APPELLATE CIVIL.

Before R. C. Mitter J.

LALITKISHORE MITRA

v.

NATHU MANDAL.*

1935

June 20, 25, 28.

Cess—Assessment, Elements of—Jurisdiction of civil court to alter Collector's assessment—Remedy for wrong assessment—Cess Act (Beng. IX of 1880), ss. 26, 34, 35, 41, 93, 104, 107.

The assessment of cess by the Collector under the Cess Act of 1880 depends upon the consideration by the Collector of the following factors :—(*i*) Annual value of the lands. (*ii*) Rate of cesses notified under section 38 of the Act. (*iii*) Status of the assessee, whether a *zemindâr*, tenure-holder, or cultivating *râiyat*.

Where the assessment of cess is made *intra vires* by the Collector upon consideration of the aforesaid elements, the civil court has no jurisdiction to touch such assessment by making any variation of the Collector's findings as to any of the aforesaid elements.

Kesho Prasad Singh v. *Ram Swarup Ahir* (1) and *Kharag Narayan* v. *Secretary of State* (2) followed.

The only remedy of any person aggrieved by such *intra vires* assessment of cess by the Collector is by following the procedure provided by sections 26, 93 and 104 of the Act.

The whole scheme of the Act is to make the decisions of the revenue department of the Government, in matters of *intra vires* assessment of cess, final.

Section 107 of the Act means that the decision of the revenue authority in matters of assessment of cess under the Act would not affect the rights and liabilities of any person in respect of any immovable property or of any interest therein in matters other than the assessment of such cess.

Peary Mohan Roy v. *Sarat Kumari Debi* (3) explained.

SECOND APPEAL by the plaintiff.

The material facts and the argument appear from the judgment.

Panchanan Ghosh and Krishnachaitanya Ghosh for the appellant.

Shailendranath Banerji for the respondents.

Ramendrachandra Ray for the Deputy Registrar.

Cur. adv. vult.

* Appeal from Appellate Decree, No. 2003 of 1933, against the decree of B. K. Basu, District Judge of Bankura, dated July 19th, 1933, modifying the decree of Nirodelal Shome, Third Munsif of Bankura, dated Nov. 26th, 1932.

(1) [1926] A. I. R. (Pat.) 175; 90 Ind. Cas. 621.

(2) [1929] A. I. R. (Pat.) 743; 118 Ind. Cas. 325.

(3) (1912) 15 C. L. J. 428.

1935

Lalitkishore Mitra v. *Nathu Mandal.*

R. C. MITTER J. This appeal is on behalf of the plaintiff, who is a co-sharer landlord, his share being 8 annas. The *pro forma* defendants are the remaining co-sharer landlords, but they have not appeared and taken part in the proceedings.

The suit was for recovery of the plaintiff's share of the rent for the years 1337 and 1338 and for his share of the cesses for the year 1335 to 1338. The plaintiff avers that the total *jamâ* is Rs. 35-6-6 a year and the total cess payable by the tenants-defendants is Rs. 11-6-9 per year, and he claims on the said basis. His claim was decreed in full by the Munsif, but, on appeal, the learned District Judge has reduced his claim for cesses. The appeal is, therefore, directed to that part of the judgment and decree of the learned District Judge which deals with the plaintiff's claim for cesses.

In the valuation-roll, the annual value of the lands in the defendants' possession has been determined to be Rs. 200-6-0. Their tenancy is entered in Form No. 3, given in Appendix B of the Cess Act, a form prepared under Rule 96 of the Cess Manual, a rule which deals with the preparation of the valuation-roll under section 34 of the Act, that is to say, his tenancy was classed by the Collector for the purposes of assessment of cesses as a tenure. In the first column is entered the number of the *khatiyân*. The second column is headed thus: Name and *Touzi* No., or if rent-free, No. in Register II of rent-free lands, or No. in Register III of the *chaukidâri châkrân* lands, with the names of *zemindârs*, tenure-holders and sub-tenure-holders in the estate. Under this heading is entered the name of Natabar and others, the defendants' predecessors. In the third column the annual value (Rs. 200-6-0) is entered. In the fourth column, which is headed "Amount of revenue payable "to Government or *chaukidâri châkrân* assessment "payable and rents payable to superior landlords on "which deduction is to be made under section 41 of the "Act" is entered the rent Rs. 30-3-6, which was the rent payable by the defendants' predecessors at the

1935

Lalitkishore Mitra v. *Nathu Mandal.*

R. C. Mitter J.

time of the preparation of the valuation-roll to the plaintiff and his co-sharers. It is admitted the rent was subsequently enhanced and is now Rs. 35-6-6. There cannot be any doubt that the defendants' predecessors had been assessed by the Collector on the basis that they were tenure-holders and not cultivating *râiyats*. The fourth column obviously mentions the amount on which deduction has to be made under the provision of section 41(*2*) of the Cess Act. The rate of road and public works cess being fixed at one anna per rupee of the annual value, the plaintiff arrives at the figures of Rs. 11-6-9 as the amount of cesses payable by the defendants in the following manner:—

	Rs.	As.	P.
At the rate of 1 anna per rupee on the annual value fixed at Rs. 200-6 ...	12	8	4½
Deduction at 6 pies per rupee on Rs. 35-6-6, the annual rent payable by the defendants to the plaintiff and his co-sharers under section 41 (*2*) ...	1	1	8
Balance ...	11	6	8½

The defendants say that they are *râiyats* and the amount of cess payable is at the rate of six pies on every rupee of the rent payable by them or at the rate of six pies per rupee of the annual value determined by the Collector. The learned District Judge, relying upon the entry in the record-of-rights prepared under Chapter X of the Bengal Tenancy Act, which has recorded the defendants as *râiyats*, has held that cesses can be received from them at such rates at which it can be received from cultivating *râiyats*. He says in his judgment that "the defendants are cultivating "*râiyats* not only for the purpose of Tenancy Act but "also for the purposes of the Cess Act." In granting

1935

Lalitkishore Mitra v. *Nathu Mandal.*

R. C. Mitter J.

the decree, the learned District Judge has, however, miscalculated the amount payable by the defendants. Instead of giving the plaintiff a decree for cesses at the rate of six pies per rupee on the annual value of Rs. 200-6, he has deducted a sum equivalent to six pies per rupee on Rs. 35-6-6, the rent payable by the defendants to the plaintiff, for which deduction there is no warrant in law, for sub-section (*3*) of section 41 of the Act does not allow any such deduction, that is, in the case of cultivating *râiyats*.

The whole question, however, is whether, when the Collector is acting *intra vires*, the civil court can go behind the assessment made by him. That assessment depends upon and is based on the following factors :—

(1) Annual value of the lands.

(ii) Rate of cesses notified under section 38.

(iii) Status of the assessee, whether a *zemindâr*, tenure-holder or cultivating *râiyat*.

Any modification or variation in any of the aforesaid three elements will affect the assessment as made by the Collector, and as the civil court has no jurisdiction to touch an assessment made *intra vires* by the Collector, it has no jurisdiction to say that a person is a cultivating *râiyat* for the purpose of the Cess Act when the Collector had made the assessment on the footing that he is a tenure-holder. The Cess Act itself provides for the remedy of an aggrieved person, whether he is a proprietor of an estate or a tenure-holder, and in the case of *intra vires* assessment that remedy is the only remedy. Confining myself to the case of a person assessed to cess on the footing that he is a tenure-holder, the following sections of the Cess Act are important :—

Section 34 authorises the Collector to have a valuation-roll prepared of tenures from the returns made and from his enquiries.

Section 35 requires the Collector to post up extracts of such portions of the valuation-roll as deals with a particular tenure at the *mâl kâchâri* of the

tenure-holder, if there be a *mâl kâchâri* or, if there be no *mâl kâchâri*, on some conspicuous place on the tenure, or if the tenure cannot be found, in a conspicuous place in any village in which such tenure is believed to be situate.

Section 26 gives the Collector power to determine whether a person is a tenure-holder or a cultivating *râiyat* for the purpose of assessment.

Section 93 provides that every valuation-roll shall be open to revision by the Commissioner or the Board of Revenue but not otherwise.

Section 104 provides for appeal to the Commissioner in certain cases and then follows section 107 which says that "nothing done in accordance with "the Cess Act shall be deemed to affect the rights of "any person in respect of any immovable property or "any interest therein".

The whole scheme of the Act is to make the decisions of officers of the Revenue Department in the matter of assessment *intra vires* final, and the meaning of the saving section 107 seems to me that if a person is assessed by the Revenue authorities on the basis that he is a tenure-holder, the assessment cannot be touched and for the purpose of determining his liability to pay cess to his landlord he must be taken conclusively to be a tenure-holder; but for determining his rights and liability in relation to his landlord in other matters, the fact that the Collector had, in assessing him to cesses, taken him to be a tenure-holder or had decided under section 26 of the Act that he is a tenure-holder and not a cultivating *râiyat*, would not be relevant and can be disregarded. To take an illustration, if the landlord brings a suit for enhancement of rent under section 7 of the Bengal Tenancy Act, such a person would not be debarred from proving that he is a *râiyat* and not a tenure-holder. The view that I am taking is in accordance with the general principle that an *intra vires* assessment cannot be challenged by a party in a civil court and is supported by the decisions of the Patna High Court in *Kesho Prasad Singh* v. *Ram Swarup*

1935

Lalitkishore Mitra v. *Nathu Mandal.*

B. C. Mitter J.

Ahir (1) and *Kharag Narayan* v. *Secretary of State* (2)—cases which I have no hesitation in following.

The learned advocate for the respondent has relied strongly upon the decision of this Court in *Peary Mohan Roy* v. *Sarat Kumari Debi* (3) in support of his contention that the civil court, in a suit for recovery of cesses, can go into and reopen the question as to whether the tenant is a cultivating *râiyat* or a tenure-holder, notwithstanding that the Collector, in making the assessment, had proceeded upon the footing that he is a tenure-holder. An examination of that case shows that the landlord had, in his return, showed that the tenant was a cultivating *râiyat* and there is no precise or clear indication that the Collector had proceeded upon the footing that he was a tenure-holder. In the Letters Patent Appeal, Sir Lawrence Jenkins pointed out that the distinction made in the Cess Act is as between a tenure-holder and a cultivating *râiyat* and not between a tenure-holder and a *râiyat*. In that case also three tenancies had been lumped together and one annual value for the three was fixed by the Collector, and that fact would make the assessment of the Collector *ultra vires*, and would thereby give the civil courts jurisdiction to discard the assessment altogether and to determine the question whether the defendant was or was not a tenure-holder. I, accordingly, hold that *Peary Mohan's* case (3) does not support the respondent. The appeal is, accordingly, allowed.

The decree of the learned District Judge is modified. The plaintiff's claim to cesses is fully allowed. The nett result is that the decree of the Munsif is restored in all respects.

The appellants will have the costs of this Court and of the lower appellate court.

Appeal allowed.

A. K. D.

(1) [1926] A. I. R. (Pat.) 175 ; 96 Ind. Cas. 621.

(2) [1929] A. I. R. (Pat.) 743 ; 118 Ind. Cas. 325.

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