

*Judgment of the Lords of the Judicial Committee  
of the Privy Council on the Appeal of  
Raja Gobind Lal Roy v. Ramjanam Misser  
and others, from the High Court of Judi-  
cature at Fort William in Bengal, delivered  
8th July 1893.*

---

Present :

LORD HOBHOUSE.

LORD MACNAGHTEN.

SIR RICHARD COUCH.

[*Delivered by Lord Macnaghten.*]

In June 1886 Mouzah Khurd Muradpore was sold for arrears of Government revenue. There was little or no competition; and the Appellant Gobind Lal Roy bought the mouzah at a price which is said to have been much below its real value. The Plaintiffs, claiming to be interested in the property as mortgagees of 8 annas, appealed to the Commissioner of Revenue against the sale. In their petition of appeal they alleged various grounds of objection, all of which are now admitted to be untenable. The appeal was rejected on the 23rd of October 1886 when the sale became "final and conclusive" under Sect. 27 of Act XI. of 1859, and a certificate of title was issued to the purchaser. Then the Plaintiffs appealed to the Board of Revenue; but that appeal was declared incompetent. At last on the 19th of October 1887, just before the expiration of a full year from the date of the Commissioner's order, the Plaintiffs brought this

76235. 125.—7/93.

suit to annul the sale and to enforce their mortgage.

The High Court, as well as the Subordinate Judge, held the Plaintiffs entitled to relief. From that decision this appeal is brought.

The grounds of appeal in substance are these :—

- (1.) That the Plaintiffs had no interest in the property at the date of the sale for arrears of Revenue.
- (2.) That the sale was authorized by Act XI. of 1859 and duly made under the Act.
- (3.) That if the sale was contrary to the provisions of the Act on the grounds now relied on, Section 33 of the Act is a bar to the suit, because those grounds were not “declared and specified” in the appeal to the Commissioner.

As regards the Plaintiffs’ title to sue, the learned Counsel for the Appellant pointed out that the plaint on the face of it showed that the property on which the Plaintiffs claimed to have a charge had been sold before the date of the Government sale, under a decree obtained by a prior mortgagee against the mortgagor ; and they insisted that such a sale has the effect of displacing puisne mortgagees and leaving them with nothing but a claim against the surplus proceeds, if any. That, however, in their Lordships’ opinion is not the necessary consequence of a sale under a decree obtained by a prior mortgagee against the mortgagor in a suit to which the puisne incumbrancers are not parties. In the present case the purchaser under the decree has never apparently disputed the right of the Plaintiffs as against the land. He was a party to a suit brought by the Plaintiffs to enforce their mortgage, which was pending<sup>o</sup> at

the date of the Government sale. It is clear from the terms of the decree made in that suit that the right of the Plaintiffs against the land would have been established but for the Government sale. He is a party to this suit; and all he claims here is the position of first mortgagee. The first ground of appeal therefore fails.

Both Courts have held that the Government sale was contrary to the provisions of Section 5 and Section 17 of Act XI. of 1859. Section 17 declares that "no estate held under attachment by the revenue authorities otherwise than by order of a judicial authority shall be liable to sale for arrears accruing while it was so held under attachment." In the present case the estate was sold for arrears which accrued while it was subject to an order issued by the Collector under the Cess Act 1880 for the levy of road cess in arrear. This order, which is termed a "prohibitory order," forbids payment of rent to any person but the Collector until the amount due for road cess is satisfied, and gives priority to the claim for road cess over any demand or claim other than the demand of Government revenue. It was said that such a prohibitory order is not an attachment. In their Lordships' opinion it is an attachment both in form and substance, and an attachment within the letter and meaning of Section 17 of Act XI. of 1859. Their Lordships therefore have no difficulty in holding that the Government sale was contrary to the provisions of Section 17. Whether it was also contrary to the provisions of Section 5 is a more difficult question, and as the decision of that question is not necessary for the determination of this appeal, their Lordships think it better not to express an opinion upon it.

The third ground of appeal is one of more

general interest. It ought perhaps to be considered as concluded by the judgment of this Board in the case of *Lala Gowri Sunker Lal v. Janki Pershad* (L. R. 17, I. A. 57) which was pronounced just after the decision of the High Court in the present case. But that case was heard *ex parte*. The point had not been taken in the Courts below; and no authorities were cited. The question is one of so much importance that their Lordships are glad to have an opportunity of re-considering their opinion, after a full argument by counsel on both sides and a discussion of all the Indian authorities bearing on the subject. It is not necessary to go through the cases. They show some difference of opinion undoubtedly. But Mr. Doyne was apparently justified in saying that the view which prevailed in India at the date of the institution of this suit was that in cases of illegality, as distinguished from cases of irregularity properly so called, a suit might be brought to set aside a sale on grounds not declared and specified in an appeal to the Commissioner. Their Lordships will now consider whether there is any real ground for that distinction.

Act XI. of 1859 was an amending Act. It was passed, as appears from the title and preamble, in order to improve the law relating to sales of lands for arrears of revenue. The machinery and procedure adopted in the Act for the most part were old, but provisions were introduced in order to give greater protection to persons interested in land subject to Government revenue against the loss of their property through their agents' fraud or their own inadvertence.

Section 3 enacted that upon the promulgation of the Act the Board of Revenue should determine upon what dates all arrears of revenue should be paid up in each district under their jurisdiction, "in default of which payment" the Act declares that "the estates in arrear in those

“ districts except as hereinafter provided shall be sold at public auction to the highest bidder.” Then follow minute provisions which may be divided into two classes. One set of provisions prescribes the manner in which sales for arrears of revenue are to be published and conducted, and the dates to be observed in the various proceedings. The other set of provisions in certain specified cases exempts land from sale though in arrear for Government Revenue, or declares that under particular circumstances the land is not liable to sale or that the sale shall not be legal. The expressions vary, but there is no difference in substance. It merely comes to this, that in particular cases which are carefully specified exceptions are made to the generality of the rule laid down in Section 3.

Section 25 declares that the Commissioner of Revenue may receive an Appeal against any sale made under the Act, if preferred to him on or before the 15th day from the date of sale, or if preferred to the Collector for transmission to the Commissioner on or before the 10th day from the day of sale “ and not otherwise,” and that the Commissioner shall be competent in every case of appeal so preferred, to annul any sale made under the Act, “ which shall appear to him not to have been conducted according to the provisions of ” the Act. This section is repealed by Act VII. of 1868, but it is re-enacted, with an extension of the time for appealing, and some other variations not material for the present purpose, by Section 2 of the Act of 1868.

Section 33 of the Act of 1859 declares that no sale for arrears of revenue made after the passing of the Act “ shall be annulled by a Court of Justice, “ except upon the ground of its having been made “ contrary to the provisions of the Act, and then “ only on proof that the Plaintiff has sustained

“ substantial injury by reason of the irregularity  
 “ complained of, and no such sale shall be an-  
 “ nulled upon such ground unless such ground  
 “ shall have been declared and specified in an  
 “ appeal made to the Commissioner under Sec-  
 “ tion 25,” and it goes on to declare that no suit  
 to annul any sale made under the Act shall be  
 received by any Court of Justice unless it shall  
 be instituted within one year from the date of the  
 sale becoming final and conclusive.

There are no doubt some provisions and  
 some expressions in these Sections which appear  
 to favour the view presented by the learned  
 Counsel for the Respondents. Their Lordships  
 cannot help being struck by the difference  
 between the times allowed for an Appeal to the  
 Commissioner and the time allowed for the  
 institution of a suit to set the sale aside. The  
 periods of 15 days and 10 days mentioned in  
 Sect. 25 are extended by Act VII. of 1868 to  
 60 days and 45 days respectively. So that the  
 difference is not quite so marked now. But the  
 difficulty remains. Why should a whole year  
 be allowed for the institution of a suit to set  
 aside a sale for arrears of revenue, if the Plaintiff  
 in all cases is to be confined to the grounds of  
 objection declared and specified in an Appeal  
 made to the Commissioner, and the suit therefore  
 is in reality nothing but an Appeal from the  
 Commissioner’s Order? Then the direction in  
 Sect. 25 to the effect that the Commissioner may  
 annul any sale “ which shall appear to him not  
 “ to have been conducted according to the  
 “ provisions of this Act ” seems to point rather  
 to an irregularity in the conduct of the sale  
 than to a sale in contravention of some express  
 provision of the Act. The reference to  
 “ irregularity ” in Sect. 23 is even stronger, for  
 it seems to imply that in every case to which

that Section applies the complaint must be a complaint on the score of irregularity.

Giving however full weight to these considerations, their Lordships, having regard to the scheme of the Act and the express direction contained in Sect. 33, are of opinion that in every case where a sale for arrears of revenue is impeached as being "contrary to the provisions" of Act XI. of 1859, no grounds of objection are open to the Plaintiff, which have not been declared and specified in an Appeal to the Commissioner.

In the opinion of their Lordships a sale is a sale made under the Act XI. of 1859 within the meaning of that Act, when it is a sale for arrears of Government revenue, held by the Collector or other officer authorized to hold sales under the Act, although it may be contrary to the provisions of the Act either by reason of some irregularity in publishing or conducting the sale, or in consequence of some express provision for exemption having been directly contravened.

As regards the reference to irregularity in Section 33 upon which the argument mainly turned, it is to be observed that the particular sentence in which it occurs—"and then only "on proof that the plaintiff has sustained substantial injury by reason of the irregularity complained of"—is not to be found in the earlier Acts of 1841 and 1845. It seems to have been borrowed, without perhaps sufficient consideration, from the Code of Civil Procedure Act VIII. of 1859, which was before the Legislature at the same time as Act XI. Without that sentence the arguments on behalf of the Respondents would have been deprived of much of their force. It is difficult to suppose that the introduction of that sentence into the Act of 1859 could have been intended to have the effect

of excluding from Section 33 all cases of illegality as distinguished from irregularity.

Their Lordships desire to add that in their opinion it would have been most unfortunate if they had been compelled to adopt the construction placed upon the Act by the Courts in India. Sales for arrears of revenue are of constant occurrence; anything which impairs the security of purchasers at those sales tends to lower the price of the estates put up for sale. It is therefore of the utmost importance in the interest of the revenue paying population of India that all questions that can arise as to the validity of a sale for arrears of revenue should be determined speedily, and that when the sale has once been confirmed by the Commissioner the purchaser should not be exposed to the danger of having his sale set aside on new grounds.

One point remains to be noticed. It was contended that the objection founded on Section 17 was in fact brought forward in the Appeal to the Commissioner though not stated in the Petition of Appeal to him. This contention rests solely on a passage in the Commissioner's judgment. He says "a petition has this day been put in, pleading that the estate was attached for arrears of Road Cess before the March Kist fell due and that it therefore ought not to have been sold at this stage of the proceedings. However this further plea cannot be admitted." No other trace of this Petition is to be found in the Record. It was not referred to in the judgment on the Appeal to the High Court. The learned Judges of the High Court say "If Section 33 does apply then it appears to us clear that the suit must fail because the grounds now taken under Sections 5 and 17 of Act XI. were not declared and specified as Section 33 requires in the Appeal preferred to the Commissioner."



Under these circumstances, assuming that in an appeal to the Commissioner the Appellant is not tied down to the grounds alleged in his petition and that after the time for appealing has passed he may bring forward sound objections so long as an appeal on grounds that are unsound is pending, their Lordships would not be justified in also assuming that the Petition to which the Commissioner alluded if it was put in by the Plaintiffs was put in at a time when it could have been taken into consideration. The inference seems to be that it was not presented until the proceedings were practically closed.

In the result therefore their Lordships will humbly advise Her Majesty that this appeal should be allowed and the decrees of the Courts below reversed, and the suit dismissed. The Respondents must pay the costs of this appeal and the costs in the High Court, and the Plaintiffs must pay the costs of the Appellant in the Court of the Subordinate Judge.

---

