

(1935) 12 CAL CK 0001

Calcutta High Court

Case No: None

(Rai) Kiran Chandra Roy Bahadur
and Others

APPELLANT

Vs

Brajendra Nath Chatterjee and
Others

RESPONDENT

Date of Decision: Dec. 5, 1935

Acts Referred:

- Bengal Cess Act, 1880 - Section 56, 66
- Letters Patent Act, 1865 - Section 15

Citation: AIR 1937 Cal 26

Hon'ble Judges: R.C. Mitter, J

Bench: Division Bench

Judgement

R.C. Mitter, J.

These two appeals are by the plaintiffs and arise out of two suits to recover cess from the defendants, who are niskardars, under the provisions of Section 56, Bengal Cess Act. They claim also as penalty an equal amount payable as cess. The plaintiffs came to Court on the basis that the rent free lands which are the subject-matters of these suits, were included in their return and that they are entitled to recover cess u/s 56. The substantial defence is this: The defendants stated that no notice u/s 54 of the Act was published by the plaintiffs and therefore they were not entitled to recover cess and penalty. It is quite clear that if such a notice is required to be published the plaintiffs' suit cannot be maintained, as the finding of both the Courts is that notice has not been published. Section 56 is quite clear on the point: that the proprietor of the estate will be entitled to recover cess from the niskardars only on the publication of notice u/s 54 and not otherwise.

2. Mr. Basu appearing for the appellants has raised the point that in the circumstances of this case the notice u/s 54 is not necessary and that the plaintiffs are entitled to claim cess from the defendants on the basis of Borat from the

Collector. In order to follow his argument the following facts are necessary. He says that the Collector proceeded u/s 66, Cess Act and called for a return from the niskardars u/s 16, Cess Act. Thereafter the Collector made a valuation so far as these niskars were concerned. Later on the Collector made an order under the last part of para. 1 of Section 71, that is to say the Collector by an order in writing directed that for the future the Niskar lands shall be included within the plaintiffs' estate. The question, therefore, is whether on these facts the notice u/s 54, is necessary as para. 3, Section 66, says that on service of notice u/s 16, on the Niskardars, the provisions of Ch. 4, of the Cess Act, shall no longer apply to Niskar lands; but the same consequences shall ensue and the same liabilities shall attach to the holder of such lands as would have ensued and would have attached, if such lands had constituted a revenue free estate. The plain meaning of this paragraph is that if the Collector u/s 66 of the Act, causes a notice to be served on the Niskardars u/s 16, his Niskar is to be treated on the same footing as if it was a revenue-free estate. If the Collector does not proceed under the last paragraph of Section 66, the position will be that the liability of the Niskardar will be to pay cess to the Collector direct or to his agent. This is the position which is laid down in the first part of para. 1 of Section 71. But where on a revaluation of an estate the Collector has the option of including the rent-free land in respect of which he has taken proceedings u/s 66, within a revenue paying or revenue free estate, this direction the Collector must give by an order in writing and when such a direction is given, the consequences are defined in the last paragraph of Section 71, which runs thus:

Upon such order being made the provisions of this chapter, in so far as they are applicable, shall apply to the assessment and payment of road cess and public work cess in respect of such land.

3. The question is whether the provisions of Section 54 and Section 56 are attracted by the making of such an order in writing by the Collector by reason of the provisions contained in the last paragraph of Section 71. The scheme of the first part of Ch. 4, of the Cess Act, is to give the proprietors of estate or tenure holders in whose estates or tenures rent-free lands are included by the Collector, powers to collect cess from the Niskardars. Section 56 is the empowering section, and this section in its express terms says that the proprietors of estates or tenure holders will be entitled to recover cess from the holders of Niskar lands, if they comply with the provisions of Section 54. Section 54 requires the holder of every estate or tenure holder, to whom any cess is payable by holders of rent-free lands, to cause a notice to be published in a certain form and in a certain manner requiring the Niskardars to pay to him. Such a notice is necessary whenever a new valuation or revaluation takes effect, and whenever the rate of cesses and whenever the dates fixed by the Board of Revenue u/s 57, for payment of instalment of cesses by holders of rent-free land are changed. The provisions of Section 54, therefore, in my judgment, are applicable, and before the Narail Babus can proceed to recover by suit the cess from the defendants,, it is obligatory on them to serve notice u/s 54. Having regard to the

language of para. 4 of Section 54, and of the last part of para. 1 of Section 71 of the Cess Act, the obligation is on the Narail Babus to publish the notice required u/s 54, in the formal manner described therein before they can get at the Niskardars and recover cess from them. For these reasons I hold that the suits have been rightly dismissed by the Courts below.

4. The result is that these appeals are dismissed with cost. The cross-objections in S.A. 1706 and 1707 of 1933 are not pressed and are dismissed but without costs. The prayer for leave to appeal u/s 15 of the Letters Patent is granted. (This judgment was affirmed on Letters Patent appeals Nos. 2 and 3 of 1936 by Guha and Bartley, JJ.)