
(1920) 06 CAL CK 0012
In the Calcutta High Court

Khaja Samshudin alias Khaja Suekroo	APPELLANT
Vs	
Pyari Lal Das, Chairman, Dacca Municipality and Others	RESPONDENT

Date of Decision : 28-06-1920

Acts Referred:

Citation : AIR 1921 Cal 161 : 60 Ind. Cas. 498

Hon'ble Judges : Asutosh Mookerjee, Acting C.J.; Ernest Fletcher, J

Bench : Division Bench

Judgement

Asutosh Mookerjee, Acting C.J.

1. This is an appeal by the fifth defendant in a suit instituted by the Chairman of the Commissioners of the Dacca Municipality for recovery of arrears of Municipal rates in respect of a holding within the jurisdiction of the Municipality. There is no dispute that all the five defendants are owners of the holding. The fifth defendant, however, pleaded that he was not an occupier of the holding, which was really occupied by his co-sharer, the first four defendants. The claim is for a sum of Rupees 740-4 annas made up as follows:

Rs. A.P. House-rate... .. 420 0 0 Water rate... .. 210 0 0 Latrine-fee... .. 110 4 0

2. It is clear from Section 103 of the Bengal Municipal Act, read with Section 85(b), that the house rate is leviable from all the owners. Section 279(3), read with Section 83(d), makes the water-rate payable by the occupiers while Section 322(1), read with Section 86(f), makes the latrine-fee payable by the occupiers. The Courts below have overruled the defence of the fifth defendant on the ground that he was in constructive occupation of the holding. We are of opinion that this view cannot possibly be maintained.

3. The Bengal Municipal Act defines the term "owner" but does not define the term "occupier". The meaning of "occupation" in a similar connection was discussed in the case of Reg. v. St. Pancras Assessment Committee (187) 2 Q.B.D. 581 : 46 L.J.M.C. 243 : 37 L.T. 126 : 25 W.R. 827. It was there pointed out that occupation for purposes of assessment of rates includes actual

possession as its primary element, for legal possession does not of itself constitute occupation. An example was given to illustrate the meaning of this test, The owner of a vacant house is in legal possession, but as long as he leaves it vacant he is not rate able for it as an occupier, yet, if he furnishes it, and keeps it ready for occupation whenever he pleases to go to it, he is an occupier, though he may not reside in it one day in a year; on the other hand, a person who, without having any title, takes actual possession of a house or piece of land, whether by leave of the owner or against his will, may well be the occupier of it. See also Mayor of Southend-on-Sea v. White (1900) 83 L.T. 408 Yates v. Chorlton-upon-Medlock Union (1883) 48 L.T. 872 : 47 J.P. 630. The sub-stance of the matter is that bare ownership does not constitute rateable occupation Smith v. New Forest Union (1889) 61 L.T. 870 : 54 J.P. 324 or, in other words, every owner is not an occupier just as every occupier is not an owner; in order to constitute rateable occupation, there must be a use and enjoyment which is or is capable of being beneficial Liverpool Corporation v. Chorley Union Assessment Committee and With-nell Overseers (1912) 1 K.B. 270 : 81 L.J.K.B. 426 : 106 L.T. 205 : 76 J.P. 164 : 10 L.G.R. 165 : 56 S.J. 187 : 28 T.L.R. 177 North Manchester Overseers v. Winstanley (1908) 1 K.B. 835 : 77 L.J.K.B. 661 : 98 L.T. 781 : 72 J.P. 171 : 6 L.G.R. 427 : 24 T.L.R. 388 affirmed in (1910) A.C. 7 : 79 L.J.K.B. 95 : 101 L.T. 616 : 74 J.P. 49 : 8 L.G.R. 75 : 54 S.J. 80 : 26 T.L.R. 90. In the case before us, the materials on the record show that the fifth defendant was not in occupation of the holding which was really in the occupation of his co-sharers. Under such circumstances, we are of opinion that the fifth defendant is not liable for the water-rate, and latrine fee, when neither he nor any member of his family really enjoyed the benefit of the water or the latrine.

4. The result if, that this appeal is allowed and the decree made by the Court below modified: the decree will be in favour of the Municipality for the sum of Rs. 420 on account of house rate against all the defendants, and there will also be a decree for the balance of the claim, namely, Rs. 320-4 annas against the first four defendants, on account of water-rate and latrine fee.

5. The plaintiff Municipality will pay the fifth defendant half his costs in all the Courts.

Ernest Fletcher, J.

6. I agree.