

PRIVY COUNCIL.

DINA BANDHU CHATTERJI

v.

ASHUTOSH CHATTERJI.

P. C.*
1938May 24, 26;
July 18.

[ON APPEAL FROM THE HIGH COURT AT CALCUTTA.]

Arrears of revenue—Last day for payment—Bengal Land-revenue Sales Act (XI of 1859), ss. 2, 3.

Where the total revenue assessed on an estate is payable in monthly instalments according to the Bengal era and the Board of Revenue has, under s. 3 of the Bengal Land-revenue Sales Act, fixed the 12th January and the 28th March as the latest dates on or before which an arrear of land revenue must be paid, on the expiry of these days any revenue then unpaid becomes an arrear for which the estate is liable to be sold.

Saraswati Bahuria v. Surajnarayan Chaudhuri (1) explained.

APPEAL (No. 28 of 1937) from a decree of the High Court (June 21, 1935) which reversed a decree of the Second Subordinate Judge of Faridpur (August 13, 1932).

The material facts are stated in the judgment of the Judicial Committee.

Pringle for the appellant. From ss. 2 and 3 of the Act and the *Touzi* Manual it is apparent that, though *kist* might be payable monthly under the settlement, it is, under the Rules, as a matter of convenience collected in two and not twelve instalments. The last day for payment of each of these instalments is fixed under s. 3. It is clear that, if arrears for the payment of which the 12th January is fixed as the last day are not paid on or before that day, the estate may be sold: *Amrita Lal Roy v. Secretary of State for India in Council* (2); *Saraswati Bahuria v. Surajnarayan Chaudhuri* (1); *Sree Sree Radhagobinda Deb Thakur v. Girijaprasanna Mukherji* (3), *Jagdishwar Narayan v. Haziq*

*Present: Lord Thankerton, Lord Romer, Sir Lancelot Sanderson, Sir Shadi Lal and Sir George Rankin.

(1) (1931) I. L. R. 10 Pat. 496. (2) (1918) 22 C. W. N. 769.
(3) (1931) I. L. R. 59 Cal. 186.

1938
Dina Bandhu
Chatterji
 v.
Ashutosh
Chatterji.

Hussain (1); *Jagdishwar Narayan v. Muhammad Haziq Hussain* (2); *Jadunandan Singh v. Savitri Devi* (3); *Nanak Prasad Sahu v. Kaseda Kumri* (4); *Makbul Ali Chowdhury v. Amrita Lal Ghose* (5).

Parikh for the respondents. Exhibit C which is relied on to show that *kists* were payable monthly, even if admissible, cannot help the appellant, as it merely fixes the revenue for a particular year, the Bengali year 1198, and says that it shall be paid in twelve monthly instalments. Here the 12th January and the 28th March are the *kist* days. The *kist* due on the 12th January becomes, under s. 2, an arrear on the 1st February and the last day for the payment of that arrear would be the 28th March. The sale on the 22nd March would, therefore, be illegal and void. *Jagdishwar Narayan's* case (2) was decided on its own facts. The facts in the same case in the High Court (1) were different from the facts here. In *Saraswati Bahuria's* case (*supra*) the Board held that the instalment was payable on the 28th March and there were no arrears. *Krishna Chandra Bhowmik v. Pabna Dhanabhandar Company, Limited* (6) appears to have proceeded on the ground, which was not there disputed, that the last day of payment and the *kist* day were the same.

Pringle replied.

The judgment of their Lordships was delivered by SIR SHADI LAL. This is an appeal from a judgment and decree of the High Court of Judicature at Fort William in Bengal dated June 21, 1935, which reversed the judgment and decree of the Second Subordinate Judge of Faridpur dated August 13, 1932, and set aside the sale of an estate for arrears of land revenue.

On March 22, 1930, a permanently settled estate, bearing *touzi* No. 299 of the Backergunge Collectorate, was sold by public auction for arrears of land

(1) [1924] A. I. R. (Pat.) 537.

(4) (1935) I. L. R. 15 Pat. 272.

(2) (1926) I. L. R. 6 Pat. 200 (204); (5) [1937] A. I. R. (Cal.) 703.

L. R. 53 I. A. 246 (250).

(6) (1931) I. L. R. 50 Cal. 1034;

(3) (1933) I. L. R. 12 Pat. 750.

L. R. 59 I. A. 68.

revenue. Three persons, namely, Ashu Tosh Chatterji, Rai Rajani Kanta Chatterji and Suresh Chandra Chatterji, were proprietors of that estate, each owning one-third share therein. The total land revenue assessed on the estate is Rs. 13-1-1, of which Rs. 5-8-10 has to be paid by the 12th January of each year, and the remainder Rs. 7-8-3 by the 28th March. It is common ground that in respect of the amount of Rs. 5-8-10 which was payable on or before January 12, 1930, two co-sharers, namely the plaintiff, Ashu Tosh Chatterji and the second defendant, Rai Rajani Kanta Chatterji, duly paid their share of the revenue, but the third co-sharer, Suresh Chandra Chatterji, failed to make any payment. There stood, however, to the credit of the estate, 9 annas and 9 pies, which had been overpaid on account of the previous instalments. After giving credit for this small sum, the Collector found that there was a deficit of Re. 1-3-9 in the amount of land revenue, which was to be paid by January 12, 1930.

The estate was, therefore, entered in the Arrear List of the Collectorate; and sold on March 22, 1930, for Rs. 700 to the appellant, Dina Bandhu Chatterji, who was the highest bidder at the auction.

Thereupon, Ashu Tosh Chatterji impeached the sale on various grounds; and, after an unsuccessful appeal to the Commissioner, he brought the present suit in the civil Court against the auction purchaser and his own co-sharers in the estate. The main ground, upon which the sale was attacked, was that the Collector had no jurisdiction to hold the sale on March 22, 1930. This ground of attack was repelled by the purchaser, and the dispute between the parties was embodied in the following issue framed by the Court:—

Was the sale of *taluk* No. 299 by the Collector of Backergunge on March 22, 1930, at revenue sale, illegal, without jurisdiction, and contrary to the provisions of Act XI of 1859?

This issue was answered in the negative by the trial Judge, who upheld the sale and dismissed the suit.

1938
Dina Bandhu
Chatterji
 v.
Ashutosh
Chatterji.

1938

*Dina Bandhu
Chatterji*
v.
*Ashutosh
Chatterji.*

On appeal to the High Court, his judgment was set aside, and the suit was decided in favour of the plaintiff.

From the judgment of the High Court the auction purchaser has brought this appeal to His Majesty in Council, and the question, which their Lordships have to determine, is whether the sale was held on a date before the latest date fixed for the payment of the arrear of revenue.

What is the law which defines an arrear of revenue, and which determines the date upon which an arrear must be paid, the consequence of non-payment thereof on that date being that the estate in arrear becomes liable to sale at public auction? The law on the subject is contained in the Bengal Land-revenue Sales Act XI of 1859. By s. 2 of that statute, it is provided that :—

If the whole or a portion of a *kist* or instalment of any month of the era according to which the settlement and *kistbandi* of any *mehāl* 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.

This section refers to the *kist* or instalment of land revenue fixed in accordance with the terms of settlement and *kistbandi* of an estate, and contemplates the payment of a *kist* or instalment every month. It then defines an arrear of revenue. If the whole or a portion of a *kist* or instalment of revenue is not paid on or before the last day of the month, during which it was to be paid, the sum remaining unpaid on the first day of the following month shall be deemed to be an arrear of revenue.

It will be observed that the section merely defines an arrear of revenue. It makes it clear that the proprietor of an estate is allowed to pay a *kist* or instalment on any day during the month for which it has been fixed. The section does not impose any penalty for the non-payment of the revenue during the month, it merely states that if it has not been paid during the month in which it was to be paid, the sum remaining unpaid becomes on the first day of the following month an arrear of revenue. But

the defaulting proprietor does not suffer any harm, even if he does not pay immediately the revenue so declared to be in arrear. The law gives him a period of grace for payment, and this concession is granted by s. 3 of the statute, which is in these terms :—

Upon the promulgation of this Act, the Board of Revenue shall determine upon what dates all 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 . . . shall be sold at public auction to the highest bidder.

In pursuance of s. 3, the Board of Revenue has fixed for an estate paying an annual revenue exceeding Rs. 10, but not exceeding Rs. 50, the 12th January and the 28th March in each year as the latest dates, on or before which, an arrear of land revenue must be paid. It is only when the latest date for the payment fixed under the section has expired without payment, that the estate becomes liable to sale at public auction on a date thereafter which may be fixed for the purpose.

The question, therefore, arises whether the sale in dispute was held after the expiry of the last date of payment as contemplated by the aforesaid section. Now, exhibit C, which is a certified copy of the *kistbandi* relating to this estate, shows that Rs. 13-1-1, the total revenue assessed on the estate, is payable in monthly instalments according to the Bengali era, that is to say, the revenue is payable by instalments each month from Baisakh to Chaitra. These instalments are called *kists* in s. 2 of the Act, and if any instalment is not paid during the prescribed month, the sum so unpaid becomes an arrear on the first day of the following Bengali month. But as already stated, the mere fact that there is an arrear to be paid in respect of an estate does not lead to any untoward consequence until the expiry of the last date of payment fixed under s. 3. As the mere failure to pay each instalment in the prescribed month does not entail any penalty, the details of the monthly instalments were omitted from the *touzi* ledger of an estate, and only the demand for arrears,

1938

Dina Bandhu
Chatterji
v.
Ashutosh
Chatterji.

1938

*Dina Bandhu
Chatterji*
v.
*Ashutosh
Chatterji.*

for which the estate would become liable to sale after the latest date of payment, was entered in the *touzi* ledger.

The *touzi* ledger of this estate mentions Rs. 5-8-10 as the net demand payable in respect of the January *kist*. The expression "*kist*", as explained in the *Touzi* Manual issued by the Board of Revenue, Bengal, means the period between one latest day for payment of arrears of revenue and the next, and is not used in the restricted meaning assigned to it in s. 2 of the Act. Thus, in the case of this estate, which paid revenue in two instalments the expression "January *Kist*" means the period beginning on 29th September, and ending on the 12th January, and the "*Kist* day" means the latest day of payment on which that period expires—now, January 12, 1930, as shown in the *touzi* ledger, was the latest date for payment of that sum. But it appears from the *touzi* ledger that of the aforesaid net demand, Rs. 4-5-1 were duly paid on or before January 12, 1930; and that only Re. 1-3-9 remained unpaid on the last day fixed for the payment of arrears. On the expiry of that day the estate became liable to sale by public auction, and the sale on the date in question, namely, March 22, 1930, did not infringe the law.

The judgment of this Board in *Saraswati Bahuria v. Surajnarayan Chaudhuri* (1) shows that their Lordships thought that the sum for the non-payment of which the property was sold in that case was a *kist* as contemplated by s. 2 of the Act, and that the 28th March was the date fixed for the payment of the *kist*. They accordingly held that the sum did not become an arrear until the 1st April. The sale held before the 7th June, the last date fixed for the payment of arrears, was, therefore, invalid. That judgment cannot be taken as displacing the meaning which their Lordships have, in the present case, shown to attach to the entry of the date January 12, 1930, under the head "date" in the *touzi* ledger. It is to be observed that the appeal in that case was

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

heard *ex parte* and the meaning of the entry "28th March" and of the references to "kist" was not examined in the light of the information now available. Moreover the evidence in that case included the sale proclamation issued under s. 7 of the Act, which was misleading. The case must, therefore, be regarded as proceeding upon its own facts.

1938
*Dina Bandhu
Chatterji
v.
Ashutosh
Chatterji.*

The learned Judges of the High Court, who decided the present case, have wrongly assumed that what is called a net demand in the *touzi* ledger in respect of the estate in question was a *kist* as contemplated by s. 2, and that the *kist* was payable in January and became an arrear on the 1st February. They think that the latest date for the payment of an arrear, accruing on the 1st February, was the 28th March, 1930, and that the sale, which was held on the 22nd March, 1930, was, therefore, held before the date on which the estate incurred the liability to sale. The reasoning of the learned Judges is faulty, as it involves the assumption that Rs. 5-8-10, for the payment of which the 12th January was fixed, was an instalment under s. 2 of the Act; while it was an arrear of revenue, for the payment of which January 12, 1930, was fixed under s. 3. In the event of non-payment on, or before, the date fixed for the payment of arrears, the estate became liable to sale, and the sale which was held on March 22, 1930, after the latest date for payment of arrears, was within the jurisdiction of the Collector.

The result of the above discussion is that the appeal should be allowed, the decree of the High Court dated June 21, 1935, set aside, and the decree pronounced by the trial Judge on August 13, 1932, restored, with costs here as well as in the High Court. Their Lordships will humbly advise His Majesty accordingly.

Solicitors for appellant: *Barrow, Rogers & Nevill.*

Solicitors for respondents: *T. L. Wilson & Co.*