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JENKINS C.J.

may be made between the parties, which will do away with the necessity of further litigation.

There has been such misconception of the position that we think the proper order for costs will be that each party will bear his own costs up to this stage of the litigation.

MOOKERJEE J. I agree.

S. M.

Appeal allowed.

APPELLATE CIVIL.

Before Richardson and Newbould JJ.

RADHA CHARAN DAS

v.

SHARFUDDIN HOSSEIN.*

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July 1.

Revenue Sale—Revenue Sale Law (Act XI of 1859) ss. 6, 33—Publication of notification of sale in the Vernacular Government Gazette, if necessary—Omission thereof is irregularity and not illegality—Bengal Land-Revenue Sales Act (Beng. VII of 1868.) s. 8.

Where the Subordinate Judge of Cuttack decided that it was absolutely necessary that the notification of a revenue sale should be published in the *Vernacular Gazette in Uriya*, and that its non-publication had made the sale null and void apart from any consideration as to inadequacy of price :—

Held, that the publication of a notification of sale in the *Calcutta Gazette* only was sufficient compliance with a provision of law (Act XI of 1859, s. 6) requiring the publication of such notification in the "Official Gazette."

Held, further, that even if it had been necessary to publish the notification in the *Uriya Gazette*, the omission to do so would not have rendered the sale null and void in the absence of any proof of substantial injury by

* Appeal from Original Decree, No. 118 of 1911, against the decree of Narendra Kishore Dutt, Subordinate Judge of Cuttack, dated March 30, 1911.

reason of this omission, as s. 33 of Act XI of 1859 applied to such a case.

Govind Lal Roy v. Ramjnam Misser (1) followed. *Lala Mobaruk Lall v. Secretary of State for India* (2) referred to.

APPEAL by the defendants, Radha Charan Das and another.

The plaintiffs, Sharfuddin Hossein and Latifanessa Bibi, brought a suit for setting aside a sale for arrears of revenue of an estate called Garadpur Taluq, within the Balasore Collectorate, on the allegation that the sale was held in contravention of the provisions of Act XI of 1859.

The property originally belonged to the sister of plaintiff No. 1, but on her death, it was alleged, the defendant No. 4, Abdul Rashid, succeeded in getting possession on the strength of a spurious *towliatnama*. Plaintiff No. 1, thereupon, brought a suit against the defendant No. 4 and recovered a decree in terms of a compromise, by which the title of plaintiff No. 1 was declared to two-thirds, and that of plaintiff No. 2 to one-third of the estate. The plaintiffs applied for execution of the decree on the 4th November 1908, but the defendant obtained a Rule from the High Court for stay of execution pending the disposal of the appeal he had preferred to that Court, which was eventually dismissed. The Rule was made absolute on the 11th January 1909 by consent, on the defendant undertaking to deposit in Court two years' Government revenue in advance and to furnish security for mesne profits for a similar period. Prior to that however, plaintiffs alleged, the defendants had without their knowledge already committed default in the payment of part of the revenue which had fallen due on November 8, 1908. The annual revenue of the

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estate was Rs. 1,586-15-6 payable in two instalments, on April 28 and November 8 each year. The sum in default was only Rs. 192-7 annas.

The sale took place on 5th February, 1909, when the property was purchased by defendants 1 and 2 through their agent defendant No. 3 for Rs. 11,000. The value of the property was stated by the plaintiffs to be Rs. 20,000.

The plaintiffs appealed to the Commissioner of Orissa on the 31st March, 1909, but the appeal was rejected on the 24th May, 1909. Thereupon the present suit was instituted on 11th March 1910.

The main ground taken by the plaintiffs was that the notification of the sale under section 6 of Act XI of 1859 had not been published in the Vernacular (Orissa) Gazette. It was not disputed that the notice was published in the *Calcutta Gazette* of 20th January, 1909, but plaintiffs contended that the words "Official Gazette" in section 6 included also the local Vernacular Gazette. They relied on rule 3 in section V, Part III of the Rules made by the Board of Revenue at page 107 of the Manual of the Revenue and Putni Sale Laws (Edition 1906), which provided—"The above notifications (under sections 5, 7, and 13) are to be published in the manner prescribed by sections 5 and 6 of Act XI of 1859, respectively. When any estate or shares paying revenue exceeding Rs. 500 are included, notifications in English for those estates or shares only should be published in the *Calcutta Gazette* and the Vernacular *Government Gazette*." To prove that the *Uriya Gazette* was an Official Gazette, plaintiffs produced a letter from the Uriya Translator to Government to the Collector of Cuttack (Ex. 10) from which it appeared that that Gazette continued to be published since 1851 under the orders of Government conveyed in letter No. 1543, dated 25th August 1851, and that

the Gazette appeared in five parts, of which Part I was to contain certain resolutions, orders, and notifications of the Government of India and of the Government of Bengal, circulars, etc., issued by the Calcutta High Court and the Board of Revenue, L. P., and notices of private individuals on payment of printing charges. On behalf of the defendants, a circular was produced (Ex. E.) bearing date 27th August 1895, addressed by the Commissioner of Orissa to all Collectors in the Division which stated that the Government of Bengal in revising the list of matter to be printed in the *Uriya Government Gazette* having excluded the publication of land sale notices therefrom, such notices might not in future be sent to the *Uriya Gazette* for being published. The resolution of the Government of Bengal on the subject was filed by the defendants in the High Court.

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The Subordinate Judge gave effect to the contention of the plaintiffs and decreed the suit, holding on the authority of *Lala Mobaruk Lal v. Secretary of State for India* (1) that publication of the notice in the Vernacular Gazette being imperative in law, its non-publication rendered the sale null and void. On the other points taken by the plaintiffs, viz., irregularities in the service of notices under section 7 or the inadequacy of the price fetched at the sale, the Court found against them.

In their grounds of appeal before the Commissioner (Ex. G.) the plaintiffs had specifically stated that the *sadar jama* of the estate being above Rs. 500, notification of sale under section 6 should have been published in the Vernacular Government Gazette but at the hearing the point does not appear to have been argued.

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Dr. Rashbehary Ghose (Babu Provash Chandra Mitter and Babu Kshirode Lal Sen with him), for the appellants. My first submission is that having regard to the provisions of section 33 of Act XI of 1859, it is not open to the plaintiffs to challenge the sale on the ground that no notice under section 6 had been published in the Vernacular Government Gazette. That ground had not been taken in the appeal before the Commissioner.

[*Mr. B. C. Mitter.* See the grounds of appeal. It was specifically taken.]

The point was practically abandoned, as it was not urged at the hearing. Then, I submit, it was not necessary to publish the notification of sale in the Vernacular Gazette at all. Section 6 requires publication in the "Official Gazette." That means the *Calcutta Gazette* and the *Calcutta Gazette* alone. Land sale notices were excluded from publication in the *Uriya Government Gazette* by an order of the Commissioner (Ex. E). The resolution of the Government of Bengal, on which the order is based, has been filed in this Court.

[*Mr. B. C. Mitter.* I object to its being used.]

As for the Board's rule at page 107 of the Sale Law Manual, the rule is without authority. It is not a statutory rule, but only a part of the instructions framed by the Board of Revenue for the guidance of its officers; and cannot have any effect in law. Lastly, I submit, that the non-publication in the *Uriya Gazette* was a mere irregularity which did not go to the root of the Collector's jurisdiction to hold the sale. Even if it were an illegality, and not a mere irregularity, it would not vitiate the sale without more; for the sale would still be a sale under the Act. The Full Bench case of *Lala Mobaruk*

Lal v. Secretary of State for India (1), on which the Subordinate Judge relies, is really as dead as Queen Anne. It was followed in *Gobind Lal Roy v. Bipradas Roy* (2), but the latter was reversed in appeal by the Judicial Committee in the case of *Gobind Lal Roy v. Ramjanam Misser* (3). The Full Bench is thus overruled by implication by the Privy Council. The present case is even stronger than the Privy Council case, as there was a direct contravention of an express enactment (section 17) and the sale was still upheld. There is no proof of substantial injury in this case. *Lala Gauri Sanker v. Janki Pershad* (4), *Balkishen Das v. Simpson* (5), and *Bageswari Prosad Singh v. Mahomed Gowhar Ali Khan* (6) were also referred to.

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Mr. B. C. Mitter (Babu Ashutosh Mukerjee and Babu Charu Chandra Biswas with him), for the respondents. To take the last point first, I submit the non-publication of the notice under section 6 in the Vernacular Gazette, assuming that to be necessary in law, would render the sale absolutely void. Section 6 stands on a different footing from section 17 with which the Privy Council case deals. Section 6 provides for the initiation of the proceedings under the Act. The notice under that section is, in fact, the very foundation of those proceedings, and strict compliance with its provisions is imperative in law. It is equivalent in fact to the filing of a plaint. A sale held without the notice under section 6 would be like a decree passed without a plaint, and therefore absolutely without jurisdiction. Suppose an extreme case where a sale is held without the issue of any notification

(1) (1885) I. L. R. 11 Calc. 200.

(2) (1889) I. L. R. 17 Calc. 398.

(3) (1893) I. L. R. 21 Calc. 70;

L. R. 20 I. A. 165.

(4) (1889) I. L. R. 17 Calc. 809.

(5) (1898) I. L. R. 25 Calc. 838.

(6) (1903) I. L. R. 31 Calc. 256.

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under the Act. Can it be contended on the strength of the Privy Council case that the sale will still be a valid sale? I submit not.

[Richardson J. But here there was some notification.]

I submit that section 6 is mandatory.

[Richardson J. We are both of us against you on this point. The Privy Council case is quite conclusive.]

In that case, it is not necessary to argue the further points. But the Full Bench case of *Lala Mobaruk Lal* (1) is not dead, as my learned friend says. It was followed by this Court for instance as late as *Jahnovi Chowdharani v. Secretary of State for India* (2).

Cur. adv. vult.

NEWBOULD J. This is an appeal against a decree setting aside a revenue sale on the ground that the said sale did not take place in accordance with the provisions of Act XI of 1859. The lower Court has held that it was absolutely necessary that the notification of the sale should be published in the Vernacular Government Gazette in Uriya and that its non-publication has made the sale null and void apart from any consideration as to inadequacy of price. We are unable to agree with the learned Subordinate Judge on either of these findings.

As regards the first point, the notification was published in the *Calcutta Gazette* and in our opinion that was sufficient. The law on this point is contained in section 6 of the Bengal Land Revenue Sales Act (XI of 1859) and is in the following words "And if the Government revenue of any estate, or share of an estate to be sold, exceed the sum of five hundred rupees, a notification of the sale of such estate or share

(1) (1885) I, L. R., 11 Calc., 200.

(2) (1902) 7 C.*W. N., 377.

of an estate shall be published in the official Gazette." The principal Gazette of the province is the *Calcutta Gazette* and in it are published all notifications, etc., of the Local Government which are required by law to be published. Selected portions from this Gazette are translated and published in the Government Vernacular Gazettes. These portions are selected according to rules prescribed by the Local Government. It appears from Exhibit E, a letter from the Commissioner of Orissa, that in 1895 the Government of Bengal in revising the list of matter to be printed in the *Uriya Government Gazette* decided to discontinue the translation and publication of land sale notices therein. The practice has since been in accordance with that decision. Exhibit 11 filed by the plaintiffs shows that in February 1911 Revenue sale notices were published in the vernacular Gazette and it appears that probably in consequence of the institution of this suit the practice followed before 1895 has been resumed. It has not been shown to us that the Government had no power to issue the instructions which it did issue and in any case the publication of a notification of sale in the *Calcutta Gazette* only is, in our opinion, sufficient compliance with a provision of law requiring the publication of such notification in "the official Gazette." We are further of the opinion that even if it had been necessary to publish the notification in the *Uriya Gazette*, the omission to do so would not have rendered the sale null and void in the absence of any proof of substantial loss by reason of this omission. The decision to the contrary arrived at by the lower Court is based on the ruling of a Full Bench of this Court in the case of *Lala Mobaruk Lall v. The Secretary of State* (1). That ruling certainly supports the contention of the learned

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(1) (1886) I. L. R. 11 Calc. 300.

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counsel for the respondents that if the provisions of section 6 of Act XI of 1859 are not complied with, the very foundations of the sale are bad and consequently the provisions of section 33 of that Act or of section 8 of Bengal Act VII of 1868 have no application. But that Full Bench ruling has in effect been overruled by the decision of the Privy Council in the case of *Gobind Lal Roy v. Ramjanam Misser* (1). We say practically overruled because though there is no reference in their Lordships' judgment to the Full Bench ruling in the case of *Lala Mobaruk Lall v. The Secretary of State* (2), the judgment of a Bench of this Court, which they reversed, was based on that Full Bench decision. The effect of the Privy Council ruling cited above is to annul to a very great extent the distinction drawn in the Full Bench ruling between illegalities and irregularities. Their Lordships commenced the portion of the judgment that deals with this question by stating that they would consider whether there was any real ground for the distinction between cases of illegality, in which a suit might be brought to set aside a sale on grounds that would be barred otherwise under section 33, and cases of irregularity. After considering arguments on both sides their Lordships came to the following decision:—"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 authorised to hold sales 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." Then in

(1) (1893) 1, L. R. 21 Calo. 70;
L. R. 20 I. A. 165.

(2) (1885) 1, L. R. 11 Calo. 200.

the next paragraph of their judgment after quoting the reference to irregularity in section 33 they remark "It is difficult to suppose that the introduction of that sentence in the Act of 1859 could have been intended to have the effect of excluding from section 33 all cases of illegality as distinguished from irregularity." It therefore follows on the authority of this Privy Council ruling that, even if we agreed with the lower Court that a publication of the notification in the Vernacular Government Gazette in Uriya was required by the law, we should be bound to hold that section 33 of Act XI of 1859 applied to this case and in the circumstances the sale could not be annulled by a Civil Court in consequence of the omission to so publish the notification. The lower Court has found that the price at which the property was purchased at the revenue sale was reasonably adequate and we agree with this finding. There is certainly no proof that the plaintiff has sustained substantial injury by reason of the irregularity complained of. This makes the provisions of section 33 as much a bar to the success of the present suit as was the fact in the Privy Council case that the irregularity there complained of was not one of the grounds declared and specified in an appeal made to the Commissioner.

We, therefore, allow this appeal and set aside the judgment and decree of the lower Court. The suit is dismissed and the plaintiffs respondents will pay the defendants appellants costs in both Courts.

RICHARDSON J. concurred.

G. S.

Appeal allowed.

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