

(1926) 06 CAL CK 0010
In the Calcutta High Court

Abani Nath Mukerji

APPELLANT

Vs

Secretary of State

RESPONDENT

Date of Decision : 24-06-1926

Acts Referred:

Cess Act, 1880 — Section 15

Citation : AIR 1927 Cal 322

Judgement

1. This appeal by the plaintiff raises a question of some importance with regard to the procedure relating to assessment of cesses on re-valuation of an estate u/s 15 of the Cess Act. We must at the outset say that the facts of this case reveal considerable irregularities in the office which was concerned with the levying of rates under the Cess Act.

2. In this case it appears that there was a re-valuation of the estate of the plaintiff in the years 1914 and 1915. But cesses were realized at the old rate till March 1919 and although there was a re-valuation of the estate no one discovered that cesses were being realized at the old rate for a period of about three years. It seems that somebody woke up on the 28th March 1919 and found that the rates were being realized at a rate considerably below the re-valuation made in the years 1914 and 1915 and demand was made for the increased rate for three preceding years which the plaintiff refused to pay. There were proceedings before the revenue authorities which were unsuccessful and the plaintiff was compelled to pay a sum of Rs. 1,600 odd which was realized by the certificate procedure.

3. This suit has been brought for the purpose of a declaration that the plaintiff was not bound to pay the amount assessed on re-valuation by reason of the failure of the revenue authority to serve notice under the last paragraph of Section 40 of the Cess Act and for recovery of the amount which the plaintiff had been compelled to pay in excess of the old rates and also for a declaration that the certificates lodged against him up to January 1919 are void.

4. The Subordinate Judge who tried the case in the first instance passed a decree

in favour of the plaintiff. On appeal by the Secretary of State for India in Council that judgment has been reversed.

5. Two questions have been urged against the judgment of the learned District Judge on behalf of the appellant. The first question is that the provisions of Section 40 of the Cess Act are mandatory and imperative and the failure to comply with the provisions of that section renders the levy of the rates void; and secondly, that cesses could not have been realised on re-valuation from after the year of the completion of the re-valuation. In the present case the re-valuation was made of a particular estate belonging to the plaintiff u/s 15 of the Cess Act and we have to construe the Act having regard to that fact in view. As at present advised we are of opinion that in order to levy cesses on any estate where the matter falls within the provisions of Section 40 the procedure laid down in that section is imperative and unless it is followed the taxing authority cannot impose any burden of taxation on any person.

6. But in the present case the difficulty arises from the fact that there was revaluation only with regard to this particular estate and we are unable to hold that Section 40 applies when there is revaluation of only one particular estate. The section commences with these words:

When the rate of road cess and public works cess to be levied in any district shall have been determined for any year and published in the Calcutta Gazette as provided in Section 155 the Collector of the district.

shall do certain things. If these provisions are scrutinized it would appear that they provide for the procedure to be adopted with reference to the whole district, that is to say, the Collector must cause the rate so determined to be published by affixing a notification in some conspicuous place in his office in every civil Court, in every Police Station and in the office of every Sub-Divisional Officer within the district and he shall cause such rate to be proclaimed by beat of drum throughout the district and shall also cause to be served a notice on the holder of every estate within the district and so on.

7. It is argued strenuously on behalf of the appellant that it would not be proper to confine this procedure to a case where cess is to be levied on the entire district, but ought to be made applicable also where there is a re-valuation of a part of a district or of an estate. But it seems that there cannot be the same reason for the publication and service of notice where a particular estate is concerned and not an entire district. Because when only an estate is re-valued it is to be presumed that the owner of the estate, who only is concerned in the matter, will take proper steps in order to acquaint himself as regards the matter of re-valuation. However that may be we cannot make any surmise as to what was the intention of the legislature. We must construe the section as it stands and as the section stands we must hold that Section 40 is applicable only where there is any cess to be levied in the district as a whole, that is, if there is a district re-valuation; and where there is a re-valuation only on an estate or a

tenure in any district it is not imperative that notice should be served on the holder of that estate or tenure according to the provisions of the last paragraph of Section 40. That being so, we are unable to, hold that the levy of the rate is unauthorised in this particular case.

8. Then comes the question whether the revenue authority was justified in levying the cess in 1919 from the year 1916, that matter must be governed according to law or any rule which has the effect of law. u/s 12 it is the Board of Revenue which has to fix a date from which the re-valuation is to take effect. Section 15 may be taken to be a supplement to that section. But there is no provision in Section 15 as to the period from which the re-valuation is to take effect. that is provided in Rule 30 made by the Board of Revenue under the authority given by Section 182 of the Cess Act.

9. It is contended on behalf of the appellant that Rule 30 is ultra vires of the Act. But Clause (1) of Section 182 is quite general and we cannot say that that rule is ultra vires of the law. Although we feel that it is a hardship on the plaintiff to have to pay back cess for three years on account of some negligence in the office of the taxing authority we cannot say that this realisation of the cess is illegal.

10. We must therefore dismiss the appeal with costs.