

(1881) 02 CAL CK 0020

Calcutta High Court

Case No: None

Baba Chowdhry and
Others

APPELLANT

Vs

Abedooddeen
Mahomed and Others

RESPONDENT

Date of Decision: Feb. 17, 1881

Acts Referred:

- Bengal Rent Act, 1859 - Section 10

Citation: (1881) ILR (Cal) 69

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

Bench: Division Bench

Judgement

Morris, J.

In all the suits for arrears of rent out of which these appeals arise, the Subordinate Judge has declined to recognize the rates of rent fixed by the Collector in the proceedings held by him at the instance of the plaintiff u/s 10 of Beng. Act VI of 1862, and has dismissed the plaintiff's suits, save in respect of certain sums admitted by the defendants themselves. The judgment of the Subordinate Judge is appealed against, on the ground that he cannot go behind the decision of the Collector under Beng. Act VI of 3862, that the defendants made no appeal at the time against the decision u/s 10, and that, therefore, the proceedings under that section are final.

2. It seems to us, however, clear on the face of those proceedings, that the Collector acted without jurisdiction; and that, therefore, the Subordinate Judge is right in declining to accept the rates that have been fixed by him.

3. First, the Collector proceeded on the application of a fractional holder of the estate only, and not on the application, as the law requires, of "the proprietor" of it. In his plaints in the several suits before us, the plaintiff himself admits that it was he

alone who instituted proceedings in the Collectorate, and that, out of the entire sixteen annas, he held a two annas eight gandas share only. But in numerous decisions of this Court it has been held, that an applicant u/s 10 of Beng. Act VI of 1862 must be the proprietor of the estate, not a shareholder only in the proprietary body, and that such shareholder cannot demand separate measurements: see *Mahomed Bahadoor Mojoomdar v. Rajah Raj Kishen Singh* (15 W. R. 522), *Moolook Chand Mundul v. Modhoosoodun Bachusputty* (16 W. R. 126), and *Shoorender Mohun Roy v. Bhuggobut Churn Gungopadhya* (18 W. R. 332). On the application, therefore, of the present plaintiff only, the Collector had no jurisdiction to proceed under that section. A second fatal objection is, that the Collector did not proceed to ascertain, determine, and record the rates of rent payable in respect of the lands in question. On the contrary, he assessed them at the rates which the Amin ascertained to be prevailing in the neighbouring villages, and not in the village itself. That the Collector based his decision, as to the lands and jamabandi, entirely upon the report and enquiry of the Amin, is indisputable. It is so stated by him in his own proceedings. But the Amin, as is apparent from his report, was unable to ascertain from the ryots themselves what the actually existing rates of rent payable by them were. He refused to accept the rates which were entered in the papers of one of the co-sharers in the estate which he saw, and he avowedly adopted the rates which he found to prevail in the neighbouring villages. It is evident, therefore, that, instead of ascertaining and recording the existing rates, he assessed what he considered to be fair and equitable rates. But this he clearly had no power to do, and the Collector was acting equally ultra vires in accepting and adopting them. This is the view of the law taken in *Anunt Manjhee v. Joy Chunder Chowdhry* (12 W. R. 371); there the learned Judges say:---"In the present instance what the Revenue Officer did was to assess upon the land such rent as he thought proper. This is quite beyond the power of any one acting u/s 10 of Beng. Act VI of 1862. The sole object of that section is to authorize the Revenue Courts to ascertain for the landlord what the existing condition of his estate is, what are the measurements, what the names of the tenants, and what the rents that they are paying."

4. In other particulars the Collector has acted irregularly and contrary to the provisions of Section 10. But the above-mentioned two instances suffice to show that he has far exceeded the power given him u/s 10, and that his decision cannot be sustained.

We, therefore, affirm the decision of the lower Court, and dismiss all these appeals with costs.