

PRIVY COUNCIL.

SHARFUDDIN HOSSAIN

v.

RADHA CHARAN DAS.

P.C.*
1918

June 18.

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

Sale for Arrears of Revenue—Notification of Sale, publication of—Act XI of 1859, ss. 6 and 33—"Calcutta Gazette", the "Official Gazette" within the meaning of s. 6—Non-publication in Uriya Vernacular Government Gazette not an illegality in sale proceedings—Grounds for annulling sale under s. 33 of Act XI of 1859.

The provisions of s. 6 of Act XI of 1859 are, for the purpose of notifying a sale for arrears of revenue under the Act, sufficiently complied with by the publication of the notification of sale in the *Calcutta Gazette*, which is the "*Official Gazette*" within the meaning of that section on its proper interpretation. Where a sale has been so notified the non-publication of the notification of sale in the *Uriya Vernacular Government Gazette* is not an illegality which renders the sale "contrary to the provisions of the Act," and is therefore not a ground for setting it aside under s. 33.

APPEAL No. 18 of 917 from a judgment and decree (1st July 1913) of the High Court at Calcutta, which reversed a judgment and decree (30th March 1911) of the Subordinate Judge of Cuttack.

The representatives of the plaintiff were the appellants to His Majesty in Council.

The facts of the case are sufficiently stated in the judgment of the High Court (RICHARDSON and NEWBOULD JJ.) appealed from, which will be found in I. L. R. 41 Calc. 276.

On this appeal,

A. M. Dunne, K. C., for the appellants, contended that the publication of the notification of sale in the

* Present: LORD SHAW, SIR JOHN EDGE, MR. AMEER ALI AND SIR WALTER PHILLIMORE, BART.

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Uriya Vernacular Government Gazette was necessary, and that the omission to so publish it rendered the sale null and void. The expression "Official Gazette" in section 6 of Act XI of 1859 means or includes a vernacular Gazette where one exists. In such a case the General Clauses Act, section 13, allowed the words "Official Gazette" to be read as plural instead of singular. The omission was not merely an irregularity but an illegality within the meaning of section 33 of Act XI of 1859. Reference was made to *Lala Mobaruk Lall v. Secretary of State for India* (1). The decision of the Board in *Gobind Lal Roy v. Ramjanam Misser* (2) was with reference to a breach of section 17, and not section 6 of the Act which distinguishes it, and makes it inapplicable. A sale so made was a forced sale, which caused an inadequate price to be obtained, the effect of which was substantial injury to the appellants.

Kenworthy Brown, for the respondents, contended that the decision in *Gobind Lal Roy v. Ramjanam Misser* (2) was conclusive that such an omission was only an irregularity and not an illegality, and that case was supported by another decision of the Board in *Tasadduk Rasul Khan v. Ahmad Husain* (3) which was a decision on sections 289, 290 and 311 of the Civil Procedure Code of 1852. [Counsel was stopped by the Board and]

Dunne K. C., called on, said he had nothing to add.

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The judgment of their Lordships was delivered by LORD SHAW. This is an appeal from a judgment and decree of the High Court at Calcutta, dated the

(1) (1885) I. L. R. 11 Calc. 200. (3) (1893) I. L. R. 21 Calc. 66 ;
 (2) (1893) I. L. R. 21 Calc. 70 ; L. R. 20 I. A. 176.
 L. R. 20 I. A. 165.

1st July 1913. That decree reversed a judgment and decree of the Subordinate Court of Cuttack, dated the 30th March 1911.

The suit was one to set aside a sale for arrears of Government revenue. The sale had been conducted under the provisions of the leading statute, Act XI of the year 1859.

By section 33 of that statute it is provided that no such sale "shall be annulled by a Court of Justice, except upon the ground of its having been made contrary to the provisions of this Act, and then only on proof that the plaintiff has sustained substantial injury by reason of the irregularity complained of." The defect of procedure, which is said not to be merely an irregularity but to amount to an illegality, is this: that publication of the notification of sale was necessary in the Uriya Vernacular Government "Gazette," circulating in the district. By order of the Lieutenant-Governor, manifestly made for purposes of public convenience, it was provided that a notification of sales should not appear in that publication. On the hypothesis, which is by no means admitted, that non-publication in the "Uriya Gazette" was an irregularity, the question for the Board is whether this was an illegality, so as to make the sale "contrary to the provisions" of the Act.

The main provisions applicable to the conduct of sales, namely, those of sections 3, 5 and 6 of the statute, have been, in all points, complied with. These sections provide, not only for notification in the Official Gazette, which is, on the proper interpretation of those sections, the Official Gazette published in Calcutta, but they also make provisions for a local mode of communication in the particular district, viz., "in the language of that district, in the office of the Collector," otherwise as set forth in section 3.

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In these circumstances, their Lordships are of opinion that no ground has been made out in the present case for the argument that this sale has been made by procedure contrary to the provisions of this Act.

Their Lordships are of opinion, not only that there has been no contravention of the provisions of the statute, but that, even if their view was that any irregularity had been committed, upon which it is not necessary to enter, there has been no proof offered that any substantial injury arose to the appellants in consequence of the irregularity complained of.

Their Lordships say no more upon the question, except that on the latter point all the Courts below are agreed, that is to say, that it is not established that the appellants bring forward a case of any substantial injury attributable to the irregularity which they allege. The essential conditions for setting aside the sale have, accordingly, not been satisfied.

In those circumstances their Lordships do not doubt that the High Court have come to a correct conclusion, and they will humbly advise His Majesty that this appeal be dismissed with costs.

J. V. W.

Appeal dismissed.

Solicitors for the appellants: *T. L. Wilson & Co.*

Solicitors for the respondents: *Ranken, Ford & Chester.*