

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the two Appeals
(consolidated) of Haji Buksh Elahi v. Durlav
Chandra Kar, from the High Court of
Judicature at Fort William in Bengal;
delivered the 13th June 1912.*

PRESENT AT THE HEARING :

LORD SHAW.

SIR JOHN EDGE.

MR. AMEER ALI.

[DELIVERED BY LORD SHAW.]

These are consolidated Appeals from judgments and decrees of the High Court at Calcutta, which set aside two decrees of the Subordinate Judge in the Second Court of 24 Pergunnahs, in Bengal. The question for determination by the Board is whether a certain sale of holdings for arrears of revenue, made to the Respondent on the 16th March 1903, should be set aside.

On the 27th March 1902, the Appellant purchased these holdings for Rs. 16,000 from a son of Bhagaban Chandra Banerji. By the kabuliyat executed in the year 1874 by Bhagaban, who was thus the Appellant's predecessor in title, it was stipulated as follows :—
“ I shall pay the said jumma in the collectorate
“ within the 28th day of June every year.” The holdings were Government tenures in Dihi Panchanagram in the District of Twenty-four Pergunnahs, and it is not disputed that such tenures came under the Act XI. of 1859 by

virtue of the provisions of Act VII. of 1868. By Section 2 of the former Act an arrear of revenue was described thus :—

“ If the whole or a portion of a kist or instalment of any month of the era, according to which the settlement and kistbundi of any mahal have been regulated, be unpaid on the first of the following month of such era, the sum so remaining unpaid shall be considered as an arrear of revenue.”

It seems accordingly hardly to admit of dispute that, if this section applied, the rent payable under the Kabuliyat on the 28th June 1902 was not in arrear till the 1st of July thereafter.

Statute having thus made clear what was to be considered an arrear of revenue, and at what date a past due payment was to be “ considered as an arrear of revenue,” namely, on the first of the month following that in which the payment fell due, the further question is this, viz. :—Was this sale conducted in accordance with the procedure prescribed by statute for the sales of property in respect of unpaid arrears of revenue?

While, as stated, it was admitted that these tenures were brought under the Act of 1859 by the Statute of 1868, it was nevertheless contended that there was some distinction to be made with reference to procedure and with reference to what constituted “ arrears.” The contention is important and was ably presented, but, in their Lordships’ opinion, it is without foundation. The Act of 1868 above referred to extends the word “ revenue ” so as to include “ every sum annually paid to Government by the proprietor of any estate or tenure in respect thereof.” As to the attempt to differentiate procedure under the two Statutes, the answer to that seems sufficiently contained in Section 30 of the later Act, which provides

that it shall be read with, and taken as part of, the former. The date when a past due payment was to be considered arrears having accordingly been settled by Section 2 of the Act of 1859, as quoted, their Lordships cannot agree with the Judgment of the High Court, which introduces a reference to "the settlement" having been made on 18th February. Therefore, say the learned Judges :—

"In the case of an ordinary contract of lease, the annual jumma would be payable on 18th February in each successive year; but under Rule 7 of Part III, c. 16, of the Survey and Settlement Manual, a settlement of revenue should ordinarily take effect from the beginning of the financial year next after that in which the proceedings of the settlement officer have been completed. If that rule be applied, the settlement dates from 1st April 1874, and the jumma would ordinarily be payable on 1st April each year.

The statements and considerations here given do not appear to their Lordships to bear upon the present case. Whatever might be the ordinary date of payment, or secondly, whatever might be the date when "the settlement" is made, or thirdly, whatever be the provisions of the Survey and Settlement Manual, it does not appear to their Lordships legitimate, by reason of any one or all of these things, to vary the actual date of payment in the kabuliyat in the present case, which is the 28th June, or the actual date when a past due payment should be considered as an arrear, which is by the Statute of 1859 the 1st July 1902. No variation of the contract of parties and the statutory provisions applicable thereto is possible by reason of general considerations or administrative rules which have not the sanction of Indian Statute. In the words of Lord Watson, in *Balkishen Das v. Simpson* (25 Indian Law Reports, 158), referring to the Act of 1859 :—

"The Act does not sanction, and by plain implication forbids, the sale of any estate which is not at the time

“ in arrear of Government revenue. The whole clauses of
 “ the Act of 1859, in so far as these relate to sales or to
 “ their challenge at the instance of the proprietor, as well
 “ as the provisions of Section 2 of Bengal Act 7 of 1868,
 “ are framed upon the express footing that they are to
 “ be applicable to the sale of estates which are in arrear of
 “ duty.”

The date when by Statute accordingly this revenue was considered in arrear was the 1st July 1902. At what date was default made in paying that arrear of revenue, so as to entitle a sale of the estate to be made? This, which appears to their Lordships to be the real question in the case, is clearly answered by the Act of 1859 itself and by the notification which followed thereon. By Section 3 of the Act, “ The Board
 “ of Revenue at Calcutta shall determine upon
 “ what dates all arrears of revenue, and all
 “ demands which by the Regulations and Acts
 “ in force are directed to be realised in the
 “ same manner as arrears of revenue, shall be
 “ paid up in each district under their jurisdiction,
 “ in default of which payment the estates in
 “ arrear in those districts, except as hereinafter
 “ provided, shall be sold at public auction to
 “ the highest bidder.” In compliance with this section, the Board of Revenue on the 6th October 1871 made and duly published a notification that it—

“ has determined and fixed the 28th June of each
 “ respective year as the latest date of payment of the rents
 “ of all description of tenures in Khas Mahal Panchan-
 “ nagram, in default of which payment on or previous to
 “ that date, tenures in arrears in that Mahal will be sold at
 “ public auction to the highest bidder.”

Bearing in mind that the whole provisions with regard to sales are, in the language of Lord Watson, “ framed upon the express footing that
 “ they are to be applicable to the sale of estates
 “ which are in arrear of duty,” and that this tenure could not be considered in arrear until the 1st July 1902, it appears fairly clear that the

28th June 1903, is the first date under the Proclamation and the Statute when there has arisen such a default as would enable that "tenure in arrears" to be sold. It so happens that the payment in the present case is not a monthly, but an annual payment, and it further happens that the payment fell to be made on the 28th June 1902. The Statute having by plain implication forbidden the estate to be considered in arrear until the 1st July, it appears to follow that the date fixed as that on which tenures in arrear will be sold must be the succeeding 28th June, namely, in the year 1903. This estate, however, was sold in the previous month of March, and their Lordships agree with the view of the Subordinate Judge in thinking that the sale is accordingly invalid. In the language of the learned Judge—

"The Board of Revenue are required, under Section 3 of the Act, to determine on what date *arrears of revenue* shall be paid up, in default of which payment the estates in arrear shall be sold at public auction."

Their Lordships agree with the view that the notification must, having regard to this section of the Statute which authorised it, be applied to the present estate as fixing the 28th June 1903 as the date on which, if the arrears are not paid up, the estate can be sold. If, in cases such as the present, this holds up the power of sale until nearly a year's revenue stands in arrear, that matter, including the question whether more than one date for payment of arrears should be set up as periods of default, is one for the consideration of the Legislature and the Board of Revenue.

Their Lordships will humbly advise His Majesty that the Appeals should be allowed, the Judgments and Decrees of the High Court reversed, and those of the Subordinate Judge restored, the costs of the Suit and of the Appeal being borne by the Respondent.

In the Privy Council.

HAJI BUKSH ELAHI

v.

DURLAV CHANDRA KAR.

DELIVERED BY LORD SHAW.

LONDON:
PRINTED BY EYRE AND SPOTTISWOODE, LTD.,
PRINTERS TO THE KING'S MOST EXCELLENT MAJESTY.

1912.