

case back to his Court in order that he may determine the question of limitation taking into consideration the fact that defendant No. 2 was made a party to the suit on the 1st December 1921 and having regard to all the other facts and circumstances of the case. This is the only question which now remains for his determination.

The costs will abide the result.

GREAVES J. I agree.

G. S. *Appeal allowed; suit remanded.*

1926
 ASRAFAN-
 NESSA
 KHATUN
 v.
 HERANDA
 CHANDRA
 CHOWDHRY.
 MUKERJI J.

APPELLATE CIVIL.

B. B. Ghose and Cammiade JJ.

ABANI NATH MUKHERJEE

v.

SECRETARY OF STATE FOR INDIA.*

1926
 June 24.

Cess—Re-valuation—Mode of levy of cess on revaluation—Date from which revaluation is to take effect—Cess Act (Beng. IX of 1880), ss. 12, 15, 40, 182—Rules made by the Board of Revenue under the Cess Act, rule 30, if ultra vires.

Section 40 of the Cess Act is applicable only where there is any cess to be levied in the district as a whole, that is, if there is a district revaluation. Where there is a revaluation only of an estate or a tenure in any district, it is not imperative that notice should be served on the holder of that estate or tenure according to the provisions of the last paragraph of section 40.

Rule 30 made by the Board of Revenue under the authority given by section 182 of the Cess Act is not *ultra vires* of the law and it is the Board of Revenue which has to fix a date from which revaluation is to take effect.

* Appeal from Appellate Decree, No. 736 of 1924, against the decree of H. C. Liddell, District Judge of Hooghly, dated December 21, 1923, reversing the decree of Lal Behary Chatterji, Subordinate Judge of that district, dated August 22, 1921.

1926

ABANI NATH
MUKHERJEE
v.
SECRETARY
OF STATE
FOR INDIA.

SECOND APPEAL by Abani Nath Mukherjee, the plaintiff.

This appeal arose out of a suit in which the plaintiff sought to recover certain sums realized from him as enhanced cess. He is the 8 annas proprietor of touzi No. 47. His estate was revalued under the Cess Act in 1914-15 and the valuation was enhanced. In 1919, he received a notice from the Collector demanding cess from 1919 at an enhanced rate. He objected that no notice had been served on him showing the amount of cess claimed under the revaluation and pleaded that he had realized from his *patnidars*, etc., at the old rate and that he had paid to the Collector at the old rate without any objection being raised. This, however, was rejected by the Collector, by the Commissioner and by the Board of Revenue. A certificate was then issued for the balance claimed at the enhanced rate and this was realized from him. He brought the present suit asking for declarations that a notice was required by law, that the plaintiff was not liable to pay enhanced cess until the notice was given and that the certificates issued were bad in law and he prayed for a refund of the money paid in excess.

The defendant (Government) contended that the plaintiff had received his valuation-roll, that the rate of cess was never altered and that the amount of cess payable was a mere matter of calculation from the valuation-roll, that the issue of a notice under section 40 of the Cess Act was not a condition precedent to the attaching of liability to pay cess and that the cess was legally payable from the beginning of the year following the year of revaluation. The Court of first instance (Subordinate Judge) granted a decree for the excess amount levied up till the date of notice (Rs. 1,676). On appeal by the Secretary of State for

India, the District Judge reversed the judgment and decree of the primary Court and dismissed the suit.

The District Judge held that the plaintiff probably received the valuation-roll showing the increase in the valuation of his estate, but that no notice under section 40 of the Cess Act showing the amount of cess payable in respect of his estate and specifying the date from which such cess would take effect was served on the plaintiff. In the opinion of the District Judge, however, after revaluation, the plaintiff's liability to pay cess on the amount of the revaluation, arises *ipso facto* without any condition precedent. The learned Judge also held that the plaintiff could be held liable in 1919 to pay enhanced cess as from 1916.

The plaintiff thereupon preferred this Second Appeal to the High Court.

Babu Rupendra Kumar Mitter (with him *Babu Shyamadas Bhattacharya*), for the appellant. It is a fundamental rule that in order that a tax may be legal, the procedure laid down for imposing the tax must be strictly complied with. The formalities laid down in the statute must be taken to be imperative: *Leman v. Damodaraya* (1). See also *S. R. Das'* Tagore Lectures on *Ultra Vires*, pages 235-36.

The notice required by section 40 of the Cess Act is essential to the legality of the cess. No notice having been given under the section, the imposition was illegal and the plaintiff is entitled to refund. The decisions in *Bhugwati Kuwari Chowdhurani v. Chutterput Singh* (2) and *Ricketts v. Rameswar Malia* (3) do not touch the contention that I am urging and are distinguishable. Rule 30 of the

1926

ABANI NATH
MUKHERJEE
v.
SECRETARY
OF STATE
FOR INDIA.

(1) (1876) I. L. R. 1 Mad. 158. (2) (1898) I. L. R. 25 Calc. 725.

(3) (1900) I. L. R. 28 Calc. 109.

1926

ABANI NATH
MUKHERJEE
v.
SECRETARY
OF STATE
FOR INDIA.

Board's rules is *ultra vires*. See section 182 of the Cess Act.

The Senior Government Pleader (Babu Surendra Nath Guha), for the respondent. The provisions of section 40 are not mandatory, but directory. Even if the provisions thereof are mandatory, they are not applicable to the present case, because the revaluation was not of a district, but of a particular estate.

Babu Rupendra Kumar Mitter, in reply. The Act contemplates one rate for a district. Section 40 should be read along with sections 155 and 156 of the Cess Act.

B. B. GHOSE AND CAMMIADE JJ. This appeal by the plaintiff raises a question of some importance with regard to the procedure relating to assessment of cesses on revaluation of an estate under section 15 of the Cess Act.

We must say at the outset that the facts of this case reveal considerable irregularities in the office which was concerned with the levying of rates under the Cess Act.

In this case it appears that there was a revaluation of the estate of the plaintiff in the year 1914-1915. But cesses were realized at the old rate till March, 1919, and although there was a revaluation of the estate, no one discovered that cesses were being realized at the old rate for a period of about three years. It seems that somebody woke up on the 28th March, 1919 and found that the rates were being realized at a rate considerably below the revaluation made in the year 1914-1915 and demand was made for the increased rate for three preceding years, which the plaintiff refused to pay. There were proceedings before the revenue authorities which were unsuccessful, and the plaintiff was compelled to pay a sum of

Rs. 1,600 odd which was realized by the certificate-procedure.

This suit has been brought for the purpose of a declaration that the plaintiff was not bound to pay the amount assessed on revaluation by reason of the failure of the revenue authority to serve notice under the last paragraph of section 40 of the Cess Act and for recovery of the amount which the plaintiff had been compelled to pay in excess of the old rates and also for a declaration that the certificates lodged against him up to January 1919 are void.

The Subordinate Judge who tried the case in the first instance passed a decree in favour of the plaintiff. On appeal by the Secretary of State for India in Council that judgment has been reversed.

Two questions have been urged against the judgment of the learned District Judge on behalf of the appellant. The first question is that the provisions of section 40 of the Cess Act are mandatory and imperative and the failure to comply with the provisions of that section renders the levy of the rates void; and secondly, that cesses could not have been realized on revaluation from after the year of the completion of the revaluation. In the present case the revaluation was made of a particular estate belonging to the plaintiff under section 15 of the Cess Act and we have to construe the Act having regard to that fact in view. As at present advised, we are of opinion that in order to levy cesses on any estate where the matter falls within the provisions of section 40, the procedure laid down in that section is imperative and unless it is followed, the taxing authority cannot impose any burden of taxation on any person.

But in the present case the difficulty arises from the fact that there was revaluation only with regard to this particular estate and we are unable to hold that

1925

ABANI NATH
MUKHERJEE
v.
SECRETARY
OF STATE
FOR INDIA.

1926

ABANI NATH
MUKHERJEE
v.
SECRETARY
OF STATE
FOR INDIA.

section 40 applies when there is revaluation of only one particular estate. The section commences with these words "when the rate of road-cess and public-works-cess to be levied in any district shall have been determined for any year and published in the Calcutta Gazette as provided in section 155, the Collector of the district" shall do certain things. If these provisions are scrutinized, it would appear that they provide for the procedure to be adopted with reference to the whole district, that is to say, the Collector must cause the rate so determined to be published by affixing a notification in some conspicuous place in his office in every Civil Court, in every police-station and in the office of every subdivisional officer within the district and he shall cause such rate to be proclaimed by beat of drum throughout the district and shall also cause to be served a notice on the holder of every estate within the district, and so on. It is argued strenuously on behalf of the appellant that it would not be proper to confine this procedure to a case where cess is to be levied on the entire district, but ought to be made applicable also where there is a revaluation of a part of a district or of an estate. But it seems that there cannot be the same reason for the publication and service of notices where a particular estate is concerned and not an entire district. Because when only one estate is revalued, it is to be presumed that the owner of the estate, who only is concerned in the matter, will take proper steps in order to acquaint himself as regards the matter of revaluation. However that may be, we cannot make any surmise as to what was the intention of the Legislature. We must construe the section as it stands and as the section stands we must hold that section 40 is applicable only where there is any cess to be levied in the district as a whole, that is, if there

is a district revaluation; and where there is a revaluation only of an estate or a tenure in any district, it is not imperative that notice should be served on the holder of that estate or tenure according to the provisions of the last paragraph of section 49. That being so, we are unable to hold that the levy of the rate is unauthorised in this particular case.

Then comes the question whether the revenue authority was justified in levying the cess in 1919 from the year 1916. That matter must be governed according to law or any rule which has the effect of law. Under section 12 it is the Board of Revenue which has to fix a date from which the revaluation is to take effect. Section 15 may be taken to be a supplement to that section. But there is no provision in section 15 as to the period from which the revaluation is to take effect. That is provided in rule 30 made by the Board of Revenue under the authority given by section 182 of the Cess Act.

It is contended on behalf of the appellant that rule 30 is *ultra vires* of the Act. But clause (i) of section 182 is quite general and we cannot say that that rule is *ultra vires* of the law. Although we feel that it is a hardship on the plaintiff to have to pay back cess for three years on account of some negligence in the office of the taxing authority, we cannot say that this realization of the cess is illegal.

We must therefore dismiss the appeal with costs.

S. M.

Appeal dismissed.

1926

ADANI NATH
MUKHERJEE
v
SECRETARY
OF STATE
FOR INDIA.