

Privy Council Appeal No. 87 of 1919.
Bengal Appeal No. 74 of 1916.

**Khetramoni Dasi, since deceased (now represented by Dunia Chand
Baral and another) - - - - -** *Appellants*

v.

Jiban Krishna Kundu and others - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 13TH DECEMBER, 1920.

Present at the Hearing :

LORD MOULTON.

LORD SUMNER.

SIR JOHN EDGE.

[*Delivered by LORD MOULTON.*]

The action to which this appeal relates is brought by the respondents, who are holders of a lease from the appellants of land situated in the Sunderbunds, with the object of obtaining a reduction of rent on the ground that a large portion of the holding has been washed away by the surrounding waters, and that the area leased has been reduced thereby to the extent of nearly a quarter. They rely on Section 52 (b) of the Bengal Tenancy Act, 1885, which enacts that :—

“ Every tenant shall be entitled to a reduction of rent in respect of any deficiency proved by measurement to exist in the area of his tenure or holding as compared with the area for which rent has been previously paid by him, unless it is proved that the deficiency is due to the loss of land which was added to the area of the tenure or holding by alluvion or otherwise, and that an addition has not been made to the rent in respect of the addition to the area.”

The facts of the case are not substantially in dispute, although the extent of the diminution of the area is not agreed between the parties and must be determined by measurement in the proper way. There is no doubt that there has been a diminution and no case is set up that there has been any previous increase of

the holding without increase of rent so as to bring it under the latter part of the clause.

The substantial defence of the respondents (who are grantees from the Government of the holding which they have leased to the plaintiffs) is that the case comes under Section 197 of the Bengal Tenancy Act, 1885, which reads as follows :—

“ Nothing in this Act shall be deemed to prevent a proprietor or a holder of a permanent tenure in a permanently settled area from granting a permanent mukarrari lease on any terms agreed on between him and his tenant.”

It is contended that by the terms of the lease to the plaintiffs they are precluded from denying their obligation to pay the full rent thereby fixed on the ground of flood or diluviation, and it is to meet a defence founded upon this provision that the plaintiffs contend that they are protected by Section 52 (b). The appellants, on the other hand, contend that they hold from the Government a permanent tenure in a permanently settled area, and therefore are excepted from the operation of Section 52 by the provisions of Section 197 above referred to.

By the definition Clause 2 (12) of the Act “ permanent settlement ” means the permanent settlement of Bengal, Behar and Orissa made in the year 1793. The grant from the Government to the appellants certainly does not come within that description if it be taken literally, for it was not made until December, 1880. But, apart from this, their Lordships are of opinion that the terms of the grant are not such as to render the lands to which it refers “ a permanently settled area.” In substance the payment to the Government is not to commence for twenty years from 1861, and is to go on at increasing rates until the expiration of 99 years, when the following clause comes into force :—

“ That after the 99th year the grant shall be liable to survey and re-settlement, and to such moderate assessment as may seem proper to the Government of the day ; the proprietary right in the grant and the right of engagement with Government remaining to the grantees, their heirs, executors or assigns, under the conditions generally applicable to the owners of estates not permanently settled ; and that revenue equal to the amount annually paid from the 51st to the 99th year shall be paid annually by the grantees, their heirs, executors or assigns, until such survey and re-settlement or re-assessment as is described above be effected.”

These terms are in such strong contrast with what is known as “ permanent settlement ” in India that their Lordships are of opinion that the appellants have failed to establish that the lands are situated in a permanently settled area. Hence they hold that Section 179 does not apply to this holding, and that the respondents are entitled to the relief which they claim under Section 52 (b). This was the judgment of the High Court of Judicature at Fort William in Bengal from which this appeal is brought, and their Lordships will therefore humbly advise His Majesty that this appeal be dismissed with costs.



In the Privy Council.

KHETRAMONI DASI, SINCE DECEASED (NOW
REPRESENTED BY DUNIA CHAND BARAL AND
ANOTHER)

v.

JIBAN KRISHNA KUNDU AND OTHERS.

DELIVERED BY LORD MOUTTON.

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