

**Nistarini Gupta Vs. Watson and Co.**

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**SooperKanoon Citation :** [sooperkanoon.com/856592](http://sooperkanoon.com/856592)

**Court :** Kolkata

**Decided On :** Mar-31-1884

**Reported in :** (1884)ILR10Cal544

**Judge :** Maclean and ;Field, JJ.

**Appellant :** Nistarini Gupta

**Respondent :** Watson and Co.

**Judgement :**

**Field, J.**

1. We think that the lower Appellate Court has taken a mistaken view of this case. The suit was one for rent against an ijaradar. The ijaradar claimed a deduction in respect of certain land which was taken up for public purposes, that is to say, for a railway. The Munsiff held that the special stipulation in the kabuliat relied upon by the plaintiff did not cover a case of this kind. The Subordinate Judge took a different view and held that the clause in the kabuliat was wide enough to cover the case of land taken for public purposes.

2. We have heard the clause in the kabuliat, and we think it was intended to meet the ordinary cases in which the area of land demised is diminished by diluvion, or other similar causes, and that the present case is not within the intention of the parties. Looking at the question from another point of view, it would be inequitable

that the zamindar, who has received the whole amount of compensation, should be allowed further to obtain from the ijaradar the former rent undiminished; in other words, after receiving the principal, should be allowed to continue to receive interest on this principal in the shape of rent. We think that this is not properly a case of abatement, as that term is ordinarily used in the rent law. It is a case in which the tenant seeks to have a deduction in respect of land taken away from the whole area demised, not by natural causes, but by vis major. In this view we think that the, ijaradar is entitled to a deduction. But in order to obtain this deduction, we think he ought to show that in consequence of the land being taken for the railway, his receipts from the tenants of his ijara have been diminished; in other, words, that there were tenants on the land who, before it was taken, paid him rent, which they have ceased to pay since it was taken for the railway. The appellants' vakil informs us that there is evidence of this nature on the record, and we must direct, therefore, the lower Appellate Court to consider such evidence and decide the case accordingly. We set aside the decree of the lower Appellate Court, and remand the case for a fresh decision. The costs will abide the result.