
(1940) 05 CAL CK 0006
In the Calcutta High Court

Secretary of State

APPELLANT

Vs

Syed Sadek Reza

RESPONDENT

Date of Decision : 10-05-1940

Acts Referred:

Public Demands Recovery Act — Section 5

Citation : AIR 1941 Cal 167

Hon'ble Judges : Nasim Ali, J;Narsing Rau, J

Bench : Full Bench

Judgement

Nasim Ali, J.—On 11th February 1924, the plaintiff in the present suit obtained from the Nawab Bahadur of Murshidabad an ijara settlement of certain properties appertaining to Mahal Taraf Sambalpur within tauzi No. 210, Parganah Kanagjole in the district of Maldah on an annual rent of Rs. 10,172 for a period of 21 years commencing from Baisak 1330 B.S. to the end of Chaitra 1350. The material terms of this ijara were : (1) That the rent reserved is to be paid by the lessee kist by kist in the sadar kachery of the Nawab Bahadur in Lalbagh in the district of Murshidabad. (2) That during the term of settlement, the lessor would have nothing to do with possession or dispossession of the properties covered by the ijara and that the lessee will have to pay the fixed annual rent without any objection. (3) That the lessee will have no right to surrender his rights under the ijara during the fixed term of the ijara. (4) That if during the term of the present lease the lessor wants to take khas possession of the mahals, he shall have to give 15 days notice and from the date of the receipt of the notice the khas possession of the mahals will be made over to the lessor.

2. In the year 1929 the Nawab Bahadur of Murshidabad instituted a suit for ejecting the plaintiff from the ijara mahals. This suit was subsequently converted into a suit for arrears of rent of the ijara mahal due up to the end of Chaitra 1337 B.S. In the year 1930, another suit for ejectment was instituted by the Nawab Bahadur against the plaintiff. Both these suits were compromised on 24th April 1931. By this compromise, the ijara was declared to be valid and binding on

the Nawab Bahadur of Murshidabad for the ijara period, namely 21 years and the right of the Nawab Bahadur of Murshidabad to take khas possession of the mahal during the continuance of the lease by giving 15 days notice to quit was extinguished. The plaintiff in the present suit executed a handnote for Rs. 22,000 in favour of the Nawab Bahadur at the time of this compromise and both the suits were dismissed in terms of the compromise. On 21st September 1933, the Murshidabad Estate Administration Act (Act 23 of 1933) came into operation. Mr. K. C. De was appointed manager of the Murshidabad estate u/s 3 of this Act. Thereafter, the manager filed a requisition u/s 5, Public Demands Recovery Act, before the certificate-officer of Lalbagh for realization of arrears of rent of the ijara mahal for the years 1338, 1339 B.S. and for the six months of 1340 B.S. The certificate officer thereupon filed a certificate on 21st November 1933. Another certificate was filed by the same certificate officer for the arrears of rent of the remaining six months of 1340 on 10th May 1934.

3. On 30th April 1934, the manager cancelled the ijara settlement u/s 12 of Act 23 of 1933. The plaintiff appealed to the Board of Revenue against this order of the manager u/s 13 of the Act. On 16th August 1934,, the Board of Revenue asked the manager to re-consider the case, to give the plaintiff another trial and to help him to recover the arrears due to him from his tenants. The Board of Revenue, however, observed that if the plaintiff did not pay the arrears after this arrangement by reasonable instalments, vigorous steps should be taken to realise them by certificate, etc. On 25th August 1934, the manager asked the plaintiff to state on what conditions he was willing to continue the lease and what terms he would propose for payment of the arrears due from him. On 19th September 1934, the plaintiff proposed certain terms. The material portion of this proposal is as follows : (1) a responsible officer of the Murshidabad estate is to be deputed at the cost of the estate during the rent realisation season to assist the plaintiff's officer in the realisation of rent from the tenants; (2) the plaintiff would pay sums of money that would be realised from time to time from the tenants either in payments of rents due or in execution of decrees for arrears of rent which had been already obtained by him deducting 25 per cent. thereof for collection expenses of the plaintiff and maintenance cost of himself and his family. On the same day, the manager accepted these terms but stated that the certificate cases would not be withdrawn as there would be no way of recovering arrears if the proposed arrangement failed. The manager added that he would not apply for coercive measure from the certificate officer so long as the arrangement would work. On 28th November 1934, an officer was appointed by the manager in accordance with this arrangement. On 11th March 1935, the Board of Revenue wrote to the lessee that he had paid only Rs. 149-4-0 within the last three months and that unless reasonable amount was paid without further delay, certificates would be executed. On 29th June 1935, the manager reported to the Board of Revenue that the arrangement had failed and asked for permission to execute the certificates against the plaintiff. On 9th July 1935, the Board approved the proposal of the manager. The services of the officer who was

appointed in accordance with the arrangement were dispensed with by the manager on 15th August 1935. On 8th October 1935, the plaintiff applied to the Board to postpone all proceedings for execution of the two certificates. This application, however, was refused. On 25th October 1935, the certificate officer of Lalbagh issued an order upon the tenants of the ijara mahal prohibiting them from paying any rent to the lessee under Rule 18 (1) (a) and (c) of the Rules in Schedule 2, Public Demands Recovery Act. On the same day, he ordered that the ijara mahal would be sold by public auction.

4. On 16th January 1936, plaintiff served a notice on the Secretary of State for India in Council represented by the manager of the Murshidabad Estate u/s 80, Civil P. C. The cause of action and the relief claimed as stated in this notice are these: The two certificates obtained by the manager were bad as the Nawab Bahadur of Murshidabad could not put the plaintiff in possession of some of the ijara properties and consequently the plaintiff was not liable to pay any rent for the ijara. The manager had no power to execute the certificates in violation of the contract and adjustment between him and the plaintiff on 19th September 1934. The plaintiff was therefore entitled to get a declaration that the agreement of 19th September 1934 was binding on the Secretary of State for India in Council, that the proceedings in execution of the certificate were illegal, void, and ultra vires and that the plaintiff was entitled to get a permanent injunction restraining the Secretary of State for India in Council from taking any steps in execution of those certificates. On 6th April 1936, plaintiff raised the present suit.

5. The case of the plaintiff so far as it is material for the purposes of the present appeal is this : The Nawab Bahadur of Murshidabad failed to deliver possession to the plaintiff of Khord Joyrampur, one of the properties covered by the ijara. The rent reserved by the ijara was a lump rent for the entire ijara mahal. The plaintiff was therefore entitled to total suspension of the entire rent from 1338 to 1340 B.S. In spite of the faithful performance of the agreement between the plaintiff and the defendant's manager, the plaintiff was arrested in execution of the certificates on 23rd July 1935. He was released on 25th July. The prohibitory order and the order for sale made by the certificate officer on 24th October 1935 were without jurisdiction as the properties affected by the said orders were outside the district of Murshidabad. The plaintiff is therefore entitled to get, (a) a declaration that the agreement and arrangement of 19th September 1934, are in force and were being performed by the plaintiff and binding on the defendant, (b) a declaration that the issue of certificate as well as execution proceedings started thereunder are void, fraudulent, illegal and without jurisdiction, (c) a perpetual injunction restraining the defendant from taking any steps under the said certificates and from interfering with plaintiff's right and enjoyment of the ijara mahal up to the year 1350 B.S. The Secretary of State for India in Council opposed this suit. His main defences are these : (1) That the suit is barred by Section 34 and Section 37, Bengal Public Demands Recovery Act, (Bengal Act 3 of 1913). (2) That at the time when the ijara lease was executed, the Nawab Bahadur of Murshidabad was not in possession of Khord Joyrampur and that the

plaintiff was aware of this fact at the time when he took the ijara. (3) That as the Nawab Bahadur of Murshidabad was out of possession of Khord Joyrampur at the time of the ijara settlement, the assets of this property were excluded when the rent of the ijara was settled. (4) That the plaintiff not having based his cause of action on the ground of suspension of rent for non-delivery of possession of mouza Khord Joyrampur in the notice u/s 80, Civil P. C., is not entitled to raise this question in this suit. (5) That the order of the manager on 19th September 1934 accepting the proposals made by the plaintiff was not an agreement between the plaintiff and the defendant's manager and that even if it was, it was not binding on the defendant as it was not entered into with the previous sanction of the Board of Revenue. (6) That the plaintiff's allegation that he had acted according to the terms of the arrangement between him and the manager is false. (7) That the certificate officer had jurisdiction to issue the prohibitory order restraining the tenants of the ijara mahal from paying their rent to the plaintiff. The following issues were framed on the pleadings of the parties before the trial Judge:

- (1) Is the suit barred by Sections 34 and 37, Public Demands Recovery Act?
- (2) Was any agreement or arrangement made on 19th September 1934 that the Murshidabad Estate would not take any coercive measures against the plaintiff in the matter of the certificates in question?
- (3) Was it an agreement or arrangement or order? Was it illegal and void ab initio? Was it set aside by the Board of Revenue?
- (4) Has such agreement or arrangement, if any, ceased to be in force? Is the defendant precluded thereby from executing the certificates in question?
- (5) Are the certificates in question as well as the execution proceedings thereunder without jurisdiction, illegal and void 1
- (6) Is the plaintiff entitled to the declaration asked for?
- (7) Is he entitled to the permanent injunction claimed?

6. The trial Judge after considering the evidence in this case recorded the following findings : (1) That the present suit was not hit by Sections 34 and 37, Public Demands Recovery Act. (2) That the arrangement accepted by the manager on 19th September 1934 was not a valid agreement. It was in the nature of a trial and the defendant had the option of not risking it any longer. (3) That the defendant was not precluded by this arrangement from executing the certificates in question. (4) That the certificate officer of Lalbagh Sub-division of Murshidabad had no jurisdiction to entertain requisitions or file certificates in respect of demands relating to property situated outside the district of Murshidabad and consequently the certificates were invalid. (5) That the plaintiff took lease of the entire mahal including Khord Joyrampur with the knowledge that this latter mauza was not in possession of the lessor and that the gross annual assets on the basis of which the rent reserved by the ijara was calculated

did not include the assets of Khord Joyrampur. (6) That the possession of the plaintiff in the ijara mahal was not interfered with by the Nawab Bahadur's estate in the years 1338 to 1340 B.S.

7. On these findings, the learned subordinate Judge decreed the suit. Hence this appeal by the defendant. From what has been stated above, it is clear that the subordinate Judge has rejected the grounds on which the plaintiff attacked the two certificates in question in the plaint. He has however declared them to be illegal and void on a ground which was not taken either in the notice u/s 80, Civil P. C., or in the plaint. This ground is that the certificate officer of Lalbagh had no jurisdiction to file the certificate inasmuch as the ijara mahal was outside the district of Murshidabad. u/s 5, Public Demands Recovery Act, when any public demand payable to a person other than the Collector is due, such person may send to the certificate officer a written requisition in the prescribed form. The form prescribed shows that the person who makes the requisition is to state the name of the certificate debtor, the address of the certificate debtor, the amount of public demand for which the requisition is made and the nature of the public demand for which the requisition is made. Section 5 evidently contemplates that the demand must be a public demand within the meaning of the Public Demands Recovery Act and must be due to that person. The manager of the Murshidabad Estate appointed u/s 3, Murshidabad Estate Administration Act, is entitled u/s 6 of the Act to receive and recover all rents, issues and profits due in respect of the immovable proper. ties of the estate. Section 6 therefore gives power to the manager to realise the arrears of rent as well. The arrears of rent for the ijara therefore were due to the manager. u/s 19 (1) of the Act, the manager shall have for the purpose of realising and recovering the rents, issues and profits of the immovable properties of the estate, the same powers as the Nawab Bahadur would have had for such purpose had the Secretary of State not entered into the said properties and all arrears of rent and all demands recoverable as rent, and all interest due on such arrears or demands shall together with all costs incurred for realising the same be recoverable as public demands.

8. It was contended on behalf of the plaintiff-respondent that the word "arrears" in Section 19 (1) contemplates "arrears" which would become due after the Act came into operation. I am unable to accept this interpretation. Section 6 of the Act gives right to the manager to realise arrears of rent as well. After the Secretary of State for India in Council entered into possession in pursuance of the Act, the Nawab Bahadur had no right to realise the arrears. Section 19 (1) lays down the procedure which the manager can adopt for realising the current as well as the arrears of rent. In addition to the ordinary procedure, viz., by suit in the civil Court, the manager can adopt the summary procedure under the Public Demands Recovery Act. The arrears of rent for which the certificates were filed were therefore due to the manager within the meaning of Section 5, Public Demands Recovery Act. The next question is before which certificate officer the requisition is to be made. The Act itself does not give any express indication as regards the matter. But, on general principles, the certificate officer within whose

jurisdiction the cause of action arises will have jurisdiction to entertain the requisition. For a suit in the civil Court, the cause of action for such a suit is to be deemed u/s 144, Ben. Ten. Act, to have arisen within the local limits of the jurisdiction of the civil Court which would have jurisdiction to entertain a suit for possession of tenure or holding in connexion with which the suit is brought. Admittedly, Section 144, Ben. Ten. Act, is no bar. The certificate officer of Lalbagh would therefore have jurisdiction to entertain the requisition and to file the certificates, if the cause of action for filing such certificates arose within Lalbagh. From the ijara lease as has already been stated, it is clear that the ijara rent was payable by the lessee (certificate-debtor) at the sadar kachery of the Nawab Bahadur of Mursbidabad in Lalbagh. The manager was therefore entitled to demand payment in Lalbagh and the debt not having been paid in Lalbagh, the manager's cause of action for making the requisition under S.5 arose within the jurisdiction of the Lalbagh certificate officer.

9. Our attention was not drawn to any statutory bar which would deprive the certificate officer of Lalbagh of his jurisdiction to entertain requisitions for realizations of public demands payable within Lalbagh sub-division. If the money is payable to the Collector of a district u/s 4, the certificate officer of that district will have jurisdiction to file the certificate. The jurisdiction of a certificate officer under the Public Demands Recovery Act depends upon the place where the public demand is payable. I therefore hold that the certificate officer of Lalbagh had jurisdiction to file the certificates in question. The learned advocate for the plaintiff-respondent made an attempt to support the decree of the trial Judge on the following grounds : (1) That the certificates were void as plaintiff was not at all liable for the rents of the ijara mahal for the years 1338, 1889 and 1340 B. C., as the Nawab Bahadur of Murshidabad did not put him in possession of one of the ijara properties, namely, Khord Joyrampur. (2) That the possession of the plaintiff was substantially interfered with by the manager of the Murshidabad Estate during this period.

10. Admittedly, the plaintiff did not obtain possession of Khord Joyrampur. The evidence in this case shows that before the ijara the Nawab Bahadur himself was not in possession of this property and the plaintiff was aware of this fact. The rent reserved by the ijara was assessed on the gross assets of the ijara properties after making certain deductions. The evidence in this case shows that in calculating the assets of the entire ijara properties the assets of Khord Joyrampur were not taken into consideration. The plaintiff is not therefore entitled to claim either suspension of rent or abatement of rent. As regards the complaint of the plaintiff that his possession was interfered with during the period in question, namely 1338 to 1340 B.S., it appears that no such complaint was made either in the notice u/s 80 or in the plaint itself. There is no satisfactory evidence also in this case to show that the plaintiff's possession during this period was interfered with by the defendant's officers. For the reasons given above, the plaintiff's prayer for a declaration that the two certificates in question were illegal and void must be rejected. As regards the

plaintiff's claim for declaration that the proceedings in execution of the two certificates were illegal, the plaintiff's case is, as has already been stated, that there was an adjustment of the certificate debts by agreement between the plaintiff and the manager of the defendant on 19th September 1934, and that in view of this adjustment defendant had no right to execute the certificates so long as the plaintiff was performing and was willing to perform his part of the contract.

11. The learned subordinate Judge has found that there had been no contract but only an arrangement in the nature of a trial. From the evidence in this case, I am not prepared to say that the subordinate Judge was wrong. Assuming however that there was any such contract, it cannot be binding on the defendant as u/s 21, Murshidabad Estate Administration Act, the manager cannot enter into any such contract without obtaining the previous sanction of the Board of Revenue. The evidence in this case does not show that previous sanction of the Board of Revenue was taken by the manager before he accepted the proposals of the plaintiff.. The Board of Revenue while disposing of the plaintiff's appeal simply asked the manager to help the plaintiff to recover his arrears and to give him another trial. But the subsequent arrangement proposed by the plaintiff and accepted by the manager was never sanctioned by the Board of Revenue. Again, u/s 37, Public Demands Recovery Act, every question arising between the certificate-holder and the certificate-debtor relating to the execution, discharge or satisfaction of a certificate is to be determined by the certificate officer and not by a suit. If the arrangement between the manager and the plaintiff amounted to an adjustment of the certificate-debt, such question is to be determined by the certificate officer and not by the civil Court in a suit. The agreement pleaded by the plaintiff therefore cannot operate as a bar to the execution of the certificates by the certificate officer.

12. It was contended on behalf of the plaintiff-respondent that the order of the certificate officer prohibiting the tenants of the ijara mahal from paying their rents to the plaintiff and the order for sale of the ijara properties were without jurisdiction as the properties affected by these two orders were outside the district of Murshidabad. It appears from Section 8 (b), Public Demands Recovery Act, that after the service of notice of any certificate u/s 7 upon the certificate-debtor, the certificate-debt becomes a charge upon the immovable property of the certificate-debtor wherever situated. Rule 23 of Schedule II of the Public Demands Recovery Act lays down that where the properties are immovable, no attachment need be made before the sale. The prohibitory order issued by the certificate officer in this case was the attachment of certain debts due to the certificate-debtor and there is nothing to show why the debts outside the jurisdiction of the attaching Court cannot be attached by a prohibitory order. Further, these are matters which relate to the execution of the certificates and are to be determined by the certificate officer u/s 37, Public Demands Recovery Act. If the plaintiff's contention is correct, the certificate officer would have jurisdiction to set aside these proceedings. Sufficient ground for perpetual injunction has not therefore been made out. For the reasons given above, I allow

this appeal and dismiss the cross-objection. The suit is dismissed. The defendant-appellant will get his full costs in the trial Court and six gold mohurs as hearing-fee in this Court with half of the other costs incurred in this Court.

Narsing Rau, J.

13. I agree that this appeal should be allowed. The main issue in the appeal is whether the certificates were filed or made without jurisdiction. This was issue 5 raised before the Subordinate Judge. A preliminary question connected with this issue is whether it can be raised at all in the civil Court. Section 35, Bengal Public Demands Recovery Act, is undoubtedly no bar, for its opening words are, "no certificate duly filed under this Act shall be cancelled by a civil Court except etc.", so that cancellation on the ground that the certificate has not been "duly filed" is not beyond the jurisdiction of the civil Court under this section. Section 37 appears at first sight to be more comprehensive, because, it states that except as otherwise expressly provided in the Act every question arising between the certificate-holder and the certificate-debtor or their representatives relating to the making, execution, discharge or satisfaction of a certificate duly filed under the Act etc., shall be determined not by suit but by order of the certificate officer before whom such question arises. Although the section thus enacts a general bar extending to all questions relating to the making of certificates, it immediately qualifies the effect by using the words "duly filed under the Act", so that once again, the question whether the certificate has been duly filed under the Act is not excluded from the purview of the civil Court. I am, therefore, of opinion that the civil Court can go into this question by virtue of the general provision in Section 9, Civil P. C.

14. The grounds upon which the learned Subordinate Judge has held in favour of the plaintiff upon this issue are: (a) that the jurisdiction of the Sub-divisional Officer, Lalbagh who made the first certificate and of the special certificate officer who made the second certificate were both confined to the subdivision of Lalbagh in the district of Murshidabad, and (b) that Mahal Sambalpur being partly in the district of Malda and partly in the district of Purnea, neither of these officers had territorial jurisdiction to entertain a requisition for, or to file, a certificate in respect of demands relating to the mahal. As to ground (a), I am inclined to think, although the point is not very material in the present case, that the jurisdiction of each of the officers extended to the entire district of Murshidabad and was not limited to Lalbagh sub-division. The provisions of the Bengal Public Demands Recovery Act, 1913, are not as explicit on this point as they might have been; but the position seems to be reasonably plain from the terms of Section 15 and from the headings of Forms 1 and 2 in the Appendix to the Act, which it may be noted, is part of Rule 84 in Schedule II which, in its turn, has effect as if enacted in the body of the Act by virtue of Section 38. Section 15 provides that where a revenue-paying estate or any share therein is liable to sale in execution of a certificate, such sale may be held either, (a) by the certificate officer exercising jurisdiction in the district to the revenue-roll of which the estate

or share appertains, or (b) by the certificate officer exercising jurisdiction in the district in which such estate or share is situated.

15. The Forms 1 and 2 in the Appendix are headed respectively "Filed in the office of the certificate officer of (name of district)" and "To the certificate officer of the district of..." It seems reasonably clear from these indications that whether certificate officer is a Collector or a Sub-divisional Officer or some officer appointed by the Collector u/s 3 (3) of the Act, he is a certificate officer of the district (as stated in the Forms) and not of any local area in the district; and he exercises jurisdiction in the district as implied in Section 15 and not merely in some local area in the district. This, however, does not solve the real problem. To appreciate the real difficulty in this case, we must turn to the provisions of Section 5, Bengal Public Demands Recovery Act, 1913, Sub-section (1) of which enacts that when any public demand payable to any person other than the Collector is due, such person may send to the certificate officer a written requisition in the prescribed form. This certificate officer may thereupon make a certificate u/s 6.

17. Let us take the extreme case where the person (other than the Collector to whom the public demand is to be paid resides in district A; the person from whom it is due resides in district B and most of his property is in district C; the payment is due to be made in district D and it is on account of property situate in district E. Which of these districts is the one whose certificate officer has jurisdiction to make the necessary certificate? It cannot be that unless all these districts are identical, the provisions of the Act are inapplicable; for Section 12, makes specific provision for transfer of certificates for execution from one certificate officer to another, a provision which would be wholly unnecessary if all the districts were identical. How then is the jurisdiction to be determined if all the districts are not identical? The only reasonable interpretation of Section 5 seems to me to be that the certificate officer referred to therein is the certificate officer of the place where the public demand is payable; for it is there that it is a demand at all. The jurisdiction of the certificate officer u/s 5 does not therefore depend upon the situation of the property in respect of which the demand arises, but upon the place where the money is demandable or payable. If this place is within the district where the certificate officer holds office, the certificate officer has jurisdiction to receive the requisition and to make a certificate. In this connexion, it is relevant to refer to the provisions of the Revenue Recovery Act, 1890 (Central Act, 1 of 1890), which is a statute still in force throughout British India and is closely allied to the Bengal Public Demands Recovery Act, 1913. Sections 3 and 5, Revenue Recovery Act, 1890, run:

3. (1) Where an arrear of land revenue, or a sum recoverable as an arrear of land revenue, is payable to a Collector by a defaulter being or having property in a district other than that in which the arrear accrued or the sum is payable, the Collector may send to the Collector of that other district a certificate in the form as nearly as may be of the schedule stating, (a) the name of the defaulter and

such other particulars as may be necessary for his identification, and (b) the amount payable by him and the account on which it is due.

(2) The certificate shall be signed by the Collector making it (or by any officer to whom such Collector may, by order in writing, delegate this duty), and, save as otherwise provided by this Act, shall be conclusive proof of the matters therein stated.

(3) The Collector of the other district shall, on receiving the certificate, proceed to recover the amount stated therein as if it were an arrear of land revenue which had accrued in his own district.

...

(5) Where any sum is recoverable as an arrear of land revenue by any public officer other than a Collector or by any local authority, the Collector of the district in which the office of that officer or authority is situate shall, on the request of the officer or authority, proceed to recover the sum as if it were an arrear of land revenue which has accrued in his own district, and may send a certificate of the amount to be recovered to the Collector of another district under the foregoing provisions of this Act, as if the sum were payable to himself.

18. It will be seen from Section 5 that in the case of sums due to officers other than the Collector, it is the Collector of the district in which the office of that officer is situate who can make the certificate; in other words, it is the Collector of the district in which the sums are payable who has jurisdiction to receive the requisition for, and to make, the necessary certificate. The Bengal Public Demands Recovery Act, 1913, is in force throughout Bengal, but not outside; if there is a public demand due in Bengal from a defaulter who resides or has property outside Bengal, the assistance of Sections 3 and 5, Revenue Recovery Act, 1890, (which is a Central Act in force throughout British India) may have to be invoked. The two Acts are in *pari materia*, though differing in local extent. In the present instance, it is clear that the *ijara* rent was payable under the terms of the *ijara* lease at the Sardar Mahalat Kutchery of the Nawab Bahadur of Murshidabad which is within the Lalbagh sub-division of the Murshidabad district. Therefore the Sub-Divisional Officer of Lalbagh and the special certificate officer had jurisdiction to make the certificates in question. "What territorial limitations there may be on their powers in execution is a different question upon which it is not necessary to express any opinion in the present case. On this issue, therefore, I think the Subordinate Judge's finding cannot be upheld.

19. The other points raised in the appeal can be disposed of briefly. It has been contended on behalf of the respondent that the certificates ought to be cancelled under sec. 35 (1) (b), Bengal Public Demands Recovery Act, because there was no liability to pay the *ijara* rent and there was not this liability, because (i) he was not given possession of mouza Khord Joyrampur although the mouza was included within his lease, and (ii) his possession of the mahal as a whole was disturbed by the lessor. As to (i) the Subordinate Judge's finding is that the

plaintiff took the lease including the mouza with the knowledge that the mouza was not in the possession of the lessor and that possession could not be delivered to him in respect of it. Indeed in para. 5 of the notice served on the defendant u/s 80, Civil P. C., the plaintiff admits that he could not obtain possession of this mouza from the date of the lease because the Nawab Bahadur of Murshidabad was out of possession at that time. As to ground (ii), there is no satisfactory evidence and hardly any allegation that there was any disturbance of such possession during the period covered by the certificates. Some sort of disturbance has been alleged in connexion with certain suits of 1929 and 1930 instituted by the Nawab Bahadur but the suits ended in a petition of compromise filed in Court on 24th April 1931. The certificates are for the Bengali years 1338-40, that is to say, for the three years beginning from about the middle of April 1931. The position after the compromise has been set out by the plaintiff himself in para. 8 of the plaint in the following terms:

Although all opposition to the actual possession of the ijara mahal was withdrawn by the said Nawab Bahadur in pursuance of the said compromise decree yet he failed to give possession of the roahul Khord Joyrampur as comprised in the said ijara.

20. Thus, the plaintiff's grievance after the compromise was confined to the Nawab Bahadur's failure to give him possession of Joyrampur mouza, a point which I have already dealt with. The next disturbance of possession alleged was after 30th April 1934 the date on which the manager cancelled the lease u/s 12, Murshidabad Estate Administration Act of 1933. But this was after the period covered by the certificates. The net result, on this branch of the case, is that the plaintiff was in undisturbed possession of the mahal during the relevant period except as regards Mouza Khord Joyrampur and so far as this mouza was concerned, the plaintiff took the lease with full knowledge that his lessor could not give him possession. Therefore the plaintiff was liable in full for the amounts claimed in the certificates and the certificates cannot be cancelled or modified u/s 35, Bengal Public Demands Recovery Act. Whether execution of the certificates was or was not barred by reason of the manager's decision of 19th September 1934 and whether particular orders passed in execution were or were not bad are all questions relating to the execution, discharge or satisfaction of the certificates. As such, they are not questions which can be raised in this suit, S.37, Bengal Public Demands Recovery Act, being an express bar. No fraud has been proved in the present case and I have already found that the certificates were duly filed under the Act.

21. Finally, it was sought to be argued on behalf of the respondent that the term "arrear of rent" in Section 19, Murshidabad Estate Administration Act, 1933, must be held to mean rent which falls due after the commencement of the Act (21st September 1933), and remains in arrear and that the term does not include rent which fell due before the Act came into force. If this interpretation of the term "arrear of rent" is adopted in Section 19 then, on the same principle, a

similar interpretation will have to be placed on the term "rent" which occurs both in Section 19 and S.6 of the Act, "rent" being construed as rent falling due after the commencement of the Act. The result would be that there would be no provision in the Act enabling the manager to recover at all, whether by suit or by certificate procedure, any rent which has remained due to the estate since before the commencement of the Act. I do not think that the Legislature intended any such limited interpretation of the term "arrears of rent." In the result, I agree that the appeal must be allowed with costs as directed in the judgment just delivered by my learned brother.