house another. [AINSLIE, J.—The case you quoted is for rent. The present case is one for enhancement of rent, and the question before us if whether a suit for enhancement of rent of land covered with buildings would lie in the Revenue Court. COUCH, C. J.—The question is, whether enhancement applies to all kinds of land.] The case of *Mathuranath Kundu* v. *Campbell* (7)

(7) *Before Mr. Justice Norman, Officiating Chief Justice and Mr. Justice Loch.*

MATHURANATH KUNDU (DEFENDANT) *v.* W. CAMPBELL, MANAGER, ON BEHALF OF SCOTT MONCRIEFF (PLAINTIFF).*

The 29th April 1871.

Mr. *J.S. Rochfort* for the appellant.

Mr. *R. T. Allan* and Baboo *Bhowani Churn Dutt* for the respondent.

NORMAN, J.—This is a suit brought in the Collector's Court under Act X of 1859, for the rent of a very considerable tract of land described as a twelve-anna darpatni talook of Mauza Majumpur, and all the jotes, lately held tby Mr. Kenny in the sixteen-anna of the village two brick building in the shape of a half moon, each containing twenty apartments, with a brick-built godown standing on the said jotes, with khas, fallow, jalkur, cunkur, churs, &c., lakhiraj lands in Mauza Majumpur, a four-anna darijara of Mauza Majumpur, Mauza Moorareepore, and lakhiraj lands in Bahadoor Khalee. containing in all 1,330 bigas. The enumeration of the different tenures and ryots' holdings in the kabuliat, which was duly registered, is written in Bengali, and occupies twenty-five closely written sheets of the largest sized brief paper,

There are huts upon the land in question, and the brick-houses, included in the lease, are apparently of considerable value.

The Assistant Collector of Kooshtea, who tried the case, says:—"There are certain *pacca* houses on the land, and no doubt part of the rent stipulated is really on account of house-rent. But neither is the amount of house-rent nor the fact that anything is due on account of house-rent mentioned in the kabuliat. The houses are merely mentioned in a list of property, the mention of them is merely descriptive." There is also "a clause whereby the tenant is bound to keep the houses in good repair, and the right of letting them is made over to him specifically. The defendant objected before the Assistant Collector that a suit for rent could not be maintained in the Collector's Court. The objection was overruled by the Assistant Collector, and his decision has been affirmed by the Judge on appeal. The objection has now been renewed on special appeal before this Court. It seems to be supposed that there is a considerable conflict of decisions on the question before us; but I think that, when the cases are closely examined it will be found that such is not the case.

The preamable of Act X of 1859 recites that "it is expedient to reenact, with certain modifications, the provisions of the existing law relative to the rights of ryots with respect to the delivery of pottas and the occupancy of land, to the prevention of illegal exaction and extortion in connection with demands of rent, and to other questions connected with the same; to extend the jurisdiction of Collectors, and to prescribe rules for the trial of such questions, as well as of suits for the recovery of arrears of rent, and of suits arising out of the distraint of property for such arrears." Upon

*Special Appeal, No. 1953 of 1870, from a decree of the Additional Judge of Nuddea, dated the 15th June 1870, affirming a decree of the Assistant Collector of that district, dated the 26th June 1869.

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shows that the suit, where the rent sought is for the land and not for the house, must be brought in the Revenue Court. There is a distinction between shop-rent and rent for the land on which a shop is built. The words of Act X are general. There is nothing in the wording of the Act which shows that

the language of this preamble, I desire to observe that the suits for the recovery of arrears or rent do not appear to be limited in any way. There is nothing to restrict the word "rents" to rents due from ryots. The 23rd section enacts that "all suits for arrears of rent due on account of land either khiraji or lakhiraj, or on account of any rights of pasturage, forest-rights, fisheries, or the like, . . . shall be cognizable by the Collectors of land revenue, and shall be instituted and tried under the provisions of this Act, and, except, in the way of appeal as provided in this Act, shall not be cognizable in any other Court or by any other officer, or in any other manner."

We have to consider whether the suit with which we have to deal is a suit for the rent of land. If so, the Collector's Court, and the Collector's Court alone, had cognizance of it under Act X.

If the principal subject of the demise, that for which substantially the rent is reserved, is land, I think it matters not that the value is increased by houses or other buildings standing upon the land. This Court so held in *Tarinee Persad Ghose* v. *The Bengal Indigo Company* (*a*). The rent of land does not represent its value in a state of nature or as jungle, but as improved land, and whether the improvement consists in the clearance of jungle, draining, fencing, accessibility by roads made upon or leading to it, contrivances for irrigation, or buildings erected upon the land, does not, in my opinion, in any way affect the question. In all cases such as I have supposed, the price for the use of the land in its improved state is rent, which can be sued for in the Collector's Court. By way of analogy, I desire to refer to the fact that in England it has long been settted that though the value of demised premises may be increased by the goods on the premises, yet the rent must be deemed to issue out of the house and land, and not out of the goods; and consequently a landlord does not lose his remedy by distress when goods are let with a house as where a furnished house is the subject of the demise, one rent only being reserved. See *Newman* v. *Anderton* (*b*). On the other hand, where the principal subject of occupation is a building or buildings, when the rent is substantially the price of the use and occupation of such building or buildings, the land on which the buildings stand being a merely subordinate matter, it may well be that the rent for such buildings cannot be truly described "as the rent of land either khiraji or lakheraj." The cases of *Maharja Dhiraja Mahtab Chand Bahadur* v. *Makund Ballabh Bose* (*c*), *Bipro Doss Dey* v. *Wollen* (*d*), and *Hari Mohan Sirkar* v. *Moncrieff* (*e*), 7th December 1170, fall apparently within this class of cases. If a zemindar could not sue a patnidar or an izaradar for rent under s. 23. of Act X of 1859, merely because there were a few houses on the land demised, he would in fact be wholly without remedy.

I am of opinion that in the present case the suit is a suit for the rent of land, and therefore that the decisions of the lower Courts must be affirmed with costs.

LOCK, J.—I quite concur.

(*a*) 2 W. R., Act X R., 9.

(*b*) 2 B. & P., N., R., 224.

(*c*) *Post*, App., 13.

(*d*) 1 W. R., 223.

(*e*) *Post*, App., 14.

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it applies only to cultivated land. A suit for enhancement of rent is still a suit for rent. The question, now, is one of jurisdiction, not of the right to enhance.

After going through the judgment of Mitter and Glover JJ., and all the cases cited, the learned counsel referred to two recent cases, *Brajanath Kundu Chowdhry* v. *Lowther* (1), and *Madan Mohan Biswas* v. *Stalkart* (2). [AINSLIE, J.—In the case of *Mathuranath Kundu* v. *Cambell* (3), Norman J., held that the minor portion of the land must follow the larger, which was in that case agricultural.] Norman, J. does not appear to draw this distinction. There are conflicting decisions on this point of jurisdiction. The purposes for which land is used is wholly immaterial. [COUCH, C. J.—This is a suit for enhancement of rent. Can the rent of lands occupied by buildings be enhanced?] That is a question, the answer to which depends on the merits of the case. After entertaining the suit, the Court may decide that such lands are not liable to enhancement.

Baboo *Ashutosh Dhur* on the same side. The question is, what is the meaning of 'land" as used in Act X. There is no definition given to the word in the Act, nor is there anything in the Act itself to show that the word should not bear its ordinary meaning, but be understood in a restricted sense applicable only to one description of land. The cases quoted in support of the opposite view refer principally to rights of occupancy in lands on which buildings stand. In a case of the 28th June 1862, *Nawab Hajee Mahomed* (4), it was held that a suit for rent of land, which did not include the rent of the house, would lie in the Revenue Court. In *Baboo Dhunput Singh* v. *Gooman Singh* (5) it was objected that a suit for rent at enhanced rates against a talookdar holding an intermediate position between the proprietor and ryot, would not lie in the revenue Court, but the

(1) *Post*, 121.
(2) *Ante*, 97.
(3) *Ante*, 115.
(4) Board's Collection of Act X Rulings, p. 47.
(5) 11 Moo. I. A., 463.

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Privy Council overruled the objection. In *Kali Kishen Biswas* v. *Sreemuttee Jankee* (1), the question was whether a right of occupancy was acquired under Act X in lands covered with buildings, or in lands not used for agricultural or horticultural purposes. [COUCH, C. J.—Is there any case holding that a suit for enhancement of rent of lands covered by buildings will lie in the Revenue Court?] The case of *Shaikh Nasur Ali* v. *Saadut Ali* (2) decided that the Revenue Courts have jurisdiction to determine the rent of land with a house on it. The judgment is very short, and it does not appear whether the present question was raised or not. [COUCH, C. J.—What was the land in this case given for?] The pottah merely shows that Sadhun Bewah, from whom the defendant claims by purchase, was substituted as a tenant in the place of her deceased brother. It gives the rate of rent which was to be paid, but contains no mention of any purpose for which the land was to be used. It is in the form of an ordinary ryoti pottah.

Mr. *Twidale* for the respondent.—There is really no conflict of decisions on the point raised in this appeal. There is not a single decision (except that of Mitter, J., in the present case) which distinctly holds that a suit for enhancement of rent of land covered by buildings will lie in the Revenue Court. In *Chotuck Pandoo* v. *Mirza Innayut Ali* (3), a Full Bench of the Agra High Court has held that land used for building purposes does not come within Act X of 1859. Looking at the Act as a whole, there cannot be any doubt that its object is to deal with the relationship between owners and cultivators of the soil. For instance, how can the provisions of s. 17 be made applicable to lands of the description in the present suit. In *Khalut Chunder Ghose* v. *Minto* (4) the object and purport of Act X was most fully discussed, and the learned Judge deciding that case has very clearly shown that

(1) 8 W. R. 250.

(2) W. R., Jan. to July 1864, Act X R., 102.

(3) 3 Agra Rep., 52.

(4) 1 Ind. Jur., N. S., 426.

land in Act X of 1859 means land which is the subject of cultivation. See also the cases of *Church* v. *Ramtanu Shaha* (1) *Khairudeen Ahmed* v. *Abdul Baki* (2), and *Ramdhin Khan* v. *Haradhan Paramanick* (3.)

Mr. *Montriou* in reply.—To limit the meaning of the word "land" is to introduce a new construction, new ideas, and new words into the Act. This limitation of meaning is not a safe legal rule of construction. There is nothing in Act X of 1859 to oblige this construction.

The jurisdiction of the Revenue Court to entertain a suit like the present, and the liability of the tenant to an enhancement of rent, appear to be confounded. The latter depends entirely on the merits of the case. It comes to this then, that, in order to decide whether the suit will lie, you will have to decide on the merits, *viz.*, to decide whether the tenant's rents can be enhanced or not. There cannot be a distinction on the question of jurisdiction, between a suit for arrears of rent and a suit for arrears of rent at enhanced rates. The general principle will have to be decided whether Act X of 1859 deals with such lands at all.

COUCH, C. J.—This suit was brought in the Court of the Deputy Collector of Jessore under cl 4, s. 23 of Act X of 1859, for arrears of rent at an enhanced rate, of land held by the defendant in the Jessore Bazar. The land was occupied by a building, which was admitted to be the property of the defendant, and no part of the rent claimed was alleged to be due on account of the building. When, or under what circumstances, the building was erected does not appear. The Deputy Collector made a decree for rent at an enhanced rate, which was reversed by the Officiating Judge of Jessore on the ground that the suit could not have been brought under Act X of 1859. He seems to have considered it as a suit for the rent of a house which it was not, but possibly he may have meant the rent of the land

(1) *Ante*, 105,
(2) *Ante*, 103.
(3) *Ante*, 107.

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upon which the house stood. On special appeal to this Court the learned Judges by whom the case was heard were divided in opinion,—Glover, J., holding that the rent of land used for building purposes cannot be enhanced by a suit under Act X of 1859, and Mitter, J., holding that a suit for arrears of rent of land, although it was occupied by a building, was within cl. 4 of s. 23; apparently assuming that if a suit for rent would lie a suit for enhanced rent would. And if by land in that clause is meant land occupied by a building, I do not see how the conclusion that a suit for a higher or enhanced rent of such land may be brought in the Collector's Court can be avoided. The erection of a building upon the land with the consent of the landlord does not give to the occupant a right to hold the land perpetually at the same rent. If his rent was liable to be raised before, it would be so still, unless the circumstances amounted to an implied contract on the landlord's part that he should always hold at the same rent, or, in fact, to the grant of a perpetual tenancy at a fixed rent, which would be determined by the Court in a suit between them. If, as Mitter, J., thinks, s. 6 of Act X applies, and a ryot holding such land for twelve years has a right of occupancy, s. 17 must also apply so far as the ground for enhancement can be made applicable. But I think that in determining what is the meaning of "land" and "holding land" in Act, X we must look at all the provisions of the Act. It may be assumed that it was not intended that one part of it should apply to one kind of land and another part to another, and that land in s. 23 should have a diffe ent meaning from what it has in other sections. The Deputy Collector says with truth that it is extremely difficult to apply to bazar lands occupied merely as building ground the provisions of s. 17, which are manifestly intended to be applied to the rent of lands used for agricultural purposes. And these are not the only provisions in the Act of which that may be said. S. 112 and the following sections can only apply to land used for cultivation. The intention of the Legislature is to be deduced from the whole Act, and a construction which makes the whole of it consistent is to be preferred. I think this is the ground of the decisions in this Court that lands used for building

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urposes are not liable to enhancement under Act X. And when we consider that a right of occupancy of land used for building purposes at a permanent rent may depend in some cases upon the terms of the original letting or upon equities arising out of the landlord's conduct, the suit for a higher or enhanced rent seems to be properly cognizable in the ordinary Civil Courts. I therefore think the decree should be confirmed.

AINSLIE, J.—I concur.

BAYLEY, J.—I am of opinion that the suit for enhancement under the circumstances of this case will not lie under Act X. of 1859, and the current of decisions is to that effect.

Decree affirmed.

Before Mr. Justice E. Jackson and Mr. Justice Mitter.

BRAJANATH KUNDU CHOWDHRY AND OTHERS (PLAINTIFFS) *v.* LOWTHER (DEFENDANT).* 1872 *Feby.* 9.

Act VIII of 1869 (*B. C.*)—*Lands occupied with Buildings, Suit for Enhancement of Rent of—Jurisdiction.*

A plaintiff brought a suit for enhancement of rent of lands occupied with buildings, under Act VIII of 1869 (B. C.)

Held, per E. JACKSON, J., that, though Act VIII of 1869 (B. C.) does not apply to lands used for building purposes, the Civil Court has jurisdiction to determine suits concerning the rent of such lands, and therefore had jurisdiction to entertain the present suit.

Held, per MITTER, J., that the word "land" in Act VIII of 1869 (B. C.) is used in its ordinary sense, quite irrespective of the purposes for which it is applied, and that a suit for enhancement of the rent of land on which a house is built, will lie under Act VIII of 1869 (B. C.)

THE plaintiffs, before the passing of Act VIII of 1869 (B. C.) served the defendant with a notice under Act X of 1859, demanding enhanced rent for their tenure on all the grounds specified in s. 17 of the Act. After the service of this notice, Act VIII of 1869 (B. C.) came into force.

* Special Appeal, No. 633 of 1871, from a decree of the Additional Judge of Hooghly, dated the 6th March 1871, affirming a decree of the Moonsiff of that district, dated the 29th December 1870.