(1934) 04 PAT CK 0002

In the Patna High Court

Harihar Prasad and Others APPELLANT

Vs

Municipal Commissioner RESPONDENT

Date of Decision : 17-04-1934

Acts Referred:
Bengal Municipal Act, 1884 — Section 85(a)

Citation : AIR 1934 Patna 357

Hon'ble Judges : Wort, J;Dhavle, J

Bench : Full Bench

Judgement

Wort, J.—These are appeals by the plaintiffs in actions in which they claimed a declaration that the assessment by the Municipality of Arrah of their holdings was not in accordance with the Bihar and Orissa Municipal Act of 1922. One point is common to both appeals, being that the plaintiffs are not liable under the Act to pay the assessment as they are not the "owners" within the meaning of the Act. The other contention which applies more particularly to Appeals Nos. 224 and 225 is that the commissioners arbitrarily amalgamated the holdings or plots into one holding, and assessed the amalgamated plots contrary to the provisions of the Act.

The plaintiffs in each case are the proprietors of estates within the Municipal area of Arrah.

2. In Appeals 224 and 225 it is contended that in constituting a holding assessable under the Act, the Municipal Commissioners have taken the bakasht land in the occupation of the proprietor, together with plots in the occupation of tenants thus constituting a holding and have assessed the plaintiffs as owners thereof. The substantial point which is argued by Sir Sultan Ahmad on behalf of the appellants in the case of Harihar Prasad v. Municipal Commissioners of Arrah, is, that he is not the owner and therefore not liable. It would appear that the land thus amalgamated as a holding is held by permanent tenants who have the right to sell, mortgage or alienate their interest in any way they choose. It is therefore contended that they are the owners within the meaning of the Act and

therefore liable to assessment and not the plaintiff.

3. The Bihar and Orissa Municipal Act is an Act to which the Municipal Commissioners owe their existence. It is a Code for the purpose of regulating the assessment, liability and collection of the Municipal taxes imposed under the Act. Section 82 gives power to the commissioners from time to time, with the sanction of the local Government to impose, inter alia, a tax on holdings situate within the Municipality assessed on their annual value. Section 84 provides that the tax on holdings shall not be imposed at a rate exceeding 7 1/2; per centum except in the Patna City Municipality. The annual value of a holding u/s 98 shall be deemed to be the gross annual rental at which the holding may reasonably be expected to let. A holding for the purpose of the Act is defined by Section 3, Clause (9), a holding meaning lands "held under one title or agreement and surrounded by one set of boundaries." Clause (18) of Section 3 provides that "owner" includes

every person who is entitled for the time being to receive any rent in respect of the land with regard to which the word is used, whether from the occupier or otherwise.

4. We go forward to Section 99 in this connection which provides

For the purposes of and subject to Clause (9) of Section 3, if a question arises whether any property is included within one holding, the decision thereof shall rest with the commissioners at a meeting

and Clause (b) provides

the commissioners at a meeting shall decide, in regard to holdings in general or to any class of holdings in particular, what tests shall be applied for determining whether properties within the municipality are held under one title or agreement.

It was contended by Mr. Yusuf on behalf of the appellants in Appeal No. 224, that the commissioners had not complied with the provisions of that section. There is no evidence however of this, nor does the point appear to have been specifically raised in the Court below.

5. We have therefore no materials upon which to come to a decision on that point and the presumption therefore is that the commissioners have acted in accordance with the Act. Section 100 provides:

Any tax which is assessed on the annual value of holdings, other than the latrine tax, shall, subject to the provisions of Sections 133 and 134, be payable by the owners of holdings within the Municipality.

Sir Sultan Ahmad in Appeal No. 1516 argues that Clause (18) of Section 3 is not technically a definition clause, but merely provides that in the term "owner" are included other persons of which admittedly it might be said that his client was one, but the duty of the commissioners in the first instance is primarily to decide who was the owner.

6. As his tenants have got permanent rights in the land and as in the event of the tenants dying leaving no heirs or legal representatives the holding would escheat to the Crown, the only persons who can be properly called owners are the tenants, and therefore they are liable. This seems to me to be an untenable contention. The duty of the commissioners under the Act is first of all to determine what is a holding for the purposes of the Act within the Municipal area. It has therefore to be ascertained what land is held under one title or agreement and surrounded by one set of boundaries.

7. It is not seriously disputed, with the exception of one matter to which I shall in a moment refer, that what has been assessed in the case in which Sir Sultan Ahmad represents the appellant, is a holding within one set of boundaries. Having decided the unit of assessment for such is a holding under the Act, the commissioners may look to any person who is entitled for the time being to receive any rent in respect of that unit. They might have, in the circumstances that existed, made the tenants liable if in fact they sublet their holdings and that in respect of the whole of the "holding" the tenant was entitled to receive rent.

8. Sir Sultan Ahmad''s contention is that they are entitled to receive rent, that is to say they are entitled to sublet without the consent of the landlord and dispose of the property in any manner they may think fit and therefore they came within the definition of owner. This however clearly is not the intention of the Act as the Act provides that a person may be considered the owner if he is entitled "for the time being to receive rent." It is clear that a person who has not let his holding cannot be said to be entitled for the time being to receive rent.

9. One argument on this point by Mr. Yusuf was that as in his case, at any rate, parts of different plots or holdings have been taken to constitute the holding within the meaning of the Act, and as no action for rent proper could have been brought under the Bengal Tenancy Act in respect of parts of plots or holdings, therefore the person assessed cannot be said to be entitled for the time being to receive rent. In my judgment, the words of the Act are too wide to allow of so narrow a construction to be placed upon them. Although in the "holding constituted under the Act there may be portions of tenant''s holding always provided that it answers the definition in Clause (9), it seems to me to be clear that if he is entitled to receive rent in respect of the whole holding he is entitled to receive rent in respect of a part.

10. In other words from every portion of a holding the landlord is entitled to receive rent, although an action may not lie for the enforcement of that right in respect of a portion. Sir Sultan Ahmad''s development of this argument is that the"owner" must be ascertained with regard to the definition of holding under Clause (9). The meaning of the words seem to me to be so clear that no other construction can be placed upon them other than the one to which I have referred. Another question arises in connexion with the constitution of a holding under the Act is that the land must be held under one title or agreement. The extreme construction contended for as to the meaning of "one title" during the

course of the argument would lead to only one conclusion, and that is, that it can be said to exist only where the land is held by one person. Reliance for this contention is placed upon the decision in Hamid Hussain v. Patna City Municipality (1913) 15 IC 548 where the decision of the learned Judges appears to be summed up in these words:

We are therefore of opinion that the term ''holding,'' as used in the Bengal Municipal Act, means land held by an occupier under one title or agreement and surrounded by one set of boundaries.

11. That decision was based on the Bengal Municipal Act, which applied to this Province prior to its constitution as a separate Province, the contention in the argument there being on the one hand, "holding" meant land held by an "occupier" under one title on the other hand the term holding meant land held by the "owner" under one title or agreement and surrounded by one set of boundaries." In so far as the contention of the successful party in that case depended upon the proposition, that in looking to the question of whether the holding was held under one title, one had to regard the matter from the point of view of the occupier or holder, I respectfully agree, but if by that was meant that in no case could it be said that two persons occupying a "holding" within the meaning of the Act in severalty could be said to be holding under one title, I cannot agree. However, the contention of the owner in that case failed on other grounds.

12. From the Act itself it would appear that title is referable to the source from which it is got, and not the circumstances under which it is held. It is clear, in my judgment, that the word being abstract cannot be said to refer necessarily to the transaction by which the holder or holders obtained their right to the holding, nor can it refer to the quality of the right if it cannot be said to have any relation to the transaction by which the holder or holders obtained his or their right.

13. The word can bear no relation or have any connexion with the number of transactions by which the right to hold is conferred. By that I mean if there are two holders in severalty, a construction cannot be placed on the expression which would exclude the view that the two persons were holding under one title. As I have said, the extreme view appears to be that if one title was to be looked for, there can be only one person holding the title. That view is plainly excluded in my judgment by Section 133 of the Act, the second proviso. This proviso did not exist in the Bengal Act and the case which it was enacted to meet was one of the difficulties which the learned Judges in the case of (Hamid Hussain v. Patna Municipality (1913) 15 IC 548 appeared to have had in coming to the conclusion they did.

14. The proviso is that if the holding is occupied in severalty the sum recoverable from any one of such persons shall not exceed such amount as shall bear to the total sum due the same proportion as the value of the part of the holding in the occupation of such person bears to the entire value of the holding it having been

provided by the section itself that if the sum due from the owner within the meaning of the Act remains unpaid the commissioners could recover the same from the occupier. The words which were used by the learned Judge in Hamid Hussain''s case (1913) 15 IC 548 illustrating this difficulty were these:

For instance if we look to Section 105 we find that the tax due from a co-resident owner may be recovered from the occupier and may be deducted by the latter from his rent. If therefore ten distinct occupiers of what is called one holding by the respondent, and if the owner makes default in payment of the rate primarily payable by him u/s 103 it is open to the Municipal authorities to proceed at their choice against any one of those occupiers and make him responsible for the payment of the entire amount. This could hardly have been intended.

15. The Bihar and Orissa Act which enacted the proviso can reasonably be said to have been enacted for the purpose of meeting the difficulty which was contemplated by the Judges in Hamid Hussain''s case (1913) 15 IC 548, but I do not agree with suggestion that the Legislature considered the law to be as decided in that case. It is true that there is no similar provision with regard to the remission of taxes on account of vacant holdings u/s 111, but this, in my judgment, does not affect the matter. Although the provisions of the present Act are in substance the same as those in the Bengal Act, if the view expressed by the learned Judges in Hamid Hussain''s case (1913) 15 IC 548 be correct, the contingency provided for by the proviso to Section 133 could never arise. Even had it been necessary to decide the question in Hamid Hussain''s case (1913) 15 IC 548, which it was not, I could not accede to the argument based on that decision that what was meant by the words under one title was such that one occupier only was contemplated.

16. The difficulty in this case arises by reason of the fact, as has been found by the Courts below, that the kasht plots in the occupation and cultivation of the proprietor have been amalgamated with the plots occupied and cultivated by tenants.

In my view the expression "under one title" refers to the source and I think it can reasonably be said that the tenant and the landlord occupy side by side one holding under one title and the fact that in respect of the bakasht lands he is not "entitled to recover rent" makes no difference as he is still the owner and may be treated as such Section 3, sub- Section 18(a) a person "entitled to receive rent" not being exhaustive of the class "owner." But it does not seem to me that this question is open to the appellants in the form in which it is raised. Section 99, as we have already seen, leaves certain matters for decision to the commissioners, and amongst others it is provided that the commissioners shall decide what tests shall be applied for determining whether the properties within the Municipality are held under one title or agreement.

17. It is true that the section provides that this decision shall be subject to Clause (9), Section 3, but the meaning of that section it seems to me to be

clearly, first, that in deciding what is a holding it must be within one set of boundaries, and where a question arises under Clause (b), Section 99 the decision of the commissioners as to what is to be decided as being under one title or agreement is necessarily restricted by the provisions of Section 3, Clause (9). In my judgment the appellants on this question fail.

18. The last point argued by the appellant in appeal No. 224 is that Section 82 had not been complied with, and that there was no evidence of the tax being imposed by a meeting specially convened for the purpose. The decisions of the Courts below on the question of fact are against the appellant, but it is said that if the resolution imposing the tax is looked at it will be seen that it was not passed at a meeting specially convened for the purpose. The resolution was to the effect that the Local Government be asked for sanctioning the imposition of 7 1/2; percent. tax. In my judgment that complies with the provisions of Section 82 and the mere fact that other business was conducted at the meeting in no way impairs the validity of the resolution imposing the tax.

19. I would further hold that unless the plaintiff could show that the action of the commissioners was ultra vires, their action in any event would fail. The Commissioners under the Act were entitled in the first instance to parcel the land within their Municipality into holdings. This they have done. The plaintiff was entitled to raise the question of whether any property to be assessed is included within a holding at a meeting of the commissioners u/s 99. The commissioners were entitled to decide amongst other things what tests should be applied in deciding the question of what constituted being held under one title. This we must presume, in the absence of evidence; this they have also done and there is nothing in the case which would show that whatever views the commissioners may have taken they have acted beyond their powers. Section 116 gives wide powers to the commissioners to review on various grounds, the amount of the assessment or valuation or exemption from assessment and u/s 117 their decision is final.

20. It is now settled law that in circumstances which would shew that the commissioners have acted ultra vires an action would lie to set aside the assessment, but in my judgment nothing is shown in these appeals that the commissioners have so acted. This would necessarily dispose of the cases apart from the other contentions.

On the main question one case was referred to in the course of the argument, the case of Tulshi Prasad Ram Vs. (J.A.W. Wilson) Chairman, Dumraon Municipality, . The learned Judges deciding that case decided that a person who was in occupation of a holding having acquired his right) in two ways, one part by purchase and the other part by survivorship, was holding it under one title. Whether his rights were tenancy rights do not appear from the decision in the case and therefore it gives no assistance in the argument with which we have to deal. In my judgment the appeals fail and must be dismissed with costs.

Dhavle, J.

21. I agree that these appeals must be dismissed with costs. We are here dealing with a number of compact blocks of land, each admittedly lying within the zamindari of one appellant. It has not been seriously suggested that these blocks are not, each of them, surrounded by one set of boundaries. The substantial question in the appeals is whether such blocks, consisting as they do in part of lands in the occupation of tenants (at fixed-rates, or merely with occupancy rights, as the case may be) and partly of land in the direct occupation of the zamindar are "held under one title" within the meaning of the definition of a "holding" in Section 3(9) of our Municipal Act. It was decided in Tulshi Prasad Ram Vs. (J.A.W. Wilson) Chairman, Dumraon Municipality, that the word "title" in this definition does not mean "title deed," and that two plots, of which one had come to the appellant in that case by survivorship and the other by purchase, were "held under one title."

22. That was a case u/s 85(a), Bengal Municipal Act, 1884 (corresponding to Section 82(1)(a) of our Act) which imposes a tax, not upon holdings (which was and is payable by the owners), but upon persons occupying holdings. The appellant in that case was owner as well as occupier, and therefore the question (which had been dealt with in 1911) in a case of the Patna Municipality to which I will refer later) did not arise whether the word "held" in the definition means "held by the owner" or "held by the occupier." It is however to be noticed that though the learned Judges dealt with and negatived the contention of the Dumraon Municipality that the appellant did not hold the two plots under one and the same superior landlord, the decision would seem to imply that it is immaterial who the superior landlords (if any) of the owner are, and that the preposition "under" in the phrase "held under one title" is taken not in the sense of "insubordinate to," but in the sense of "in accordance with (some regulative power or principle") to quote the Oxford English Dictionary. The expression "surrounded by one set of boundaries" in the definition is also by no means free from ambiguity, and I notice that in the case from Tulshi Prasad Ram Vs. (J.A.W. Wilson) Chairman, Dumraon Municipality, , Mullick, J., observed that:

It is clear that the plots being adjacent are bounded by one set of boundaries.

Taking this observation with the proviso to the definition in Section 3(9), which lays down that:

23. Where two or more adjoining holdings form part and parcel of the site or premises of a dwelling house ... such holdings shall be deemed to be one holding for the purposes of this Act other than those mentioned in

the clause imposing tax upon persons occupying holdings, it would seem that the definition of holding contemplates the title not of the occupier but of the owner, or plainly the holdings are to be treated as one not because they merely adjoin each other, but because they are also occupied by one and the same person or set of persons, and if by reason of their contiguity such holdings would be necessarily surrounded by one set of boundaries, the only reason for starting with them as two or more holdings must be that they are not "held under one title" but belong each to a different owner, though occupied under those owners by one and the same person or set of persons.

We have on the other hand, Section 109 of the Act, treating a house belonging to one owner and the land on which it stands belonging to another as constituting one holding: the unity of title for "holding under one title" for the purposes of the definition will in such cases be usually at any rate furnished by the title to the house being vested in the person who has obtained the title to the land, i. e., the right to occupy it from its owner.

25. It may be observed in passing that in the case of such a holding the Bengal Act (see Section 104) required the Municipal Commissioners, on the application of either party to make an award declaring the amount payable by the owner of the land to the owner of the house in respect of the rates which were to be payable by the latter to the Municipality; and that our Act (Section 109) has now taken the apportionment between the two owners out of the hands of the Municipal Commissioners. This offers a notable contrast to the action of the Legislature in conferring a new power on Municipal Commissioners by Section 99 of our Act. An instance of another kind, bearing on the interpretation of the expression "held under one title" in the definition under consideration, is furnished by the proviso added in our Act (see Section 133) of the old rule in Section 105, Bengal Act, regarding what our Act calls "recovery from occupier of tax due from non-resident owner, and deduction from rent."

26. This proviso deals with a holding "occupied in severally by more than one person." Where are we to look in such a case for the "one title" necessary for the constitution of the holding? It seems to me that the answer must be the title of the owner, for the several occupiers have each his own title independent of the others, though it is perhaps not altogether impossible to take these titles as one because they are derived from the one title of the superior landlord. Our Legislature in 1922 altered the old law in more than one respect in order to meet the difficulties pointed out in 1911 in Hamid Hossain v. Patna Municipality (1913) 15 IC 548 in deciding the question whether the term "holding" refers to land held by an occupier under one title or to land held by an owner under one title, etc., difficulties which led the learned Judges to reject the contention of the Patna Municipality that the term meant "land held by the owner under one title."

27. I have already referred to the indications furnished by several sections of our Act to show that they are by no means uniformly in favour of one view or the other; but the most significant change made by our Legislature in the old law in this connexion is the power given by Section 99(b) to the commissioners at a meeting to decide, in regard to holdings in general or to any class of holdings in particular, what tests shall be applied for determining whether properties within the Municipality are held under one title.

This new provision seems to me to take the matter out of the hands of the civil Courts except in such cases, as for instance, where the commissioners are shown to have had no basis whatsoever for their decision and to have acted in flagrant disregard of the law.

28. In the present appeals, it cannot be said that the blocks which the Municipality has taken for holdings cannot reasonably be regarded as "held under one title" each; for each zamindar will be said to hold his block under (his own) one title, notwithstanding the fact that his occupation is partly direct and partly through tenants. This, I need hardly say, is only one way in which the Municipality may legitimately have regarded the matter. Mr. Yusuf has not been able to establish that the commissioners did not at a meeting lay down the tests authorized by Section 99(b), or that the procedure followed by them was illegal in any material respect.

29. His contention that the holdings formed by the Municipality are contrary to law because they include portions of agricultural holdings for which it would not be competent to the zamindar to bring rent suits must plainly be overruled. The result in my opinion is that the Municipality cannot be said to have acted ultra vires in taking as the holdings to be assessed the block of land we are dealing with rather than the lands (so far as they may be compact, i. e., surrounded by one set of boundaries) held by each tenant (and the zamindar himself separately) in each block.

30. I now come to a very serious point arising in the three appeals argued by Sir Sultan Ahmad and also adopted by Mr. Yusuf in the other two appeals before us. It was argued that the sharah-muyyan (or fixed rate) raiyats, whose holdings are included in the blocks taken by the Municipality as its units of assessment, are the persons liable to pay the municipal assessment on their holdings because they (and not the zamindars) own these holdings, and that the Municipality was accordingly not entitled to take these blocks as the holdings to be assessed. The tax is on holding (Section 100), and the question is whether the fixed-rate tenant can be regarded as the owner of his holding for this purpose.

31. He is, of course, the owner of his tenancy interest; and as he is a raiyat, the land he holds, if it forms the subject of a separate tenancy, is a holding within the meaning of Section 3(9), Ben. Ten. Act. But is that the holding contemplated by the Municipality? There are other classes of tenant under the Bengal Tenancy Act, to say nothing of the zamindar, and it cannot be and has not been suggested that a zamindar or a tenure-holder may not have a holding within the definition in Section 3(9) of our Municipal Act, though a holding under the Bengal Tenancy Act can only refer to a raiyat. The definition of a municipal holding does not say by whom the land is to be held, nor does the Act, in the matter of assessment, regard the quality of the interest of the holder; a holding as defined in the Municipal Act will be assessed irrespective of whether it is held by a zamindar, or tenure-holder, or raiyat with or without transferable or non-transferable occupancy rights, the assessment in each case being determined by the gross

annual rental at which the holding may reasonably be expected to let.

32. Sir Sultan Ahmad has laid stress on the large rights of the sharah-muyyan raiyat in his holding u/s 18, Ben. Ten. Act, and urged that they put him in the position of an "owner," in the ordinary use of the word which is not excluded by Section 3(18) of the Act.

He has also pointed out that an owner does not cease to be an owner merely because he may be in occupation himself, Section 3(15) of the Act laying down that the term "occupier" includes an owner in actual occupation of his own land or building. As regards these contentions, it may be observed that confusion is likely to result from the fact that the word "holding" is used in the Municipal Act in a different sense altogether from that attaching to it under the Bengal Tenancy Act; and that this confusion is not lessened by the provision in Section 3(18), Municipal Act, that "owner" includes (a) every person who is entitled for the time being to receive any rent in respect of the land with regard to which word is used, whether

from the occupier or otherwise....

33. It was, for instance, suggested at one time in the argument before us, on Section 3(l8) that it was immaterial for his inclusion in the term "owner" whether a person was actually entitled to rent for the time being. The suggestion was based on the last two words "or otherwise" quoted above.

The provision in question however merely makes it immaterial whether the rent comes from the occupier or from some other person, may be a lessee between him and the owner. The fixed rate raiyat can transfer and bequeath his holding in the same way as the holder of a permanent tenure, without the consent of his landlord; but even so, he cannot, it seems to me, be regarded as owner of the land held by him to the entire exclusion of his landlord; he is liable to pay rent (not revenue) to his landlord and is also liable to be ejected by him in certain contingencies.

34. For the purposes of the Municipal Act, moreover, the rights of the fixed rate tenant in his agricultural holding are entirely immaterial; what is taxed is not his interest, but the land held by him, which in these cases is included in the large compact blocks held by the zamindars who are themselves owners within Section 3(18). For the exercise of its power to impose a tax on holdings, the Municipality has to find holding as defined in the Municipal Act; and we have not been referred to anything in the Municipal Act which compels Municipalities to recognize agricultural holdings as units for the purposes of the Municipal assessment. It may indeed be impossible in a number of cases for a holding under the Bengal Tenancy Act to be a holding under the Municipal Acts; the former may, and more often than not does, consist of several scattered plots, but the latter must be surrounded by one set of boundaries.

35. The Act has but one definition of a holding irrespective of its agricultural or

other character: see Mahadev Aon v. Chairman of Howrah Municipality (1910) 37 Cal 697. In its application to agricultural holdings, the definition raises a number of difficult problems; in the case from Hamid Hussain v. Patna City Municipality (1913) 15 IC 548 for instance, all that the zamindar succeeded in establishing was that under the Act then in force the Patna Municipality should have adopted the rule that the term "holding" means a land held by an occupier under one title, etc., while the Municipality had been treating the land in suit from time to time as a varying number of holdings. Were that rule still applicable, an agricultural holding lying within the limits of a Municipality may have to be treated for the purposes of the Municipal assessment as a number of holdings depending on the number of scattered plots or portions, each with its own set of boundaries, composing it. Questions of a different order arise when we come to the ownership of agricultural land with the variety of grades of interest not uncommonly found in such land.

The Legislature has now dealt with such questions by enacting Section 99.

36. The power given by Section 99(b) to the Municipal Commissioners in the matter of determining whether properties are held under one title for the purposes of and subject to Section 3(9) may affect the incidence of the Municipal assessment as between various grades of owners, but if it is exercised in accordance with the Act (and the contrary has not been established in these appeals), it does not seem to me that the Courts can interfere under our Municipal Act on the ground that the Municipality ought to have carved out smaller holdings in view of the nature of the title of the fixed rate or other tenants; though it is true that the amalgamation of their lands with the bakasht lands of the zamindars, for the purposes of the Municipal assessment, has thrown the Municipal-tax, so far as it may be referable to the raiyati lands, upon the zamindars who are only entitled in the sharah-muyyan case to fixed rents.

37. It cannot be said that this could not possibly have been intended by the Legislature; and in any case the clear provisions of Section 99 must be given effect to. If the blocks taken by the Municipality for holdings answer the definition in Section 3(9), it is useless to show that smaller holdings could have been found within the definition, to say nothing of the fact that it has not been established by the appellants that the sharah-muyyan holdings are in fact each "surrounded by one set of boundaries." Sir Sultan Ahmad''s contention must therefore be overruled.

