

(1910) 04 CAL CK 0015
In the Calcutta High Court

Mohadev Aon

APPELLANT

Vs

Chairman of the Howrah Municipality

RESPONDENT

Date of Decision : 26-04-1910

Acts Referred:

Bengal Municipal Act, 1932 — Section 6(3), 85

Citation : 6 Ind. Cas. 410

Hon'ble Judges : Mookerjee, J;Carnduff, J

Bench : Division Bench

Judgement

1. The question raised by this second appeal is one of considerable importancename, whether arable lands are liable to be rated under the Bengal Municipal Act, 1884. The original suit was brought for a declaration that certain land within the limits of the Howrah Municipality, of which the plaintiff was in possession as a cultivator for the purpose of growing betel, was exempt from assessment u/s 85 of the Act, for an injunction restraining the Municipal Commissioners of Howrah, through their Chairman, the defendant, from levying upon it the tax imposed on holdings" thereunder, and for the recovery, after refund, of the amount actually realised from the plaintiff in respect of the said tax and costs. The Court of first instance and the lower appellate Court have concurred in dismissing the suit, and the plaintiff has now appealed to this Court.

2. That Section 85 of the Act provides in clear and unambiguous language for the imposition of a tax upon all holdings" or, in the alternative, of a tax upon all persons occupying holdings" in a Municipal area cannot, of course, be gainsaid; and the question before us thus resolves itself into one as to whether or not a parcel of arable land, occupied as such, is a "holding" within the purview of the enactment.

3. By Section 6, Clause (3), of the Act the expression holding" is defined as meaning land held under one title or agreement and surrounded by one set of boundaries, while land" is made, by Clause (5) of the same section, to include things attached to the earth; so that it is equally indisputable that the word

holding" is, in itself, wide enough to cover arable land.

4. Section 98 exempts from assessment holdings used exclusively as places of public worship or as public burial or burning grounds, and since it was amended by Section 36 of the Bengal Municipal (Amendment) Act, 1891, it further provides for the special exemption of any holding used for purposes of public charity while Section 87^A likewise since 1894, similarly relieves persons from assessment only in respect of their occupation of places used for public worship, burial or cremation. Obviously, neither of these express exemptions can be appealed to in this case.

5. But the contention put forward, on behalf of the appellant, by Dr. Rash Behary Ghose and supported by arguments, which the learned Vakil has, frankly, adopted from two opinions given in 1884, and in 1890, by the then Ad vocal e General Sir Charles Paul, is that, if the enactment; be read as it ought doubtless to be read as a whole, it becomes manifest that the legislature contemplated Municipal taxation only in respect of some sort of habitation and residence and that, therefore, purely agricultural holdings are outside the scope of the Act. Section 8, it is pointed out, makes a town or a village the nucleus of a Municipality, and indicates that the intention was to deal with only inhabited and residential areas; and Section 9 advances the contention by providing that not less than three-fourths of the population of an area included within the limits of an already constituted Municipality shall be chiefly employed in pursuits other than agriculture." Section 103 is then referred to, and this provision, it is urged, requires the rating-list to contain particulars as to the name of the street or road in which each holding is situated, whereas arable lands can seldom, if ever, be so described. Section 110 provides for remission or refund in respect of any holding which has been vacant for sixty or more consecutive days and it is next contended that the word vacant" is hardly applicable to culturable plots of land. And, finally, it is argued that the benefits to be derived from taxation under the Act, such as lighting, sanitation and water supply, are, on the face of them, meant for persons occupying houses and can be of no value to cultivators, as such.

6. Now, in order to justify a Court in overriding the plain language of a statute by reference to its spirit and general tenor, the argument must be cogent and convincing but here we are by no means impressed by the reasoning of the learned Vakil for the appellant. As regards Sections 8 and 9 of the Act, suffice it to say that the proviso to the latter, which is most relied upon, does not exclude agriculturists altogether. As for Section 103, provision is purely ancillary and incidental, and it would, in our opinion, be absurd to allow the bare allusion in it to streets or roads to have any effect upon the general scope of the enactment. Moreover, there is nothing to prevent a parcel of arable land from lying alongside (and so to speak in) a road, and, even if it were not actually so situated, there would, so far as we can see, be nothing incongruous in describing it in a Municipal register as being in the road" to which access from it is available. And,

indeed, we have it in this case from the judgment of the first Court that everything was done in conformity with the provisions of Section 103" whence it follows that the appellant's land has been and presumably must be capable of being properly described in the manner indicated. Then, with respect to Section 110, we are not prepared to concede that it is inapplicable, but should rather hesitate to hold that the benefit of the provision could not be claimed if a piece of arable land assessed with the tax in a Municipality were to lie uncultivated, tenantless and unproductive of rent for the statutory period. And a reference to Section 69, which declares the purposes to which a Municipal fund whether derived from taxation or otherwise available may be applied, is, we think, enough to refute the argument that to take the case of the appellant before us a person growing betel within a Municipal area obtains, and can obtain, no benefit from the conveniences and advantages provided therein at the expense of the rate-payers.

7. On the other hand, the legislation of 1894 indicates unmistakably that the exclusion of agricultural lands, originally secured by express enactment in the case of assessment on persons occupying holdings, was intended to cease; and there remain certain provisions in the Act, as it now stands, which show that, in the case of taxation upon holdings also, exemption in respect of arable lands was not contemplated. Before the law was altered and as it was when the late Advocate-General advised on the point, the section--see Section 79 of the old Bengal Municipal Act of 1866 and Section 87 of the existing Act as it was passed in 1884--expressly enacted that the rate on the value of holdings should not be assessed or levied on any person in respect or the occupation of arable lands or of buildings used for public worship or as public burial or burning grounds; but the words italicised were repealed by the amending Act of 1894, already cited, and this deliberate omission obviously cannot be ignored. Next, Section 96, requires all holdings to be valued, and Section 87(g) and 103(h) clearly indicate that the valuation lists should include every holding and every person occupying a holding whether exempt from taxation or not. Then exemptions, which do not in terms cover arable lands, or the persons occupying such lands, are provided for by Sections 87 and 98, and Section 103 contains a special provision for relief in cases of excessive hardship. Further, Section 86, Clause (d), relates to the imposition of a water rate on all holdings" according as the houses and lands" concerned are situated in streets supplied with water or in streets not so supplied, and Clause (6) of the first proviso to Section 279 directs that no such water rate shall be levied upon "any land used exclusively for purposes of agriculture." Clause (e) of Section 86 likewise renders leviable a lighting rate on the annual value of holding generally, but the complementary Section 308 contains no exempting proviso similar to that to be found in Section 279. No doubt to the presence or absence of such proviso little weight should be attached; for, as was observed by Lord Macnaghten in *The Commissioners for Special Purposes of the Income Tax v. Pemeel* (1891) L.K. A.C. 531, 589, and by Lord Chancellor Hereon in *the West Derby Union v. Metropolitan Life*

Assurance Society (1897) L.R. A.C. 647 : 66 L.J. Ch. 726 : 77 L.T. 284 : 61 J.T. 820, it is well known that a proviso is not infrequently inserted in an Act merely to allay fears when such fears are absolutely unfounded and when no proviso is really necessary to protect the persons at whose instance it is added. This, however, hardly strikes us as a case of that class; and, as was also remarked by Lord Herschell in the *West Derby Union v. Metropolitan Life Assurance Society* (1897) L.R. A.C. 647 : 66 L.J. Ch. 726 : 77 L.T. 284 : 61 J.T. 820, a proviso may be used as a guide in the selection of one or other of two possible constructions of the words to be found in an enactment where there is doubt as to its scope or as to the proper view to be taken of it. Here the exemption contained in the proviso to Section 279 and the absence of any such exempting clause in Section 308, taken with the amending legislation of 1894, and the other provisions of the Act above referred to, are most significant and seem to us to render it clear that no such exemption as that claimed by the appellant is contemplated.

8. The result, therefore, is that the appeal fails and must be dismissed with costs.