
(1935) 11 CAL CK 0007
In the Calcutta High Court

Case No : S.A. 1260, 1261 and 1262 of 1933 and Appeal No. 1260 of 1933

Babu Jitendra Nath Roy

APPELLANT

Vs

The Secretary of State for India in Council

RESPONDENT

Date of Decision : 22-11-1935

Acts Referred:

Citation : (1935) 11 CAL CK 0007

Final Decision : Dismissed

Judgement

S.A. 1260 of 1933.

1. This appeal has arisen out of a suit instituted by the Plaintiff Respondent for declaration that certain revaluation, proceedings in connection with assessment of cess under the provisions contained in the Cess Act (Bengal Act IX of 1880) were illegal, ultra vires and not binding on the Plaintiff. The question relevant for the purpose of this appeal raised before the Court is below, and which was argued in support of the appeal, was whether the revaluation for imposition of cess made in respect of Jessore portion of Touzi No. 132 of the Jessore Collectorate, under sec. 21 of the Cess Act was ultra vires, illegal and not binding against the Plaintiff, for non-service of notice under sec. 16 of the Cess Act, upon the Plaintiff. the Plaintiff not having been otherwise cognizant of the order calling for return as prescribed by law, before the making of valuation under sec. 21 of the Act. The Courts below have concurrently found on evidence before the Courts that there was no proof of any notice served on the Plaintiff as contemplated by sec. 21 of the Cess Act, and that the Plaintiff was not otherwise cognizant of the same before the estate in question was valued for cess purposes, under sec. 21 of the Cess Act. On the findings referred to above, the decision of the Courts below was that the assessment of cesses on revaluation was illegal and not binding on the Plaintiff.

2. It was urged in support of the appeal that the service of notice under sec. 16 of the Cess Act was merely a matter of procedure; non-service of such notice could not in any way vitiate the assessment proceedings; the jurisdiction of the

revenue authorities in the matter of revaluation in the case was acquired by the proclamation to make return by the parties concerned under sec. 14 of the Cess Act; the non-service of notice under sec. 16 of the Act could not render the proceedings invalid. There is no question that the publication of a proclamation gives jurisdiction to the Collector in the matter of assessment of cesses on proper valuation of lands; but the subsequent procedure contemplated by the Cess Act, for the purpose of making valuation as contained in sec. 16 of the Cess Act, could not be ignored, in fixing liability, so far as payment of cess was concerned. The elaborate provisions contained in secs. 16, 17, 18 leave no room for doubt that following the procedure mentioned therein was as much binding on the revenue authorities seeking to assess and impose liability as on the parties who were required to lodge returns on service of notice on them, as provided by sec. 16 of the Cess Act. There was penalty imposed for omitting to make return (sec. 18); and the provisions that follow, contained in secs. 19 and 20, make it abundantly clear how the failure to make returns after service of notice affects the right of the parties to collect rent in respect of the property sought to be assessed or reassessed to cesses under the Cess Act. It is also significant that it is only on not furnishing return after service of notice under sec. 16 that the Collector is empowered to make his own valuation. In our judgment the provisions contained in the Cess Act to which reference has been made above make it abundantly clear that service of notice under sec. 16 of the Cess Act was not merely a matter of procedure, but was a part of the law with reference to which valuation" or revaluation as contemplated by law could be made by the revenue authorities, and liability imposed in the matter of payment of cesses, and non-compliance with the law--by failure to serve notice--made the assessment of cesses invalid under the law. The service of notice is made imperative by law, for the purpose of valuation of lands under the Cess Act, and that must be the case,--in view of the position that the State would not impose any liability on a subject without giving him an opportunity to be heard. If there is any ambiguity in the statute,--although in our opinion there is none, -- in the matter of the effect of non-service of notice under sec. 16 of the Cess Act, it was the duty of the State to use language of precision when it was imposing liabilities upon its subjects; the benefit of the doubt is the right of the subject. The reasonable construction of the provisions of the Cess Act to which reference has been made above, leads to the conclusion that notice under sec. 16 of the Act was imperative, before assessment of cess could be made by the revenue authorities on valuation of lands; and notice not having been served, as provided by law, the Plaintiff was entitled to a declaration that the cess revaluation in respect of the Jessore portion of Touzi No. 132 was ultra vires, legal and not binding against him.

3. In the result, the appeal fails; and it is dismissed with costs.

S. As. Nos. 1261 & 1262 of 1933.

4. These two appeals have arisen out of suits instituted by the Plaintiff Appellant

in this Court, for declaration that a cess revaluation in respect of properties mentioned in the plaints was illegal and ultra vires and not binding on the Plaintiff. The question in controversy in the appeals relates to the assertion made by the Plaintiff in the suits that the revaluation in question was made on the basis of a Note to sec. 24 of the Cess Act (Bengal Act IX of 1880), and Rule 66 of the Cess Manual, which the Board of Revenue had no authority under the law to frame, and which were inconsistent with the definition of "cultivating raiyat" as contained in the Cess Act.

5. The Courts below gave their decision on the question mentioned above against the Plaintiff in the suits, in which these appeals have arisen. The question to be considered "is whether note to sec. 24 of the Cess Act, and Rule 66 made by the Board of Revenue was in consonance with the provisions of sec. 106 of the Act. There can be no question that it was within the competency of the Board of Revenue to make rules and otherwise provide for the proper execution of the Cess Act, in respect of valuation of the assessment and of the levy of cesses. The question then was whether there was anything contained in the Note to sec. 24 and in Rule 66 of the Cess Manual, inconsistent with or repugnant to the definition of a "cultivating raiyat" as contained in sec. 4 of the Cess Act,-- inasmuch as so long as the Note and the Rule in question are not repugnant to the provisions of the Act, they cannot be held to be ultra vires or inoperative. As has been repeatedly pointed out by this Court, that a raiyat may be a tenure-holder within the meaning of the Cess Act, and thus in order to claim the privilege of a cultivating raiyat under the Cess Act, a person must be an actual cultivator of the soil, and the total rent payable by him for all his holdings must not exceed Rs. 100 per annum. A raiyat may be a tenure-holder within the meaning of the Cess Act; and the distinction between a holder of a tenure and a cultivating raiyat, and not between a holder of a tenure and a raiyat, must be recognised. [See *Peary Mohan Roy v. Sarat Kumari Devi* 15 C.L.J. 428 (1912) and *Sarat Chandra Deb v. Dharani Mohan Roy* 32 C.W.N. 610: S.C. 47 C.L.J. 510 (1928)]. In our judgment therefore, the Note to sec. 24 of the Cess Act and Rule 66 in the Cess Manual, cannot be held to be ultra vires and inoperative, as made by the Board of Revenue without jurisdiction, They are not in any way inconsistent with the definition of "cultivating raiyat" as contained in sec. 4 of the Cess Act; and the Courts below have rightly held that revaluation under the Cess Act could not be held to be illegal on the ground that it was made on the basis of Note to sec. 24 of the Cess Act and Rule 66 of the Cess Manual, framed by the Board of Revenue, which were both in force at the time when the revaluation in question was made. On the conclusion arrived at by us, as mentioned above, the decree of the Courts against which these appeals were directed are upheld, and the appeals are dismissed with costs.