

**(1911) 12 CAL CK 0024**  
**In the Calcutta High Court**

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| Gangadhar Das and Others      | Vs | APPELLANT  |
| Bhikari Charan Das and Others |    | RESPONDENT |

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**Date of Decision :** 14-12-1911

**Acts Referred:**

**Citation :** 13 Ind. Cas. 403

**Hon'ble Judges :** N. Chatterjea, J;Coxe, J

**Bench :** Division Bench

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### Judgement

Coxe, J.—This was a suit to set aside a revenue sale. The sale took place on the 9th April 1906, and the date on which the proclamation is said to have been affixed in the Collectorate was recorded as the 6th April. The Munsif considered, that this was a clerical mistake; but the lower Appellate Court took a different view, and found that the defendant had failed to prove that the notice was affixed in the Collectorate one month before the date of the sale. He held that this was an irregularity, and he also held that the price realised at the sale was inadequate. But he was unable to find that there was any evidence to connect the inadequacy of the price with the irregularity and accordingly dismissed the suit.

2. The plaintiff appeals to this Court.

3. The first point taken on behalf of the plaintiff is, that the omission to post the proclamation of sale in the Collectorate one month before the date of sale (a point on which we are concluded by the decision of the lower Appellate Court) amounts to more than an irregularity, and makes the whole sale entirely null and void whether the plaintiff was injured or not. This is an argument that has very frequently been used in dealing with these revenue sales, and finds expression in the Full Bench decision in the case of Lala Mobarak Lal v. Secretary of State 11 C. 200. In that case the learned Judges held, that failure to comply with the provisions of Section 6 of Act XI of 1859 amounted to more than an irregularity and to an entire illegality, and that, consequently, the provisions of the Act imposing restrictions upon the rights of persons whose property was sold to relief

in the Civil Courts, had no application; inasmuch as in such a case there was really no sale at all. The learned Chief Justice thought that in that case the sale in question could not properly be said to be a sale for arrears of revenue within the meaning of the Act; and Mitter, J., held that it was null and void as not being a sale under the provisions of Act XI of 1859. They held, therefore, that the sale in such a case was not a sale at all under the Act, and that the provisions of the Act which imposed restrictions on the right of the defaulter to have the sale set aside, had no application.

4. It appears to me that the whole reasoning on which this decision was based is entirely swept away by decisions in *Tasadduk Rasul Khan v. Ahamad Husain*. 21 C.66 : 20 I.A. 176 (P.C.) and *Gobind Lal Roy v. Ramjanam Misser* 21 C. 70 : 20 I.A. 165. In the first case it was held, that an irregularity u/s 290, Civil Procedure Code, which greatly resembles the irregularity complained of in this case, did not make the sale a nullity and in the second case their Lordships used these significant and emphatic words: "In the opinion of their Lordships a sale is a sale made under the Act XI of 1859 within the meaning of that Act, when it is a sale for arrears of Government revenue held by the Collector or other Officer authorized to hold a sale under the Act, although it may be contrary to the provisions of the Act either by reason of some irregularity in publishing or conducting the sale or in consequence of some express provision for exemption having been directly contravened." It is clear, therefore, that in the opinion of the Privy Council a sale that was marred by an irregularity of this nature was none the less a sale under the Act, and that view appears to me to takeaway the whole foundation of the reasoning on which the decision in *Lala Mobarak Lal v. The Secretary of State* 11 C. 200 was based. It is true that, the decision in *Lala Mobarak Lal v. The Secretary of State* 11 C. 200 has been followed in subsequent cases namely in *Jahnнови Chowdhurani v. The Secretary of State* 7 C.W.N. 377; *Sheikh Mohamed Aga v. Jadunandan Jha* 10 C.W.N. 137 : 2 C.L.J. 325 and *Sheo Ruttan Singh v. Net Loll Sahu* 30 C. 1. But in those cases the learned Judges were acting only with the question whether Section 8 of Bengal Act VII of 1868 applied to a case in which notice, u/s 6 of Act XI of 1859, had been served, but had not been served 30 days before the date of the sale; and they held, that although the certificate of title given to the purchaser was conclusive evidence that notice had been served, it was not necessarily conclusive evidence that the notice had been served in time.

5. I am myself inclined to think that the question whether the notice is served in time is part of the larger question whether it has been duly served, and that notice cannot be said to have been duly served if it has not been served in time. It is not, however, necessary in the present case to come to any decision on this point for, even if the respondent is not entitled to the benefit of Section 8, still the appellant will not be entitled to succeed unless he can show that he has been injured. The learned Judges who decided the cases to which I have referred, certainly cited the Full Bench decision as being still in effect, that the only point they were dealing with was whether Section 8 applied and their decisions cannot,

in my opinion, be taken as authority for holding that, in their opinion, that decision justified a person whose property had been sold, in asking to have the sale set aside simply and solely on the ground that the sale was illegal by reason of the fact that the notice had not been served in time, without proof of injury. Secondly, it has been urged that the learned Subordinate Judge ought to have concluded, as a matter of law, that the inadequacy of the auction price was the consequence of the irregularity to which we have referred. I cannot see, however, that any question of law really arises in this connection. The learned Munsif deals with this matter at, great length, and explains more fully why the irregularity could not have caused the deficiency in the selling price. The learned Sub-Judge's judgment is one of affirmance. It is not for us to say whether the evidence is or is not sufficient to justify the conclusion arrived at by the Subordinate Judge but I certainly cannot possibly say that he was bound, as a matter of law, to conclude that the inadequacy of price was due to the alleged irregularity. I hold, therefore, that it is not sufficient for the appellant to show that the notice was published less than thirty days before the sale, and that he is not entitled to have the sale set aside on that ground alone. As regards the question whether he has suffered by this irregularity we are, in my opinion, concluded by the findings of fact.

6. The appeal will accordingly be dismissed with costs.

N. Chatterjea, J.

7. I agree.