

## PRIVY COUNCIL.

DHIRAJ CHANDRA BOSE

v.

HARI DASI DEBI.

P.C.<sup>o</sup>  
1914Oct. 29 ;  
Nov. 2.

## [ON APPEAL FROM THE HIGH COURT AT FORT WILLIAM IN BENGAL.]

*Sale for arrears of revenue—Setting aside sale—Irregularity—Arrears under Act XI of 1859 paid—Embankment charges due—Sale under Act XI of 1859 as for arrears of revenue instead of under Public Demands Recovery Act (Beng. Act I of 1895 as amended by Beng. Act I of 1897)—Embankment Act (Beng. Act II of 1882).*

In this case the High Court set aside a sale for arrears of revenue, holding that where the Collector had acknowledged payment in full of the arrears of land revenue for which the sale had been advertised, and had elected to proceed by certificate procedure against an arrear of a different character, and had already directed a sale under that procedure, he could not turn round and treat the arrear under the certificate as an arrear of land revenue without any notice to the parties under section 5, and proceed to sell under the land revenue proclamation on the mere ground that no special exemption order had been passed. The embankment charges ordered to be levied under the Certificate Act (Beng. Act I of 1895 as amended by Beng. Act I of 1897) were taken out of the purview of Act XI of 1859 unless and until fresh notices were issued under section 5, and they could not be treated as arrears of land revenue. The sale, therefore, not being for an arrear of land revenue, was liable to be set aside. An appeal from that decision was dismissed by their Lordships of the Judicial Committee, who said they saw no reason to interfere with it.

APPEAL 64 of 1913 from a judgment and decree (4th July 1910) of the High Court at Calcutta which reversed a judgment and decree (29th March 1909) of the Subordinate Judge of Midnapur.

The defendants were the appellants to His Majesty in Council.

<sup>o</sup>Present: LORD DUNEDIN, LORD SHAW, SIR JOHN EDGE, AND MR. ANEER  
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The only question for determination on this appeal was whether the first respondent, Hari Dasi Debi, was entitled to have set aside the sale of an 8 annas share of mahal Gumukpota, pergunna Kastirjora which had taken place by order of the Collector of Midnapur under Act XI of 1859.

She was the recorded proprietor of the share in the zamindari in respect of which a separate account known as No. 1 had been opened in the Collectorate Register. It had been purchased by her on 23rd November 1904 at an execution sale, and she had mortgaged it to the second appellant Hem Chandra Bose, who in a suit (189 of 1906) on the mortgage brought in the Court of the Subordinate Judge of Midnapur, had obtained on 9th June 1906 a decree against her for a sum of Rs. 13,000 with costs.

Hari Dasi Debi was in arrears in payment of the Government revenue, and also of certain cesses, rates and charges, which were by law realizable as arrears of Land Revenue, payable in respect of her share of the mahal; and among others, in respect of certain embankment charges due prior to September 1906, and also in respect of the quarterly kist of the Government Land Revenue due on 12th January 1907. As to these arrears notices, dated 16th February 1907, were duly issued and published under sections 6 and 13 of Act XI of 1859, fixing 26th March 1907 at 12 o'clock for the sale of the first respondent's share for recovery of the arrears of revenue and the other demands which by law are recoverable as arrears of Land Revenue. Notices were also duly issued under Section 7 of the Act to the raiyats and other tenants not to pay rents to the respondent.

On 13th March 1907, a further certificate for Rs. 69-13-9 was filed in the Collectorate under the Bengal Embankment Act (Bengal Act II. of 1882) against the first

respondent in respect of certain additional embankment charges, payment of which was in arrear.

On 6th March 1907, the appellant Hem Chandra Bose obtained a decree in suit 189 of 1906 which barred his mortgagor's (the first respondent's) right of redemption.

On 18th March 1907, the first respondent through her Naib applied to the Collector of Midnapur to be allowed to deposit the arrears of revenue due, but her application was refused. On 23rd March 1907, she presented a petition to the Collector by a pleader for exemption of the share of the mahal Gumukpota from sale, admitting the default in respect thereof, and expressing her willingness to deposit the "arrears of revenue, etc.;" and on that petition, which was made under Section 18 of Act XI of 1859, the Collector on 25th March made an order that the arrears might be accepted if paid on that day. On 25th the first respondent through her agents deposited with the Collectorate Rs. 807 in respect of the arrears due by her, that sum being short of the full amount required to be paid by Rs. 69-13-9. On 26th March, on the deficit being reported to him, the Collector directed that the sale must proceed; and on that day (which was the day fixed for the sale) the share in mahal Gumukpota was duly sold, and was purchased by the second respondent, Nanda Lal Mullick, for Rs. 500, and he at once deposited Rs. 125, part of the purchase-money in compliance with the requirements of Act XI of 1859.

On 27th March, the respondent Hari Dasi Debi petitioned the Collector to set aside the sale. The purchaser on 24th April paid to the Collectorate under section 23 of the Act, Rs. 375 the balance of his purchase-money.

On 24th May 1907, the Collector confirmed the sale and ordered a certificate of title to be issued to the

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purchaser. On the same day the respondent, Hari Dasi Debi, presented an appeal against the sale to the Commissioner of the Division under section 26 of the Act; and the appeal was on 26th July considered by the Commissioner and dismissed; whereupon, the sale became final and conclusive under section 27 of the Act; and on 12th August a sale certificate was granted to the purchaser under section 28.

Meanwhile, on 19th June 1907, the right title and interest of the respondent, Hari Dasi Debi, in the 8 annas share of the mahal Gumukpota had been put up for sale under the decree of 9th June 1906 in the mortgage suit 189 of that year, and purchased by the second appellant, Hem Chandra Bose; and on 23rd November 1907 that sale was confirmed by the order of the Court.

The suit giving rise to the present appeal was instituted by Hari Dasi Debi on 18th January 1908 against the appellant Dhiraj Chandra Bose, and the purchaser Nanda Lal Mullick who had parted with his interest in his purchase to the first defendant.

The plaintiff alleged (*inter alia*) in her plaint that her agent had on 25th March 1907 deposited only Rs. 807 in payment of arrears in consequence of information given him by the clerk in the Arrears Collection Department of the Collectorate; that the sale was invalid, illegal, and erroneous on a number of grounds, and that the property had in consequence been sold at a very inadequate price, and she prayed that the sale might be set aside.

The defendants denied (*inter alia*) that the plaintiff's agent had either received or acted on information obtained from the clerk of the Arrears Collection Department in the matter of depositing only Rs. 807; and also denied that the sale was in any way illegal, invalid or erroneous; and they alleged that certain

grounds now put forward in the plaint had not been stated in her appeal to the Commissioner; that the sale in question had become final and conclusive, and a sale certificate had been granted, and that the grounds and objections raised in the plaint could not now be entertained, or the sale set aside; and that the plaintiff's interest in the property having passed to the appellants, she had no further interest to enable her to maintain the suit.

The following were the issues so far as they are now material :—

*6th.*—Whether the sale referred to in the plaint is invalid and liable to be set aside ?

*7th.*—Whether the proceedings under section 5 of Act XI of 1859 were adopted before the sale ? If not, whether the sale can stand according to law ?

*8th.*—Whether the Arrears Collection Officers informed the plaintiff's man to deposit Rs. 807 only ? If so, whether the sale is bad ?

*9th.*—Is the plaintiff entitled to any relief ? If so, what ?

*10th.*—Whether there were any arrears of revenue due by the plaintiff, for which the property was sold ?”

The Subordinate Judge held that the order made on 25th March 1907 that “ the arrears might be accepted if paid on that day ” did not amount to an order of exemption, because the condition was not fulfilled, for the arrears were not paid off on 25th March ; that the sale duly and properly took place for the arrears of revenue for which the property was liable, and it was valid and final ; that the objection raised under section 5, clause (3) of Act XI of 1859 was not open to the plaintiff, and was not applicable to the case, inasmuch as the sale had taken place for recovery of arrears of revenue, and no proceedings under section 5 were necessary ; and that in fact the clerk of the Arrears Collection Department of the Collectorate did not mislead the plaintiff's agent, and even if he had

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done so, the Court had no power to grant relief to the plaintiff on that ground.

An appeal by the plaintiff came before a Divisional Bench of the High Court (HOLMWOOD and SHARFUDDIN JJ.) who (after deciding that the plaintiff had sufficient interest in the property in suit to enable her to maintain the appeal to which a preliminary objection had been taken on the ground that she had no competence to support it) delivered judgment and made a decree reversing the decision of the Subordinate Judge, and decreeing the suit and the appeal with costs.

The material portions of their judgment are as follows :—

“ We may mention that although the point now in issue, namely, whether the estate could be sold for arrears of pulbandi only under Act XI of 1859 without taking the necessary steps under section 5 of the Act, was raised in express terms in the appeal to the Commissioner, it does not appear that the point was urged before him, or if it was, he did not consider it necessary to notice it. The question, however, which would arise under section 33 of the Act is not material, inasmuch as it is admitted that if this was a sale under the Revenue Sale Law at all, it cannot be set aside.

“ The only point which really arises in this case is whether the sale for an arrear of Rs. 69-13-9 for pulbandi, which was already the subject of a certificate, the sale under which was fixed for the same day, 26th March, could be held under the Revenue Sale Law in face of the fact that the Collector's ledger book, the chalans given to the plaintiff, the rubokari of the 24th May 1907 and the order for sale on the account list of arrears of revenue payable, all show that the revenue and other charges had been fully paid up, and that nothing remained due but the sum of Rs. 69-13-9 under the certificate 4654. The account list clearly refers to the certificate, and the Collector must have known when he passed the order that the only debt due from the estate was already the subject of a certificate decree, or if he did not, the plaintiff ought not to suffer for his laches. Now, this certificate was issued not only against the plaintiff as proprietress but against one Jogendra Nath Pathak, the usufructuary mortgagee in possession, and this is urged as a further ground for holding that the estate could not be sold under Act XI of 1859 as for an arrear of Government revenue. No arrear of Government revenue was or could be due from Jogendra Nath

Pathak, yet he was equally liable with the plaintiff for the pulbandi arrear for which the estate was actually sold.

"The Subordinate Judge refused to admit the Collector's ledger, as it was tendered at a late stage of the case, but we thought it right to admit it as a public document about which there was no dispute, and the learned vakil for the respondents very frankly admitted that he could have no objection to its going in, though he asked us at the same time to take in the judgment in appeal of the Commissioner. This we saw no objection to doing and we have already dealt with it above. We may point out that there is evidence that the existence of the arrear of Rs. 69-13-9 may have purposely been withheld from the plaintiff, for we find certain pencil calculations on the back of Ex. I, showing that the person who estimated the plaintiff's dues at Rs. 807-1-1 had Ex. I actually before him and in his hands when he made the calculation. One of the witnesses who knows the mohurir Prabhat Chandra's hand-writing well and who attests it in the entries made in ink in Ex. I, does not venture to deny that the pencil entries are his, but says he cannot make out in whose writing they are. This witness, Utpal Chandra Bhattacharji, Land Revenue Towzi mohurir, says that parties have always made all necessary enquiries from Prabhat, and this practice has been going on ever since he joined the department. He significantly asks 'From whom but Prabhat Babu should parties get these informations as to how much is deposited?' and this rather discounts the value of the Commissioner's judgment which is based on the fact that plaintiff's agent had no business to rely on casual enquiries from a busy man like the mohurir Prabhat on the day before the sales. Prabhat himself gives a very half-hearted denial to the pencil entries, and we must take it that he alone had the opportunity of making them. He does not deny that the karpardaz came to him for information, but says he does not remember, but he admits that he was the man who the very next day certified to the Collector that Rs. 69-13-9 remained unpaid, without drawing any attention to the fact that this sum was due under a certificate for pulbandi, although the order-sheet was before him, and he boasts in his evidence that he could not make an incorrect statement under those circumstances. Yet the order-sheet clearly shows the reference number of the certificate on the face of it.

"We fully appreciate the importance of the dictum of their Lordships of the Judicial Committee in the case of *Gobind Lal Roy v. Ramjanam Misser* (1) that any thing which impairs the security of purchases at revenue sales tends to lower the price of the estates put up for sale, and that the purchaser should not be exposed to the danger of having his sale set aside

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(1) (1893) I. L. R. 21 Calc. 70, 83 ; L. R. 20 I. A. 165, 174.

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after a year upon new grounds. But the ground taken in this case is not new. It is the ground that has been apparent on the face of the Collectorate proceedings from the beginning and was taken in the grounds of appeal to the Commissioner. Having regard to the carelessness apparent in this case, with which any and every statement of a mohurir is accepted by the subordinate revenue officers and passed on to the Collector, and to the immense temptation these mohurirs are under to traffic in revenue-sales, we think that the evidence of the *bona fides* of the mohurirs should be most carefully scrutinized, and when, as in this case, there appears *prima facie* suspicion of misrepresentation, the technical effect of the Collector's orders should be very strictly interpreted in favour of the plaintiff.

"There is no direct evidence of an attachment under the certificate for Rs. 69-13-9, but the certificate itself obtained the force of a decree on 12th March 1907 when it was filed, and the order for sale on 26th March, which was passed on the same day, is clearly an order for execution of the decree by sale, and operates as an attachment within the meaning of section 17, for the words of that section are not 'ordered to be attached,' but 'held under attachment by the revenue authorities otherwise than by order of a judicial authority'; but the sale is not bad on that ground alone, since the attachment, if any, was made after the last day of payment and after the estate had become liable to sale for arrears of Government revenue: *Bunwari Lal Sahu v. Mohabir Persad Singh* (1). But the main ground for holding that the sale must be set aside is that it is not for arrears of revenue at all. Section 33 says 'no sale for arrears of revenue shall be annulled by a Court of Justice,' it does not say 'no sale purporting to be for arrears of revenue shall be set aside.'

"It is in vain to say that the Collector could have sold the estate for arrears of embankment charges if he had not issued a certificate and had proceeded under section 5 of the Act.

"It is urged that the omission to proceed under section 5 is a mere irregularity, but their Lordships of the Judicial Committee did not lay this down in *Gobind Lal Roy's Case* (2), and the only authority we have been referred to the case of *Deonandan Singh v. Manbodh Singh* (3) merely says that the non-issue of a notice under section 5 is an irregularity which does not make a sale a nullity unless the ground has been specified in the appeal to the Commissioner. This case is rather in plaintiff's favour, and in any case no notice under section 5 was held to be necessary in that case, as the arrears were not other than those of the current year and of the year

(1) (1873) 12 B. L. R. 297;  
 L. R. 1 I. A. 89.

(2) (1893) I. L. R. 21 Calc. 70;  
 L. R. 20 I. A. 165.

(3) (1904) I. L. R. 32 Calc. 111.



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immediately preceding. But to say that no notice under section 5 is necessary when the sale is not for arrears of revenue at all but for other demands recoverable by the same process as land revenue, is going very much farther than any authority with which we are acquainted, more especially when the arrears of pulbandi are already under process of recovery by the certificate procedure.

“It is useless to enter into an examination of all the facts and documents referred to by the learned Subordinate Judge. The first five issues which he set himself to try were decided in favour of the plaintiff. The 10th issue was the most important in the light of the questions as framed, and the principal part of his judgment is upon this, *viz.*, whether there were any arrears of revenue due by the plaintiff for which the property was sold.

“It is, of course, perfectly clear that the head note to Ex. 12 which is the certified copy of the Collector's order, Ex. 1, is not part of the document at all. But we have the whole document in original and that document shows that the Collector was misled into thinking that the arrear of Rs. 69-13-9 which clearly appears by the reference to the certificate to be an arrear of pulbandi was as a matter of fact, an arrear of revenue, and on this he ordered an immediate sale on the sale-proclamations already issued under section 6 of Act XI of 1859. The proclamation shows that the arrear of land revenue was Rs. 547-10-10.

“Now, it is clearly established by the Collectorate ledger exhibited in this Court, by the chalans, Ex. 2 (series) and by the Collector's rubokari on the 24th May 1907 that this Rs. 547-10-10 had been fully paid up and receipts granted for it. It is true no formal order of exemption had been passed in respect of it, and, therefore, the estate was still liable to sale for this arrear as advertised, but it is equally clearly established by the same papers that the estate was not sold for those arrears but for the 69-13-9 due for pulbandi under the certificate.

“These are all the findings of fact that are necessary to dispose of issues 6 to 10.

“Applying the law as we understand it and following the principles laid down by the Judicial Committee in the case of *Gobind Lal Ray v. Ramjanam Misser* (1), we are of opinion that the sale as held on the 26th March 1907 was not a sale for arrears of land revenue and that it was not competent to the Collector to hold such a sale under Act XI of 1859.

“It appears to us that when the Collector has acknowledged payment in full of the arrears of land revenue for which the sale was advertised, and has elected to proceed by certificate procedure against an arrear of a

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different character, and has already directed a sale under that procedure, he cannot turn round and treat the arrear under the certificate as an arrear of land revenue, without any notice to the parties under section 5, and proceed to sell the property under the land revenue proclamation on the mere ground that no special exemption order has been passed. The embankment charges ordered to be levied under the Certificate Act are taken out of the purview of Act XI of 1859 unless and until fresh notices are issued under section 5, and they cannot be treated as arrears of land revenue. The sale, therefore, not being for an arrear of land revenue, is liable to be set aside, and the judgment and decree of the Subordinate Judge must be discharged with costs."

On this appeal, which was heard *ex parte*,

*A. M. Dunne*, for the appellant, contended that the sale had taken place in conformity with the provisions of Act XI of 1859 and was valid, final, and conclusive; and the respondent had not proved in connection with the sale any irregularity by which she had sustained substantial injury. Her application to the Collector for exemption was made under section 18 of the Act which provided that "the Collector shall duly record in a proceeding the reason for granting such exemption." The order made by the Collector on the petition, therefore, authorising the Collectorate office to receive the arrears due, if paid on that day (25th March) without giving any reason, was not an order for exemption but a preliminary proceeding which was necessary before an order for exemption could be made. The failure to deposit the arrears due was a matter for which the respondent and her agents were entirely responsible. It was well known to her and to them that without an order for exemption being made, the sale must take place; that all the arrears then due and payable in respect of land revenue, cesses, embankment charges, &c., had to be deposited on 25th March in order to obtain the exemption asked for, and it was entirely the fault of herself and her agents that the correct amount was not paid into the Collectorate.

Section 6 of Act XI of 1859 provided that "the property shall on the day notified for sale be put up to auction and sold to the highest bidder, and that no payment or tender of payment made after the latest date for payment" (in this case 12th January 1907) "shall bar or interfere with the sale, either at the time of sale or after its conclusion." No ground had been established by the respondent entitling her to have the sale set aside; and the Court had no jurisdiction under section 33 of Act XI of 1859 to annul the sale or to disturb the title of the purchaser. [LORD SHAW referred to *Mahomed Jan v. Ganga Bishun Singh* (1).] The respondent had, moreover, it was submitted, at the date of the suit, no interest in the property entitling her to have the sale set aside.

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The judgment of their Lordships was delivered by

LORD DUNEDIN. This is an appeal heard *ex parte* and whenever this is the case it is a matter of considerable anxiety to the Board. But in this appeal that anxiety was certainly relieved by the exceedingly fair and candid way in which it was presented by the learned counsel for the appellants. In the result, upon a full consideration of the circumstances, their Lordships see no reason for interfering with the judgment of the Court below.

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They will, therefore, humbly advise His Majesty to dismiss the appeal.

*Appeal dismissed.*

Solicitors for the appellants: *Watkins & Hunter.*

J. V. W.