

Privy Council Appeal No. 18 of 1917.

Bengal Appeal No. 84 of 1913.

Sheikh Sharfuddin Hossain, since deceased
(now represented by Shamsuddin Hossain
and others), and Another - - - *Appellants,*

v.

Samanta Radha Charan Das, since deceased,
and Another - - - - - *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 18TH JUNE, 1918.

Present at the Hearing :

LORD SHAW.

SIR JOHN EDGE.

MR. AMEER ALL.

SIR WALTER PHILLIMORE, BART.

[*Delivered by* LORD SHAW.]

This is an appeal from a judgment and decree of the High Court at Calcutta, dated the 1st July, 1913. That decree reversed a judgment and decree of the Subordinate Court of Cuttack, dated the 30th March, 1911.

The suit was one to set aside a sale for arrears of Government revenue. The sale had been conducted under the provisions of the leading statute, Act XI of the year 1859.

By section 33 of that statute it is provided that no such sale "shall be annulled by a Court of Justice, except upon the ground of its having been made contrary to the provisions of this Act, and then only on proof that the plaintiff has sustained substantial injury by reason of the irregularity complained of." The defect of procedure which is said not to be merely an irregularity but to amount to an illegality is this: that publication of the notification of sale was necessary in the Urya vernacular Government "Gazette," circulating in the district. By order of the Lieutenant Governor, manifestly made for purposes of public convenience, it was provided that a notification of sales should not appear in that publication. On the

hypothesis which is by no means admitted, that non-publication in the "Urya Gazette" was an irregularity, the question for the Board is whether this was an illegality, so as to make the sale "contrary to the provisions" of the Act.

It is admitted by Mr. Dunne, with his usual candour, in the argument presented to the Board, that the main provisions applicable to the conduct of sales, namely, those of sections 3, 5, and 6 of the statute, have been, in all points, complied with. These sections provide, not only for notification in the Official Gazette, which is, on the proper interpretation of those sections, the Official Gazette published in Calcutta, but they also make provisions for a local mode of communication in the particular district, viz., "in the language of that district, in the office of the collector," otherwise as set forth in section 3.

In these circumstances their Lordships are of opinion that no ground has been made out in the present case for the argument that this sale has been made by procedure contrary to the provisions of this Act.

There remains further the question of irregularity. Their Lordships are of opinion, not only that there has been no contravention of the provisions of the statute, but that, even if their view was that any irregularity had been committed, upon which it is not necessary to enter, there has been no proof offered that any substantial injury arose to the appellants in consequence of the irregularity complained of.

Their Lordships say no more upon the question, except that on the latter point all the Courts below are agreed, that is to say, that it is not established that the appellants bring forward a case of any substantial injury attributable to the irregularity which they allege. The essential conditions for setting aside the sale have accordingly not been satisfied.

In those circumstances their Lordships do not doubt that the High Court have come to a correct conclusion, and they will humbly advise His Majesty that this appeal be dismissed with costs.

In the Privy Council.

SHEIKH SHARFUDDIN HOSSAIN,
SINCE DECEASED (NOW REPRESENTED BY SHAMSUDDIN HOSSAIN AND OTHERS), AND ANOTHER.

vs.

SAMANTA RADHA CHARAN DAS,
SINCE DECEASED, AND ANOTHER.

DELIVERED BY
LORD SHAW.