

Privy Council Appeal No. 28 of 1937

Bengal Appeal No. 26 of 1935

Dinabandhu Chatterjee - - - - - *Appellant*

v.

Ashutosh Chatterjee and others - - - - - *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 JULY, 1938

Present at the Hearing:

LORD THANKERTON.

LORD ROMER.

SIR LANCELOT SANDERSON.

SIR SHADI LAL.

SIR GEORGE RANKIN.

[*Delivered by* SIR SHADI LAL.]

This is an appeal from a judgment and decree of the High Court of Judicature at Fort William in Bengal dated the 21st June, 1935, which reversed the judgment and decree of the Second Subordinate Judge of Faridpur dated the 13th August, 1932, and set aside the sale of an estate for arrears of land revenue.

On the 22nd March, 1930, a permanently settled estate, bearing tauzi number 299 of the Backergange Collectorate, was sold by public auction for arrears of land revenue. Three persons, namely, Ashutosh Chatterjee, Rai Rajani Kanta Chatterjee 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 the 12th January of each year, and the remainder Rs. 7/8/3 by the 28th March. It is common ground that in respect of the amount of Rs.5.8.10. which was payable on or before the 12th January, 1930, two co-sharers, namely the plaintiff, Ashutosh Chatterjee and the second defendant, Rai Rajani Kanta Chatterjee, 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 Re.1/3/9 in the amount of land revenue, which was to be paid by the 12th January, 1930.

The estate was, therefore, entered in the Arrear List of the Collectorate; and sold on the 22nd March, 1930, for Rs.700 to the appellant, Dinabandhu Chatterjee, who was the highest bidder at the auction.

Thereupon, Ashutosh Chatterjee 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 co-sharers in the estate. The main ground, upon which the sale was attacked, was that the Collector had no jurisdiction to hold the sale on the 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 the 22nd March, 1930, at revenue sale, illegal, without jurisdiction, and contrary to the provisions of Act XI of 1859? ”.

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 XI of 1859. By section 2 of that statute, it is provided that:—

“ If the whole or a portion of a kist or instalment 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 ”.

This section refers to the kist or instalment of land revenue fixed in accordance with the terms of settlement and kistbandi of an estate, and contemplates the payment of a kist or instalment every month. It then defines an arrear of revenue. If the whole or a portion of a kist or instalment 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 instalment 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 ”.

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 the 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, exhibit C, which is a certified copy of the kistbandi relating to this estate, shows that Rs.13/1/1, the total revenue assessed on the estate, is payable in monthly instalments according to the Bengali era, that is to say, the revenue is payable by instalments each month from Baisakh to Chaitra. These instalments are called kists in section 2 of the Act, and if any instalment 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 instalment in the prescribed month does not entail any penalty, the details of the monthly instalments 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 mentions 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 instalments the expression “ January Kist ” means the period beginning on 29th September, and ending on the 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 the

12th January, 1930; and that only Rs.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.

The judgment of this Board in *Saraswati Bahuria v. Surajnarayan Chaudhuri* (I.L.R. 10 Patna 496), 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 the 28th March was the date fixed for the payment of the kist. They accordingly held that the sum did not become an arrear until the 1st April. The sale held before the 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.

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 the 1st February. They think that the latest date for the payment of an arrear, accruing on the 1st February, was the 28th March, 1930, and that the sale, which was held on the 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 the 12th January was fixed, was an instalment under section 2 of the Act; while it was an arrear of revenue, for the payment of which the 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 the 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 the 21st June, 1935, set aside, and the decree pronounced by the Trial Judge on the 13th August, 1932, restored, with costs here as well as in the High Court. Their Lordships will humbly advise His Majesty accordingly.

In the Privy Council

DINABANDHU CHATTERJEE

2.

ASHUTOSH CHATTERJEE AND OTHERS

DELIVERED BY SIR SHADI LAL

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