
(1940) 05 CAL CK 0026
In the Calcutta High Court

Abdul Monaf and Others

APPELLANT

Vs

Sunamganj Municipal Board

RESPONDENT

Date of Decision : 08-05-1940

Acts Referred:

Letters Patent Act, 1865 — Section 15

Sunamganj Municipal Board Act, 1923 — Section 59(1)(b)

Citation : AIR 1941 Cal 482

Hon'ble Judges : Mohamad Akram, J

Bench : Division Bench

Judgement

Mohamad Akram, J.—These 10 analogous appeals by the plaintiffs arise out of as many suits for a declaration that the personal tax imposed upon them by the defendant Sunamganj Municipal Board under Act, 1 of 1923 (Assam) was illegal and improper and for an injunction restraining the said Board from realising the same. The suits were heard together and disposed of by one judgment and so were the appeals before the lower appellate Court. The plaintiffs are different but the defendant in all the suits is the same. The case of the plaintiffs was that they resided outside the Sunamganj Municipality and served as Government servants in the Sunamganj Munsif's Court within the municipal area; that the plaintiff in suit No. 2354 was the accountant and the plaintiffs in the other suits were the process-servers of the said Court; that as the plaintiffs were not inhabitants of the Municipality they were not liable for the taxes imposed upon them under the Assam Municipal Act (1 of 1928).

2. The defence inter alia was that the plaintiffs by serving in the Munsif's Court within the Municipality were carrying on business there; that, as such, they were inhabitants of the municipal area and liable to assessment u/s 59, Clause (1), Sub-clause (b) of Act 1 of 1923; that the tax had been rightly imposed upon them. The trial Court decreed the suits but the Court of appeal below dismissed them. The plaintiffs thereupon preferred the present appeals.

3. It was contended on behalf of the appellants that Section 80 and proviso (1)

of Section 59 (1) prohibited the imposition of the tax on the plaintiffs as the Munsif's Court, (holding No. 80), had already been taxed and the same was payable by Government; that, in any event, the expression "carrying on business" did not imply service : *Sangster v. Kay* (1850) 5 Ex 386, that the plaintiff's, therefore, were not inhabitants within the meaning of Section 3, Clause (15) and were not liable to taxation u/s 59, clause (1), Sub-clause (b) of the Act. It was contended on behalf of the respondent that S.80 and proviso (1) to Section 59 had no application; that the expression "carrying on business" included employment and service for salary: *Rolls v. Miller* (1884) 27 Ch D 71, that the plaintiffs, therefore, were inhabitants within the meaning of Section 8 (15) and were rightly made liable u/s 59 (1) (b), Assam Municipal Act. Now Section 80, Assam Municipal Act, prevents the imposition of a tax on any person in respect of his occupation of any holding in any Municipality in which a tax on inhabitants is already imposed except to this extent that public buildings contained in a holding may be assessed with tax according to a prescribed rate. Similarly, proviso (1) to Section 59 (1) of the Act prohibits the imposition of tax upon the owner of the holding as well as upon the inhabitants, under Clauses (a) and (b) of Section 59 (1) in the same ward and in the same time except to this extent that in a ward where tax on inhabitants is in force, public buildings shall be assessed with tax on holdings according to a prescribed scale. No question in the present case arises regarding any tax in respect of occupation or ownership of any holding, and, admittedly, no other tax has been imposed upon the plaintiffs. I do not think, therefore, that Section 80 or proviso (1) to Section 59 (1) has any application or can operate as a bar to the imposition of the present tax. As regards the argument that the plaintiffs were not inhabitants as contemplated by Section 59 (1) (b) of the Act and were, therefore, not liable to taxation, it appears that u/s 59 (1) (b) the Municipal Board is empowered to impose "a tax on inhabitants according to their circumstances and property within the municipal area." The word "inhabitant" with reference to a local area has been defined in Section 3 (15) as meaning "any person ordinarily residing or carrying on business or occupying immovable property therein."

4. The question, therefore, arises whether the expression "carrying on business" in Section 3 (15) of the Act includes service. In *Sangster v. Kay* (1850) 5 Ex 386, it was held that a clerk in the Privy Council Office could not be said by reason of being there to carry on business within the meaning of Section 60, County Courts Act, and the expression "carrying on business" implied "something more than mere service from which the person may be discharged at a moment's notice." Similarly in *Lewis v. Graham* (1888) 20 QBD 780, it was held that a clerk employed at a solicitor's offices in London does not "carry on business" there within the meaning of the Mayor's Court Extension Act, 1857. Coleridge, C. J. while construing the words "carry on business," observed in the course of his judgment as follows:

If the question in this case were *res integra* I should say that it was only where a person is employed in business of his own, carrying on business in the ordinary

sense of the words that the Mayor's Court has jurisdiction ** * The business must be some business in which he has control, or acts as one of the partners engaged in carrying it on. A particular clerk or workman who is engaged about the business but has no control over it whatever cannot be said to be carrying on business in the city

5. The case in *Rolls v. Miller* (1884) 27 Ch D 71 relied upon by the respondent does not seem to me to be applicable. That was a case of a lease in which there was a covenant preventing the lessee from using or "carrying on" upon the premises any trade or business of any description whatsoever. The under-lessee opened in the premises a "Home for working-girls" and the question arose whether this was using the premises in violation of the covenant in the lease. It was found that no fee was charged from the girls but there was a paid superintendent who managed the home, invited applications from girls in need of accommodation, and saw to the observance of the rules and regulations of the institution. On those and other facts, it was said that it did not really matter that no profit was sought to be made, that the purpose of the Home was a purpose beyond the ordinary purpose of a dwelling house and that what was being done was carrying on the business of a lodging house in contravention of the terms of the lease. The question whether the expression "carrying on business" included a mere servant doing his duty was not decided in that case. Following therefore the principle laid down in *Sangster v. Kay* (1850) 5 Ex 386 and *Lewis v. Graham* (1888) 20 QBD 780, I am of opinion that the appellants who are Government servants, merely performing duties that are assigned to them, cannot be regarded as "carrying on business" so as to bring them within the meaning of the word "inhabitant" defined in Section 3 (15) and make them liable to taxation u/s 59 (1) (b) of Act, 1 of 1923. I accordingly allow the appeals, set aside the decrees of the Court of appeal below and restore those of the Court of first instance. The appellants will get their costs from the respondents. I assess a consolidated hearing fee of three gold-mohurs to be divided equally between the appellants in all the appeals. In view of the general importance of the question involved in these appeals the prayer for leave to appeal u/s 15, Letters Patent, is granted.