(1910) 01 CAL CK 0005

In the Calcutta High Court

Babu Surajdeo Narain APPELLANT

Vs

M.H. Mackenzie RESPONDENT

Date of Decision : 05-01-1910

Acts Referred:

Road Cess Act, 1871 — Section 4

Citation : 5 Ind. Cas. 254

Hon'ble Judges : Chatterjee, J

Bench : Single Bench

Judgement

Chatterjee, J.—The plaintiff is the landlord. The defendant is a mokararidar under him. Within the mokarari, certain specified land had been let out to the wife of the defendant by the plaintiff and, on a portion of this land, a hat is held. This hat has been assessed at an annual value of Rs. 1,000 and Rs. 62-8 has been assessed as road-cess upon it. The Deputy Collector says: "You pay this amount and recover it from your mokararidar with interest". The plaintiff, therefore, has brought this suit for recovery of this amount after having paid it to the Collector.

2. The defendant pleads that he is not liable and the reason given is that it was not open to the Collector to levy road-cess upon the profits of the hat and, as this amount has been illegally levied from the plaintiff, the defendant is not liable.

3. The question for decision has formed the subject of decision by a Full Bench of this Court in the case of The Secretary of Stale for India in Council v. Karuna Kant Chowdhry 6 C.L.J. 342 : 11 C.W.N. 1053 (F.B.), where it was held that profits from a hat or mela are not liable to road-cess because they do not come within the meaning of annual value of land as defined in Section 4 of the Road Cess Act. As regards the facts of this case, no doubt they are distinguishable from the facts in the Full Bench case. There the mela was held for a few days in the year upon agricultural lands belonging to raiyats, the zemindar letting out the land to a certain person and that person, in turn, giving to certain other persons, who are described as ijaradars, what is called an ijara of the right to hold a mela at a certain yearly rental. Here the land upon which the hat is held does not form

the subject of any other holding or tenure but is a part of the tenure of the defendant and the hats are held twice a week throughout the year. But the principal decision does not seem to be distinguish a (sic) The profits derived from the hat cannot be said to be rent or revenue within the meaning of the words in Section 4 of the Road Cess Act and as only the annual value of the land is assessable, the assessment upon the plaintiff was ultra vires. No doubt there is a rule of the Revenue Board authorising the assessment of hats under certain conditions but that rule, being at variance with the provisions of the Act itself, has been held to be ultra vires in the case of Uumed Rasul Shaha Fakir v. Anath Bandhu Chowdhury 28 C. 637. The plaintiff may seek a remedy but not in this suit. I must, therefore, dismiss the appeal with costs.

