1957

*Asa Ram*
v.
*Ram Kali*

*Venkatarama Aiyar J.*

and that, accordingly, the tenant acquired the rights of a hereditary tenant. That decision has no application when the lease is, as held by us, not a prudent transaction binding on the mortgagors. In this view, the questions raised by Mr. Sinha on the construction of s. 30(6) and s. 11 of the Act and s. 15 of the Agra Tenancy Act, 1926, do not arise for decision.

In the result, the appeal is allowed, the decree passed by the Board is set aside, and that of the Revenue Officer, Meerut affirmed by the Commissioner, restored. The respondents will pay the costs of the appellants throughout, including the costs of the remand.

*Appeal allowed.*

---

1957

*November, 25.*

## CHOUDHURY DHARAM SINGH RATHI

*v.*

## THE STATE OF PUNJAB AND OTHERS

(S. R. DAS C. J., VENKATARAMA AIYAR, S. K. DAS, GAJENDRAGADKAR and A. K. SARKAR JJ.)

*Preventive Detention—Failure of the Advisory Board to submit its report within time—Effect—Detenu, if must be set at liberty—Preventive Detention Act (No. IV of 1950), ss. 10, 11.*

Submission of its report by the Advisory Board under s. 10 of the Preventive Detention Act within the time prescribed by that section is of the utmost importance to the detenu and if the Board fails to do so any further detention beyond that period becomes unlawful.

Consequently, where the case of the detenu was that the Advisory Board had not submitted its report within ten weeks of his detention and his detention thereafter had, therefore, become illegal and no attempt was made on behalf of the Government to controvert that case in the counter-affidavits filed on its behalf, the detenu must be set at liberty.

ORIGINAL JURISDICTION : Petition No. 135 of 1957

(Under Article 32 of the Constitution for a writ in the nature of *habeas corpus*).

1957

*Choudhury Dharam Singh Rathi*
v.
*The State of Punjab*

*Das C.J.*

*N. C. Chatterjee* and *Naunit Lal* for the petitioner.

*N. S. Bindra* and *T. M. Sen*, for the respondents.

1957. November 25. The following Judgment of the Court was delivered by

DAS, C. J.—This is an application for a writ in the nature of *habeas corpus* filed by the petitioner who was detained by an order made by the District Magistrate, Karnal under s. 3 of the Preventive Detention Act on the August 18, 1957, and which was approved by the State Government on August 29, 1957.

In para 10(xii) of his petition the petitioner stated that he made representations before the Advisory Board and personally appeared twice before it, but the Board had not yet passed any order and he contends that his detention has become illegal and bad. Under s. 10 of the Preventive Detention Act, the Advisory Board is enjoined, after going through the procedure therein laid down, to make its report to the State Government within ten weeks from the date of the detention. On the report being made the State Government has to take steps under s. 11 of the Act. If the report is against the detention the Government has no option but must release the detenu forthwith. In such a case the delay in the submission of the report may result in prolonging the detention beyond the period signified by the expression "forthwith" occurring in s. 11 read with s. 10. On the other hand if the report approves of the detention the Government may but is not bound to continue the detention and if it does decide to continue the detention, it has to fix the period of such detention. In this case also the delay in the submission of the report deprives the detenu of the advantage of a fresh decision by the State Government about the continuation of his detention. It, therefore, follows that in either case the making of the report within the time prescribed by law is of the utmost importance to the detenu and the failure to make the report in time may quite conceivably have the effect of unlawfully prolonging the detention and, therefore, after the expiry of the ten

1957

*Choudhury Dharam Singh Rathi*
v.
*The State of Punjab*

*Das C.J.*

weeks the detenu may well complain that he has been deprived of his personal liberty otherwise than in accordance with procedure established by law. The ten weeks' time within which the report of the Advisory Board was to be filed in this case expired on October 27, 1957. This Petition was filed on November 8, 1957. The detenu may well complain that on and from October 28, 1957, his detention has become illegal and bad and that, in substance, is what he has said in para. 10(xii) of his petition.

Learned counsel appearing on behalf of the State has submitted that there is no allegation in the petition that the Board has not submitted its report and that all that has been said is that the Board has not made any order. Says learned counsel that if the petitioner had stated that the Board had not submitted its report the State Government could then be expected to deal with that allegation. Under s. 10 of the Act the Board has no power to make any order to continue or discontinue the detention, but is only under a duty to submit its report to the State Government. In this context, therefore, a plain reading of para. 10 (xii) indicates that the grievance of the petitioner, in substance, is that the Board has not submitted its report within the prescribed period and that, therefore, his detention has become illegal. Learned counsel appearing for the State wanted time to ascertain whether the report had been submitted within the time. We do not think in the circumstances of this case any adjournment should be given. The allegation was definitely made in the petition that the Board had not done its duty and the detention was on that account characterised as illegal and bad but this paragraph has not at all been dealt with in either of the two affidavits in opposition that have been filed. There was no scope for any misunderstanding about the petitioner's case. In these circumstances, we are of opinion that no good reason has been shown way any adjournment should be granted.

In the view we have taken on the effect of the non-compliance with the procedure laid down in s. 10 of

1957

*Choudhury Dharam Singh Rathi*
v.
*The State of Punjab*

*Das C.J.*

the Act, it is not necessary for us to go into the other points raised in the petition. We, therefore, direct that a writ be issued as prayed for and the petitioner be set at liberty forthwith.

*Writ issued.*
*Petitioner set at liberty.*

---

1957.

*November, 26.*

## INDU BHUSAN CHATTERJEE

*v.*

## THE STATE OF WEST BENGAL

(B. P. SINHA, JAFER IMAM and J. L. KAPUR JJ.)

*Public servant—Prosecution—Sanction—Essentials of a valid sanction—Prevention of Corruption Act,* 1947 (2 *of* 1947), *ss.* 5(2), 6—*Indian Penal Code* (*Act* 45 *of* 1860), *s.* 161.

The appellant, a public servant, was convicted under s. 5(2) of the Prevention of Corruption Act, 1917, and under s. 161 of the Indian Penal Code on a charge of accepting a sum of Rs. 100 as illegal gratification. It was contended for the appellant that the conviction was bad on the ground that the sanction for his prosecution was not valid because the officer competent to sanction the prosecution (1) had not applied his mind to the facts and circumstances of the case but merely perused the draft prepared by the Police and (2) did not investigate the truth of the offence. The evidence, however, showed that he went through all the papers placed before him which gave him the necessary material upon which he decided that it was necessary in the ends of justice to accord his sanction:

*Held,* that the essentials of a valid sanction were present in the case and that the conviction was valid.

*Gokulchand Dwarkadas Morarka* v. *The King,* (1948) L.R. 75 I.A. 30, referred to.

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 18 of 1955.

Appeal from the judgment and order dated December 1, 1954, of the Calcutta High Court in Criminal Appeal No. 322 of 1953, arising out of the judgment