(1898) 06 CAL CK 0007

In the Calcutta High Court

Case No : Appeal from Appellate Decree No. 283 of 1897

Ambika Churn Mozumdar, Chairman, Faridpur Municipality APPELLANT

Vs

Satish Chunder Sen RESPONDENT

Date of Decision : 24-06-1898

Acts Referred:

Citation : (1898) 06 CAL CK 0007

Final Decision : Dismissed

Judgement

1. These three appeals are preferred by the Chairman of the Faridpur Municipality from the judgment of the Officiating District Judge of Faridpur, who has affirmed the decision of the Munsif declaring that the Plaintiffs-Respondents in this Court were not liable to assessment under sec. 85 (a) of the Bengal Municipal Act (III of 1884). These Plaintiffs had paid under protest the amount assessed upon them and the District Judge varying the order of the Munsif has directed a refund of the amount so paid. In special appeal three questions have been raised. It has been contended in the first place, that under sec. 85 (a) all persons residing within or upon a holding are liable to assessment if they possess separate assessable incomes; and various sections of the Act were referred to for the purpose of showing that the Legislature must have meant when it used the expression " a tax upon persons occupying the holdings within the Municipality according to their circumstances and property within the Municipality," that all such persons were liable to assessment.

2. The Courts below have given very clear reasons for holding that the view upon which the Municipality of Faridpur was proceeding was not well founded. Now in one of these cases the Plaintiff is the son of the occupier of the holding, and although he has a separate assessable income, lives with his father upon the premises in connection with which the assessment has been attempted to be made, in the other two cases the Plaintiffs are clerks, in other words, servants of the pleader who is occupying the particular holding. And if the view which the Municipality appears to take of the liability of these persons to assessment be

well founded, it would follow that all persons connected with, or related to a particular individual occupying a particular holding, and by that relationship entitled to or bound to live with him, would be separately assessable, if possessed of a separate income. A wife, for example, if living with her husband and a servant, if residing on his master''s permises would be separately assessable; and so forth.

3. We do not think, however, that could possibly have been the intention of the Legislature. The words of the section amply warrant the meaning attached to them by the lower Courts. Sec. 85 runs as follows : -- "The Commissioners may from time to time, at a meeting convened expressly for the purpose, of which due notice shall have been given, and with the sanction of the Local Government impose within the limits of the Municipality one or other, or both, of the following taxes, viz., (a) a tax upon persons occupying holdings within the Municipality according to their circumstances and property within the Municipality : (b) a rate upon the annual value of all holdings situated within the Municipality.

4. In our opinion that must be read distributively: so to speak, as meaning upon any person occupying any holding within the Municipality according to his circumstances and property. There may of course he circumstances in which more persons than one may occupy, or may choose to occupy, a particular holding jointly, making each of themselves assessable to the Municipality. But there is nothing in the section to warrant the conclusion that persons situated like the Plaintiffs are assessable under that section.

5. Then it was contended that the Plaintiff''s action was barred, inasmuch as the assessment under sec. 112 was made more than three months from the date of the suit and that inasmuch as sec. 363 provides a period of 3 months within which the action should be brought the Plaintiffs suit should be held to be out of time. It appears to us, however, that the right to obtain a declaration such as the Plaintiffs seek in this case, namely, that it should be declared that they were not assessable under the Act was a recurring right and that the Plaintiffs were entitled to maintain the present action.

6. It was also contended that inasmuch as a notice was no. 1 given under sec. 363 of the Act respecting the refund claimed, the Plaintiffs cannot obtain the order which the District Judge has made in their favour. It has been held in a series of cases that the word "act" used in the section refers to tortious act and not to any act arising upon a contractual or quasi-contractual basis as in the present case. Here the Plaintiffs deposited the money under protest. They are clearly entitled to obtain a refund of the amount paid by them. We think, therefore, that all the objections taken to the judgment of the District Judge have failed and that these appeals must be dismissed with costs.