

## **PRIVY COUNCIL**

Dinabandhu Chatterjee

Vs.

Ashutosh Chatterjee

P.C.A.No.28 of 1937

(Lord Thankerton, CJ. Lord Romer, Sir Lancelot Sanderson, Sir ShadiLal and Sir George Rankin JJ.)

18.07.1938

### **JUDGMENT**

#### **SIR SHADILAL J.**

1. This is an appeal from a judgment and decree of the High Court of Judicature at Fort William in Bengal dated 21st June 1935, which reversed the judgment and decree of the Second Subordinate Judge of Faridpur dated 13th August 1932, and set aside the sale of an estate for arrears of land revenue. On 22nd March 1930, a permanently settled estate, bearing tauzi No. 299 of the BackergangeCollectorate, was sold by public auction for arrears of land revenue. Three persons, namely AshutoshChatterjee, RaiRajniKantaChatterjee and Suresh Chandra Chatterjee, were proprietors of that estate, each owning one-third share therein. The total land revenue assessed on the estate is Rs. 13-1-1, of which Rs. 5-8-10 has to be paid by 12th January of each year, and the remainder Rs. 7-8-3 by 28th March. It is common ground that in respect of the amount of Rs. 5-8-10 which was payable on or before 12th January 1930, two co-sharers, namely the plaintiff, AshutoshChatterjee and defendant 2, RaiRajaniKantaChatterjee, duly paid their share of the revenue, but the third co-sharer, Suresh Chandra Chatterjee, failed to make any payment. There stood however to the credit of the estate 9 annas and 9 pies, which had been overpaid on account of the previous instalments. After giving credit for this small sum, the Collector found that there was a deficit of Rs. 1-3-9 in the amount of land revenue, which was to be paid by 12th January 1930. The estate was therefore entered in the Arrear List of the Collectorate, and sold on 22nd March 1930, for Rs. 700 to the appellant, DinabandhuChatterjee, who was the highest bidder at the auction. Thereupon, AshutoshChatterjee impeached the sale on various grounds; and after an unsuccessful

appeal to the Commissioner, he brought the present suit in the Civil Court against the auction-purchaser and his own cosharers in the estate. The main ground, upon which the sale was attacked, was that the Collector had no jurisdiction to hold the sale on 22nd March 1930. This ground of attack was repelled by the purchaser, and the dispute between the parties was embodied in the following issue framed by the Court :

Was the sale of Taluk No. 299 by the Collector of Backergange on 22nd March 1930, at revenue sale, illegal, without jurisdiction, and contrary to the provisions of Act 11 of 1859 ?

2. This issue was answered in the negative by the trial Judge, who upheld the sale and dismissed the suit. On appeal to the High Court, his judgment was set aside, and the suit was decided in favour of the plaintiff. From the judgment of the High Court the auction-purchaser has brought this appeal to His Majesty in Council, and the question which their Lordships have to determine, is whether the sale was held on a date before the latest date fixed for the payment of the arrear of revenue. What is the law which defines an arrear of revenue, and which determines the date upon which an arrear must be paid, the consequence of non-payment thereof on that date being that the estate in arrear becomes liable to sale at public auction ? The law on the subject is contained in the Bengal Land Revenue Sales Act 11 of 1859. By Section 2 of that statute, it is provided that:

If the whole or a portion of a kist or installment of any month of the era according to which the settlement and kistbandi of any mahal have been regulated be unpaid on the first of the following month of such era, the sum so remaining unpaid shall be considered an arrear of revenue.

3. This Section refers to the kist or installment of land revenue fixed in accordance with the terms of settlement and kistbandi of an estate, and contemplates the payment of a kist or installment every month. It then defines an arrear of revenue. If the whole or a portion of a kist or installment of revenue is not paid on, or before, the last day of the month, during which it was to be paid, the sum remaining unpaid on the first day of the following month shall be deemed to be an arrear of revenue. It will be observed that the Section merely defines an arrear of revenue. It makes it clear that the proprietor of an estate is allowed to pay a kist or installment on any day during the month for which it has been fixed. The Section does not impose any penalty for the non-payment of the revenue during the month; it merely states that if it has not been paid during the month in which it was to be paid, the sum remaining unpaid becomes on the first day of the following month an arrear of revenue. But the defaulting

proprietor does not suffer any harm, even if he does not pay immediately the revenue so declared to be in arrear. The law gives him a period of grace for payment, and this concession is granted by Section 3 of the statute which is in these terms :

Upon the promulgation of this Act the Board of Revenue shall determine upon what dates all arrears of revenue . . . shall be paid up in each district under their jurisdiction, in default of which payment the estates in arrear in those districts . . . shall be sold at public auction to the highest bidder.

4. In pursuance of Section 3 the Board of Revenue has fixed for an estate paying an annual revenue exceeding Rs. 10, but not exceeding Rs. 50, the 12th January and 28th March in each year as the latest dates, on or before which, an arrear of land revenue must be paid. It is only when the latest date for the payment fixed under the Section has expired without payment, that the estate becomes liable to sale at public auction on a date thereafter which may be fixed for the purpose. The question therefore arises whether the sale in dispute was held after the expiry of the last date of payment as contemplated by the aforesaid Section. Now Ex. C, which is a certified Copy of the kistabandi relating to this estate, shows that Rs. 13-1-1, the total revenue assessed on the estate, is payable in monthly installments according to the Bengali era, that is to say, the revenue is payable by installments each month from Baisakh to Chaitra. These installments are called kists in Section 2 of the Act, and if any installment is not paid during the prescribed month, the sum so unpaid becomes an arrear on the first day of the following Bengali month. But, as already stated, the mere fact that there is an arrear to be paid in respect of an estate does not lead to any untoward consequence until the expiry of the last date of payment fixed under section 3. As the mere failure to pay each installment in the prescribed month does not entail any penalty, the details of the monthly installments were omitted from the tauzi ledger of an estate, and only the demand for arrears, for which the estate would become liable to sale after the latest date of payment, was entered in the tauzi ledger. The tauzi ledger of this estate shows Rs. 5-8-10 as the net demand payable in respect of the January kist. The expression " kist, " as explained in the Tauzi Manual issued by the Board of Revenue, Bengal, means the period between one latest day for payment of arrears of revenue and the next, and is not used in the restricted meaning assigned to it in Section 2 of the Act. Thus, in the case of this estate, which paid revenue in two installments ;the expression "January kist" means the period beginning on 29th September and ending on 12th January and the "kist day" means the latest day of payment on which that period expires-now 12th January 1930, as shown in the tauzi ledger, was the latest date for payment of that sum. But it appears from the tauzi

ledger that of the aforesaid net demand, Rs. 4-5-1 were duly paid on or before 12th January 1930; and that only Re. 1-3-9 remained unpaid on the last day fixed for the payment of arrears. On the expiry of that day the estate became liable to sale by public auction, and the sale on the date in question, namely 22nd March 1930, did not infringe the law.

5. The judgment of this Board in *Mt. SaraswatiBahuria v. SurajnarayanChaudhuri*, shows that their Lordships thought that the sum for the non-payment of which the property was sold in that case was a kist as contemplated by Section 2 of the Act, and that 28th March was the date fixed for the payment of the kist. They accordingly held that the sum did not become an arrear until 1st April. The sale held before 7th June, the last date fixed for the payment of arrears, was therefore invalid. That judgment cannot be taken as displacing the meaning which their Lordships have, in the present case, shown to attach to the entry of the date 12th January 1930, under the head " date " in the tauzi ledger. It is to be observed that the appeal in that case was heard *ex parte* and the meaning of the entry "28th March" and of the references to " kist" was not examined in the light of the information now available. Moreover the evidence in that case included the sale proclamation issued under Section 7 of the Act, which was misleading. The case must therefore be regarded as proceeding upon its own facts.

6. The learned Judges of the High Court, who decided the present case, have wrongly assumed that what is called a net demand in the tauzi ledger in respect of the estate in question was a kist as contemplated by Section 2, and that the kist was payable in January and became an arrear on 1st February. They think that the latest date for the payment of an arrear, accruing on 1st February, was 28th March 1930, and that the sale, which was held on 22nd March 1930, was therefore held before the date on which the estate incurred the liability to sale. The reasoning of the learned Judges is faulty, as it involves the assumption that Rs. 5-8-10, for the payment of which 12th January was fixed, was an installment under Section 2 of the Act; while it was an arrear of revenue, for the payment of which 12th January 1930 was fixed under section 3. In the event of non-payment on, or before, the date fixed for the payment of arrears, the estate became liable to sale, and the sale which was held on 22nd March 1930, after the latest date for payment of arrears, was within the jurisdiction of the Collector. The result of the above discussion is that the appeal should be allowed, the decree of the High Court dated 21st June 1935 set aside, and the decree pronounced by the trial Judge on 13th August 1932 restored with costs here as well as in the High Court. Their Lordships will humbly advise His Majesty accordingly.

Appeal allowed.

Cases Referred.

(1931) 18 AIR PC 57=130 IC 676= 10 Pat 496 (PC)