APPELLATE CIVIL.

Before Sir Francis W. Maclean, K. C. I. E., Chief Justice, and Mr. Justice Geidt.

1907
Nov. 25.

SHAMBHU CHANDRA HAZRA
v.
PURNA CHANDRA PAL.*

Record of rights—Bengal Tenancy Act (VIII of 1885), ss. 108, 109, sub-sec. (3)—Settlement Officer, power of—Revision of entries—Objection by tenants—Second appeal—Settlement of rent.

Section 108 of the Bengal Tenancy Act does not warrant the Settlement Officer in revising his entries as to *mal* lands in the record-of-rights.

The Act gives to tenants ample opportunity for the correction of mistakes in the record-of-rights; but the tenants to avail themselves of the opportunity must make an objection to the draft-record, or institute a suit under s. 106 of the Act after the final publication of the record.

No second appeal lies from the decision of a Settlement Officer settling rent under s. 109 of the Bengal Tenancy Act.

SECOND APPEALS by the plaintiff-landlord, and by some of the tenant-defendants.

On the 27th July 1901, the dur-putnidar, Sambhu Chandra Hazra applied for a survey and record-of-rights in respect of 127 and odd acres of lands in mauza Nazarpur in the district of Burdwan in the occupation of 51 tenants under him. On the 5th September 1902, the dur-putnidar further prayed for assessment of fair and equitable rent. On the 31st March 1903, the Settlement Officer published the draft record-of-rights and informed the parties that the record would be open for inspection and that objections would be received within one month. No objections being preferred within the month, the record-of-rights was finally published on the 9th June 1903, and the Settlement Officer proceeded to settle fair and equitable rents. On the 14th August

*Appeals from Appellate Decree, Nos. 1033 and 1081 of 1905, against the decree of G. K. Deb, District Judge of Hooghly, dated Jan. 30, 1905, confirming the decree of Pramatha Nath Dutt, Settlement Officer of Uluberiah, dated Dec. 22, 1903.

1903, some of the tenants preferred their objections as regards the mode of measurement and the entry as to their status of settled raiyats holding *mal* lands, asserting that their status was that of raiyats holding at a fixed rent. Accordingly the Settlement Officer, on the 22nd December 1903, after enquiry, altered the entry in the record-of-rights and recorded as *lakhiraj* the lands which had been put down as *mal*. He decided against the tenants on their other objections. On appeal, these orders were upheld by the Special Judge.

The landlord preferred a second appeal (No. 1033) for the alteration made in the entry in the record-of-rights and for the limitation of enhancement of rent imposed by the Settlement Officer.

The tenants also preferred an appeal (S. A. No. 1081) solely on the ground that the Settlement Officer was wrong in allowing enhancement of rent.

Babu Sarat Chandra Roy Chowdhury (*Babu Charu Chandra Bhattacharya* with him), for the appellant (in S. A. No. 1033). A Settlement Officer cannot alter entries of *mal* lands made by him in a record-of-rights, after its final publication, into *lakhiraj*, without a plaint being properly filed before him under s. 106, Bengal Tenancy Act. In this case no such plaint was filed.

[GEIDT J. Could not the tenants' petitions of ob ection be treated as plaints?]

The petitions were unstamped. The Special Judge also holds that the petitions were not plaints within the meaning of s. 106. But he is of opinion that the Settlement Officer could alter the records under s. 108. Section 108 however has no application. Revision of any decision made under ss. 105, 106 or 107 is possible under that section. Here the Settlement Officer is said to have revised the finally published record-of-rights. The tenants raised no objection either when the draft records were being prepared when they had the opportunity to do so, or after the draft publication when they were allowed a month's time to file objections.

As regards the second point, the Settlement Officer in fixing an arbitrary limit to the enhancement on the ground of hardship

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apparently had in mind s. 36 of the Bengal Tenancy Act. That section however does not apply to a case of increase of rent on increase of area, and only provides for *gradual* enhancement. Section 52 is imperative.

Babu Nagendranath Ghosh, for the respondent, conceded that s. 108 had no application to the present case, but submitted that the tenants took objections upon the landlords' application for settlement of rent, and that the question of the correctness of the entries arose upon such objections. Under s. 107, a proceeding for settlement of rent under s. 105 is a judicial proceeding, and it is open to the tenants in such a proceeding to raise any question which they might legitimately raise in a suit instituted for the same purpose.

[MACLEAN, C. J., drew attention to s. 105, cl. (*2*).]

This clause does not override or go beyond the provisions of s. 103B. I am entitled to prove that an entry is incorrect in a proceeding by the landlord under s. 105 as in any other.

[MACLEAN C. J. You should have done so when the draft records were being published or within the month allowed to you after the draft publication. You had also the right to institute a suit under s. 106 within three months after the final publication. You, however, did not avail yourself of any of these opportunities.]

The omission on the part of the tenant to contest the proceedings before the Settlement Officer or to institute a suit under s. 106 does not confer greater authority on the entry than is given to it by s. 103B. It is open to me to prove that the entry is incorrect, in any subsequent judicial proceeding in which the entry is relied upon.

On the second point, s. 109A, cl. (*3*) precludes a second appeal against the decision of the Settlement Officer on the amount of rent.

Babu Sarat Chandra Roy Chowdhury, in reply.

Babu Nagendranath Ghosh, for the appellant (in S. A. No. 1081). The decision that the tenants were settled raiyats is based on an erroneous reading of s. 115 of the Act. Under s. 50, presumption should have been made in favour of the tenants that they were tenants at fixed rates from the fact that they were holding lands at the same rent for over twenty years

before settlement proceedings were instituted: *Secretary of State or India* v. *Kajimuddi*(1).

[MACLEAN C.J. Can you at this stage of the case go behind the entry?]

The entry is not conclusive under s. 103B. Section 105(2) has no application to the present question of the status of a tenant. Under s. 103B the entries are only to be presumed to be correct until the contrary is proved.

Babu Sarat Chandra Roy Chowdhury was not called upon to reply.

The judgment of the Court (MACLEAN C.J. and GEIDT J.) was delivered by

MACLEAN C.J. These appeals arise out of settlement proceedings initiated by the landlord who applied for the preparation of a record-of-rights. An enquiry was held by the Settlement Officer and a draft record-of-rights published on the 31st March 1903, the parties being informed that the record would be open for inspection, and that objections would be received within one month. No objections were preferred, and on 9th June 1903 the record-of-rights was finally published. The Settlement Officer then proceeded in accordance with the landlord's application, to settle fair and equitable rents, and on the 14th August 1903 the tenants, who had been recorded as settled raiyats holding *mal* lands, put in a petition objecting that some of their lands recorded as *mal* were *lakhiraj*, and that their status was that of raiyats holding at a fixed rent. The Settlement Officer on enquiry gave effect to the first of these objections, and altered the entry in the record-of-rights, recording as *lakhiraj* lands which had been put down as *mal*. As regards the second objection, the Settlement Officer held that the raiyats had not proved that they had held lands at a uniform rate of rent since the permanent settlement. The Settlement Officer's orders on these points were upheld by the Special Judge on appeal.

In appeal No. 1033 which is by the landlord, it is objected that the Settlement Officer was not competent to revise the entries

(1) (1899) I. L. R. 26 Calc. 617.

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relating to *mal* lands. The Special Judge has held that section 108 of the Bengal Tenancy Act gives the Settlement Officer power to alter these entries. That section provides that a Revenue Officer . . . . . "may on application or of his own motion within twelve months from the making of any order or decision under section 105, section 106, or section 107 revise the same." It seems clear to us that the entry as to *mal* lands was not made under any of the sections mentioned. Section 105 refers to the settlement of fair and equitable rents. Section 106 relates to the decision of disputes regarding entries in the record-of-rights. These disputes can only be decided by the presentation of a plaint on stamped paper. No such plaint had been presented, nor had the Settlement Officer professed to settle any such dispute under section 106. Section 107 merely refers to the procedure to be adopted under the two preceding sections, and directs the Revenue Officer to make in the record-of-rights a note of all rents settled under section 105 and of all decisions of disputes passed under section 106. It appears to us, therefore, that section 108 did not warrant the Settlement Officer in revising his entries as to *mal* lands in the record-of-rights. The Act gives to tenants ample opportunity for the correction of mistakes in that record. The draft record is prepared in the presence of landlord and tenant. The draft is then published, and objections to any entries therein are invited and considered before it is finally published. A still further opportunity is afforded even after final publication by section 106, which allows the parties to institute before the Revenue Officer a suit for the decision of any dispute regarding the entries. In the present case the tenants made no objection to the draft record, nor did they after final publication institute any suit regarding the *mal* lands. The Settlement Officer had no authority to revise the entries regarding *mal* lands in the record-of-rights, and his orders on this point must be set aside.

Another objection taken in the landlord's appeal is in regard to the limitation of enhancement of rent imposed by the Settlement Officer who has directed that the rents shall not be enhanced so as to be in excess of one and a half times the existing ren It is urged that such a limitation is inequitable in cases where the

tenant is holding an area in excess of that on which his existing rent was fixed. We are, however, unable to entertain this objection, as the order complained of is a decision settling a rent, and on such a point no second appeal lies: see section 109 (subsection 3) of the Bengal Tenancy Act.

In appeal No. 1081 preferred by the tenants, the sole ground urged is that the Settlement Officer was wrong in deciding that their status was not that of tenants holding at fixed rents. For the reasons already given in a former part of this judgment regarding *mal* lands, we are of opinion that the Settlement Officer had no power to entertain their objection as to their status. Their status had been recorded in the draft record as that of settled raiyats. No objection to this entry was made before final publication, nor was any plaint presented to the Settlement Officer for a decision of a dispute on this point.

The result is that the landlord's appeal No. 1033 succeeds in part. The entries in regard to *lakhiraj* lands must be expunged, and the lands entered as *mal*. In this appeal, we direct that each party bear its own costs.

Appeal No. 1081 fails, and is dismissed with costs.

S. M.