

1935.

SHEO BALAK

PRASAD
AWASTHI

v.

JUGAL
KISHORE
NARAIN.

cannot now turn round and question the execution on the ground that there was no decree.

I see no merit in this appeal and would dismiss it with costs.

MACPHERSON, J.—I agree.

Appeal dismissed.

KHAJA
MGHAMAD
NOOR, J.

REVISIONAL CRIMINAL.

Before James and Saunders, JJ.

SARAT CHANDRA DAS MAHAPATRA

1935.

v.

KING-EMPEROR.*

December,
2.

Orissa Tenancy Act, 1913 (Act II of 1913), sections 65 and 67—order of fine passed against landlord for not granting rent receipts, if revisable by High Court.

An order of fine passed by the Subdivisional Officer against a landlord under section 67 of the Orissa Tenancy Act, 1913, for not granting receipts as required by section 58 in an order passed by a Revenue officer and is subject to appeal to the Collector under the Act and the High Court has no jurisdiction to revise that order.

Naik Pandey v. Bidya Pandey(1) and *Emperor v. Mahant Ramdas*(2), distinguished.

The facts of the case material to this report are set out in the judgment of James, J.

G. P. Das and *G. C. Das*, for the petitioners.

No one for the Crown.

JAMES, J.—On the 11th of December, 1934, a number of raiyats petitioned the Collector of Balasore,

*Criminal Revision nos. 539 to 548 of 1935, from an order of R. C. Das, Esq., District Magistrate of Balasore, dated the 16th August, 1935.

(1) (1916) 1 Pat. L. J. 149.

(2) (1904) 9 Cal. W. N. 816.

alleging various acts of oppression against their landlord and his tahsildar. The Collector referred the petition to the Subdivisional Officer for enquiry and report. The Subdivisional Officer, on the 21st of May, 1935, reported to the Collector that the tenants were not obtaining receipts prepared in the form prescribed by section 65 of the Orissa Tenancy Act, and that the landlord was therefore liable to be fined under section 67(3) of the Act. The Collector on the 5th of June remarked on this report that the Subdivisional Officer was competent to dispose of the matter, and remanded the proceedings to him for passing final order in the case. He cited Government notification no. 4878 of the 19th of June, 1916, which is a notification issued under section 3(4) of the Orissa Tenancy Act whereby all Subdivisional Officers are empowered *inter alia* to discharge the functions of a Collector under section 67 of the Orissa Tenancy Act. The Subdivisional Officer, on receiving these orders, completed his proceedings and fined the landlord under section 67 of the Orissa Tenancy Act. The landlord then moved the District Magistrate for the exercise of his revisional powers under section 435 of the Code of Criminal Procedure, praying that the record of the proceedings should be forwarded to the High Court under section 438 of the Code with a recommendation for revision of the order made under section 67 of the Orissa Tenancy Act by the Subdivisional Officer. The District Magistrate dismissed the application, pointing out that the Subdivisional Officer had disposed of these cases as a Revenue officer, and that if the petitioners were aggrieved they should have appealed to the Collector under sub-section (8) of section 67 of the Orissa Tenancy Act.

Mr. G. P. Das on behalf of the petitioners argues that an order made by a Collector under section 67 of the Orissa Tenancy Act is made in a criminal proceeding, and that, therefore, the High Court has jurisdiction to revise that order in suitable cases.

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He quotes the decision of Mullick, J. in *Naik Pandey v. Bidya Pandey*⁽¹⁾, a case in which a suit for malicious prosecution had been instituted against persons who had made a complaint before a Collector under section 58 of the Bengal Tenancy Act. All that is decided in that case is that a complaint of that kind is such a complaint as would give rise to an action for damages for malicious prosecution if it should be made without just and reasonable cause. But in deciding that case Mullick, J. quoted a decision of the Calcutta High Court in *Emperor v. Mahant Ramdas*⁽²⁾ wherein the order of a Subdivisional Magistrate imposing a fine under section 58 of the Bengal Tenancy Act was set aside by the High Court. The Sessions Judge making his reference in that case had expressed some doubt whether the Magistrate had jurisdiction in the matter; but the High Court decided that the Magistrate had jurisdiction to try the landlord for the act specified in section 58(β) of the Bengal Tenancy Act, namely, failure to prepare and retain counterfoils in rent receipts.

In the Bengal Tenancy Act as it then stood, sub-section (β) ran as follows :

“ If a landlord without reasonable cause fails to prepare and retain a counterfoil or copy of a receipt or statement as required by either of the said sections, he shall be punished with fine which may extend to fifty rupees.”

The Bengal Tenancy Act was amended in 1907, when the existing sub-section (β) was substituted for the original sub-section. The amended sub-section makes it clear that the fine if it is to be imposed, is to be imposed by the Collector; and that the appeal lies to the Commissioner of the Division which, subject to any order passed on revision by the Board of Revenue, is to be final. Since the passing of Bengal Act I of 1907 which amended the sub-section a magistrate has not had jurisdiction to act under section 58 of the Bengal Tenancy Act. The rule in

(1) (1916) 1 Pat. L. J. 149.

(2) (1904) 9 Cal. W. N. 816.

Emperor v. Mahant Ramdas⁽¹⁾ determining the question of whether a magistrate can take action under section 58 of the Bengal Tenancy Act, is no longer law, because its basis was destroyed by the legislation of 1907. The learned District Magistrate acted rightly in declining to make any reference to the High Court. We have no jurisdiction to revise the order of the Subdivisional Officer. He pointed out rightly that the proper remedy of the petitioners lay in the appeal provided by sub-section (8) of section 67 of the Orissa Tenancy Act.

We cannot interfere in these cases and the petitions must be dismissed.

SAUNDERS, J.—I agree.

Rule discharged.

APPELLATE CIVIL.

Before Agarwala and Varma, JJ.

SECRETARY OF STATE FOR INDIA IN COUNCIL

v.

AMARNATH.*

Code of Civil Procedure, 1908 (Act V of 1908), section 80
—notice—suit against Secretary of State impleaded as pro
forma defendant, without notice, if maintainable.

Section 80 of the Code is express, explicit and mandatory. It admits of no implications or exceptions. Notice must be served on the Secretary of State. It is immaterial that he was impleaded as a pro forma defendant and that no relief was claimed against him.

*Appeal from Appellate Order no. 169 of 1935, from an order of J. G. Shearer, Esq., I.C.S., District Judge of Patna, dated the 12th March, 1935, reversing an order of Babu Satnarain Chaudhuri, Munsif of Barh, dated the 20th July, 1934.

(1) (1904) 9 Cal. W. N. 816,

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SARAT
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