

CIVIL REVISION.

Before Edgley J.

DILIP KUMAR DATTA GUPTA

v.

SRIDHAR DALUI.*

1939

Dec. 4.

Cess—Notification by Collector in respect of estate or tenure in arrears—
Effect on rent of intermediate tenancies—Cess Act (Ben. IX of 1880),
s. 99.

The effect of a notification by the Collector under s. 99 of the Cess Act is to make payments of rent not only to the owner of the defaulting estate or tenure by his tenant but also by any intermediate tenant on the estate or tenure to his immediate landlord void until the notification is revoked.

CIVIL RULE obtained by the plaintiffs, intermediate landlords, under s. 115 of the Civil Procedure Code.

The facts of the case and arguments in the Rule are sufficiently mentioned in the judgment.

Gunada Charan Sen and *Amalendu Sen* for the petitioners.

Rabindra Nath Bhattacharjee for *Bishnupada Mukherjee* for the opposite party.

EDGLEY J. In this case the petitioners were the plaintiffs in Rent Suit No. 2352 of 1938. They held a tenure under *touzi* No. 401 of the 24-Parganás Collectorate. It appears that this estate fell into arrears in respect of the payment of cess under the Cess Act of 1880 with the result that the Collector issued a notification in respect of the estate under s. 99 of the Cess Act. After the issue of this notification, the petitioners' tenants paid their rent direct to the Collector and, in the rent suit with

*Civil Revision, No. 1141 of 1939, against the order of Dharendra Nath Basu, First Additional Subordinate Judge of 24-Parganás, dated May 20, 1939, affirming the order of Rajendra Chandra Bhattacharjya, Second Munsif of Alipore, dated Dec. 19, 1938.

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reference to which this application arises, the tenants pleaded that the amount due from them as rent had already been paid.

The main contention of the petitioners in this case is that s. 99 of the Cess Act confers no authority upon the Collector to realise rent except rent payable directly to the owners of the estate which has been attached. The petitioners maintain that the rent due from them to the landlords of *touzi* No. 401 was actually realised by the Collector, but, so far as their own tenants were concerned, their contention is that, in spite of the issue of the notification under s. 99 of the Cess Act, they nevertheless have a right to realise arrears of rent due from their own tenants. I am not prepared to accept this contention.

According to the general scheme of the Cess Act with regard to the realisation of arrears of cess, it appears that the Collector is empowered (a) under s. 98 to realise arrears of cess as a public demand or (b) to proceed under s. 99 of the Act. The policy of the legislature in enacting s. 99 of the Act appears to have been to provide a less drastic method for ensuring the payment of Government dues in respect of arrears of cess than that which has been provided by the Revenue Sale Law, under which estates in arrears may be sold free of encumbrances, and under s. 99 of the Cess Act the only way in which intermediate tenures would be affected would be by reason of the payment of rent due to such intermediate tenures to the Collector instead of to the tenure-holders until such time as the total amount of arrears of cess due in respect of the defaulting estate or tenure had been fully recovered.

The form of notice which is issued under s. 99 of the Cess Act is contained in Sch. F attached to the Act. This notice recites that—

The occupiers, tenure-holders, under-tenants and *rāiyats* on estate or tenure (*the estate, tenure or lands to be clearly designated*) are hereby prohibited, until further order of the Collector, from making any payment of rent now or hereafter to become due from them in respect of any land comprised within such estate or tenure except to the Collector of the said district or to (*name of person*) hereby appointed to receive the same.*****

From the terms of this notice it is quite clear that the prohibition with regard to the payment of rent relates to all land comprised within the defaulting estate or tenure and, if this notice be read with the third paragraph of s. 99, it is quite clear that, in the case with which we are now dealing, the Collector was not only authorised to collect the rent payable by the plaintiffs' tenants, but it is further clear that, if the rent due from those tenants had been paid to the petitioners and not to the Collector, such payment would have been null and void.

It has been faintly urged by the learned advocate for the petitioners in this case that, in any event, any sum due as rent from the tenants which has not yet been paid to the Collector should be paid to the petitioners. I am, however, not prepared to accede to this argument in view of the provisions of the third paragraph of s. 99 of the Cess Act.

In view of the considerations mentioned above, I am of opinion that the decisions of the courts below are correct. This Rule is, therefore, discharged with costs. The hearing-fee is assessed at two gold mohurs.

Rule discharged.

A. A.

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