

(1918) 03 MAD CK 0034
In the Madras High Court

Best and Co. Ltd.

APPELLANT

Vs

The Collector of Madras

RESPONDENT

Date of Decision : 18-03-1918

Acts Referred:

Government of India Act, 1915 — Section 106(2)

Citation : (1918) 35 MLJ 23

Judgement

1. This was a suit brought by Messrs. Best & Co. Ltd., a firm of merchants carrying on business in this city, for a declaration that an agreement dated the 4th October 1915 entered into by them with the Collector of Madras of the day was binding on the parties. The action is brought because, on the 22nd May 1917, the Collector purporting to act in consequence of the Income Tax Act, V of 1916 declared that the agreement was no longer binding on him and repudiated it. The plaintiffs tendered the sum that they said to be due under the agreement and brought this action to safeguard their rights under it. The agreement is one made with the Collector of Madras under the provisions of the former Income Tax Act (II of 1886) Section 31, which enables persons, instead of being reassessed every year, to arrange with the Collector for a definite sum to be assessed for a fixed period and in this case the period agreed upon was five years from the 1st April 1915. The plaintiffs originally sued the Secretary of State for India. At one time the point was taken on behalf of the Government that the proper person to be sued was not the Secretary of State but the Collector of Madras but, on a suggestion made at the time of the settling of issues, that difficulty, which was purely a technical one, was obviated by adding the Collector of Madras as a party, so that, the relief being in the alternative against one or other of those officials, it is really immaterial to decide as to which of them is actually liable. Of course, we all know it really comes to the same thing, the Collector being the revenue authority.

2. By way of preliminary objection, another point was taken by the learned Advocate General which is embodied in the first issue in the case, and that was, that I sitting as a Judge on the Original Side of the High Court of Judicature for

Madras, had no jurisdiction u/s 106(2) of the Government of India Act, 1915, to try the suit. The words of the section seem to be quite explicit and are as follows :--" The High Courts have not and may not exercise any original jurisdiction in any matter concerning the revenue, or covering any act ordered or done in the collection thereof according to the usage and practice of the country or the law for the time being in force." As I say, on the face of it, it appeared to me that that entirely precluded me from entertaining the suit on the merits or from entertaining it at all. Mr. Grant took two points in answer to that contention. The first point was this : that by the decision in Collector of Sea Customs v. P. Chidambaram ILR (1876) Mad. 89 which, of course, if the situation were unchanged would be binding upon me. I was compelled to hold that the prohibition against the High Court on the original side trying revenue suits had disappeared, because one of the learned Judges, Mr. Justice Kernan, held that the prohibition contained in the section of Act 39 and 40 Geo. III C. 79, otherwise known as the Government of India Act, 1800, was repealed by 53 Geo. III, Ch. 155, Sections 99 and 100, and the other learned Judges apparently held that the prohibition contained in 39 and 40 Geo. III C. 79 was by necessary implication repealed by the Charter Act and the Letters Patent of this Court. What Mr. Grant says is as I follow it, this : here in 1874 at the date of the judgment of that Bench, there was in existence the Act 39 and 40 Geo. III Ch. 79, but the learned Judges still held that the effect of later legislation had been to abrogate that section of the Act. Then, he says, the Government of India Act, 1915, Sub-section 1 of Section 106 re-enacts the Letters Patent and, therefore, I must hold just the same as the learned Judges did in 1874, viz., that the effect of re-enacting the Letters Patent is to overrule the prohibition contained originally in 39 and 40 Geo. III Ch. 79 and now in the Act of 1915. I do not think that is a possible construction for me to adopt. It is very unfortunate that the section of the Act 39 and 40 Geo. III Ch. 79 should have been re-enacted in Section 106 of the Government of India Act, 1915, because the conflict between the King's Courts and the Sudder Courts, which was the only reason for the introduction of the section in the old Act of 1800, has entirely passed away and there is no rhyme or reason in prohibiting the original side of this court from trying revenue cases, But I am not concerned with the wisdom or the policy of the legislation. The legislature has thought fit to re-enact the section in circumstances which do not, in my opinion, require it. It has done so and I cannot hold, where an express prohibition has been re-enacted in 1915, that I can act on the view formed by a Bench of this court in 1874 as to the effect on the original section of subsequent statutes all of course prior to 1874, long prior to the Government of India Act, 1915. I am of opinion that the prohibition is absolute and that I have no jurisdiction to entertain this suit.

3. Mr. Grant took the further point that the fetter on my jurisdiction was only with regard to "acts ordered or done in the collection of the revenue according to the usage and practice of the country or the law for the time being in force," and he says, "if you go into the facts, on the merits you will find that my contention

is well founded, that this was an illegal repudiation of the agreement." That contention, I think, was disposed of as long ago as 1848 in a judgment of their Lordships of the Privy Council in the case of *Spooner v. Juddow* 1848 4 M.I.A. 353. In that case the Court put a construction on a protective statute of this kind which, so far as I know, has never been departed from, and it is put in much clearer words than I can put it, by Lord Campbell in giving their Lordship's opinion at page 379 of the report. What he says is this: " The point, therefore, is, whether the exception of jurisdiction only arises where the defendants have acted strictly, according to the usage and practice of the country, and the Regulations of the Governor and Council. But upon this supposition the proviso is wholly nugatory : for if the Supreme Court is to enquire whether the defendants in this matter concerning the public revenue were right in the demand made, and to decide in their favour only if they acted in entire conformity to the Regulations of the Governor and Council of Bombay, they would equally be entitled to succeed, if the statutes and the charters contained no exception or proviso for their protection. Our books actually swarm with decisions putting a contrary construction upon such enactments, and there can be no rule more firmly established, than that if parties bona fide and not absurdly believe that they are acting in pursuance of statutes, and according to law, they are entitled to the special protection which the legislature intended for them, although they have done an illegal act. " It is not suggested in this case that the Collector of Madras or the Secretary of State acted mala fide or purported to seek the protection of the statute with the full knowledge that all that was being done was to commit a mere act of aggression. Whether they were right or wrong, they thought clearly and honestly that they were taking advantage of the provisions which the statute allowed them to take advantage of, in terminating this agreement. I am, therefore, compelled to hold that " this court had no Jurisdiction to entertain this suit. I may add that I asked the parties if they wanted me to go into the other questions in the suit and save them from further trouble in case I should be held to be wrong in holding that I have no jurisdiction. I am not asked to do that but only to decide the preliminary point, and on that I hold that I have no jurisdiction. I dismiss the suit with costs (one set) of the Secretary of State.