(1933) 02 PAT CK 0019

In the Patna High Court

Secy. of State APPELLANT

Vs

Ramasray Singh and Others RESPONDENT

Date of Decision : 10-02-1933

Acts Referred:

Bengal Cess Act, 1880 — Section 24, 41, 5

Citation : AIR 1933 Patna 430

Judgement

1. These are appeals by defendant 1, the Secretary of State for India in Council, against the decision of the District Judge of Saran confirming the decision of the Munsif and decreeing the plaintiffs'' suits for a declaration that the assessment of road cess made upon them under the Road Cess Act was ultra vires and without jurisdiction and the realisation of the cess so assessed was illegal and for a refund of the same. The plaintiffs are admittedly the cultivating raiyats of certain lands in village Anandpur which adjoins the lands of Sonepur where the Sonepur Fair is held annually. It appears that the plaintiffs allowed the dealers of cattle to hold a sort of hat upon their holdings for which they charged a certain fee per head of cattle from those dealers. These plaintiffs were called upon to submit a return u/s 24, Cess Act (Bengal Act 9 of 1880) and thereafter they were assessed with a certain amount of cess upon the income they derived from the dealers of cattle who hold the hat upon their land.

2. They protested that they were not liable to be assessed on the income they derived which could not be treated as the annual value of the land within the definition of the expression as given in the Cess Act.

Their objections were disallowed up to the Board of Revenue. They then instituted the present suits for a declaration that they were not liable to assessment and for a refund of the cesses realized from them. The defence of the Secretary of State for India was that the plaintiffs were the holders of tenure within the definition of the term as given in the Cess Act and that therefore they were liable to assessment and they have been rightly assessed and the cesses have been legally recovered from them. Both the Courts below have held that the assessment on the basis of the income derived by the plaintiffs from the dealers of cattle was illegal and ultra vires and they made a declaration entitling the plaintiffs to a refund of the cess realized from them and granted them a decree as prayed for.

3. The argument advanced by the learned Government Pleader on behalf of the appellant is that u/s 5 Cess Act, an Immovable property is liable to the payment of local cess. u/s 6 the local cess is to be assessed on the annual value of lands. u/s 4 "annual value of any land, estate or tenure" means the total rent which is payable, or, if no rent is actually payable, would on a reasonable assessment be payable during the year by all the cultivating raiyats of such land, estate or tenure, or by other persons in the actual use and occupation thereof.

4. It is contended that the plaintiffs" interest in the lands is an interest in Immovable property within the meaning; of Section 5 and that therefore u/s 6 they are liable to assessment upon the annual value which is to be determined upon the sum they recover which is to be treated as the annual value within the definition of the term as given in Section 4. It is clear that the argument of the learned Government Pleader cannot be accepted as sound. u/s 41 of the Cess Act; every cultivating raiyat has to pay to the person to whom his rent is payable 5 a certain proportion of the local cess calculated under the provisions of the Act or upon the annual value ascertained under the provisions of Section 24 or 25 of the Act in respect of the land held by him.

5. The amount upon which the plaintiffs are sought to be assessed is not the amount of the rent which is payable by the plaintiffs to their landlord and therefore they cannot be assessed with cesses upon this amount, nor is the amount the annual value ascertained under the provisions of Section 24 or Section 25 of the Act. Section 24 empowers the Collector to cause a notice in the prescribed form to be served on any person holding any lands or possessing any interest therein, although such person may have been mentioned in any return as a cultivating raiyat. This section merely empowers the Collector to call upon the cultivating raiyat to submit a return and the cultivating raiyat has to submit a return of the annual value of the land held by him. According to the definition of the term "annual value" he has to mention in the return the rent which is payable to him. That supposes that the raiyat has got an under-raiyat under him from whom he recovers rent. If there is no under-raiyat and if the raiyat is himself cultivating the land, it is clear that he cannot be called upon to furnish a return of the annual value which he derives in respect of the land.

6. The note to Section 24 printed in the Bihar and Orissa Cess Manual of 1927 clearly indicates that Section 24 contemplates the case of a raiyat who is not cultivating the land himself directly but has let it out to under- raiyats for actual cultivation.

For aught we know, the provisions contained in Section 24 might have been introduced for the purpose of enabling the Collector to check the accuracy of the return filed by the proprietor or the tenure-holder, who in his return has described certain lands as in the possession of cultivating raiyats. Section 26 provides that if it shall appear to the Collector that any person upon whom a notice has been served u/s 24 has been wrongly classed in the return as a cultivating raiyat, the Collector may direct that the entry be corrected and that such person be classed as a tenure-holder.

7. This clearly refers to the return submitted by the superior landlord or tenure-holder. In any event when as a matter of fact in the present case there is no actual cultivating raiyat under the plaintiffs, the plaintiffs cannot be called upon to submit a return of the annual value of their lands. The scheme of the Road Cess Act appears to be that the holder of the estate has to pay cesses upon the rents that he receives in respect of the estate. The tenure-holder in his turn has to pay cesses upon the rent that he receives from the raiyat under him and the raiyat has to pay the cesse not upon what he receives from the land but upon what rent he pays to his superior landlord. In the present case the plaintiffs are the cultivating raiyats. There is no dispute on the point that they are the cultivating raiyats. As cultivating raiyats they are liable under the Act to pay cesses upon the rent they pay to the superior landlord in respect of the land forming their raiyati holding. If the plaintiffs make any profit out of the land, that profit is not to be taken into consideration in assessing the road cess in respect of the land. It is only the income derived by the holder of the estate or of the tenure upon which cess is to be assessed and in so far as the cultivating raiyat is concerned it is only upon the rent payable by him that cess is to be assessed. Under the circumstances it is clear that the plaintiffs cannot be assessed to cesses in respect of any profit which they make out of the holding.

8. The question is whether the plaintiffs can be construed to have the status of a tenure-holder in respect of the lands held by them when they allow the dealers in cattle to come upon the land and hold a hat there. The definition of the term "tenure" as given in the Act precludes such a contention. It expressly provides that the interest of a cultivating raiyat is not included in the term "tenure". The plaintiffs are admittedly cultivating raiyats and they cannot be treated to be tenure-holders for the purposes of assessment of cesses. The persons who hold the hat and deal in cattle upon the land are not lessees under the plaintiffs. They are mere licensees who have been granted license to come upon the land and to sell their cattle.

9. The difference between a lessee and a licensee has been pointed out in the case of Khundan Lal Singh and Others Vs. Nafizuddin and Others, , and the Full Bench decision of the Calcutta High Court in Secy. of State v. Karuna Kanta (1907) 35 Cal 82 is a clear authority on the point. It is therefore clear that the decision of the learned District Judge was correct. These appeals must therefore be dismissed with costs.