

(1871) 12 CAL CK 0001

Calcutta High Court

Case No: Regular Appeal No. 144 of 1871

Baboo Shib Dutt Sing
and Others

APPELLANT

Vs

Mohan Ram Jha

RESPONDENT

Date of Decision: Dec. 22, 1871

Judgement

Loch, J.

The question to be decided on these facts, is, whether the sale should have taken place after the proceedings, required by sections 18, 21, and the following sections of Act VII of 1868 (B.C.) had been carried out, or whether the Collector was right in selling the property under the provisions of Act XI of 1859. The determination of this question depends on what is the right construction of the provisions of Act VII of 1868 (B.C.), as read with the provisions of Act XI of 1859. Now we find that Act VII of 1868 (B.C.) is entitled an Act "to amend and extend the law for the recovery of arrears of Land Revenue and of Public Demands recoverable as arrears of Land Revenue." And the last section provides that "this Act shall be read with, and taken as part of, Act XI of 1859."

2. Now the procedure laid down by Act XI of 1859, with regard to the realization of demands recoverable as public revenue, is as follows: By section 3, Act XI of 1859, the Board of Revenue is required to determine the dates upon which all arrears of revenue and all demands which, by the Regulations and Acts in force, are directed to be realized in the same manner as arrears of revenue, should be paid up in each district, in default of which payment the estates in arrear should, except as thereafter provided, be sold at public auction. The section further provides for the due publication of the notice of the dates so fixed. The exception referred to in section 3 relates to arrears and demands mentioned in section 5. This section provides that no estate or any share or interest in any estate shall be sold for arrears other than of the current year or of the year immediately preceding, or for arrears due on account of estates other than that to be sold or for arrears of estates under attachment by order of a judicial authority; or for arrears due on account of Tuccavee, poolbundee, or other demand not being land revenue, but recoverable by the same process as arrears of land revenue, otherwise than after a due

notification, specifying the nature and amount of the arrear or demand, and the latest date on which payment thereof would be received, shall have been affixed for a period of not less than fifteen clear days preceding the date fixed for payment according to section 3 of the Act, in the office of the Collector, &c. It is clear, therefore, that, previous to the enactment of Act VII of 1868 (B.C.), this was the section under which the Collector could proceed in order to bring estates to sale to realize demands recoverable as public revenue. Act VII of 1868 (B.C.) commences by giving certain definitions of the words "proprietor," "revenue," "estate," "tenure," "jurisdiction," "collector," "demand," and under the heading of the word "demand," is entered sums of money "due from any person for his proportion of the authorized expenses of making a division of any estate under Regulation XIX of 1814, or in respect of any fine imposed under sections 20 and 21 of the same Regulation." Section 5, Act XI of 1859, is not rescinded nor expressly modified by the provisions of Act VII of 1868 (B.C.), but the procedure therein in prescribed has been actually modified, though its provisions have not in terms been superseded by the latter Act in regard to the realization of demands recoverable as arrears of revenue. The procedure prescribed by Act VII of 1868 (B.C.) is less summary than that prescribed by the former Act. By section 5, Act XI of 1859, the estate of a party, from whom a demand of this nature is due, is liable to sale after the publication of a notification affixed in the office of the Collector and other officers for a period of not less than fifteen clear days preceding the date fixed by the Board of Revenue for payment of arrears of revenue or demands realizable as such arrears. But by the provisions of section 18, Act VII of 1868 (B.C.), it is enacted that,--"Whenever any arrears of any demand shall be unpaid, by any person liable to pay such demand to a Collector, for one month after he shall have been required to pay the same by a notice in writing under the hand of such Collector, the Collector of the District shall make under his hand a certificate of the amount of such arrears so remaining unpaid, in the form in Schedule A. to this Act annexed, and shall cause the same to be filed in his office." The effect of a certificate made u/s 18 is set forth in section 20, which enacts that "every such certificate * * * shall, as regards the remedies for enforcing the same, and subject to the provisions hereinafter contained, and so far only, have the force and effect of a decree of a Civil Court, and the Government shall be deemed to be the plaintiff, and the person named as debtor therein shall be deemed to be the defendant." Section 21 provides that after the Collector has filed the certificate in his office, he shall issue to the defendant a notice in the form of the Schedule C. which shall have the effect of binding the immoveable property of the defaulter as if a prohibitory order had issued and an attachment been made against such property under Act VIII of 1859. By section 22 the party regarding whom such certificate has been made, may, within a month after the service of the notice, if he feel aggrieved, apply by petition in the form in Schedule D. to the Collector by whom the certificate was issued; and the Collector, after fixing a day for the hearing of such application, shall proceed to hear and determine the application, and may set aside, modify, or vary such certificate; and the Collector for the purposes of hearing and determining such application shall have all the powers conferred by Act VIII of 1859 upon the Civil Court for hearing and determining claims to attached property. Section 24 enacts that every certificate, made in pursuance

of section 18 of the Act, may be enforced by all or any of the ways and means mentioned and provided by Act VIII of 1859 for the enforcement of decrees for money; and all the practice and procedure prescribed by Act VIII of 1859 or by any other Act for the time being in force in respect of sales in execution of decrees, shall apply to every execution issued for the levying of monies expressed in such certificate.

3. Now it is clear from these sections that, though the Legislature has not expressly modified the provisions of section 5, Act XI of 1859, they are in fact superseded by the procedure prescribed in Act VII of 1868 (B.C.), which provides a new and a less summary mode of realizing demands recoverable as arrears of revenue. It clearly appears to have been the object of Government to adopt a more lenient course in realizing demands which were not really arrears of revenue. I think therefore that all sales for the recovery of such demands must be preceded by the steps prescribed in section 18 and following sections in Act VII of 1868 (B.C.), and that the Collector cannot proceed to sell under the more summary course sanctioned by Act XI of 1859. It is clear also, from the provisions of Act VII of 1868 (B.C.), that the certificate is to have the effect of a decree, and that for sales in execution thereof, the whole of the procedure prescribed by Act VIII of 1859 must be adopted. Therefore, as in the case of execution of decrees, if a party before the sale takes place, comes into Court and pays the amount of the debt due, or tenders the amount of the debt due, the Court is bound to receive the money and to abstain from selling the property attached; so in the case of the property which has been under the certificate for a Government demand, if the proprietor either before or at the time of sale come into Court, and before the property is actually sold, tender the amount of the demand, the Collector is bound to hold his hand and to abstain from selling the property.

4. In the present case we find that the procedure followed was that prescribed by Act XI of 1859, and not that prescribed by the later Act VII of 1868 (B.C.), and we find further that before the sale took place, the defaulter did actually tender the amount of the fine, which under the circumstances should have been received, and all proceedings for the sale of the property should have at once been stopped. In this view of the case I think the proceedings of the Collector were erroneous, and that the sale was not a legal one, not having been conducted under the provisions of Act VII of 1868 (B.C.); and therefore the judgment of the lower Court must be affirmed and the appeal dismissed with costs.

5. It is urged by the appellant, in the 4th ground of appeal, that the Court should not have cancelled the sale except upon proof that the plaintiff had sustained substantial injury by reason of the irregularity complained of. The question of substantial injury, however, is not one which we can entertain. The whole proceedings of the Collector were, according to the view taken of them above, irregular and illegal, and as such must be set aside. The 5th ground taken by the appellant is that the sale should not be reversed without an order directing the refund of the purchase-money with interest, and the 6th ground objects to the payment of the plaintiff's costs, the appellant urging that he is entitled to his costs either from the plaintiff or Government. As the Government is not before us in this appeal, we can make no order either in respect to the purchase-money or to costs. The plaintiff is

clearly entitled to his costs, and the decree of the lower Court apparently makes both the Government and appellant liable for the plaintiffs costs.