

**(1869) 05 CAL CK 0030**

**Calcutta High Court**

**Case No:** Motion No. 406

Narayani Dayi Debi

APPELLANT

Vs

Chandi Charan Chowdhry and  
Others

RESPONDENT

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**Date of Decision:** May 18, 1869

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### **Judgement**

Bayley, J.

This is an application for the exercise of our extraordinary powers u/s 15 of the Charter, and we are asked to grant a rule calling upon the other side to show cause why an order of the Collector of Moorshedabad dated the 3rd April 1869, recalling a previous order passed by the said officer for the delivery of possession of a certain tenure purchased by the petitioner under the provisions of section 105, Act X of 1859, should not be quashed as passed without jurisdiction. I consider in the first place that section 15 of the Charter gives this Court a discretion to exercise those powers given by that section, and does not make it imperative upon us to exercise them. The parties in this case are not debarred from finding further redress upon the refusal to exercise our powers under that section. Where there is a case of refusal by the lower Court to exercise a jurisdiction which it has, or a case of exercise of the jurisdiction which it has not, resulting in injustice done to a party for which there are no other means of redress, in such a case I think this Court ought to exercise its extraordinary powers under the provisions of section 15, but in this case I do not think that the circumstances are such as would justify our interference.

2. The zamindar sold a tenure for arrears of rent and the applicant purchased that tenure and delivery of possession to the appellant was ordered by the Collector. But subsequently the Collector discovered on the motion of an objector, that the same tenure had been already sold for arrears due upon it under the provisions of Act VIII of 1865 (B.C.) and delivered over by him, the Collector, to the objector; and considering it unjust and improper that the same property should be twice sold and delivered to two different parties, the Collector recalled his order delivering possession to the applicant.

3. It is contended that this order of recall by the Collector was an order without jurisdiction; the case of Chunder Coomar Roy v. Mackenzie 3 W.R. Act X, Rul. 10, decided by LOCH and Seton-Karr, JJ., has been cited in support of the contention. For this case, there is a dictum that a Deputy Collector has no authority to review an order, or a Collector to receive an appeal from an order passed in execution. On the other hand, there is a case in which it has been held that a Judge has power to review an order passed in execution. The Collector, it seems to me, is a judicial officer to a certain extent presiding in a Judicial Court, and looking to the considerable doubts that exist on the point as to whether under the provisions of sections 109 and 153, Act X of 1859, a Collector has or has not power to review an order passed in execution and to the conflicting decisions on the point, and looking also to the equity of the case, as being in favour of the Collector's order, I have no hesitation in saying that in a case like this, with considerable doubts on one side and equity on the other, it would not be a proper exercise of the powers vested in us by section 15 to interfere with the order passed by the Collector. In this view we reject this application.