

(1937) 04 CAL CK 0033
In the Calcutta High Court

Administrator General of Bengal-Co-plaintiff	APPELLANT
Vs	
SM. Jnanadayini Devi and Others	RESPONDENT

Date of Decision : 09-04-1937

Acts Referred:

Bengal Sanitary Drainage Act, 1895 — Section 23

Citation : AIR 1937 Cal 483 : 173 Ind. Cas. 334

Hon'ble Judges : S.K. Ghose, J; Jack, J

Bench : Full Bench

Judgement

Jack, J.—This appeal is by the Administrator-General of Bengal as executor to the estate of the late Sagore Chandra Dutta, proprietor of Touji No. 109/1, on account of a suit for the recovery of the drainage cess from the tenure-holders. The cess to the amount of Rs. 14,502-1-8, which was the total amount of cess due from 1920 to 1946, was paid by the Administrator-General on account of this touji in November 1926. The amount due by the tenure-holder, was not ascertained when the original assessment was made in 1920. It was only ascertained after a notification during the settlement operation in 1927 that the said officer should record the amount of cess for which the tenure-holders were liable. The Record of Rights was finally published in 1930 and it then appeared that the amount to be paid by the tenure-holders, who are being sued in this case, was Rs. 247-11-6 annually. The present suit was instituted on 15th April 1932 for the recovery from the tenure-holders of the cess from 28th September 1920 to 14th April 1932. The suit was decreed for the period of four years only up to the date of the institution of the suit on 15th April 1932. The Administrator-General claimed that the cess should have been decreed for the whole period from 1920 and that the Court of appeal below was wrong in holding that the claim for the previous period was barred by limitation. The ground on which it is urged that the claim is not barred is that until the publication of the Record of Rights in 1930 the amount of cess which was payable by the tenure-holders was unknown and the right of action for the recovery of cess only arose in 1930 and therefore none of the amount is barred. Section 23, Bengal Sanitary Drainage

Act, 1895, provides thus:

Any holder of an estate or tenure, who shall pay to the Collector any instalment of such rate payable under the last preceding section, shall be entitled to recover half the amount of the instalment so paid from the holder of a tenure or cultivating raiyat holding lands within the local area under such holder of an estate or tenure in the same proportion and in the same manner as he is entitled to recover road cess or public works cess, payable under the provisions of the Cess Act, 1880.

2. Under the provisions of the Cess Act, the amount payable by the tenure-holders is to be settled by the Government after due notification and it is claimed therefore that inasmuch as the amount due from the tenure-holders had not been previously settled the proprietor could not sue for the amount due from the tenure-holders until that had been done. This is no doubt true, but at the same time this cannot affect the limitation as regards the amount due from the tenure-holders. The cess was due from 1920 when the original assessment was made. In 1924 the Administrator-General brought a suit for a declaration that he was not liable to pay and that suit was compromised in 1926 and it was held that in lieu of Rs. 32,532-3-8, the total amount payable in 26 years, the amount of Rupees 14,502 should be paid in one instalment. The fact that the amount due from the tenure-holders had not been fixed by the Government would not affect limitation as regards the tenure-holders. The cess for the year 1920 became due at the end of that year and the claim for that cess would become barred after the expiry of three years. At the time the proprietor made arrangements with the Government for the payment of the cess it was open to him to point out that owing to the fact that the amount due from the tenure-holders had not been fixed he was unable to recover any cess from the tenure-holders, or it was open to him to bring a suit against the tenure-holders for the amount which he considered it was due to him and it would have been for the Court to determine what proportion of the cess was due from the tenure-holders. In any case merely because the amount due had not been definitely fixed in 1920 it would not make the tenure-holders liable after the expiry of three years for the cess from the year 1920. It would appear therefore that the learned Judge in the Court below is right in holding that the tenure-holders are not liable for the cess for the period beyond four years from the date of the institution of the suit.

3. On the side of the respondents it is contended that they are not liable for the amount recorded in the settlement record as the Settlement Officer had no authority to record the amount and they are not bound by any statement made in the record. However it is clear that u/s 102, Bengal Tenancy Act, read with Section 31, Bengal Sanitary Drainage Act, it was open to the Government to empower the Settlement Officer to record the amount of cess for which the tenure-holders were liable. In any case since there was no appeal by the respondents against the decree for the amount claimed for these four years the decision as to the amount due is *res judicata*. Therefore the cross-objection to

the effect that in view of the admissions of the plaintiffs and the proved facts of the case, the learned lower Courts erred in not holding that the Record of Rights was incorrect and that in any case it would not afford a safe and sure basis for decreeing any claim against the defendants cannot be maintained. The objection that the respondents are only bound to pay half the actual amount which was paid by the Administrator-General by arrangement with the Government is also *res judicata*. Moreover, as the Court below has pointed out the amount was reduced in consideration of the fact that it was paid in a lump sum and the amount was accepted as payment of the full amount of the cess. The terms of the compromise show that there was no remission of the rate of cess and it was recognized at that time that the appellant was entitled to claim the full rate of cess from the tenure-holders.

4. In these circumstances it must be taken that the appellant paid cess at the full rate and therefore he is entitled to recover cess at the rate recorded in the Record of Rights from the tenure-holders. In any case, as stated before, this question is *res judicata* inasmuch as there was no appeal from the decree as to the rate. As regards the question of damages there appears to be no reason why the respondents should not be held liable for damages from the time the rate of cess payable by the tenure-holders was fixed, namely, 1930. There was no longer any excuse for with-holding the payment of the cess which was due once it had been finally published in the Record of Rights that cess to the amount of Rs. 247-11-6 was due from the tenure-holders. As regards the two years, namely, from April 1930 to April 1932, the appellant therefore appears to be entitled to damages at the rate claimed, namely, at 25 per cent. per annum. With this modification the appeal and the cross-objection are dismissed. There will be no order as to costs.

S.K. Ghose, J.

5. I agree.