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DHAVLE, J.

section 120B of the Indian Penal Code was dropped on the ground that no sanction was obtained. But the object of the conspiracy was to commit cognizable offences punishable with rigorous imprisonment for more than two years, and it should have been obvious to the Assistant Public Prosecutor and the Additional Sessions Judge, from a mere perusal of section 196A(2) of the Code of Criminal Procedure, that in such a case no "sanction" was necessary.

ROWLAND, J.—I agree.

Reference rejected.

SPECIAL BENCH.

Before Khaja Mohamad Noor, James and Agarwala, JJ.

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March, 5, 6.

MAHARAJ KUMAR RAM RANBIJAY PRASAD SINGH

v.

RAMGIRHI RAI.*

Bengal Tenancy Act, 1885 (*Act VIII of* 1885), *sections* 30(*b*) *and* 32—*decennial periods—court, whether bound to exclude the period preceding the date when the current rent was fixed—shorter periods, when can be substituted—"practicable", meaning of.*

The rise contemplated in section 32(*b*) of the Bengal Tenancy Act, 1885, is the rise over the price which was prevailing at about the time when the current rent was fixed.

There is nothing in sub-clause (*a*) of section 32 of the Act which enjoins upon the court not to take, for purposes of comparison, a period preceding the date when the rent was last fixed or settled. Rather it may be more equitable to compare the prices of the decennium just before the institution of the suit with the prices which prevailed in the decade just before the settlement of the rent.

* Appeals from Appellate Decrees nos. 1008 to 1021 of 1931, from a decision of A. C. Davies, Esq., I.C.S., District Judge of Shahabad, dated the 11th February, 1931, reversing a decision of Maulavi Muhammad Yahia, Munsif of Buxar, dated the 5th February, 1930.

Shorter periods can only be substituted for decades if it is, in the opinion of the court, impracticable to take the latter into consideration.

The word " practicable " in clause (*a*), as also clause (*c*), of section 32 of the Act contemplates the practicability of taking a period for which figures are available or can be obtained without undue inconvenience and trouble.

As at present times a complete price list of the staple food crops commencing from the year 1887 can be had, clause (c) of section 32 may now be taken to be obsolete for all practical purposes.

Where, therefore, the rent was settled under section 105 of the Act in 1914 and just on the completion of fifteen years suits for enhancement of rent under section 30(*b*) were instituted and the trial court, for the purpose of section 32, compared the prices of the decennial period just before the institution of the suits with those of the decennium immediately preceding that period, thus including in the second decade the period prior to 1914 when the rent was settled.

Held, that the trial court was right in doing so, as it was not necessary that the period taken for comparison must be within the currency of the existing rent.

Appeal by the plaintiff.

The facts of the case material to this report will appear from the following order of reference :—

MACPHERSON AND VARMA, JJ.—This batch of appeals has at the instance of a single Judge of this Court been placed before a Division Bench.

Having heard Mr. S. M. Mullick and Mr. Parmeshwar Dayal for the parties, we are of opinion that the point involved being of importance to millions of raiyats in the province ought to be heard by a Special Bench of Judges so as to secure an authoritative decision. The contingency which has arisen may perhaps be found to be one which the Legislature has either not foreseen or has not provided for.

Section 30(*b*) of the Bengal Tenancy Act provides that the landlord of a holding held at a money-rent by an occupancy raiyat may, subject to the provisions of the Act, institute a suit to enhance the rent on the ground

" (*b*) that there has been a rise in the average local prices of staple food-crops *during the currency of the present rent*".

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Strictly this provision would seem to mean a rise in the average price during the currency of the present rent over the price either in the first year thereof, or in the first year preceding it. But section 32 sets out rules as to enhancement on this ground, or more properly speaking, rules in respect of calculation of the enhancement. Section 32(*a*) provides that the Court shall compare the average prices during the decennial period immediately preceding the institution of the suit with the average prices during such other decennial period as it may appear *equitable and practicable* to take for comparison; and section 32(*c*) provides that if in the opinion of the Court it is not *practicable* to take the decennial periods prescribed in clause (*a*), the Court may, in its discretion, substitute any shorter periods therefor.

Thus in (*a*) the second decennial period is one that it may appear equitable and practicable to take; and as all periods (within reasonable limits) are now practicable, equity is really the criterion. In (*c*), however, the criterion is not equity and practicability but practicability (in the opinion of the Court) only, thus contemplating either the position, natural in the years just after the Act came into operation, when price lists might not be available for any year or any group of years, or perhaps a position such as arises in the present instance where the currency of the rent is only fifteen years, or, again, possibly both these and other positions.

It is a commonplace that the legislature in 1885 envisaged a more or less progressive rise in prices and contemplated that the only question was the quantum of the rise. The accepted view, at least where there had been no previous enhancement under section 30(*b*), was that any decennial period practicable was also equitable and often the period from 11 to 20 years back was used for comparison as being most equitable.

On the 6th August, 1929, the proprietor of the Dumraon estate made an application under section 30(*b*) in respect of the holdings of the respondent raiyats, the rents of which had been fixed under section 105 of the Bengal Tenancy Act to take effect from 1321 F. (corresponding to September, 1914), the enhancement on the previous rent being two annas in the rupee. [The decree for the enhancement had, it may be stated, actually been passed more than fifteen years before the institution of the suits under section 30(*b*)]. The decennial periods taken for comparison were 1909 to 1918 and 1919 to 1928. It does not appear that any objection was taken in the first Court to acceptance of these decennial periods. The comparison showed that in respect of both rabi and paddy lands enhancement of slightly over four annas in the rupee was admissible. The Munsif granted an enhancement at four annas in the rupee to take effect from 1338 F.

On appeal by the raiyats the learned District Judge dismissed the suits in a succinct judgment which is here reproduced :—

"There is clearly an error in the learned Munsif's calculations. The rents of these holdings were fixed under section 105, Bengal Tenancy Act, with effect from the year 1914. The learned Munsif in calculating the enhancement admissible has gone back to the year 1909. Now the existing rents have been current only since the year 1914 and the learned Munsif should, therefore, have not taken into account any rise in prices earlier than the year 1914. Taking the period of 14 years from 1915 to 1928 and dividing it into two periods of seven years for comparison I find that the enhancement admissible would be less than six pies in the rupee. Accordingly the appeals are allowed with costs and the original suits dismissed".

The two controversial points arising on this judgment are, first, whether the Munsif was entitled to take into account, that is to say, to include in his second decennial period, any years prior to 1321 F. or whether that period must in law be within the currency of the present rental as the appellate Court has held; and, secondly, whether section 32(*c*) is available, when the learned District Judge utilised it, not because in his opinion it was impracticable to take a decennial period but because in his opinion, though practicable, it was not legal to do so: in other words, is his view of the law correct.

The fact that the second decennial period lies partly before and partly after the enhancement of 1321 F., from which the present rent commenced is a peculiarity of the present case, which, however, does not appear to be of much practical importance since the five years 1909 to 1913 inclusive might, on the record as it stands, be compared with the five years 1924 to 1928 inclusive.

As to the first point, the view taken by the learned District Judge that the rise in the average local prices of staple food-crops must be determined on the figures of prices within the currency of the rental itself, at first appeared novel; but we understand that it has been accepted by at least one Judge of the Court sitting singly though we have not been referred to the record. The view generally accepted, however, is that the first or later decennial period [or any shorter period in the circumstances set out in section 32(*c*)] is a device for calculating what may be called the average (risen) price, during the whole of the current settlement, whereas the second or earlier decennial period is intended to indicate the average price from which the rise in price has taken place and may be either within or without the currency of the present rent and, in circumstances like the present, ought in equity to be the period antecedent to the currency of the present enhanced rent. Strictly speaking, a rise during the currency of the present rent would be a rise in the average price throughout the period of currency over the price at the outset. But just as the later decennial period is a device whereby to secure a figure for the average (and alleged risen) price throughout the currency of the present rent, so is the earlier decennial period in respect of the average price over which there has been such alleged rise. The theory seems to be that the rise referred to in section 30(*b*) is at least in circumstances like the present, a rise over the previous period. And after an enhancement under section 30(*b*) the earlier decennial period would ordinarily, and almost always would equitably, be the ten years before the present rent became current. The view of the District Judge that the earlier period for comparison must be within the currency of the present rent does not appear to be necessary under the terms of section 30(*b*) and there are many practical reasons against it. The considerations in favour of the view are well set out in the judgment of James, J. in *Rameshwar Prasad Singh* v. *Bihari Kahar*(1), decided on the 22nd November, 1934.

The decision of the second point depends upon the first point. Impracticability in the opinion of the judge is the only ground upon

(1) (1934) S. A. 1231 of 1932 (unreported).

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which the decennial periods can be discarded. If in law they must lie within the period of less than twenty years during which the rent is current, that condition is satisfied, but if they need not so lie, section 32(*c*) is not available and the only criterion of the earlier period (practicability being admitted) is equity.

It may be observed that in the particular cases, it would seem that the raiyats were by no means prejudiced by the inclusion of the years 1914—1918 (1321 to 1325 F.) in the earlier decennial period.

Let the record be submitted to his Lordship the Chief Justice.

On this reference.

Sushil Madhab Mullick (with him *N. K. Prasad II and Ramnandan Prasad*), for the appellant. There is nothing in Section 32 of the Bengal Tenancy Act which precludes the court from taking a period preceding the date when the rent was last settled for the purpose of comparing the average prices. There is no warrant for the proposition laid down by the District Judge that the earlier period for comparison must be within the currency of the existing rental. This view of the District Judge has been criticised in *Maharaj Kumar Ram Ranbijoy Prasad Singh* v. *Mathura Rai*(1) and *Rameshwar Prasad* v. *Behari Kahar*(2).

[NOOR, J.—Section 30(*b*) contemplates that the rise in price has been during the currency of the existing rent and has continued up to the institution of the suit.]

Yes. Therefore, it would be more equitable to choose a period prior to the settlement of the existing rental in order to determine the rise. The provisions of section 32 are mandatory. The words "equitable" and "practicable" in clause (*a*) only contemplate the equity and practicability of taking periods which are not periods of abnormal fall or rise in prices. Under clause (*c*) shorter periods can be taken only when it is not *practicable* to take decennial periods. When the Act was enacted the legislature

(1) (1935) S. A. 928—953 of 1931 (unreported).
(2) (1934) S. A. 1231 of 1932 (unreported).

contemplated a practical difficulty in some cases where the price lists might not be available for any year or number of years just after 1885. Now that a complete price list commencing from 1887 is available, the discretion vested in the court by virtue of clause (*c*) does not arise.

[Referred to sections 37 and 113 of the Bengal Tenancy Act, *Kamala Prasad Singh* v. *Bankey Prasad Singh*(1), *Muhammad Abdul Hasnat* v. *Rambilas Singh*(2), *Nirmal Kumar* v. *Gauri Prasad*(3) and *Rameshwardhari Singh* v. *Mahabir Singh*(4).]

Parmeshwar Dayal (with him *P. P. Verma*), for the respondents. The second decennial period to be taken for comparison should fall within the currency of the existing rent.

[JAMES, J.—The legislature contemplated that this period during the currency of the rent *may* be taken and not *must* be taken.]

If we take a period which is prior to the settlement of the existing rent, that would be going behind the Act itself. The language of section 30(*b*), read with section 32, clearly indicates that in calculating the rise in the average prices one has not to go back to a period beyond the currency of the existing rental. The "impracticability" contemplated by section 32(*c*) only means that if the court cannot take two decennial periods within a short time during the currency of the existing rental then and then alone a shorter period may be substituted. No other consideration as to impracticability comes in.

[NOOR, J.—Why do you say that the taking of any other decennial period is impracticable in the present case?]

(1) (1929) 10 Pat. L. T. 693.
(2) (1929) 10 Pat. L. T. 869.
(3) (1929) 10 Pat. L. T. 888.
(4) (1929) 10 Pat. L. T. 700.

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Because the level of prices in that other period which is prior to the date when the present rate was first fixed or settled has already been taken into consideration.

In clause (*c*) the reference is to *time* only. The word " equitable " is not used. The omission is not accidental but deliberate. It contemplates the physical impracticability of taking two periods from a short space of time.

[Referred to " Selections from Papers relating to the Bengal Tenancy Act ", page 437.]

The passage from the speech at page 437, last paragraph, gives a clue to the intention of the legislature as manifested in section 32. Stress is laid on the words " any period during the currency of the rent....."

Sushil Madhab Mullick, not called upon in reply.

S. A. K.

Cur. adv. vult.

KHAJA MOHAMAD NOOR, J.—These fourteen second appeals arise out of the same number of suits for enhancement of rents of occupancy holdings of the defendants on the ground of rise in prices of staple food crops under section 30 of the Bengal Tenancy Act. The rent of all these holdings except perhaps of the one involved in second appeal no. 1012 of 1932 was settled under section 105 of the Bengal Tenancy Act in the year 1914. That rent came into operation from 1321 Fs. These suits for enhancement of rent were instituted just after the completion of fifteen years since the settled rent came into force. The learned Munsif gave the plaintiff decrees for enhancement at the rate of four annas in the rupee. For the purpose of comparison under section 32(*a*) of the Bengal Tenancy Act he took the two decades just preceding the institution of the suits, that is to say, he compared the average prices of the decennial period

just before the institution of the suits with the decennial period just preceding it. The suits having been instituted just after fifteen years since the rent was settled under section 105, it is obvious that three years of the earlier decennium fell into the period which was prior to the settlement of rent. The learned District Judge on appeal has dismissed the plaintiff's suits entirely. He held that the learned Munsif was not empowered to include for comparison any period prior to the settlement of rent under section 105 of the Bengal Tenancy Act. Presumably on his interpretation of sub-clause (*c*) of section 32 he took into consideration only the period of the currency of rent and divided it into two periods and compared the one with the other; and having found that the rise was only six pies in the rupee, declined to give any enhancement at all. These appeals came up for hearing before a Division Bench of this Court (Macpherson and Varma, JJ.); but considering the importance of the question involved, they suggested that the appeals be heard by a Special Bench and hence these cases have come before this Bench.

The only question of law which arises is whether the learned District Judge was right in taking into consideration two shorter periods of seven years each, i.e., only the period within the currency of the present rent; and whether he was right in holding that any period before the settlement of rent could not be taken into consideration. In order to decide this an examination of the provisions of law for enhancement of rent on the ground of rise in prices of the staple food crops is required. Section 30 of the Bengal Tenancy Act mentions the various grounds on which the money rent of an occupancy holding can be enhanced. We are only concerned with sub-clause (*b*) of that section which authorises enhancement of rent on the ground that there has been a rise in the average local prices of staple food crops during the currency of the present rent. It is obvious that the rise contemplated in this sub-clause is the rise over

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the prices which prevailed just at or about the time when the rent was fixed. The principle is obvious. The rent represents a share of the produce of the land which from ancient times the cultivators of the soil were paying to the Government of the time being and which is now payable to the landlords. The money rent represents the price of the share of the produce which the landlord is entitled to receive from the raiyats. Any rise or fall in the price of staple food crops necessarily disturbs this proportion of the share of the landlord and the raiyat. Therefore the framers of the Bengal Tenancy Act provided both for enhancement and reduction of rent on the ground of rise and fall of prices of the staple food crops. It is obvious from the principles on which these enhancements and reductions of rent are based that the rise contemplated in section 30(*b*) of the Act is the rise over the price which was prevailing at about the time when the current rent was fixed. It is assumed that the rent must have been fixed on the basis of the price prevailing. Section 32 provides the machinery for finding out what enhancement should be allowed in case there is a rise in the price of these staple food crops. Sub-clause (*a*) enjoins upon the court to compare the average prices of the two decennial periods, one of them must be the period immediately preceding the institution of the suit and the other may be any one which is practicable to take. But at the same time it must be equitable to take that decade into consideration for comparison. By practicable I understand the period for which figures are available or can be obtained without undue inconvenience and trouble. According to the terms of the section the Court can take any period which it thinks equitable to take; the decennium may be one immediately preceding the decennium with which the comparison is to be made or any earlier decennial period. Ordinarily, however, it may be inequitable to go beyond the decennial period just preceding the time when the current rent was fixed, as in that case it will be unjust

upon the raiyats to pay enhancement on the basis of rise of price compared with the prices which prevailed many years before the time when the rent was fixed which must have been taken into consideration at the time of the fixing of the current rent. In the present case the rent under section 105 of the Bengal Tenancy Act must have been settled on the basis of rise in the decennium just preceding the settlement. The learned Munsif has in these cases taken the earlier decennial period, the one just before that decennium which was immediately preceding the institution of the suits. There is nothing in this sub-clause which enjoins upon the court not to go to a period before the date when the rent was last fixed or settled. Rather in my opinion it will be more equitable to compare the prices of the decennium just before the institution of the suit with the prices which prevailed in the decade just before the settlement of rent. The learned District Judge seems to have acted upon sub-clause (*c*) which in my opinion has no application. Shorter period can only be substituted for decades if it is in the opinion of the court impracticable to take the latter into consideration. It is to be seen that comparison between two decennial periods is obligatory. Sub-clause (*c*) is an exception. When the Bengal Tenancy Act was passed in 1885, the Legislature must have contemplated institution of suits immediately after the passing of the Act. No definite arrangements for the publication of the price lists were prevailing then as it is now. In clause (*c*) the Legislature provided for cases where it will be impracticable to get the prices of two decades. 'Practicable' in this clause again, I think, means the same thing as it does in clause (*a*). It is not practicable to compare the prices of two decades when evidence of prices is not available or evidence can only be procured with such an amount of inconvenience and trouble that the court thinks under the circumstances to be unnecessary. But those considerations do not arise now when we have got a complete price list of the staple food

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crops commencing from the year 1887. For all practical purposes clause (*c*) may now be taken to be obsolete. Therefore, the learned District Judge in my opinion was not right in confining himself to the periods of the currency of the present rent.

The learned Advocate for the respondents has drawn our attention to a passage in the speech of Sir Stuart Bayley given in the Imperial Legislative Council during the passage of the Bengal Tenancy Act. First of all, these speeches are of no value in interpreting the meaning of the statute. We must interpret sections of an Act on the basis of the plain wordings of the sections themselves. The Legislature must be taken to have meant what they have said and not what they contemplated to say but did not say. Here I feel no difficulty in interpreting the two clauses of section 32; but the passage in the speech referred to by the learned Advocate for the respondents does not support him. There Sir Stuart Bayley was comparing the position which was before the passing of the Bengal Tenancy Act with the position which would be after the passing of the Act; and it was pointed out by him that the landlords would be in a better position in securing enhancement because it would no longer be necessary for them to prove the prices prevailing before the time when the rent was fixed, as the section authorises the court to compare any two decennial periods even between the currency of the rent. The word used in the speech was 'may' and not 'must'.

I think the judgment of the learned District Judge in dismissing the suits cannot stand. Now the question arises—what should be done in this particular case. The learned Munsif has given an enhancement of four annas in the rupee. We cannot ignore the fact that since that judgment there has been a considerable fall in the prices of staple food crops on account of the general economic depression and as we are finally disposing of the cases now, we must see

that no injustice is done to the raiyats on account of the enhancement being at a figure which may be unjust and inequitable. In my opinion four annas in the rupee in the circumstances which have arisen since the order of the learned Munsif will cause undue hardship to the tenants. The question arises whether the suits should be remanded in order to determine what should be the fair enhancement in these cases or whether we should by some rough calculation fix a reasonable amount. I find that in a case which came up on appeal from the judgment of the same learned District Judge (Mr. Davies) and was from the neighbourhood of the village involved in the present suits, the learned District Judge himself gave enhancement at one anna in the rupee. That rate was upheld in this Court by my learned brother James [*Maharaj Kumar Ram Ranbijoy Prasad* v. *Mathura Rai*(1)]. I see no reason why the same amount of enhancement should not be allowed in these cases. The suits in those cases were instituted at about the same time when the present suits were instituted. Therefore in my opinion it will serve the ends of justice if instead of remanding the cases for an elaborate enquiry, enhancement be granted in all these cases at one anna in the rupee.

The only question for consideration which seems to have been specially raised is in regard to second appeal no. 1012 which corresponds to suit no. 737 of 1929 before the Munsif. It seems that in that case a specific defence was taken that the holding was at a fixed rate and not an occupancy holding. At one place the learned Munsif has said that the rent of all the holdings involved in these suits were settled under section 105 of the Bengal Tenancy Act. If so, no question of this holding being at a fixed rate did in fact arise. But later on the learned Munsif seems to have specifically considered the plea of the defendant of that suit about the fixity of the rent and while dealing with this plea, he does not seem to have

(1) (1935) S. A. 928—953 of 1931 (unreported).

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considered that the rent was enhanced in the year 1914. Assuming, however, that the holding involved in that suit was not the subject-matter of settlement of rent in 1914, the plea of fixity of rent cannot be entertained for a moment. Apart from the reasons given by the learned Munsif for coming to a conclusion against the defendant, it seems that even in the evidence given by the defendant of that suit, he only claimed that rent was not enhanced for hundred years. That is not enough now since the record-of-rights has been prepared and the presumption for fixity of rent on account of there being no change for twenty years is no longer available to the defendant. Therefore, I agree with the learned Munsif in holding that the defendant of that suit has failed to prove that the holding was at a fixed rent.

The appeals are partly allowed. The rent of all the holdings is enhanced at the rate of one anna in the rupee. The appellant will be entitled to half the costs of this Court as well as of the court of appeal below. The order for costs made by the Munsif will stand.

JAMES, J.—I agree.

AGARWALA, J.—I agree.

Appeals allowed in part.

FULL BENCH.

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February, 7, 11, 12, 13, 14.
April, 10.

Before Wort, Khaja Mohamad Noor and Agarwala, JJ.

ATUL KRISHNA ROY

v.

LALA NANDANJI.*

Hindu Law—Mitakshara—partition between father and sons—creditor's suit against father alone for prepartition

* Appeal from Appellate Order no. 250 of 1934, from a decision of K. P. Sinha, Esq., I.C.S., District Judge of Shahabad, dated 31st July, 1934, confirming the decision of Babu H. P. Sinha, Munsif, 1st Court of Arrah, dated 28th November, 1933.