

(1878) 08 CAL CK 0004

Calcutta High Court

Case No: None

Surnomoyee Dabee

APPELLANT

Vs

Koomar Purresh
Narain Roy

RESPONDENT

Date of Decision: Aug. 28, 1878

Acts Referred:

- Road Cess Act, 1871 - Section 4

Citation: (1879) ILR (Cal) 576

Hon'ble Judges: White, J; Tottenham, J

Bench: Division Bench

Judgement

White, J.

The point raised by this appeal is, whether the defendant (the respondent before us) is entitled from the annual profit,--viz., Rs. 11,700,--payable by him to the plaintiff (the appellant before us) under a patni-kabuliyat, to deduct that portion of the road-cess levied upon the land, the subject of the patni-tenure, which falls according to Bengal Act X of 1871 upon the plaintiff, but has been paid by the defendant. If this question had been one pure and simple of the construction of the patni-kabuliyat, we should have taken time to consider the validity of an objection raised by Baboo Rash Behary Ghose on behalf of the respondent, that a special appeal does not lie in such a case under the new Code; but the decision of this appeal involves not only that question, but also a consideration of the Bengal Road Cess Act, and of the effect of its provisions upon contracts made prior to its passing, and we are clearly of opinion that the special appeal lies.

2. (After shortly stating the facts, and the terms of the kabuliyat, as above, his Lordship continued):

3. When this kabuliyat was executed, the income tax Act was in force, but has since been repealed. The road-cess was not imposed until the year 1871. The Act

ordaining the cess directs that where land is the subject of various tenures and sub-tenures, the road-cess shall be recoverable from the several owners or occupiers in certain proportions mentioned in the Act. The payment on account of road-cess, which is sought to be deducted by the defendant, is that portion of the cess which under the Act would fall upon the plaintiff, and, if the rights of the parties as regards the point in dispute are not governed by the contract to which they were parties in 1862, it is clear that the defendant would be entitled to make the deduction which he claims.

4. The first Court decided that the road-cess was an impost or "augobar" within the meaning of the kabuliyat, and decreed that the defendant must pay the whole of the annual profit of Rs. 11,700 without any deduction on account of the road-cess. Mr. Tweedie the Additional Judge, has taken a different view of the matter. He holds that the road-cess is not an impost (augobar) within the meaning of the kabuliyat, but that it is really an income tax, and as such, a charge which the plaintiff has expressly undertaken to bear.

5. The correctness or otherwise of his decision turns, in the first place, upon what is the tax which the plaintiff by the kabuliyat undertook to pay; and, secondly, upon what is the nature and character of the tax imposed by the Bengal Legislature and called the road-cess.

6. As regards the first question, the word used in the kabuliyat to define the particular tax which the plaintiff has agreed to pay is the English word income tax, although the word itself is written in the Bengali character. income tax is a word which has a very sharply defined meaning. The tax is distinguished by well-known characteristics, and when the kabuliyat was executed, a tax of that name, and having these well-known characteristics, was in force. We have no doubt that the income tax intended by the kabuliyat was the income tax then in force, and any future tax that might hereafter be imposed which falls upon income, and is of the same character and nature as the income tax then in force.

7. As regards the second question, if the cess imposed by Beng. Act X of 1871 is really an income tax, then unquestionably the plaintiff who has agreed to pay "income tax" would be bound to pay this cess, although it has been imposed since the date of the kabuliyat.

8. We are of opinion, however, that having regard to the provisions of the Road Cess Act, the impost is not an income tax.

9. The income tax, which was levied at the date of the kabuliyat, was a tax imposed by the Legislature of the Government of India upon all the people of India whose incomes exceeded a certain amount. It formed part of the financial system of India, and was levied mainly, if not entirely, for the purposes of all India. The subject-matter of the tax was a man's annual income from whatever source derived, and was levied upon what actually came to his hands as income, and not upon the

value of his property. Now the road-cess is imposed not by the Metropolitan Legislature of India, but by the local Legislature of Bengal. It is not a tax upon income. It is a tax, as Section 4 of Beng. Act X of 1871 says, upon Immovable property within a certain part only of India, and it is assessed upon the annual value of that property; and, as the interpretation clause, shows, irrespective of whether the property is a rent-paying one or not. Again, the proceeds of the tax are applicable to purely local purposes,--viz., the construction and maintenance of roads and other means of communication. It is to my mind as much a misnomer to call the road-cess an income tax as it would be to give that name to the lighting or water-rate which is levied upon the owners and occupiers of houses in Calcutta, or to the highway rate which is collected in England.

10. Being of opinion that the road-cess does not come within the meaning of income tax as named in the kabuliyat, the next question is, whether it is an outgoing which the defendant ought to pay. The defendant has agreed to pay any impost (augobar) which may be laid on by Government in future. The word "augobar" has been the subject of some criticism by Mr. Tweedie based apparently on its primary and literal meaning, and he has come to the conclusion that road-cess is not "augobar." It appears to us unnecessary to decide whether "augobar" does or does not include such a tax as road-cess, for we think upon a consideration of the language of the kabuliyat, to which I have above referred, that the true meaning of the parties is that the Rs. 11,700 annual profit should be treated as a net annual sum payable by the defendant, and that the same should be paid without deduction, except for income tax. The translation of the Subordinate Judge runs thus: "I or my heirs shall not in any way be able to raise any objection to your getting the aforesaid profit of Rs. 11,700," which is thus paraphrased by Mr. Tweedie: "I shall not on this account (viz., Khazana bridhi or augobar), or on any other account, make any deduction from the Rs. 11,700 "munafa" payable by me to you."

11. It appears to us not unreasonable or improbable that, when the plaintiff has by his patni-settlement virtually turned himself into an annuitant upon the land, and assigned to the defendant the land with all the prospect of its future increase of value, that the parties should come to an arrangement by which the annual payment to the plaintiff should be exempt from all present and future charges upon the land except income tax.

12. The only remaining question is, whether the directions in the Road Cess Act override the contract which the parties made for themselves long before that Act was passed. Although the Act contains no saving clause in favour of contracts, it does not prohibit in future the making of contracts which shall interfere with the incidence of the road-cess as directed by the Act, nor vacate contracts that may have been made before the passing of the Act. In the absence of any provision to that effect, we think that the terms of the kabuliyat must still govern the rights of the parties, and that the agreement which they have come to is not affected by the

subsequent passing of the Road Cess Act.

13. The result is, that this appeal will be allowed. The decree of the lower Appellate Court will be sot aside, and that of the first Court will be restored with costs. The appellant will have his costs of this appeal and also in the lower Appellate Court.