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**(1946) 05 CAL CK 0021**  
**In the Calcutta High Court**

Deba Prosad Garga

APPELLANT

Vs

Municipal Commissioner of Tamluk

RESPONDENT

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**Date of Decision :** 23-05-1946

**Acts Referred:**

Bengal Municipal Act, 1932 — Section 129(b), 8(21)

**Citation :** AIR 1947 Cal 121

**Hon'ble Judges :** Sharpe, J;B.K. Mukherjea, J

**Bench :** Full Bench

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**Judgement**

B.K. Mukherjea, J.—This appeal is on behalf of the plaintiffs, and it arises out of a suit commenced by them in the Court of the First Munsiff at Tamluk for declaration that a resolution, dated 27-10-1938, passed by the Commissioners of the Tamluk Municipality u/s 129(b), Bengal Municipal Act, (Bengal Act 15 [XV] of 1932) is illegal and ultra vires and that the plaintiffs are not liable to be assessed with rates and taxes on the basis of that resolution. There was a further prayer for an injunction restraining the Commissioners from enforcing that resolution. The Commissioners of the Tamluk Municipality are the principal defendants in the suit, though some of the ratepayers also have been added as parties defendants under Order 1, Rule 8, Civil P.C. To appreciate the point in controversy between the parties, it may be convenient to refer to a few antecedent facts and also to some of the provisions of the Bengal Municipal Act. Section 8(21), Bengal Municipal Act, defines "holding" as "land held under one title or agreement and surrounded by one set of boundaries." Section 129 provides inter alia that the Commissioners at a meeting shall determine what class of ownership shall be accepted as the test for determining whether lands within a municipality are held under one title or agreement.

2. By a resolution, dated 23-2-1934, the then Commissioners of the Tamluk Municipality passed a resolution to the effect that ownership for purposes of determination of a holding and for assessment of rates and taxes would be the ownership of persons in actual occupation of the land and having substantial

rights therein. One of the rate-payers who felt aggrieved by that resolution brought a suit in the Tamluk Court for a declaration that the resolution was illegal and ultra vires of the Municipality. The suit was dismissed by the Trial Judge and the order of dismissal was eventually affirmed by this Court on appeal. It appears that a new set of Commissioners came into office in 1938 after defeating the old Board, and the new Commissioners passed a resolution on 27-10-1938, which runs as follows:

In the matter of determination of holdings within the Municipal area u/s 129(b), Bengal Municipal Act, 1932, the class of ownership as indicated below be accepted as the test for determining whether the lands within the Municipality are held under one title or agreement and surrounded by one set of boundaries, (a) In case of buildings, the ownership of the person or persons who have absolute rights over them, (b) In case of revenue free lands, the ownership of the person or persons who hold revenue free estates under the Crown, (c) In cases of rent free lands, the ownership of the proprietor or proprietors within whose revenue paying estates such lands are situated, (d) In case of Mai lands (Kaiyati lands) the ownership of the proprietor or proprietors within whose revenue paying Estate, such lands are situated.

3. The plaintiffs are the proprietors of the Mahishadal Estate, owning a large quantity of lands in the town of Tamluk of which they are the revenue proprietors but which are held by various grades of tenants or raiyats under them. The effect of the resolution quoted above, they apprehend, would be to place the entire burden of taxation in respect of these lands upon them and exonerate the raiyats who are in actual occupation of them from any liability in respect thereto. Accordingly, they brought this suit and impugned the resolution of the Municipality, dated 27-10-1938, on a number of grounds. It was contended; in the first place, that it was beyond the competence of the Municipal Commissioners to pass a resolution in the form in which it was passed or to adopt any class of ownership as the test for determination of the holding which is not ownership according to the definition of the ownership in the Municipal Act itself. The second ground taken was that the Commissioners were actuated by malicious motives and their act was not a bona fide act at all. The third point raised was that the proceedings of the meeting in which the resolution was passed were vitiated by various irregularities. Lastly, it was urged that a resolution on the identical matter having been passed by the Municipal Commissioners in the year 1934, a fresh resolution on the same subject could not be brought again in 1938. The learned Munsiff who heard the suit decided all these points against the plaintiffs and dismissed the suit. On appeal, this decree of dismissal was affirmed by the Subordinate Judge of Midnapur. The plaintiffs have now come up on second appeal to this Court.

4. Mr. Gupta who appeared on behalf of the plaintiffs-appellants attempted to support the appeal substantially on the first ground that was put forward on behalf of his clients in the Courts below. The other three points were not pressed

before us. In opening the case, Mr. Gupta formulated a point that the jurisdiction of the Commissioners to determine u/s 129(b), Bengal Municipal Act, as to which class of ownership is to be the test for determination of a holding, is limited by the definition of "ownership" as given in Section 3(38) of the Act, and it was beyond the competence of the Commissioners to adopt a particular class of ownership as the test and to regard a particular person as owner who is not an owner according to that definition. He, however, abandoned this point in course of his arguments, and in fact, we are not satisfied that there is really any conflict between Sections 3(38) and 129(b) of the Act. The definition of an "owner" as embodied in Section 3(38), Bengal Municipal Act, is taken from Section 3(50), Calcutta Municipal Act, (Bengal Act [3] III of 1923). Any person receiving the rent of any land or building, would be an owner according to the definition unless the owner is in actual occupation of the property himself. Section 129(b), Bengal Municipal Act, on the other hand, empowers the Commissioners to determine whether the actual occupier or any grade of rent receiver above him would be regarded as owner for the purpose of determining whether the lands are held under one title within the definition of a "holding" as given in the Municipal Act.

5. Mr. Gupta's main contention is that the exercise of the powers of the Commissioners u/s 129(b), Bengal Municipal Act, has been made expressly subject to the provision of Section 3(21), Bengal Municipal Act. He says that the definition of "holding" given in Section 3(21) makes it clear that a "holding" which is the unit of assessment under the Bengal Municipal Act, must mean and refer to lands in occupation of a single person or sets of persons. If such lands are surrounded by one set of boundaries and held under one title, they would constitute a holding under the Bengal Municipal Act. If there are different persons or sets of persons in occupation of certain lands, then, even if the ultimate source of their title be the same, they would not constitute a single holding, and all that Section 129(b) of the Act lays down is that the Commissioners may decide what class of ownership they will adopt as a test for determining the unity of title of the actual occupier. In support of this contention, Mr. Gupta placed considerable reliance upon a decision of this Court in *Shah Hamid Hossain v. Patna Municipality* 15 Ind.Cas. 548 . In that case which was decided under Bengal Municipal Act, 1884 (III [3] of 1884 B.C.), it was held by Mookerjee and Carnduff, JJ. that the basis of a "holding" as defined in the Municipal Act was occupation and not ownership, and the term was used with reference to land held by an occupier under one title or agreement and surrounded by one set of boundaries. Sir Ashutosh Mukherjee pointed out in course of his judgment that certain anomalies would result if the determination of "holding" is made to depend upon superior ownership-alone unconnected with the occupation of the land. Reference was made particularly to Section 105 and 110 of the Act of 1884, and it was said that the provisions of these sections could not be given effect to properly if any other test was applied. The decision can be taken to be good law even at the present day subject to the modifications which have been introduced by the Legislature by the present Bengal Municipal Act,

Section 129(b) of the present Act gives the Commissioners powers which were not conferred upon them by the previous Act for determining at a meeting what should be accepted as the test for determining what lands are held under one title or agreement for the purpose of satisfying the definition of a "holding" as given in the Act. The position now is that there might be several grades of rent receivers above the person in actual occupation of lands, and, it is for the Commissioners to decide who should be regarded as an owner for determining whether the lands are held under one title or not. Thus, occupation is not now the only test as was held under the old Act in *Shah Hamid Hossain v. Patna Municipality* 15 Ind.Cas. 548 and it is quite competent to the Commissioners to adopt any other test if they so choose. The anomalies, as pointed out by Sir Ashutosh Mookherjee, which would result if any other test was adopted have been sought to be removed by the addition of Clause (2) to Section 142 of the present Act and the last proviso to Section 165. Sections 142 and 165, present Bengal Municipal Act, correspond to Sections 110 and 105 of the old Act, and the additions made in the present Act are quite in conformity with the provisions of Section 129(b) of the Act.

6. As the law now stands, in order that a parcel or parcels of land may constitute a "holding," the occupation of the lands is surely to be looked to, but it would not be the occupation of a single person or set of persons; there may be different occupiers but if their ultimate source of title is the same according to the test adopted by the Commissioners u/s 129(b), Bengal Municipal Act, then if these parcels are covered by the same set of boundaries, they would constitute a "holding" within the meaning of Section 3(21) of the Act. This view was taken in *Harihar Prasad and Others Vs. Municipal Commissioner*, which was decided under the Bihar and Orissa Municipal Act, 1922 (B. & O. Act 7 [VII] of 1922). Section 99(b), Bihar and Orissa Municipal Act, is almost in the same terms as Section 129, present Bengal Municipal Act. This view is also borne out by the observation of Mitter, J. in *Suri Municipality v. Charu Shashi Ghose* AIR 1946 Cal. 236 . We cannot, therefore, accept the main contention of Mr. Gupta that the Commissioners had not authority to adopt any class of ownership as the test for the determination of the "holding" except the owner-ship of the actual occupier.

7. Mr. Gupta has further pointed out that in the resolution dated 27-10-1938 quoted above, the Commissioners purported to lay down that the class of ownership which was accepted by them as the test would determine not only whether the lands in the municipality were held under one title or agreement, but also whether they were surrounded by one set of boundaries. The last thing obviously the Commissioners could not do. As a matter of fact, if the lands are surrounded by one set of boundaries, then and then only the Commissioners can determine u/s 129, Bengal Municipal Act, what sort of ownership should be accepted as the criterion for determining whether these lands are held under one title or not. Mr. Jana appearing for the Municipality says that it was not the intention of the Municipality to lay down a test for determination of boundaries at all and as a matter of fact, what the Commissioners did was simply to reproduce

the definition of "holding" in the resolution Be that as it may, the last words in the introductory part of the resolution, namely "surrounded by one set of boundaries" could not obviously be put in the resolution, and to that extent certainly the Commissioners acted beyond the powers which they could exercise u/s 129(b), Bengal Municipal Act. As these words, however, do not affect the other portion of the resolution, we do not think that there is any difficulty in holding this portion to be ultra vires, keeping the rest in tact.

8. The result, therefore, is that we allow this appeal in part. We declare that the words "surrounded by one set of houndttries" occurring at the end of the introductory part of the resolution, dated 22-10-1938, should be treated as ultra vires and of no effect. The rest of the resolution will stand, and the decree of the lower appellate Court is modified accordingly. We make no order as to costs in this Court.

Sharpe, J.

I agree.