

CIVIL REVISION.

Before Ghose J.

RAJENDRA NATH NAG

v.

ASHA LATA DEBI.*

1939

May 24.

Occupancy holding—*Transfer*—*Landlord's fee in respect of transfer before August, 1938, if recoverable*—*Bengal Tenancy Act (VIII of 1885), ss. 26J (1), 188 (1)*—*Bengal Tenancy (Amendment) Act (Ben. VI of 1938)*—*Bengal General Clauses Act (Ben. I of 1899), s. 8.*

The landlord's fee payable on transfer of occupancy holdings, which accrued due before August 18, 1938, can be demanded and recovered after the Bengal Tenancy (Amendment) Act of 1938 came into force. And legal proceedings under ss. 26J (1) and 188 (1) of the Bengal Tenancy Act can be instituted for the purpose as before, as if the Bengal Tenancy (Amendment) Act of 1938 had not been passed.

CIVIL RULE obtained by the landlord for revision under s. 115 of the Code of Civil Procedure.

The facts of the case are sufficiently stated in the judgment.

Hemendra Chandra Sen, Bijan Behari Mitra and Santosh Nath Sen for *Lokendra Chandra Sen* for the petitioner. The landlord's right to recover the transfer-fee accrued before the Amending Act came into force. In the absence of a different intention appearing in the Amending Act of 1938 his rights are protected under s. 8 of the Bengal General Clauses Act; and he is entitled to institute the same proceedings for the recovery of the fee and compensation as he was entitled to do under the repealed sections of the Bengal Tenancy Act.

Gour Mohan Dutt and *Hariprasanna Mookherjee* for the opposite party. Section 26J (1), which has been repealed, merely imposed the liability to pay landlord's fee on the transferee of the holding. But

*Civil Revision, No. 409 of 1939, against the order of Omer Mallik, Munsif of Bongaon, dated Feb. 6, 1939.

the procedure for the recovery of the fee was laid down in s. 188(1) of the Bengal Tenancy Act, which has been amended by the new Act of 1938. What-
 ever, therefore, may have been the landlord's right under the substantive law he cannot take advantage of the procedure which has been repealed.

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GHOSE J. This Rule has arisen under the following circumstances. The opposite party purchased by a registered *kabâlâ* on June 6, 1938, from a tenant of the petitioners certain tenancies described in the plaint as *mokarari râryati*, though, according to the petitioners, they are occupancy holdings. The opposite party paid Rs. 2 as landlords' transfer fee. The petitioners, on receipt of the notice of transfer, filed an application under s. 26J of the Bengal Tenancy Act for recovery of the balance of the landlords' transfer fee of Rs. 40 with compensation Rs. 40. The Munsif, by his judgment, dated February 6, 1939, has decided that the tenancies are occupancy holdings, but that the application under s. 26J of the Bengal Tenancy Act is not maintainable under the Bengal Tenancy Act as now amended. Against that order, the present Rule has been issued. The Munsif has referred first to the Bengal Tenancy Ordinance, 1938, which was published on June 3, 1938. The effect of that Ordinance (*vide* s. 2) was merely to extend the time for registration which was available under s. 23 of the Registration Act. But that does not affect the present question, since the registration has already taken place.

The next point that the Munsif has taken is that, according to the Bengal Tenancy (Amendment) Act of 1938, the landlords' transfer-fee cannot, after August 18, 1938, be demanded. But, in taking this view, the learned Munsif overlooked the provisions of s. 8 of the Bengal General Clauses Act (Ben. I of 1899). Reading clauses (c) and (e) of that section, it will be seen that the Amendment Act cannot, in the absence of a different intention appearing therein, affect the liability which has

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already accrued and a legal proceeding in respect of such liability may be instituted and continued as if the Amendment Act had not been passed. The learned advocate for the other side has pointed out that s. 26J(1) merely imposes the liability to pay and s. 188(1) lays down the procedure by way of application. That only strengthens the argument in favour of the petitioners, because, relying on this section, they are entitled to say that the liability to pay landlord's fee has already accrued and therefore they are entitled to follow the procedure laid down in s. 188(1) in spite of the Amendment Act of 1938.

The order dismissing the application is, therefore, set aside and the lower Court is directed to proceed to hear the application.

It may be noted that the finding of the Munsif that the properties in question are holdings in occupancy right and that the applicants are the landlords in respect of such holdings will stand.

The Rule is made absolute accordingly. There will be no order for costs in this Rule.

Rule absolute.

A. A.