

PRIVY COUNCIL.

P. C.*
1931.

Nov. 2, 30.

KRISHNACHANDRA BHOUMIK

v.

PABNA DHANABHANDAR COMPANY,
LIMITED.

[ON APPEAL FROM THE HIGH COURT AT CALCUTTA.]

*Sale for Revenue—Arrears of revenue—Liability to sale—Separate account—
Bengal Land Revenue Sales Act (XI of 1859), ss. 2, 3, 13.*

Upon the true construction of sections 2 and 3 of the Bengal Land Revenue Sales Act, 1859, an estate is not liable to sale under that Act unless (1) there has been a failure to pay the whole or part of a *kist* or instalment, (2) the amount, being unpaid on the first day of the following month, has been converted by the operation of section 2 into an arrear, and (3) the latest date, as fixed by section 3 and the official notice of the Board of Revenue, for the payment of that arrear, has passed.

Where a separate account for a share of the estate has been kept under section 10, section 13 precludes a sale of the share unless (1) the estate has become liable to sale, and (2) there is an arrear of revenue for the share according to the separate account giving effect to section 2.

A separately accounting share of an estate was sold under the Act on June 26, 1924. By the general account for the estate the January *kist* had been paid, but a small part of the March instalment had not been paid. The next date after April 1 officially fixed as the latest date for the payment of arrears was June 28.

Held that the estate not being liable to be sold up on June 26 the sale of the share was invalid irrespective of whether there was an arrear of revenue on the separate account.

Saraswati Bahuria v Surajnarayan Chaudhuri (1) followed.

Decree of the High Court affirmed upon a different ground.

Appeal (No. 105 of 1930) by defendant No. 1 from a decree of the High Court (May 23, 1928) affirming a decree of the Subordinate Judge of Pabna (July 22, 1926).

The suit was instituted by the respondent company, in liquidation, against the appellant and others claiming, *inter alia*, to set aside a sale for arrears of

**Present*: Lord Thankerton, Lord Salvesen, Sir Lancelot Sanderson and Sir George Lowndes.

revenue of a share of an estate in respect of which a separate account had been ordered to be kept.

The facts and the material provisions of the Bengal Land Revenue Sales Act, 1859, appear from the judgment of the Judicial Committee.

The High Court by a judgment delivered by B. B. Ghose J., Basu J. concurring, affirmed the decree of the trial judge setting aside the sale. The learned Judge said that the separated share could not be sold for arrears which undoubtedly were unpaid on January 12, 1924, because the estate was not then liable to sale as there was then an excess of payment in respect of it. On the expiry of March 28, the estate was liable to be sold, as there was an arrear of 6 annas 5 pies from the estate. But the books showed that there was then no arrear for the separated share, and the Collector was not entitled to sell because the separated estate had been in arrear earlier in the year. The learned judge referred to *Mahomed Jan v. Ganga Bishun Singh* (1).

Dube K. C. for the appellant contended that, upon the facts, estate 10/6 was in arrear and liable to be sold in respect of the March *kist*, or alternatively in respect of the January *kist*. Reference was made to the judgment of the Board in *Saraswati Bahuria v. Surajnarayan Chaudhuri* (2), also to the Bengal Touzi Manual, 1918, r. 68.

Abdul Majid for the respondent company was not called upon.

The judgment of their Lordships was delivered by

LORD THANKERTON. This is an appeal against a judgment and decree, dated the 23rd May, 1928, of the High Court of Judicature at Fort William in Bengal, which affirmed a judgment and decree, dated the 22nd July, 1926, of the Subordinate Judge of Pabna, whereby a sale for arrears of revenue was set aside.

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(1) (1911) I. L. R. 38 Calc. 537 ;
L. R. 38 I. A. 80.

(2) (1931) I. L. R. 10 Pat. 496.

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There is an estate which forms touzi No. 10 of the Pabna Collectorate. Respondents Nos. 2 to 11, who were the original co-proprietors of a share of this estate, opened a separate account for payment of their share of revenue known as account No. 10/6, in terms of section 10 of the Bengal Land Revenue Sales Act, XI of 1859. Thereafter, they mortgaged their interest in the separate account along with other property to the respondent company No. 1, who, on the 19th November, 1923, purchased the property along with others under a mortgage decree of sale obtained by them in 1918. Respondents Nos. 2 to 11 then instituted suits to set aside the mortgage sales, and these suits were finally disposed of by compromise on the 16th June, 1924; under the compromise, the sale in respect of No. 10/6 was set aside, but respondent No. 1 retained their mortgage lien thereon.

On the 26th June, 1924, share No. 10/6 was sold by the Collector of Pabna for arrears of revenue under the Act of 1859, and was bought by the present appellant. After an unsuccessful appeal to the Commissioner of Revenue for the division, under section 25 of the Act, respondent No. 1 brought the present suit on the 10th July, 1925, in the court of the Subordinate Judge at Pabna for annulment of the sale, or alternatively for a declaration that the purchase of the appellant is subject to the mortgage lien of respondent No. 1 and for possession on the basis of that lien. It is not disputed that the conditions precedent to the jurisdiction of the civil court prescribed by section 33 of the Act have been complied with in the present suit.

Twelve issues were settled at the trial, but for the purpose of disposal of this appeal, only two need be referred to, *viz.*,—“2. Was any arrear due justifying “the sale by the Collector?” and “10. Is the sale “liable to be set aside on the ground alleged in the “plaint?” The remaining issues related to various alleged irregularities in the proceedings leading up to the sale and the alternative

relief asked for, and these have been dealt with in the courts below, but their Lordships find it unnecessary to deal with them, as, in their opinion, issue No. 2 was rightly answered in the negative by both courts below, though their Lordships have come to that conclusion on somewhat different grounds, following a recent decision of this Board, which is referred to later. The opinions of the courts below proceeded on a construction of the Act which must now be held to be erroneous, in view of the more recent decision of this Board just referred to.

It will be convenient to refer in the first place to the relevant sections of the Act of 1859. The sale of the separate account No. 10/6 was instituted by the Collector under the authority of section 13, which provides as follows:—

Whenever the Collector shall have ordered a separate account or accounts to be kept for one or more shares, if the estate shall become liable to sale for arrears of revenue, the Collector or other officer as aforesaid in the first place shall put up to sale only that share or those shares of the estate from which, according to the separate accounts, an arrear of revenue may be due. In all such cases notice of the intention of excluding the share or shares from which no arrear is due shall be given in the advertisement of sale prescribed in section 6 of this Act. The share or shares sold, together with the share or shares excluded from the sale, shall continue to constitute one integral estate, the share or shares sold being charged with the separate portion, or the aggregate of the several separate portions, of *jamá* assigned thereto.

It is, therefore, clear that, in order to justify the sale of No. 10/6, (a) the estate must have become liable to sale for arrears of revenue, and (b) an arrear of revenue must be due from No. 10/6 according to the separate account. What is an arrear of revenue is to be found in section 2, which provides as follows:—

If the whole or a portion of a *kist* or instalment of any month of the era according to which the settlement and *kistibandi* of any *mehál* have been regulated be unpaid on the first of the following month of such era, the sum so remaining unpaid shall be considered an arrear of revenue.

The latest date for payment of arrears and the liability to sale are dealt with in section 3, as follows:—

Upon the promulgation of this Act, the Board of Revenue at Calcutta shall determine upon what dates all arrears of revenue and all demands which, by the Regulations and Acts in force, are directed to be realised in the

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same manner as arrears of revenue, shall be paid up in each district under their jurisdiction, in default of which payment the estates in arrear in those districts, except as hereinafter provided, shall be sold at public auction to the highest bidder. And the said Board shall give notice of the dates so fixed in the official gazette, and shall direct corresponding publication to be made, as far as regards each district in the language of that district, in the office of the Collector or other officer.

The section goes on to provide for notice by the Board of the dates so fixed in the official gazette and otherwise. It is decided by the judgment of this Board in *Saraswati Bahuria v. Surajnarayan Chaudhuri* (13th January, 1931) (1) that, before liability to sale attaches, there must be (i) the whole or a portion of a *kist* or instalment unpaid, (ii) the conversion of such unpaid amount into an arrear on the first of the following month, and (iii) the passing of the latest date of payment of such arrear, as fixed under section 3 and the official notice of the Board of Revenue.

As regards the present case, it is agreed that, by notice in the "Calcutta Gazette" of the 10th August, 1910, the dates of payment of instalments of revenue and the latest dates for payment of arrears were fixed as 28th June, 28th September, 12th January, and 28th March.

The admitted facts in the present case are, first, that the collectorate account for the third *kist* of 12th January, 1924, showed a credit balance of 7 annas 4 pies on the general accounts of *touzi* No. 10, and a debit balance of Rs. 35-2 annas in the separate account of No. 10/6, to satisfaction of which the Collector appropriated sufficient of the money deposited with him in terms of section 15 of the Act; secondly, that in the accounts for the fourth *kist* of 28th March, the general account of *touzi* No. 10 showed an unpaid balance of 6 annas 5 pies, but the separate account of share No. 10/6 showed that the sum of Rs. 20-13 annas, being the current demand of revenue in respect of the fourth *kist*, had been paid on the 27th March, 1924, and there was thus no unpaid balance in the separate account in respect of that *kist*.

(1) (1931) I. L. R. 10 Pat. 496.

Reverting to the provisions of section 13, the only arrear of revenue of the estate which is said to justify the sale is the unpaid balance of 6 annas 5 pies of the fourth *kist* of the 28th March, 1924. But this unpaid balance could not be considered an arrear until the first of the following month *i.e.*, the 1st April, 1924, and the latest day of payment was accordingly the 28th June, 1924—two days after the sale took place—and the estate could not “become liable to sale for “arrears of revenue” until after the 28th June, 1924. It is, therefore, clear that the sale of share No. 10/6 was invalid on this ground alone, and it is unnecessary to consider whether No. 10/6 was a share “from which, “according to the separate accounts, an arrear of “revenue may be due,” within the meaning of section 13; but it may be pointed out that the deficiency of Rs. 35-2 annas shown in the separate account of the January *kist* could not be considered an arrear until the 1st February, 1924, and there could be no default in payment until 28th March, 1924—and that only on the doubtful assumption that, in a question with the Collector, it remained unpaid after the latter had appropriated part of the deposited monies in satisfaction of it. But their Lordships find it unnecessary to consider this question.

Accordingly, their Lordships are of opinion that the sale should be annulled, and they will humbly advise His Majesty that the decree of the High Court of the 23rd May, 1928, should be affirmed and the appeal dismissed with costs.

Solicitors for appellant: *Watkins & Hunter.*

Solicitors for respondent No. 1: *Francis & Harker.*

A. M. T.

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