

Emperor Vs. Ram Sarup

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Court : Allahabad

Decided On : Apr-30-1915

Reported in : AIR1915All372; 30Ind.Cas.722

Judge : Piggott, J.

Appellant : Emperor

Respondent : Ram Sarup

Judgement :

Piggott, J.

1. The facts disclosed by this order of reference are peculiar. Ram Sarup is a land-holder of a village Darabnagar in the Bareilly District. By an order lawfully passed and promulgated under Section 51 of the Agra Tenancy Act (Local Act II of 1901), a portion of the rents due from tenants of that village had been suspended. Ram Sarup was aware of the order of suspension but he endeavoured to collect suspended arrears by process of distraint. He has been prosecuted for having disobeyed an order promulgated by a public servant, lawfully empowered to promulgate such order, direction him to abstain from such act. The learned Sessions Judge has doubted the propriety of the conviction and the sentence of Rs. 150, fine which followed the prosecution and has referred the matter to this Court for orders. The effect of an order suspending or remitting rent under Section 51 of the Tenancy Act already referred to is not to prohibit the zemindar or

zemindars affected by such order from collection the same. This is obvious from Sub-clause 5 of said section which prescribes the consequences which will result in the even o a land-holder's succeeding in collection rents which have been suspended or remitted. If the tenants are in fact sufficiently well off to pay the suspended rents I cannot see that any principle of public policy is violated by permitting them to do so. The appropriate consequences will follow under the provisions of the Tenancy Act itself. It will be presumed that a mistake was made in suspending rents and land revenue in a village where the tenants are in fact able to pay, and the zemindar will become immediately liable for payment of the suspended arrears of land revenue. The difficulty in the present case seems to have arised because of Ram Sarup's attempt to invoke the power of distraint. The whole facts are not before me, and, moreover, the question whether distraint can law fully be levied in respect of rents under suspension is one entirely within the jurisdiction of the Revenue Courts. I should have thought myself that such distraint could be successfully contested by the tenant under Section 142 of the Tenancy Act whereby the distrainer can be put to proof of his claim to the contested arrears just as if he were the plaintiff in a suit to recover the same. It is expressly laid down that a suit for the recovery of suspended arrears of rent will not lie during the period of suspension. If I am mistaken in this view--and I conceive it possible that some difficulty may have been felt by reason of the definition of what constitutes and 'arrear of rent' given in Section 101 of the Tenancy Act--then the question of the re-drafting of the provisions of that Act relating to distraint deserves the attention of the Legislature. As regards the effect of Section 51 of the Tenancy Act I feel no doubt whatever. And order suspending or remitting arrears of rent is not an order prohibiting the land-holder from receiving the same is tendered or from attempting to realize the same by lawful means. Its effect is simply to deprive him of his right of suit in respect of the arrears remitted or of the suspended arrears during the period of suspension. Ram Sarup either had a right in law to distrain for these suspended arrears, or he had not. I should have thought that he had not, and I that case the distraints levied by him can be set aside and he is liable to compensate the tenants inconvenienced thereby. If, however, it be held that the suspension of arrears of rent does not deprive the land-holder of his power of distraint during the period of suspension I am unable to hold that he is liable to

punishment for availing himself of his legal right.

2. I set aside the conviction and sentence in this case; the fine, if paid, will be refunded.

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