

(1939) 12 CAL CK 0013
In the Calcutta High Court

Dilip Kumar Dutta Gupta and Others

APPELLANT

Vs

Sridhar Dalui and Another

RESPONDENT

Date of Decision : 04-12-1939

Acts Referred:

Cess Act, 1880 — Section 99

Citation : AIR 1940 Cal 110

Hon'ble Judges : Edgley, J

Bench : Division Bench

Judgement

Edgley, J.—In this case the petitioners were the plaintiffs in Rent Suit No. 2352 of 1938. They held a tenure under Touzi No. 401 of the 24 Parganas Collectorate. It appears that this estate fell into arrears in respect of the payment of cess under the Cess Act of 1880 with the result that the Collector issued a notification in respect of the estate u/s 99, Cess Act. After the issue of this notification the petitioners' tenants paid their rent direct to the Collector and in the rent suit with reference to which this application arises the tenants pleaded that the amount due from them as rent had already been paid. The main contention of the petitioners in this case is that Section 99, Cess Act, confers no authority upon the Collector to realize rent except rent payable directly to the owners of the estate which has been attached. The petitioners maintain that the rent due from them to the landlords of Touzi No. 401 was actually realized by the Collector, but, so far as their own tenants were concerned, their contention is that, in spite of the issue of the notification u/s 99, Cess Act, they nevertheless have a right to realize arrears of rent due from their own tenants. I am not prepared to accept this contention.

2. According to the general scheme of the Cess Act with regard to the realization of arrears of cess, it appears that the Collector is empowered, (a) u/s 98 to realize arrears of cess as a public demand or (b) to proceed u/s 99 of the Act. The policy of the Legislature in enacting Section 99 of the Act appears to have been to provide a less drastic method for ensuring the payment of Government

dues in respect of arrears of cess than that which has been provided by the Revenue Sale Law, under which estates in arrears may be sold free of encumbrances, and u/s 99, Cess Act, the only way in which intermediate tenures would be affected would be by reason of the payment of rent due to such intermediate tenures to the Collector instead of to the tenure-holders until such time as the total amount of arrears of cess due in respect of the defaulting estate or tenure had been fully recovered. The form of notice which is issued u/s 99, Cess Act, is contained in Schedule F attached to the Act. This notice recites that:

The occupiers, tenure-holders, under-tenants and raiyats on estate or tenure (the estate, tenure or lands to be here clearly designated) are hereby prohibited, until further order of the Collector, from making any payment of rent now or hereafter to become due from them in respect of any land comprised within such estate or tenure except to the Collector of the said district or to (name of person) hereby appointed to receive the same....

3. From the terms of this notice it is quite clear that the prohibition with regard to the payment of rent relates to all land comprised within the defaulting estate or tenure and, if this notice be read with para. 3 of Section 99, it is quite clear that, in the case with which we are now dealing, the Collector was not only authorized to collect the rent payable by the plaintiffs' tenants, but it is further clear that, if the rent due from those tenants had been paid to the petitioners and not to the Collector, such payment would have been null and void. It has been faintly urged by the learned advocate for the petitioners in this case that, in any event, any sum due as rent from the tenants which has not yet been paid to the Collector should be paid to the petitioners. I am however not prepared to accede to this argument in view of the provisions of para. 3 of Section 99, Cess Act. In view of the considerations mentioned above, I am of opinion that the decisions of the Courts below are correct. This rule is therefore discharged with costs. The hearing-fee is assessed at two gold mohurs.