
(1935) 11 CAL CK 0031
In the Calcutta High Court

Secy. of State

APPELLANT

Vs

Jitendra Nath Roy

RESPONDENT

Date of Decision : 22-11-1935

Acts Referred:

Cess Act, 1880 — Section 16

Citation : AIR 1936 Cal 70

Judgement

1. This appeal has arisen out of a suit instituted by the plaintiff-respondent for a declaration that certain re-valuation proceedings in connexion with assessment of cess under the provisions contained in the Cess Act (Bengal Act 9 of 1880) were illegal, ultra vires and not binding on the plaintiff. The question relevant for the purpose of this appeal raised before the Courts below, and which was argued in support of the appeal was whether the re-valuation for imposition of cess made in respect of Jessore portion of Touzi No. 132 of the Jessore Collectorate, u/s 21, Cess Act, was ultra vires, illegal and not binding against the plaintiff, for non-service of notice u/s 16, Cess Act, upon the plaintiff, the plaintiff, not having been otherwise cognizant of the order calling for return as prescribed by law, before the making of valuation u/s 21 of the Act.

2. The Courts below have concurrently found on evidence before the Courts that there was no proof of any notice served on the plaintiff as contemplated by Section 21, Cess Act, and that the plaintiff was not otherwise cognizant of the same before the estate in question was valued for cess purposes, u/s 21, Cess Act. On the findings referred to above, the decision of the Courts below was that the assessment of cesses on revaluation was illegal and not binding on the plaintiff. It was urged in support of the appeal that the service of notice u/s 16, Cess Act, was merely a matter of procedure; nonservice of such notice could not in any way vitiate the assessment proceedings; the jurisdiction of the revenue authorities in the matter of revaluation in the case was acquired by the proclamation to make return by the parties concerned u/s 14, Cess Act, the non-service of notice u/s 16 of the Act could not render the proceedings invalid. There is no question that the publication of a proclamation gives jurisdiction to

the Collector in the matter of assessment of cesses on proper valuation of lands; but the subsequent procedure contemplated by the Cess Act, for the purpose of making valuation as contained in Section 16, Cess Act, could not be ignored, in fixing liability, so far as payment of cess was concerned. The elaborate provisions contained in Sub-section 16, 17 and 18 leave no room for doubt that following the procedure mentioned therein was as much binding on the revenue authorities seeking to assess and impose liability as the party who were required to lodge returns on service of notice on them, as provided by Section 16, Cess Act. There was penalty imposed for omitting to make return (Section 18); and the provisions that follow, contained in Sub-section 19 and 20 make it abundantly clear how the failure to make returns after service of notice affects the right of the parties to collect rent in respect of the property sought to be assessed or re-assessed to cesses under the Cess Act. It is also significant that it is only on not furnishing return after service of notice u/s 16 that the Collector is empowered to make his own valuation. In our judgment the provisions contained in the Cess Act to which reference has been made above make it abundantly clear that service of notice u/s 16, Cess Act, was not merely a matter of procedure, but was a part of the law with reference to which valuation or revaluation as contemplated by law could be made by the revenue authorities, and liability imposed in the matter of payment of cesses; and non-compliance with the law by failure to serve notice made the assessment of cesses invalid under the law. The service of notice is made imperative by law, for the purpose of valuation of lands under the Cess Act, and that must be the case, in view of the position that the State would not impose any liability on a subject without giving him an opportunity to be heard. If there is any ambiguity in the statute, although in our opinion there is none, in the matter of the effect of non-service of notice u/s 16, Cess Act, it was the duty of the State to use language of precision when it was imposing liabilities upon its subjects; the benefit of the doubt is the right of the subject. The reasonable construction of the provisions of the Cess Act to which reference has been made above, lead to the conclusion that notice u/s 16 of the Act was imperative, before assessment of cess could be made by the revenue authorities on Valuation of lands; and notice not having been served, as provided by law, the plaintiff was entitled to a declaration that the cess revaluation in respect of the Jessore portion of Touzi No. 132 was ultra vires, illegal and not binding against him. In the result the appeal fails and it is dismissed with costs.

(S. A. Nos. 1261 and 1262 of 1933)

3. These two appeals have arisen out of suits instituted by the plaintiff appellant in this Court, for declaration that a cess revaluation in respect of properties mentioned in the plaints was illegal, ultra vires and not binding on the plaintiff. The question in controversy in the appeals relates to the assertion made by the plaintiff in the suits that the revaluation in question was made on the basis of a Note to Section 24, Cess Act, Bengal Act 9 of 1880, and Rule 66 of the Cess Manual, which the Board of Revenue had no authority under the law to frame, and which were inconsistent with the definition of "cultivating raiyat" as

contained in the Cess Act. The Courts below give their decision on the question mentioned above against the plaintiffs in the suits, in which these appeals have arisen. The question to be considered is whether Note to Section 24, Cess Act, and Rule 66 made by the Board of Revenue were in consonance with the provisions of Section 106 of the Act. There can be no question that it was within the competency of the Board of Revenue to make rules and otherwise provide for the proper execution of the Cess Act, in respect of valuation of the assessment and of the levy of cesses. The question then was whether there was anything contained in the Note to Section 24 and in Rule 66 of the Cess Manual, inconsistent with or repugnant to the definition of a "cultivating raiyat" as contained in Section 4, Cess Act, inasmuch as so long as the Note and the rule in question are not repugnant to the provisions of the Act, they cannot be held to be ultra vires or in-operative. As has been repeatedly pointed out by this Court, a raiyat may be a tenure-holder within the meaning of the Cess Act, and thus in order to claim the privilege of a cultivating raiyat under the Cess Act, a person must be an actual cultivator of the soil, and the total rent payable by him for all his holdings must not exceed Rs. 100 per annum. A raiyat may be a tenure holder within the meaning of the Cess Act; and the distinction between a holder of a tenure and a cultivating raiyat, and not between a holder of a tenure and a raiyat, must be recognized: See Peary Mohan Roy v. Sarat Kumari Debi (1912) 15 C L J 428, Sarat Chandra Deb v. Dharani Mohan Roy 1928 Cal 508. In our judgment therefore, the Note to Section 24, Cess Act and Rule 66 in the Cess Manual, cannot be held to be ultra vires and inoperative, as made by the Board of Revenue without jurisdiction.

4. They are not in any way inconsistent with the definition of "cultivating raiyat" as contained in Section 4, Cess Act, and the Courts below have rightly held that revaluation under the Cess Act could not be held to be illegal on the ground that it was made on the basis of Note to Section 24, Cess Act and Rule 66 of the Cess Manual framed by the Board of Revenue, which were both in force at the time when the re-valuation in question was made. On the conclusion arrived at by us, as mentioned above, the decree of the Courts against which these appeals were directed are upheld, and the appeals are dismissed with costs.