

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Maharaj Kumar Babu Ganeswar Singh, since deceased, and now represented by Babu Laliteswar Singh v. Mohunt Ganesh Das, since deceased, and now represented by Mahant Ram Kishen Das, from the High Court of Judicature at Fort William in Bengal; delivered the 19th June 1906.*

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Present at the Hearing :

LORD DAVEY.

SIR ANDREW SCOBLE.

SIR ARTHUR WILSON.

[*Delivered by Sir Andrew Scoble.*]

In this case, special leave to appeal was granted on the ground that substantial questions of law arose upon the decisions of the Courts in India, which had given concurrent judgments in favour of the original Respondent, the Plaintiff in the suit.

The suit was brought by the Plaintiff to set aside the sale of a village called Subhankarpore, stated to be worth a lakh of rupees, the property of the Plaintiff, which had been put up to auction under the provisions of Bengal Act VII. of 1880—the Public Demands' Recovery Act—and purchased for Rs. 1,100 by Maharaj Ganeswar Singh, whose estate is represented by the present Appellant. The sale was made in execution of a certificate granted by a Deputy Collector in respect of a fine imposed on the Plaintiff for failure to comply

with a notice issued under Section 16 of Bengal Act IX. of 1880—the Cess Act.

The sale took place on the 19th September 1893, and the purchaser was put in possession of the village on the 5th December following. On the 2nd January 1894, the Plaintiff presented a petition to the Commissioner of the Division, alleging that he had no knowledge of the proceedings which had led to the sale, and that they ought to be set aside and the sale cancelled as irregular, fraudulent, and collusive. The Commissioner, after hearing the vakils for both parties, by his Order of the 12th December 1894, admitted the Appeal, on the ground that the evidence for the Petitioner made out “a *primâ facie* case of fraud, or at any rate of irregularities, which prevented the Petitioner from obtaining knowledge of the proceedings against him, and caused the sale of his estate at a most inadequate price”; and he referred it to the Collector “to reply specifically to the allegations of the Petition.” No report was apparently made by the Collector, probably because the purchaser, in his turn, appealed to the Board of Revenue against the Commissioner’s Order, with the result that the Board, by an Order of 9th May 1895, decided that the fine was unjust, and had “no hesitation in setting aside the certificate for its recovery.” On 4th February 1896, the Commissioner passed a formal Order annulling the sale, on the ground that “it was brought about fraudulently and without legal justification.”

Upon these proceedings before the Revenue authorities being put in evidence before the Subordinate Judge of Tirhoot, in whose Court the suit was pending, he passed a decree in favour of the Plaintiff on the ground that the certificate and sale having been set aside by a competent tribunal, the purchaser’s claim to the

property could not be maintained. This decree was confirmed on appeal by the High Court at Calcutta.

The questions argued before their Lordships were three in number. First, that the Revenue authorities had no jurisdiction to make the orders on which the decree of the Civil Court was based; second, that the Appeal to the Commissioner was barred by limitation; and third, that the Defendant was not allowed to adduce full evidence in support of his case.

Upon the first question, their Lordships entertain no doubt. In the case of *Sadhusaran Singh v. Panchdeo Lal* (I.L.R., 14 Cal. 1) the High Court of Calcutta has held that Bengal Act VII. of 1880 applies to cases of road and other cesses; and, that being so, it is necessary to look to that Act in order to ascertain the extent of the jurisdiction conferred upon the higher Revenue authorities over the proceedings of their subordinate officers. This appears to be of the widest possible character. Section 17 provides that "the Commissioner may in any case in which he thinks fit, revise any order passed by a Collector, or Deputy Collector, or Assistant Commissioner, or Extra Assistant-Commissioner." In the opinion of their Lordships this applies to orders made after as well as before sales in execution of certificates issued under the Act. And Section 24 enacts that "all Collectors, Deputy Collectors, Assistant Commissioners, and Extra Assistant-Commissioners shall, in the performance of their duties under this Act, be subject to the general supervision and control of the Commissioners of Divisions and the Board of Revenue." These extensive powers were no doubt given to prevent any abuse of authority under the extremely stringent and summary procedure

authorized by the Act, and are, in their Lordships' opinion, amply sufficient to justify the Orders of which complaint is now made.

Upon the second question, it is quite true that under Section 12 of the Act a person who denies his liability to pay the amount for which a certificate has been made and filed against him, is allowed thirty days within which he may petition the Collector to set aside the certificate either in whole or in part; that thereupon the Collector must proceed to determine the liability of the petitioner; and that under Section 16 an appeal from the Collector's order may be preferred within thirty days from the making of the order. But this was not the procedure under which the Order now complained of was made. The Commissioner acted in the exercise of his revisional jurisdiction under Section 17; and it would defeat the object of the legislature if the periods of limitation applicable in ordinary cases were held binding upon him, when so acting.

The third point was that the Defendant was not permitted to bring forward full evidence in support of his case. Their Lordships entirely agree with the learned Judges of the High Court that it is "an elementary principle which is binding " on all persons who exercise judicial or quasi-judicial powers, that an order should not be made " against a man's interest without there being " given to him an opportunity of being heard." In his Order of 4th February 1896, annulling the sale, the Commissioner says, " it is quite " unnecessary to hear the purchaser before dis- " posing of this petition," the ground of his decision being that the effect of the order of the Board of Revenue, cancelling the certificate, was to render the sale null and void; and that there being " no question as to the illegality of the

“ sale,” the formal order which he was asked to make followed as a matter of course. This is not a sufficient reason, though it may be doubted whether the purchaser was prejudiced by the irregularity. But, however this may be, it seems to their Lordships that the proper remedy of the purchaser, if aggrieved by this Order having been made in his absence, was to apply to the Revenue authorities for a re-hearing, and that it is now too late to ask for a remand on that ground.

Their Lordships will humbly advise His Majesty that this Appeal ought to be dismissed, and the Decree of the High Court, dated 30th March 1898, confirmed. The Appellant must pay the Respondent's costs of the Appeal.

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