

(1942) 03 CAL CK 0026
In the Calcutta High Court

Khagendra Nath Banerjee and Others	APPELLANT
Vs	
Sm. Rani Harshamukhi Dassi and Others	RESPONDENT

Date of Decision : 20-03-1942

Acts Referred:

Bengal Sanitary Drainage Act, 1895 — Section 23

Citation : AIR 1943 Cal 49

Hon'ble Judges : Blank, J;B.K. Mukherjea, J

Bench : Full Bench

Judgement

B.K. Mukherjea, J.—This appeal arises out of a suit brought by the original plaintiff Rani Harsha Mukhi, now respondent 1, for recovery of rents and cesses including drainage cesses due in respect of a tenure held by the defendants-appellants under the plaintiff and her cosharer. The only dispute was with regard to drainage cesses which were claimed by the plaintiff at the rate of Rupees 121-8-8 per annum for the years 1340 to 1342 less the amount paid and credited. The Administrator General, Bengal (now respondent 2) who as cosharer landlord was made a pro forma defendant, subsequently got himself transferred to the category of a co-plaintiff and laid claim to drainage cesses at the same rate for his share, for the years 1339-1342 B. Section Damages were also claimed by both the plaintiffs. The claim for recovery of drainage cesses was based upon Section 23, Bengal Sanitary Drainage Act (Bengal Act 8 of 1895). This Act has been repealed by the Bengal Agricultural and Sanitary Improvement Act (Bengal Act 6 of 1920); but its operation is saved in the present context by the first proviso to Section 36 of the latter Act. To appreciate the point in controversy between the parties it would be necessary to state a few more facts. The defendants are the holders of a tenure within a revenue paying estate, which is owned jointly by Bani Harshamukhi and the Administrator General Bengal. There was a drainage scheme undertaken by Government which had benefited the lands of this as well as other estates. According to the rate determined by the Collector u/s 21, Sanitary Drainage Act, the amount of drainage cesses levied on the Administrator General of Bengal was Es. 32,500 and that on Rani

Harshamukhi or rather her predecessor was Rs. 40,822 and these sums were payable in 1 instalments spread over 26 years. The two proprietors instituted two suits, being suits Nos. 159 and 188 of 1924 against the Secretary of State for India in Council disputing their liability to pay the drainage cesses imposed on them. Eventually these suits were compromised. So far as the Administrator General of Bengal was concerned the amount was reduced to Es. 14,500 on condition of the entire payment being made in one lump. As regards the Rani plaintiff, the amount was reduced to some extent, and it was agreed that she would pay the sum of Es. 1800 in one lump, and the rest in 50 half yearly instalments. It was a term of the compromise that the plaintiffs would be entitled to realise cesses from their subordinate tenants on the original rate. This appears to be the basis on which the liability of the tenants was recorded in the finally published record of rights some four years later.

2. The contention of the defendants was that u/s 23, Sanitary Drainage Act, the plaintiffs were entitled to realise from them only half of the instalments which they themselves paid to the Collector, and as the original amounts payable by the plaintiffs were reduced as a result of the compromise the defendants were also entitled to get proportionate reduction in the instalments payable by them. This contention did not commend itself to the Courts below, and they decreed the suit, with some reduction of the damages claimed by the Rani plaintiff. Mr. Baxi who appeared in support of the appeal, reiterated the point that was put forward on behalf of his clients in the Courts below, and he has taken his stand on Section 23, Sanitary Drainage Act. That section reads as follows:

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.

3. It is clear that under the provisions of this section, the proprietor can realise from his subordinate tenants only half of what he has himself paid to the Collector, and Mr. Baxi contends that as the plaintiffs have paid less than the sums originally fixed by the Collector the tenants are also entitled to proportionate reductions. The respondents on the other hand contended that settlement with Government was the same thing as payment to Government of the whole amount originally due, and as the rate fixed by the Collector u/s 21 of the Act was left in tact, the tenants who were no parties to the compromise were not in any way affected by the same. Reliance was placed in this connection upon the decision of a Division Bench of this Court in Administrator General of Bengal-Co-plaintiff Vs. SM. Jnanadayini Devi and Others, , where the provision of Section 23, Sanitary Drainage Act, was considered with reference to facts arising out of this identical agreement between the Administrator General

Bengal and the Government. We may say at the outset that the scheme of the Act seems to be that on receipt of the final report relating to construction of the drainage work, the Collector has got to determine the rate at which the drainage cesses are to be collected, along with road cess annually payable direct to Government, and the rate must be such as shall be sufficient to provide for the payment of the costs of construction in course of not more than thirty years (Section 21). The rate determined is to be published as provided in. Section 40, Cess Act, and shall be paid together with road cess, presumably in such instalments as the road cess is paid. (Section 22). u/s 23 the holder of an estate or tenure who has paid any instalment of such rate is entitled to recover half of the same from the subordinate tenure-holder or cultivating, raiyat. A case like the present one, where after the determination of the rate by the Collector, there was a fresh contract between the Government and the proprietors, and in consideration of avoiding disputes relating to the validity of the imposition, and in further consideration of the fact the whole amount was in one case paid in a single lump, the amount payable by the proprietors was reduced, does not come strictly within the terms of the section. We are unable to hold however that such agreement is illegal and not binding as between the Government on the one hand and the proprietors on the other.

4. The subordinate tenure-holders were no parties to this agreement and as their condition could not be rendered worse by a compromise of this description, they cannot also in our opinion take advantage of any term of such compromise. The Administrator General of Bengal in the present case paid a sum of Es. 14,500 in one lump, in full satisfaction of the claim. The amount certainly was much below What was originally imposed on him, but he cannot possibly ask his subordinate tenants to pay half of this whole amount in one instalment. In these circumstances we are of opinion that the word "paid" in Section 23 would have to be construed somewhat liberally, and the payment of a sum of Rs. 14,500 in one instalment must be held to be equivalent to payment of the sum of Rs. 32,500 in such instalments as were originally determined, since the Government accepted it in full satisfaction of its claim.

5. In Administrator General of Bengal-Co-plaintiff Vs. SM. Jnanadayini Devi and Others, , this question was agitated and it was held that

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-holder.

6. We are not prepared to dissent from this view. In the case of the Rani plaintiff, it is true, that she paid only a small sum in One lump, and she was given the right to pay the rest in a large number of instalments, but the reasons given above are applicable in her case too. It would really be anomalous, if the position of the tenant could be affected by any agreement between the Government and the proprietors relating to the payment of the drainage cesses, where there was no alteration of the rate determined by the Collector, and where they were

expressly excluded from the agreement. The terms of the compromise in ease of the Rani plaintiff also show that there was no remission in the rate of cesses and hence the payment made by her should be taken as payment in full satisfaction of the claim which the Government had against her, on the basis of the original determination by the Collector. The result is that the appeal is dismissed. We make no order as to costs of this appeal.

Blank, J.

7. I agree.