
(1946) 12 CAL CK 0013
In the Calcutta High Court

Subimal Chandra Chatterjee

APPELLANT

Vs

Corporation of Calcutta

RESPONDENT

Date of Decision : 18-12-1946

Acts Referred:

Calcutta Municipal Act, 1923 — Section 205

Citation : AIR 1947 Cal 369

Hon'ble Judges : Chakravartti, J;Blank, J

Bench : Full Bench

Judgement

Chakravartti, J.—The principal question involved in this appeal is covered by authority, but the appellant contends that it is not concluded. In *Corporation of Calcutta v. Fool Coomari Dasi* ("37) 41 C.W.N. 353, it was held by Lord-Williams J. sitting singly, that u/s 205, Calcutta Municipal Act, arrears of the occupier's share of the consolidated rate were as much a charge on the premises concerned as arrears of the owner's share. The appellant questions this view and having done so unsuccessfully in the Courts below, contended before us that the case decided by Lord-Williams J. had not been rightly decided. A further contention, noticed below, was also put forward.

2. The material facts of the present case are simple and may be briefly stated. The appellant is the owner of premises No. 47/I Gorachand Road which has always been let out to a single tenant. He was sued by the Corporation of Calcutta who claimed from him a sum of Rs. 282-7-9 pies as arrears of the consolidated rate and prayed for a declaration of a charge for this sum on the property. The sum claimed was made up of Rs. 228-7-9, which was the occupier's share of the rate for 7 quarters, from the third quarter of 1932-33 to the first quarter of 1935-36, and Rs. 54 which represented both the owner's and the occupier's shares for the fourth quarter of 1940-41. The occupier during the first period was one Mr. Brown and during the latter period one Mr. Zuman, but neither of them was made a party to the suit. The appellant's defence was that the Corporation was not entitled to recover the consolidated rate by suit without

first presenting bills for the same, which it had not done; and that, in any event, he, as the owner, was not liable for the occupier's share. A third defence that the Corporation not having tried to recover the occupier's share from him, was debarred from recovering them from the owner by the principles of equitable estoppel, was abandoned before this Court.

3. The trial Court found that some of the bills for the first period had not been presented to the occupier and that for the second period, no bill had been presented either to the occupier or to the owner. The Court, however, thought that this omission could not affect the liability of the premises u/s 205 of the Act and in that view decreed the Corporation's claim in full, with a declaration of charge as prayed for. But it allowed the Corporation only half the costs of the suit in view of its want of diligence in realising the occupier's share from the occupier.

4. On appeal, the learned Additional District Judge found that all the bills for the first period had been duly presented to the occupier, but with regard to the second period, he affirmed the finding of the trial Court. He held that all that Section 205 required was that the rate should become "due" and the rate for the fourth quarter of 1940-41, which was the only quarter in respect of which there had been an omission to present bills, had become due on 15-1-1941 u/s 149 of the Act, whether any bills had been presented or not. As regards the owner's liability for the occupier's share of the rate, he held that the matter was concluded by the decision in *Corporation of Calcutta v. Fool Coomari Dasi* ('37) 41 C.W.N. 353. He refused to interfere with the trial Court's order for costs in appeal, although he added that if he had tried the suit, he would have been inclined not to allow any costs to the Corporation at all.

5. Three points were urged before us in the present appeal. It was contended that presentation of bills was a condition precedent to the Corporation's right to recover the consolidated rate by suit and therefore a condition precedent to its right to have a charge declared u/s 205 of the Act. It was contended in the second place that under the provisions of the Calcutta Municipal Act, the owner was not liable for the occupier's share of the rate and Section 205, on its true construction, did not provide that arrears of the occupier's share should be a charge on the premises, as had been wrongly decided in the case relied on by the learned Additional District Judge. It was lastly contended that the learned Judge could and should have set aside the trial Court's order for costs, since, on this question, his opinion was in the appellant's favour.

6. It will be noticed that on the findings of fact, the objection based on the failure to present bills bears only upon the claim for the fourth quarter of 1940-41, an amount of Rs. 54. As the appellant put his case, he could not succeed as to the rest of the claim unless he could make good his second contention.

7. The first contention, like the second, is covered by authority and the authority is that of a Division Bench. In *Mathura Prosad Rajghoria and Others Vs. Corporation of Calcutta and Others*, , I had the privilege of appearing for the

owner who was the appellant to this Court and my learned brother was a member of the Bench that heard the appeal. There it was held that presentation of a bill for the consolidated rate to the person liable to pay it was not a condition precedent to the institution of a suit against him u/s 204 of the Act. The word "defaulter," occurring in the section, was held to mean simply a person, who, being liable to pay the rate, had failed to do so by the dates specified in Section 149. The learned advocate for the appellant in the present case did not advance any argument on this question, but simply stated that he adopted the argument advanced from the Bar in the previous case. Likewise, the learned advocate for the respondent stated that he was unable to add anything to the reasons given in the decision for rejecting the argument.

8. With the greatest respect, I am unable to-persuade myself, that, on this question, Mathura Prosad Rajghoria and Others Vs. Corporation of Calcutta and Others, was rightly decided. The crucial section is Section 204 and that section provides that the Corporation may, instead of proceeding against a defaulter by distress and sale, recover from him by suit any sum due on account of the consolidated rate. Whatever the meaning of the word "defaulter" may be, it is clear that it bears the same meaning for the purposes of a suit as it does for the purposes of distress, for the two remedies are alternative and the right of suit is given against the same person, against whom proceedings by way of distress would be competent. Against whom can the Corporation proceed by way of distress? Turning now to some earlier sections of the Act, one finds that, u/s 149, the rate for each quarter becomes payable, that is to say, due, on the 15th day of the month with which the quarter begins. Next comes Section 189 which is mandatory and it provides that when the rate is due, the Corporation shall present to the person liable a bill for the sum due. Section 190, which follows, provides that if the sum due is not paid within seven days of the presentation of the bill, the Corporation may serve a notice of demand; and Section 191 provides that if after seven days from the service of the notice of demand, the rate due remains still unpaid, the Corporation may proceed against the person liable by way of distress. It is thus-clear that there can be no distress proceedings unless the rate is due, unless a bill has been presented, unless a notice of demand has been, served thereafter and unless seven days elapsed from the service of the notice and the rate due-has still not been paid. I respectfully agree in the view expressed in Mathura Prosad Rajghoria and Others Vs. Corporation of Calcutta and Others, that the notice prescribed by Section 190 is optional and need be served only if distress proceedings are contemplated. In other words, it is peculiar to the distress procedure and the first step in proceedings by way of distress. When, therefore, Section 204 speaks of proceedings against the "defaulter" by way of suit instead of by distress, the option has reference to the stage represented by Section 190. It is at that point that the procedure bifurcates. If the Corporation elects to proceed against the person liable by distress, it serves a notice of demand; otherwise, it may proceed against him by suit without doing anything further. But who is the person against whom the

Corporation may take the step preliminary to distress proceedings? In other words, who is the "defaulter"? It is clear from Section 190 that the person-upon whom a notice of demand can be served is not merely a person from whom the rate is due, but a person who, having been presented with a bill, has failed to pay it within seven days. Only such a person is a defaulter for the purpose of distress proceedings and, in my view, it follows that he alone is a defaulter for the purposes of a suit. Indeed, Section 189 is mandatory and applies to all cases. If presentation of a bill is not a condition precedent to the institution of a suit, it is difficult to see how effect can be given to the mandatory provisions of Section 189. I cannot imagine that presentation of a bill is a condition precedent to the institution of distress proceedings, which it unquestionably is, but is not a condition precedent to the institution of a suit.

9. The learned Judges in *Mathura Prosad Rajghoria and Others Vs. Corporation of Calcutta and Others*, refer to the ordinary meaning of the word "defaulter" and observe that there are no indications in the Act which might lead them to hold that the Legislature had used the word in Section 204 in any other sense. With great respect, I think there do exist such indications in the Act which I have endeavoured to point out. The correct position is indicated by the learned Judges themselves perhaps inadvertently, in a passage occurring at page 339 of the report which does not accord with the view ultimately taken by them. There it is observed as follows:

The effect therefore is: When the consolidated rate is not paid within seven days of the presentation of the bill, the Corporation has the option of proceeding in either of two ways.

This includes presentation of the bill among the circumstances which must occur before the question of proceedings in either of the two ways can arise.

10. For the reasons given above, I am of opinion that no one becomes a defaulter unless he has failed to pay the rate within seven days of the presentation of a bill and that presentation of a bill is a condition precedent to the [institution of a suit u/s 204. I think, however, for reasons given later, that omission to present bills does not affect the present suit.

11. The question raised by the second contention as to the true meaning of Section 205 is one of much greater importance, both to the Corporation and to the tax-payer. But before dealing with it, the text of the section may be set out in full. It runs thus:

205, The consolidated rate due from any person in respect of any land or building shall, subject to the prior payment of the land-revenue (if any) due to the Government thereupon, be a first charge upon the said land or building and upon the moveable property (if any) found within or upon such land or building and belonging to such person.

On a plain reading of the section, its meaning appears to be that arrears of the

consolidated rate, whether they be due from the owner or the occupier, shall be a charge on the premises concerned; and if there be on the premises any moveable property belonging to the person from whom the arrears are due, there shall be a charge on such moveable property as well. But if the arrears be due from the owner, there shall be no charge on any moveable property belonging to the occupier that may be on the premises; and similarly, if they be due from the occupier, the owner's moveable property, if there be any on the premises, shall not stand charged.

12. The appellant, however, contended that the true meaning of the section was not so broad. According to him, the section meant that the consolidated rate, due from the owner, would be a first charge upon the land or building, belonging to the owner, as also upon moveable property, belonging to him, found upon the premises; and that the consolidated rate, due from the occupier, would be a first charge upon moveable property, belonging to the occupier and found in or upon the land or building, but not upon the land or building. This meaning was sought to be extracted from the section in two ways. It was said that the phrase "belonging to the said person" was to be taken as going not only with the words "moveable property" but also with the words "land or building" preceding those words. It was said in the second place that the section must be construed in a sense consistent with the other parts of the Act, and, so construed, would be found to bear the limited meaning contended for, as the Privy Council had found Section 65, Bengal Tenancy Act to bear a limited meaning, in spite of the equally general language in which that section purported to create a charge : *Arthur Henry Forbes v. Bahadur Singh* 1 AIR 1914 P.C. 111.

13. As regards the case in *Corporation of Calcutta v. Fool Coomari Dasi* ("37) 41 C.W.N. 353, it was contended that the grounds on which Lord-Williams J. had placed his decision were all erroneous.

14. It will be convenient to deal first with the decided case. Lord-Williams J. placed his decision on three grounds : his own construction of the language of the section, the authority of the decision in *Akhoy Kumar v. Corporation of Calcutta* 2 AIR 1915 Cal. 478 and the fact that in spite of the construction put by that decision on Section 228 of the old Calcutta Municipal Act (3 [III] of 1889), the Legislature had re-enacted that section as Section 205 of the present Act without any alteration in the language. Although on the question of the textual construction of the section, the learned Judge held against the owner who had put forward the same view as the appellant did in the present case, he observed that if the matter had been free from authority, he would have held that the effect of the section was as the owner contended, viz. it did not make the premises, or what was the same thing, the owner, liable for the occupier's share of the rate.

15. I am clearly of opinion that as a matter of grammar, the language in which the section is expressed cannot possibly admit of the construction suggested by the appellant. It might have been suggested with some plausibility if the word

"and" occurring before the words "belonging to the said person," had not been there. Even then, the placing of the adjectival clause at the end of the sentence, if it was intended to qualify both "moveable property" and "land or building," would have been an example of a degree of clumsiness, not ordinarily to be expected in a statute. The learned Judge, in my opinion, was perfectly right in holding that the words "and belonging to the said person" could have reference only to the words immediately preceding, viz. "moveable property found within or upon such land or building."

16. Nor can I see that the learned Judge was wrong in holding that the question before him was covered by the decision in *Akhoy Kumar v. Corporation of Calcutta* 2 AIR 1915 Cal. 478. The question before him was whether, although the Act had nowhere made the owner expressly liable for the occupier's share of the rate, his land or building was nevertheless liable by virtue of the general provision for a charge contained in Section 205. The question decided in the case referred to was that although the liability of a transferee from the owner was expressly limited by Section 223 of the old Act to arrears of the owner's share of the tax for one year prior to the purchase, the charge created on the premises by Section 228 was not similarly limited, but extended to all the arrears due. The reason given was that Section 228 was perfectly general in its terms and created a liability of the premises (liability in rem) for the rates due thereon. The appellant contended that the question of construction had not been decided by the Court. It is undoubtedly stated in the judgment that no attempt had been made to support the view that the phrase "belonging to the person liable for such rate" qualified the expression "building or land" as well, but unless the Court considered the construction untenable, it could not have interpreted the section in the way it did. Even assuming that this question of construction was not decided, there can be no doubt that the Court ruled that the scope of the charge u/s 228, which was identical with the present Section 205 in all essential respects, was not circumscribed by the personal liabilities expressly created by the Act. I am accordingly of opinion that Lord-Williams J. was right in thinking that the question before him was covered by the decision in *Akhoy Kumar v. Corporation of Calcutta* 2 AIR 1915 Cal. 478.

17. As regards the third reason given by Lord-Williams J. it was contended that the Legislature had in fact made some alteration of language in the present Section 205. It was pointed out that whereas the language of Section 228 was "the consolidated rate due in respect of any building or land," it was "due from any person in respect of any land or building" in Section 205, and that the expression "belonging to the person liable for such rate" had been changed into "belonging to, the said person." In my view, these changes, instead of narrowing down the liability of the premises to one for the owner's share of the rate, make it more explicitly general so as to cover both the owner's and the occupier's shares.

18. The really important question raised by the appellant was whether, decisions

apart, the correct view to take of Section 205, would be that having regard to the other provisions of the Act, its wide language could not be given its literal meaning, but had to be understood in a limited sense. Reference was made on his behalf to Sections 124, 149 and 199. Under the first of them, the consolidated rate is imposed as one tax; under the second, it is made payable by the owner and the occupier in proportions of half and half; under the third, the Corporation is entitled to recover the owner's share from the occupier. There is no corresponding provision, empowering the Corporation to recover the occupier's share from the owner. It was accordingly argued that under the charging provisions of the Act, the owner's liability was limited to only his share of the rate and Section 205, which occurred in a chapter dealing with recovery of the tax, ought to be construed as creating a charge on his property for that liability only. A provision creating a security for a debt could not enlarge the debt itself. Support for this method of construction was sought to be derived from the decision of the Privy Council in *Arthur Henry Forbes v. Bahadur Singh* 1 AIR 1914 P.C. 111. Reference was also made to the decision of this Court in *Official Trustee of Bengal Vs. Purna Chandra Roy and Another*, where, following *Arthur Henry Forbes v. Bahadur Singh* 1 AIR 1914 P.C. 111 it was held that the charge created by Section 65, Bengal Tenancy Act, did not attach as soon as the rent fell into arrear.

19. In the Privy Council decision, Section 65, Bengal Tenancy Act was construed by reference to other provisions of that particular Act and the appellant could draw upon that case only for the proposition that the general language of a section is not in all cases conclusive. That indeed is a common place rule of construction of statutes. The appellant was therefore entitled to refer to other provisions of the Act as he did. He might have added that where the Act intended to make the owner liable for the occupier's share, it expressly said so, as in Section 157, dealing with premises occupied by more than one tenant, and Section 159, dealing with bustees, under both of which the owner was liable for the entire consolidated rate. It might have been argued that the fact that these special provisions had to be made, showed that, under the general provisions, there was no liability on the owner to pay the occupier's share of the rate.

20. It appears to me plain, however, that Section 205 deals with a different kind of liability from those dealt with by the earlier sections of the Act. It is true that the section occurs in ch. 16 which is the machinery chapter, but there is no absolute rule that a liability cannot be imposed by any provision outside the main charging section. A well-known example is the Indian income tax Act where the liability for tax is imposed not only by Section 3, but also by certain other provisions scattered among the machinery sections of the Act. It is noticeable that ch. 16, Calcutta Municipal Act begins with Section 188 which states Expressly that the provisions of that chapter shall be deemed to be in addition to any powers conferred by or under other chapters of the Act. In my view, the sections referred to by the appellant deal with the personal liabilities of the owner and the occupier, while Section 205 provides, in addition, for a liability of

the premises itself. It is as if the premises, which received the amenities provided by the Corporation, is required to pay for them, apart from the owner and the occupier being personally liable to pay. The limits of the respective personal liabilities of the owner and the occupier have no bearing on the liability of the premises which is a liability for the whole consolidated rate. In *Hyde v. Berness* (1889) 53 J.P. 453, the Court had to consider the effect of a charging order made under the Artizans and Labourers Dwellings Act, 1868. The Act empowered the local authority to require the owner of an uninhabitable house to make it fit for habitation and to charge the expenses of the repairs on the hereditament by a charging order. Section 27 provided that every annuity charged on premises by a charging order might be recovered as if it were a rent charge granted by deed out of the premises of the owner thereof. Such a charging order having been made and the question being who was liable to pay the amount charged--the freeholder or the tenant in possession--Stephen J. held as follows:

I am of opinion that the Act does not place the liability in any person but the premises are charged with it

and it was held that the present occupier, being the owner within the meaning of the Act, i.e. the free-holder, was liable during the continuance of his estate. In my view, the same principle applies to a charge created by Section 205 and it is a charge on the premises for all arrears of the consolidated rate, whether due from the owner or the occupier. There is no inconsistency between Section 205 and the scheme of the Act, as Lort-Williams J. supposed.

21. This, however, does not dispose of the appeal and a further question must be considered before the decree passed by the Courts below can be upheld. Although Section 205 may create a charge on the land or building even for arrears of the occupier's share, such charge can only be enforced by a suit. The appellant proceeded on the basis that the present suit was one u/s 204 and the respondent also insisted that the right of suit was given by that section. If I agreed, I would be bound at least to hold that the suit, so far as it concerned the rate for the fourth quarter of 1940-41, was not maintainable, since no bills for that quarter had been presented. Indeed, the effect would be even more fatal to the suit, as shown below. But in my opinion, Section 204 does not authorise a suit against the owner for the occupier's share of the rate and the present suit is not under that section. The section provides that the Corporation, instead of proceeding against a defaulter by distress and sale, may recover from him by suit any sum due on account of the consolidated rate. Clearly, a suit can be brought under the section only against a defaulter. Even assuming a person becomes a defaulter as soon as he fails to pay the rate due from him by the dates specified in Section 149, as held in *Mathura Prosad Rajghoria and Others Vs. Corporation of Calcutta and Others*, , it is clear that except in cases coming under Sections 157 and 159, an owner can never be a defaulter in respect of the occupier's share of the rate, because he is under no obligation to pay that share

on those or any other dates. It was held in the case cited above that there was no right of suit in the Corporation outside Section 204. If that be the correct view, the present suit, which is against the owner alone, was liable to be thrown out in limine, so far as it related to the occupier's share of the rate.

22. But, in my opinion, Section 204 is not the, only section which gives a right of suit to the Corporation. Section 205 which creates a charge, necessarily confers with it a right of suit to enforce the charge. By virtue of Section 100, T.P. Act, all provisions of that Act, applicable to a simple mortgage, apply to a charge, so far as may be, and similarly, those provisions of Order 34, Civil P.C. which apply to a simple mortgage, are made applicable to a charge by Rule 15 of that Order. The effect of these provisions is that whenever there is a charge, there can be a suit in the nature of a mortgage suit to enforce that charge. There is thus a right of suit in the Corporation u/s 205 in addition to the right u/s 204. In Mathura Prosad Rajghoria and Others Vs. Corporation of Calcutta and Others, their Lordships had not their attention directed to this aspect of the question, because the property there concerned was a bustee, so that the owner was liable for the whole consolidated rate and thus a defaulter within the meaning of Section 204. But their observation that Section 204 is the only section giving a right of suit, ignores Section 205 and cannot, in my view, be accepted as correct. The present suit, though not warranted by Section 204, as regards the occupier's share, is warranted by Section 205, which requires no defaulter and only requires that the consolidated rate should be due "from any person." It also follows that even if the word "defaulter" bears the limited meaning which I have held it to bear, that cannot affect the present suit even as respects the claim for the fourth quarter of 1940-41, because the suit is not one u/s 204, but one u/s 205.

23. By Section 205 the land or building, belonging to the owner, is charged for the occupier's share of the rate, payable to the Corporation. The position of the owner is therefore exactly that of a surety who has charged his own immovable property to secure a debt due from the principal debtor. The charge is unconditional for there is no obligation on the Corporation to proceed first against the occupier, and consequently a suit against the owner alone for enforcement of the charge, as the present suit is, is maintainable. It seems to me, however, that the better course would be to implead both the owner and the occupier, at least in cases where the Corporation might desire or require to obtain a personal decree.

24. For the reasons given above, the first contention of the appellant, though correct can be of no avail to him in the present suit and the second contention must fail. In my opinion, Section 205 creates a charge on the land or building for arrears of the occupier's share of the consolidated rate as well and itself authorises a suit for enforcement of the charge, which need only satisfy its own requirements and not also the requirements of Section 204. Such a suit may be against the owner alone who, though not liable to pay the occupier's share personally, is in the position of a surety whose immovable property stands

charged for the debt of another, viz., the occupier. Section 204, in my opinion, does not authorise a suit against the owner for the occupier's share of the rate, except in cases covered by Section 157, and questions arising under it have no relevance to a suit brought against the owner for enforcement of the charge u/s 205 in respect of the occupier's share. There is really no question of the occupier's share in cases coming u/s 159.

25. It remains to deal with the small point regarding costs. Costs are always discretionary and the learned Judge was perfectly right in making a distinction between exercising the discretion as a trial Court and interfering with the trial Court's discretion as a Court of appeal. Besides, the finding of fact by the appellate Court has reduced the Corporation's negligence to that as respects a single quarter and deprivation of half the costs, as ordered by the trial Court, cannot be said to be an inadequate penalty. In the result, I would dismiss the appeal, but would make no order as to costs.

Blank, J.

26. I have had the advantage of perusing the draft of the judgment which has been delivered by my learned brother who finds himself unable to hold that as regards two questions, Mathura Prosad Rajghoria and Others Vs. Corporation of Calcutta and Others, , to which I was a party was not rightly decided. As however, for reasons given later in the judgment, the difference of view on the first question does not affect the decision of the present appeal, I do not express any opinion thereon. As regards the second question, there was no occasion in Mathura Prosad Rajghoria and Others Vs. Corporation of Calcutta and Others, to consider the position whether the liability for the consolidated rate is divided between the owner and the occupier and I agree that the present suit is authorised by Section 205 of the Act and that the appeal should be dismissed with no order as to costs.