LETTERS PATENT APPEAL.

Before Terrell, C.J. and James, J.

SRI RADHA KISHUNJI

v.

HARICHARAN AHIR.*

1930.

January, 23, February, 25.

Bengal Tenancy Act, 1885 (Act VIII of 1885), sections 30(a) and 31A, object of—"prevailing rate", meaning of—suit must fail where prevailing rate not found—section 31A, whether should always be resorted to—principles, whether should be applied to areas to which section not made applicable.

The object of section 30(*a*) Bengal Tenancy Act, 1885, which in substance is a re-enactment of section 17, Bengal Rent Act, 1859, is not to raise or depress rent to a common average level, but, where it could be found that in any particular area a tenant of the village could expect to get land similar to that in dispute in similar circumstances at some definite customary rate per bigha, that rate should be taken as the proper standard.

Held, therefore, that the "prevailing rate" referred to in section 30(*a*) of the Act means not the average of the rents paid by the raiyats of a village but a definite rate actually paid and current in the village.

Sadhoo Singh v. *Ramanoograh Lall*(1), *Priag Lal* v. *Brockman*(2), *Alef Khan* v. *Raghunnath Prasad Tewari*(3) and *Shital Mondal* v. *Prosonnamoyi Debya*(4), followed.

Shaikh Dena Gazee v. *Mohinee Mohan Dass*(5), explained.

If no prevailing rate is found to exist, the plaintiff's claim for enhancement must necessarily fail.

The principles of section 31A cannot be applied to areas to which the section has not been made applicable by the Local Government.

*Letters Patent Appeals nos. 75 and 76 of 1928, from a decision of the Hon'ble Mr. Justice R. L. Ross, dated the 8th August, 1928, setting aside a decree of Maulvi A. Shakur, Subordinate Judge of Shahabad, dated the 4th July, 1925, which in turn confirmed a decision of Babu Ram Bilas Singh, Munsif, 1st Court of Arrah, dated the 19th March, 1924.

(1) (1868) 9 W. R. 83.
(2) (1870) 13 W. R. 346.
(3) (1898) 1 Cal. W. N. 316.
(4) (1894) I. L. R. 21 Cal. 986.
(5) (1874) 21 W. R. 157.

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Harihar Prasad Bajpai v. *Ajub Misir*(1) and *Ramdeo Singh* v. *Babu Mohcshwar Prasad*(2), followed.

Held, further, that even in cases to which section 31A applies it is not obligatory to use the method set forth in the section and in certain circumstances it would be clearly wrong to do so.

Appeal by the plaintiff.

The facts of the case material to this report are stated in the judgment of Terrell, C.J.

Sambhu Saran and *B. P. Sinha*, for the appellant.

Shiveswar Dayal, for the respondent.

COURTNEY TERRELL, C.J.—These are Letters Patent appeals by the plaintiff from the judgment of a single Judge of this Court in two similar suits for enhancement of rent under the Bengal Tenancy Act. The only point which concerns us is the claim by the plaintiff for enhancement on the ground that the existing rents are below the prevailing rate in the village.

The Munsif issued a commission to a revenue officer to ascertain the prevailing rate. The revenue officer submitted a report setting forth the names of the tenants of similar lands, the area of such land held by each of such tenants, the total rent paid by each tenant in respect of such land, and the result of a calculation showing the rate per bigha. He stated that there was no single rate which could be called a "prevailing rate" and, (although section 31A of the Bengal Tenancy Act had not in fact been extended by the Local Government to this village) he, by applying the method described in that section to the figures set forth in his report, arrived at the figure Rs. 8-12-0 per bigha as that which should be deemed to be the prevailing rate. The Munsif accepted the report and accordingly enhanced the rents. The plaintiff appealed to the Subordinate Judge who, holding that

(1) (1913) I. L. R. 45 Cal. 930. (2) (1915) 21 Cal. L. J. 483.

the method prescribed by section 31A was not applicable until other methods of investigation had been tried, sent the case back with directions to issue a fresh commission to ascertain the prevailing rate for similar lands in neighbouring villages. This time the revenue officer did not follow the course he was directed to take but simply re-submitted the figures set forth in the first report. The Munsif and the Subordinate Judge accepted this report and the rent was accordingly enhanced as in the earlier judgment.

The learned Judge on appeal decided that the first report of the Commissioner disclosed no "prevailing rate" within the meaning of section 30 (*a*) and that, as the second report was not in accordance with the directions of the Subordinate Judge and as those directions were in accordance with law, the case must go back for yet a third report upon the basis of the prevailing rate in neighbouring villages.

Considerable difficulty has been felt by the Courts in considering the words "prevailing rate" in this section. The section is in substance a re-enactment of section 17 of Bengal Rent Act (Act X of 1859) and the phrase "prevailing rate" originated from the fact that there were in many places governed by the Regulations standard pargana rates which were recognised in the respective localities as the proper rate of rent payable by raiyats of the pargana or, in the alternative, that if there was no rate which prevailed throughout the pargana, there were different rates for different classes of land generally recognised as the customary rates (nirkh) in the village or local area. We do in fact find in very old jamabandis of a great estate such as Bhojpur (belonging to the Maharaja of Dumraon) that there are definite rates per bigha from which the rent is calculated but in Bihar as a whole such rates have fallen into complete desuetude and there is now no general rate in a village or local area. If in any village the rent of any holding is divided by the number of bighas in that holding

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many different rents will be found to exist side by side. The object of section 17 of the Act of 1859 and that of section 30(*a*) of the Bengal Tenancy Act was not to raise or depress rents to a common average level, but, where it could be found that in any particular area a tenant of the village could expect to get land similar to that in dispute in similar circumstances at some definite customary rate per bigha, that rate should be taken as the proper standard. This was the principle followed by the Courts in Bengal as shewn by the decisions in *Sadhoo Singh* v. *Ramanoograha Lall*(1) and *Priag Lall* v. *Brockman*(2). In 1874 Ainslie, J. of the Calcutta High Court in *Shaikh Dena Gazee* v. *Mohinee Mohan Doss*(3) did permit an average to be taken but that was a case in which the different rates varied very slightly and were so nearly equal as to make it difficult to say which was the prevailing rate. What was actually sanctioned in that case was not the striking of a general average from a mass of lump rentals and the Calcutta High Court continued to be careful to point out that the expression "prevailing rate" did not mean an average rate [See *Alef Khan* v. *Raghunnath Prosad Tewari*(4)]. In *Shital Mondal* v. *Prosonnamoyi Debya*(5) it was pointed out that the decision of Ainslie, J. in so far as it approved of the adoption of an average, stood alone, and that the expression "prevailing rate" in section 30 (*a*) of the Bengal Tenancy Act meant not the average of the rents paid by the raiyats of a village but a definite rate actually paid and current in the village. It is clear that if the practice of averaging were permitted those raiyats, who were paying a lump rental for their land which by calculation could be shewn to be at a rate per bigha less than the rate per bigha similarly found to be paid by those tenants who held more than 50 per cent. of the land, would have their rent enhanced. This would mean that enhancement would

(1) (1866) 9 W. R. 88.
(2) (1870) 13 W. R. 346.
(3) (1874) 21 W. R. 157.
(4) (1896) 1 Cal. W. N. 310.
(5) (1894) I. L. R. 21 Cal. 986.

have to be ordered in every village for there is no provision that the rentals of those paying more than the average rental so found may be depressed to that average level. Nevertheless in 1898 section 31A (*1*) of the Bengal Tenancy Act was passed which is as follows:—

"In any district or part of a district to which this sub-section is extended by the Local Government by notification in the *Calcutta Gazette*, whenever the prevailing rate for any class of land is to be ascertained under section 30, clause (*a*), by an examination of the rates at which lands of a similar description and with similar advantages *are held within any village or villages*, the highest of such rates at which and at rates higher than which the larger portion of those lands is held may be taken to be the prevailing rate."

This section which has not been applied by the Local Government to any great extent does in fact permit the process of averaging to be applied. It may be shewn from an examination of the examples that it is in fact a simple method of obtaining an average. If *Illustration* (1) given in the section be examined it will be found that the rate of Rs. 1-12-0 selected as the prevailing rate corresponds almost exactly to the result obtained by finding the average rate per bigha which works out at Rs. 1-11-5. If the second example be examined it will be found that whereas by average the rate would be Rs. 1-6-10, the rate to be selected by the prescribed method is Rs. 1-4-0. The discrepancy has been caused by the fact that relatively small area of 50 bighas only is supposed to pay the high rate of Rs. 2. It will be noted that even in cases to which the section is made applicable by the Local Government it is not obligatory to apply the method set forth in the section and in certain circumstances it would be clearly wrong to use that method. By way of illustration we may take the following artificial example:—

499 bighas at Re. 1.
2 bighas at Rs. 1-2-0.
199 bighas at Rs. 2.
300 bighas at Rs. 2-8-0.

Now if the method shewn in the section be applied the "prevailing rate" to be selected will be Rs. 1-2-0

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whereas on an average the amount will be Rs. 1-5-7. If it were the purpose of the legislature that the method of the section were invariably to be applied to areas to which the section is made applicable the results might be manifestly unjust and artificial.

It has been argued that there is no specific prohibition against applying the principle of section 31A to areas to which it has not been made applicable by the Local Government but in *Harihar Prasad Bajpai* v. *Ajub Misir*(1) it was expressly held that in enacting section 31A the legislature could not be held to have intended to alter the pre-existing law in districts to which that section was not applied. In 1915 in *Ramdeo Singh* v. *Babu Moheswar Prosad*(2) a similar decision was arrived at and it was further held that unless the landlord proved that a prevailing rate had been ascertained and found no decree for enhancement could be passed.

In the case before us the report sets out, as I have said, the name of each tenant of similar land, the area held by him and the total jama paid by him. The total size of the land held by each tenant varies from one-tenth of a bigha to thirty-four bighas. The number of tenants is 29 and the rates (calculated by dividing the area in bighas paid for each holding by the total jama of that holding) vary from Rs. 12 per bigha to Rs. 2-3-0 per bigha. No one rate so calculated can be said to be paid either by the majority of tenants or in respect of the majority of bighas. An average works out at Rs. 8-7-9 which closely approximates to the figure obtained by the process set forth in section 31A. If all the rents below this figure were enhanced to this figure at least one half of the area would still be paying at a rate higher than the average and if the average were to be taken as the prevailing rate a case for enhancement would remain on the next occasion for such enhancement would be higher again than the average obtained on the present

(1) (1913) I. L. R. 45 Cal. 930. (2) (1915) 21 Cal. L. J. 483.

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basis of facts. Such a result would lead to continuous disastrous enhancement until the rents had reached the maximum. The revenue officer who has made the report has clearly demonstrated that there is no prevailing rate in the village; but the direction of the learned Subordinate Judge that he should ascertain whether there is any prevailing rate in adjoining villages has still to be carried out. This appeal must accordingly be dismissed with costs. The case must be remanded, as directed by the learned Judge of this Court, but with this modification, that the commissioner will be directed only to ascertain whether there is in neighbouring villages a definite prevailing rate of the kind which has been described above. If no such rate is found to exist, the plaintiff's claim for enhancement under section 30(*a*) must necessarily fail. It must be made clear that the commissioner is not to be required to find anything more than this. He is not required to find what may be the lowest rate paid by a considerable number of raiyats for land with similar advantages, nor is he to ascertain any average rates of rent, by the application of the principles laid down in section 31A or in any other way.

JAMES, J.—I agree.

Appeals dismissed.

APPELLATE CIVIL.

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February, 2, 3. March, 7.

Before Adami and Scroope, JJ.

ACHAMBIT MAHATA

v.

RAJ KUMAR TEKAIT MAN MOHAN SINGH.*

Chota Nagpur Tenancy Act, 1908 (*Beng. Act VI of* 1908), *sections* 51*A*(5) *and* 81(*b*)—*record-of-rights for Manbhum—entry "occupancy raiyat with rent subject to enhancement"*,

* Appeals from Appellate Decrees nos. 1581, 1608 and 1609 of 1925, from a decision of J. A. Saunders, Esq., I.C.S., District Judge of Manbhum, dated the 7th July, 1925, reversing a decision of Maulavi Najabat Hussain, Subordinate Judge of Purulia, dated the 14th May, 1924.