

Gora Chand Haldar and anr. Vs. Rakhal Chandra Gope and ors.

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SooperKanoon Citation : sooperkanoon.com/876413

Court : Kolkata

Decided On : May-17-1922

Reported in : AIR1923Cal364,72Ind.Cas.37

Judge : Asutosh Mookerjee and ;Chotzner, JJ.

Appellant : Gora Chand Haldar and anr.

Respondent : Rakhal Chandra Gope and ors.

Judgement :

1. This is an appeal by the plaintiffs in a suit for recovery of arrears of rent on the allegation that the rent is livable in kind. The tenant defendants urged that rent was payable not in kind but in cash, and in support of this contention they relied upon a mutation order made by an Assistant Settlement Officer on the 17th July 1922, and amended on the 2nd September 1922. The plaintiffs thereupon assailed the validity of the mutation order on a variety of grounds. The Court of first instance came to the conclusion that the order was ultra vires and afforded no defence to the claim. Upon appeal the District Judge has held that rent has been validly commuted by an order under Section 40 of the Bengal Tenancy Act, which cannot be successfully impeached by the appellants. On the present appeal, we are invited to consider which of these conflicting views is correct.

2. It is plain from the materials on the record that no notice of the -application for commutation was served upon the plaintiffs who are some of the landlords of the

tenants defendants. The plaintiffs contend accordingly that the mutation order is not operative as against them. Section 40, Sub-section (2), provides that an application may be made to one of the Revenue Authorities mentioned therein for commutation. In the present case, such an application was made by the tenants. Although the section does not state explicitly that no order for commutation is to be made till opportunity has been afforded to the party liable to be affected thereby to appear and contest the application, it is obvious on first principles that no order should be made till notice of the application has been served. The object of the application for commutation is to secure an alteration of the most essential element of the tenancy, namely, the rent. It is of the utmost importance to the party whether the rent is to be paid in kind or cash and if the rent is to be paid in cash, what sum should, be taken as the proper amount payable in lieu of rent previously paid in kind. An order of this description cannot justly be made without notice to the party affected. We must consequently hold that the order was made without jurisdiction. This is not a case where proceedings properly initiated have been notified to the parties concerned, but there has been an irregularity in the service of notice. Here the Revenue Authorities assumed jurisdiction over persons who would be affected by their order without any notice served upon them. In such circumstances, the order must be regarded as ultra vires. As was observed by Willes, J., in *Cooper v. Wandsworth Board of Works* (1863) 14 C.B. (N.S.) 180 : 32 L.J.C.P. 185 : 9 Jur. (N.S.) 1155 : 8 L.T. 278 : 11 W.R. 646 : 143 E.R. 414 : 135 R.R. 643, 'a Tribunal which is by law invested with power to affect the property of one of Her Majesty's subjects, is bound to give such subject an opportunity of being heard before it proceeds that rule is of universal application and founded upon the plainest principles of justice.' There can be no dispute that an order under Section 40 made by a Revenue Officer without jurisdiction does not bind the Civil Court; see *Jadu Nath Manna v. Pran Krishna Das* 46 Ind. Cas. 455 : 27 C.L.J. 569 : 45 C. 769.

3. The result is that this appeal is allowed, the decree of the District Judge set aside and that of the Court of first instance restored with costs both here and in the lower Appellate Court.

