(1918) 04 BOM CK 0001

In the Bombay High Court

Case No : O.C.J. Suit No. 1213 of 1917

P.W. Monie APPELLANT

Vs

The Rev. Robert Scott RESPONDENT

Date of Decision : 11-04-1918

Acts Referred:

City of Bombay Municipal Council Act, 1988 — Section 140(c)
Indian Universities Act, 1904 — Section 25(1)

Citation : AIR 1918 Bom 88 : (1918) 20 BOMLR 839 : 47 Ind. Cas. 642

Hon'ble Judges : Kajiji, J

Bench : Single Bench

Judgement

Kajiji, J.—This is a case stated for the opinion of the Court u/s 90 and 0. XXXVI of the Code of Civil Procedure. The plaintiffs, who are the Municipal Commissioner and the Municipal Corporation for the City of Bombay, seek to recover from the defendant, who is the present acting Principal of the Wilson College, municipal property taxes in respect of the buildings known as hostels belonging to that College. The Wilson College is affiliated to the University of Bombay. Section 21 (1) of the Indian Universities Act, 1904, provides that a College applying for affiliation to an University must satisfy the Syndicate of the University, inter alia, " (a) that the buildings in which the College is to be located are suitable and that provision will be made in conformity with the Regulations for the residence in the College or in lodgings approved by the College of students not residing with their parents or guardians and for the supervision and physical welfare of students" ; "(f) that due provision will so far as circumstances will permit be made for the residence of the head of the College and some members of the teaching staff in or near the College or the place provided for the residence of students.

2. u/s 25 (1) and (2) (m) "the Senate of an University is impowered with the sanction of the Government to make regulations to provide inter alia for the residence and conduct of students, and the senate of the Bombay University has accordingly made the following regulation, viz., "that each College shall provide

residential quarters for such a percentage of its students as the Syndicate may from time to time approve." In order to satisfy the requirements of the provisions of Section 21 (1)(c) of the Indian Universities Act, 1904, and pursuant to the above-quoted regulation, the Wilson College has erected three buildings known as hostels, two of which are in the College compound and the third in close proximity to the same for the use of its students. The first is capable of accommodating thirty students, the second, forty-four students, and the third, one hundred and twenty-six students. It appears that in addition to the students an European Professor and an Indian Superintendent reside in the first and second hostels and an European Superintendent and an Assistant Superintendent reside in the third hostel and that all these are on the staff of the College. In the second hostel a peon is accommodated in the outer compound. The fees payable by students of the Wilson College in respect of each of the two terms in a year are as follows :-

1. Non-resident students, Es. 48, and a sum of Rs. 3 as subscription towards the Gymkhana.

2. Resident students, the above sums of Rs. 48 and Rs. 3 and an additional fee-the average amount of which is about Rs. 23. Pursuant to Section 140(c) of the City of Bombay Municipal Act, 1888, the Municipal Commissioner has caused the three hostels to be assessed for payment of the general tax as set out in paragraphs 8 and 9 of the case.

3. The defendant contends that the Wilson College is exempt u/s 143(1) (a) and (2)(d) of the City of Bombay Municipal Act, 1888, from payment of the general tax in respect of the three hostels. Section 143(1)(a) and (2)(d) runs as follows:-

(1) The general tax shall be levied in respect of all buildings and, lands in the city, except-

(a) Buildings and lands or portions thereof exclusively cccupicd for public worship or for charitable purposes ;

(2) the following buildings and lands or portions thereof shall not be deemed to be buildings exclusively occupied for public worship or for charitable purposes within the meaning of Clause (a), viz.:

(d) Those in respect of which rent is derived, whether such rent is or is not applied exclusively to religious or charitable purposes.

4. Mr. Campbell for the plaintiffs has very fairly conceded that he is not going to contend that the fees paid by the resident students is rent within the meaning of Sub-section (2) (d) of Section 143 of the City of Bombay Municipal Act, 1888. The main contention of Mr. Campbell for the plaintiffs is that these three hostels are not exclusively occupied for charitable purposes.

5. It seems to me that it would be better and certainly more convenient to divide for the purposes of argument hostels into portions occupied by students, and

portions occupied by the professor, Superintendents and Assistant Superintendent. The plaintiffs contend that both these portions are rateable for payment of general tax as they are not exclusively occupied for charitable purposes within the meaning of Section 143 (1)(a) of the City of Bombay Municipal Act. The onus to prove that they are so occupied is on the defendant. Let us then, first consider the question of the portion occupied by students. From the statement of the case it appears that the resident students on an average pay Rs. 23 more per term than the non-resident students. Then the question arises: Are students tenants of the College ? In my opinion they are clearly not; for none of the incidents relating to tenancy exists in a case like this. The students have to observe certain rules framed for regulating their conduct; they are liable to be turned out of their rooms at any time without notice and without refund of fees or part of fees. Certain restrictions are placed even on their user of the rooms in their occupation and it is evident that there would be no discipline if these students were regarded as regular tenants of the College and had their legal rights of tenants. I, therefore, hold that the extra sum paid by resident students is not paid as rent within the meaning of sub- Clause (d) of Section 143 (2) of the City of Bombay Municipal Act, but is an additional fee paid by them for the advantages derived by them and more attention paid to them for looking after their social, moral and physical welfare than the non-resident students of the College who pay a less fee.

6. Then the next question for consideration is that-is the portion of the hostels occupied by the students exclusively occupied for charitable purposes within the meaning of Section 143 (1) (a) ? It must be borne in mind that the words "charitable purposes" must not be taken in their popular sense and as it was held in the case of The University of Bombay v. The Municipal Commissioner for the City of Bombay ILR (1891) Bom. 217 the words "charitable purposes" have acquired a technical meaning 4n the Presidency of Bombay and in that sense they include all purposes within the meaning of Statute 43, Eliz. c. IV. It is not disputed that the College is a charitable institution. Then, is the hostel an integral part of the College as contended by Mr. Mirza for the defendant ? In my opinion the hostel cannot be considered a part of the College but must be regarded as a separate institution which every College must erect and maintain ; for the Indian Universities Act, 1904, contemplates that the College authorities will provide accommodation in the College itself or in some convenient building near it for the residence of the students who are not living with their parents or guardians and for some members of the teaching staff in or near the College or the place provided for the residence of such students. Therefore it is incumbent upon every College affiliated to the University to provide quarters for such students. Further, it is admitted that the Syndicate of the University requires the College authorities to submit periodically a statement of students for whom residence is provided in the hostel. I must, therefore, hold that hostels are erected and maintained by the College as part of the general educational scheme of the country and the object of the hostel is the advancement of learning and it,

therefore, falls within the general objects which are charitable and which are mentioned by Lord Macnaghten in Commissioners for Special Purposes of Income Tax v. Pemsel [1891] A.C. 531 and therefore the portions occupied by the resident students are exempt from taxation as they are exclusively occupied for charitable purposes within the meaning of Section 143(1) (a) of the City of Bombay Municipal Act.

7. Now as to the portion occupied by the Professor and Superintendents. On behalf of the plaintiffs it is contended that this occupation must be held to be a beneficial one and therefore rateable. Bearing in mind the fact that hostels are provided for residence of students who do not reside with their parents or guardians and that the Indian Universities Act, 1904, Section 21 (1) (c) contemplates that the College authorities will perform the duty of supervising, looking after and taking care of students residing in the hostel, how can a College discharge the duty imposed upon them by the Legislature except some one or so many of their teaching staff as are necessary, reside in the hostel ? That is why a Superintendent is given quarters in the hostel for the proper discharge of the duties imposed upon them by the College authorities and as required by the Indian Universities Act. In my opinion it is absolutely necessary for the scheme of education that provision must be made for the residence of necessary members of the teaching staff to reside in the quarters provided for students. Residence for such members is compulsory for the scheme of education for the proper discharge of their duties. Materials and details are necessary to come to a definite conclusion as to whether more than one Superintendent is necessary for the proper supervision and physical welfare of students or that the portions now occupied by a Professor and Superintendents are absolutely necessary for that purpose or that any portion of such quarters is used for any other purpose. These are considerations necessary to determine the question before the Court: Bent v. Roberts (1877) 3 Ex. D. 66 and the case of Oxford Rate (1857) 8 El & Bl. 184 Mr. Mirza for the defendant offered to adduce evidence by calling the defendant but the plaintiffs'' counsel would not agree to this course being adopted and it is settled practice that where a special case is stated by consent it can only be reopened by mutual consent: Hamilton, Fraser & Co. v. Staley, Radford & Co. (1584) Solicitors'' Journal, p.478

8. On the materials before me it appears that in the first hostel there is accommodation for thirty students and in the second, for forty-four, and that although these are regarded as two buildings it is really one as there is intercommunication between them, and the third hostel has accommodation for one hundred and twenty-six students. I, therefore, hold, on the materials before me, that the premises occupied by one Superintendent for the first and second hostels and the premises occupied by one Superintendent in the third hostel and the portion occupied by the peon in the outer compound are necessary for the discharge of their duties of supervision and physical welfare of students as required by Section 21(1)(c) of the Indian Universities Act and are exempt from taxation, u/s 143(1)(a). As to the portions occupied by the Professor and the

other Superintendents or Assistant Superintendent, I have no evidence to show what the terms of their employment are or what their duties are such as to make their presence on the premises absolutely necessary for education purposes and for due performance and proper discharge of the duties imposed upon them by the College ; and, therefore, the portions occupied by them will, under the circumstances, be liable for taxation, but I will give liberty to the defendant to. prove when occasion arises that the terms of their employment and their duties are such as to make their presence on the premises absolutely necessary and that the portions occupied by them are necessary and are exclusively occupied for that purpose.

9. Therefore, the answer to the question submitted is that the defendant as representing the Wilson College is liable to be rated for the general tax leviable u/s 140 (c) of the City of Bombay Municipal Act, in respect of the parts of the hostels occupied by persons other than the students and one Superintendent in the first and second hostel and one in the third hostel and the peon. Each party to bear its own costs.

