(1935) 03 CAL CK 0012

In the Calcutta High Court

Purusottam Singha and Others — APPELLANT

Vs

Atul Chandra Chaudhury, President, Bhanderhati Union Board — RESPONDENT

Date of Decision : 08-03-1935

Acts Referred:

Bengal Village Self-Government Act, 1919 — Section 101, 37, 38, 39, 40

Citation : 163 Ind. Cas. 807

Hon'ble Judges : Nasim Ali, J

Bench : Single Bench

Judgement

Nasim Ali, J.—This is an appeal by the plaintiffs in a suit for a declaration that the imposition of the Union rate for the years 1337. B.S. by the Union Board of Bhanderhati u/s 37 of the Bengal Village Self-Government Act of 1919 is illegal and ultra vires and for refund of the amount recovered by the Union Board from the plaintiffs.

2. The trial Court decreed the plaintiffs'' suit. On appeal the learned Judge has reversed the decision of the trial Court and has dismissed the suit. Hence the present appeal by the plaintiffs.

3. The first point urged by the learned Advocate for the appellant is that the assessment of the Union rate is illegal, in as much as the Union Board had no authority or power to take into consideration the income of the plaintiffs outside the Union. u/s 37 of the Act, the Union Board is authorised to impose a Union rate. u/s 38 the rate to be imposed by the Board u/s 37 shall be assessed according to circumstances and property, within the Union, of the persons liable to be assessed. u/s 39 the assessment shall be in accordance with the rules prescribed u/s 101. The rules framed by the Local Government lay down, that in assessing the rate, the annual income of the assessee from buildings and other properties within the Union and the income which he derives from business conducted within the Union can only be taken into consideration. The income of a person which is not derived either from any property or from any business outside the Union cannot be taken into consideration in assessing the Union rate.

The learned Advocate for the respondent, however, contended that circumstances and property as contemplated by Section 38 are very wide to include a man''s income outside the Union. I am unable to accept this contention. The provisions of the Act and rules framed under the Act make the position, which I have already indicated, absolutely clear. Under these, circumstances I am of opinion that the rate imposed on the plaintiffs by the Board was illegal.

4. It was, however, contended by Dr. Mukherjee on behalf of the respondent that even if the rate imposed by the Union Board was illegal, the present suit is bound to fail inasmuch as it is barred by limitation, u/s 64, Clause 2 of the Act. This clause lays down that the suit must be instituted within three months after the accural of the cause of action. The point for determination therefore is: When did the cause of action accrue in the present case? The contention of the learned Advocate for the appellants is that the cause of action in the present suit did not arise till the Magistrate passed his final order in the matter u/s 40 of the Act. I am unable to accept this contention. The assessment becomes final u/s 39. Section 40 simply authorises the District Magistrate to revise the assessment at any time and consequently it cannot be said that the assessment u/s 39 does not reach finality till the District Magistrate calls for the papers of the Union Board. As the suit has been brought admittedly after three months from the date of the final assessment, it is barred by limitation.

5. In the result the appeal fails and the suit stands dismissed on the ground of limitation.

6. Parties will bear their own costs throughout this litigation.

