

(1866) 09 CAL CK 0002

Calcutta High Court

Case No: Miscellaneous Regular Appeal No. 821 of 1865

Kally Narain Roy Chowdhry

APPELLANT

Vs

Sreemutty Sadrun Nessa
Khatoon

RESPONDENT

Date of Decision: Sept. 17, 1866

Judgement

Sir Barnes Peacock, Kt., C.J.

The question is whether, under s. 19 of the Bengal Act VI of 1862, a Deputy Collector can hear appeals upon reference by a Collector. It is contended that the words "all the powers vested in the Collector by any of the sections of this Act or of Act X of 1859" include the powers of hearing appeals. But it is clear what the object of the section was, and that it was never intended to authorize a Deputy Collector to hear appeals. S. 1, Act VI of 1862, repealed s. 150, Act X of 1859, except as to cases which had been instituted before the passing of that Act. By s. 150, Act X of 1859, it was enacted that "all the powers vested in the Collector by the preceding sections of this Act may be exercised by any Deputy Collector in cases referred to him by a Collector, and in all cases without such reference by any Deputy Collector placed in charge of any subdivision of a district." The section was reenacted by s. 19, Act VI of 1862, with the addition of the following words:-- "or who is specially authorized by Government to receive such cases." It was therefore intended to give to the Deputy Collectors who are specially authorized by Government to receive such cases all the powers which might be exercised by a Deputy Collector placed in charge of a subdivision or by any Deputy Collector in cases referred to him by a Collector. S. 19, Act VI of 1862, is not very accurately worded. It uses the words "all the powers vested in the Collector by any of the sections of Act X of 1859," and not "all the powers vested in the Collector by any of the sections of Act X preceding s. 150," but it is perfectly clear that it was not the intention of the Legislature to give to a Collector the power of authorizing a Deputy Collector to hear an appeal from the judgment of another Deputy Collector. S. 154 of Act X enacts that "in suits in which the judgment of the Collector is final, as provided in the last preceding section, the Collector may, upon

the application of either party if preferred within thirty days from the date of decision, order the rehearing of a suit upon the ground of the discovery of new evidence, &c. By s. 20, Act VI of 1862, the Collector may withdraw a suit from any Deputy Collector and try it himself. If a Collector should withdraw a suit from a Deputy Collector in charge of a subdivision and hear it himself, he would have power to order a rehearing of it under s. 154 of Act X; but it cannot be contended that the Deputy Collector in charge of a subdivision could order a rehearing in such a case after it had been heard by the Collector. It must be borne in mind that whatever power is vested by the section in question in a Deputy Collector in cases referred to him by a Collector, is also vested without such reference in a Deputy Collector in charge of a subdivision. S. 155, Act X of 1859, gives an appeal to the Collector from a judgment of a Deputy Collector in certain cases, and it therefore impliedly gives the Collector power to hear the appeal, but this implied power was not one of the powers intended to be given to a Deputy Collector in charge of a subdivision. It is clear that the right of appeal given by s. 155 of Act X to a Collector from the decision of a Deputy Collector in charge of a subdivision has not been taken away, and that the power of hearing such appeal is still vested in the Collector. It cannot be supposed that the Legislature intended that a Deputy Collector in charge of a sub-division could exercise the powers of the Collector, and hear the appeal from his own decision, or that the Collector should have power to refer it to another Deputy Collector in the same subdivision or in any other part of his district. It appears to me that the case is too clear for argument, and that the object of s. 19 of the Bengal Act VI of 1862 was to give to Deputy Collectors specially entrusted with these particular powers, all the powers which were conferred on Deputy Collectors upon reference by the Collector or on Deputy Collectors placed in charge of subdivisions without such reference.

2. We therefore think that the Deputy Collector cannot hear an appeal from another Deputy Collector, even if the case is referred to him by the Collector. This case will go back to the Division Bench to be finally determined.

¹ The jurisdiction of Collectors and Deputy Collectors to try rent cases has been taken away by Bengal Act VIII of 1869.