smither JJ.

BIPRADAS PAL CHOWDHRY

v.

AZAM OSTAGAR.*

1918
June 6.

Record-of-rights—Non-agricultural lands—Bengal Tenancy Act (VIII of 1885), s. 105.

Section 105 of the Bengal Tenancy Act has no application to non-agricultural lands situated in a mofussil municipality.

SECOND Appeal by Bipradas Pal Chowdhry, the applicant.

A record-of-rights under section 103 of the Bengal Tenancy Act was prepared for several villages in

*Appeal from Appellate Decree, No. 1695 of 1909, against the decree of H. E. Ranson, District Judge of Nadia, dated May 13, 1909, affirming the decree of Sadad A. Musad, Settlement Officer of Nadia, dated Nov. 13, 1908.

1918
 BIPRADAS
 PAL
 CHOWDHRY
 v.
 AZAM
 OSTAGAR.

Touzi No. 474, Taraf Santipur, including village Bergram, at the instance of Bipradas Pal Chowdhry, who has *putni* rights in the estate. Village Bergram happens to be a part of the Santipur town and is situated within its municipal limits. At the time of the record-writing, it was discovered that almost all the holdings in the village were homesteads, occupied by tenants, who were engaged in trade or other non-agricultural employments. At the time of the attestation, therefore, no status under the Bengal Tenancy Act was given to the tenants and the non-agricultural character of the holdings were noted in the *khatians*. The records as framed were finally published on the 22nd June, 1908. In September, 1908, the landlord *putnidar* applied to have fair rents settled for the defendants-tenants under section 105 of the Bengal Tenancy Act. It was contended on behalf of the tenants that the holdings being situated within the municipal town of Santipur and being non-agricultural in character, the provisions of the Bengal Tenancy Act were inapplicable and therefore no proceedings under section 105 could be taken in Court. The Revenue officer upheld the contention of the tenants-defendants and rejected the application. The appeal to the District Judge by the *putnidar* was also unsuccessful, and he preferred a second appeal to the High Court.

Babu Pravash Chandra Mitter (with him *Babu Amarendra Nath Bose*), for the appellant. My contention is that the Bengal Tenancy Act applies to all areas to which it is made applicable by its "Local Extent" clause. It is no doubt true that there are several sections of the Act which are made applicable to agricultural lands only. These sections limit their operations to agricultural lands only by virtue of the

language used in these sections. The existence of these sections in the Act support my contentions as showing that the Act as a whole refers to lands agricultural as well as non-agricultural. Section 3 (the "Definition Clause") contains many definitions which would include agricultural as well as non-agricultural lands. I rely upon the definitions of "estate", "proprietor", "tenant", "landlord", "village" and "Permanent Settlement." I also rely upon the wording of sections 101 and 102 of the Act. Section 101 refers to "local area, estate or tenure". Therefore, any local area in Bengal or any estate (and it is well-known that estates contain lands agricultural as well as non-agricultural) or any tenure (it is equally well-known that the whole of an estate can be let out as a tenure) would be attracted by the provisions of section 101 of the Act. And if section 101 applies, section 102 and the following sections would also apply. Chapters XIII, XIII A and XIV, by the very language of the sections contained therein, would apply to all lands agricultural and non-agricultural.

The scheme of the Act as a whole therefore shows that Chapters II to VII are special provisions as to agricultural lands, but the other chapters, notably Chapters I, X, XIII, XIII A and XIV, apply to all lands. I am a landlord within the meaning of section 105 as defined in section 3. The respondents are tenants within the meaning of the same section as defined by section 3. Therefore I am entitled to maintain this application and the lower Courts have erred in deciding to the contrary.

Ramdas Mukerjee v. Biprodas Pal Choudhery (1) is distinguishable. The judgment proceeded on the meaning of the word *Korfa*. Even so, the judgment gives no reasons.

1918

BIPRADAS
PAL
CHOWDHRY
v.
AZAM
OSTAGAR.

If you refer to the Rules of the Board of Revenue, you will find that record-of-rights is drawn up in every case.

Babu Mahendra Nath Roy (with him *Maulvi Abdul Jawad*), for the respondents. The Bengal Tenancy Act is limited in its application to the classes of tenants enumerated in section 4 of that Act. That section, taken with section 5, clearly shows that the tenants contemplated therein hold land for the purpose of cultivation or for the purpose of collecting rents from such tenants. The word "landlord" as used in the Act necessarily means a landlord of such tenants. See also the definitions of "tenant," "landlord," "tenure" and "holding" in section 3. As to record-of-right, see section 102 clauses (a) and (d). Section 105 is necessarily limited to these classes of tenants. See particularly section 105, sub-section (4). Fair and equitable rent is to be fixed, having regard to the rules laid down in the Act for increasing or reducing rent. See the provisions contained in sections 7, 8, 27 to 38, 43, 48 and 53 of the Act for enhancement and reduction of rent; none of them can apply to tenants of homestead lands engaged in trade. The real test is not whether the land is or is not situate within the limits of a municipality. See also *Raniganj Coal Association, Ltd. v. Judoonath Ghose* (1), *Umrao Bibi v. Mahomed Rojabi* (2) and *Rashbehari Lal Mondal v. Tilackdhari Lal* (3).

Babu Birajmohan Mazumdar, for the Deputy Registrar.

Babu Pravash Chandra Mitter, in reply. The extreme contention of my friend would land us in an absurd position, viz., if there is an inch of non-agricultural land within a large agricultural area, the Bengal

(1) (1892) I. L. R. 19 Calc. 489. (2) (1899) I. L. R. 27 Calc. 205.

(3) (1915) 23 C. L. J. 111, 112.

Tenancy Act will not apply. Section 4 of the Act is not exhaustive. By section 181, *ghatwali* lands only are excluded from the operation of the Act. No other class of lands are expressly excluded from the operation of the Act, except the town of Calcutta and any area constituted a municipality by the Bengal Municipal Act of 1884, and specified by a Notification in that behalf. The Bengal Tenancy Act applies to *jalkars* and *fisheries* : *Shibu Halder v. Gopi Sundari Dasi* (1), *Probat Chandra Gangopadhyaya v. Chirag Ali* (2). The provisions of Chapter XIV relating to annulment of incumbrances also show that the intention of the Legislature was not to limit the operation of the Act to agricultural lands. *Unrao Bibi's case* (3) cited by my friend is not applicable. The point in issue in that case was whether a mixed question of law and facts which was not raised in the pleadings or in the Court of first instance should be allowed to be raised in second appeal, and discussions as to the applicability of the Bengal Tenancy Act to agricultural or non-agricultural lands were unnecessary. Moreover the case, it is said, follows *Raniganj Coal Association, Limited, v. Judoonath Ghose* (4) on that point, but the case expressly left the question whether the word "land" included other than agricultural and horticultural lands open. Neither is the Bengal Tenancy Act exhaustive as regards the legal incidents of the class of tenants it deals with : *Mohesh Jha v. Manbharan Mia* (5). The remarks in the case of *Rashbehari Lal Mondal* (6) on which my friend relies strongly are *obiter*. The only question in the appeal was whether the period of limitation in a suit for arréars of rent due under a *mustagiri* land of agricultural lands was

1918

BIPRADAS
PAL
CHOWDHRY
v.
AZAM
OSTAGAR.

(1) (1897) 1 C. W. N. lxxxviii.

(4) (1892) I. L. R. 19 Calc. 489, 497.

(2) (1906) I. L. R. 33 Calc. 607.

(5) (1901) 5 C. L. J. 522, 526.

(3) (1899) I. L. R. 27 Calc. 205.

(6) (1915) 23 C. L. J. 111.

1918
 BIPRADAS
 PAL
 CHOWDHRY
 v.
 AZAM
 OSTAGAR.

governed by the Bengal Tenancy Act or Limitation Act. There was no question whether the land was agricultural or not.

Cur. adv. vult.

WOODROFFE J. This appeal and connected Rule 4783 raise the question whether section 105 of the Bengal Tenancy Act applies to non-agricultural lands situated in a mofussil municipality. The lands have been found to be homestead lands occupied by tenants engaged in trade or other non-agricultural employment.

It has been argued that the local extent of operation of the Act extends to all municipalities except Calcutta or other excepted area, which this is not. That may be, but the question before us is whether section 105 applies to the class of tenants which these have been found to be.

The Legislature contemplated I think that only three classes of tenants should be regarded as holding lands within the meaning of the Bengal Tenancy Act, viz., a tenure-holder who has been held to mean a person collecting rents from raiyats, raiyats holding lands for the purpose of cultivation and under-raiyats holding under them. The question is whether the tenants here come within the classes mentioned in section 4.

An argument has been sought to be drawn from the fact that *putnis* have been treated as falling within the Act and yet some *putnis* may exist in respect of non-agricultural property such as *hâts*. It has, however, been stated without controversy that it has not been held that *putnis* of this class fall within the Act, whatever may be the case as regards *putnis*, the nature of which bring their holders within the definition of tenure-holder in the Bengal Tenancy Act. There

seems to me no doubt that in its general scope the Bengal Tenancy Act is a law for agricultural landlords and tenants.

It is found, as a matter of fact, that the tenants are not of the classes mentioned in section 4. "Tenant" in section 105 means a tenant as defined in section 4. In section 105 "landlord" means the landlord of a tenant defined in section 4 and "land" means land held by a tenant as so defined.

There are two Rules 4783 and 4784. The first has been asked for in case there was no appeal from the Settlement Officer to this Court, and the second in case there was no appeal from the Settlement Officer to the special Judge. The concurrent conclusions of the learned Judges is correct and this appeal is dismissed with costs and the Rules are discharged without costs.

SMITHER J. I agree.

S M.

Appeal dismissed.

1918

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BIPRADAS
PAL
CHOWDHRY
v.
AZAM
OSTAGAR.
—
WOODROFFE
J.