
(1926) 02 CAL CK 0049
In the Calcutta High Court

Tarak Govinda Chowdhury and Others	APPELLANT
Vs	
Indu Jyoti Majumdar	RESPONDENT

Date of Decision : 06-02-1926

Acts Referred:

Citation : AIR 1929 Cal 452

Judgement

1. The appellants who are three brothers instituted a suit against the Chairman and Commissioners of the Patna Municipality for, amongst others, a declaration that the assessment of a personal tax on them of Rs. 21 per quarter was illegal and ultra vires. The suit has been dismissed by both the Courts below. The appellants contend, in the first instance, that the imposition of a personal tax jointly against them is illegal as has been recently held to be so by this Court. We have considered the question whether we should allow the appellants to urge this contention now when it was not urged in any of the Courts below or even in their grounds of appeal to this Court. We think we shall not be justified in doing so.

2. They next urge that in assessing the tax the meaning of the expression "according to their circumstances and property within the municipality" appearing in Section 85 (a) has been misunderstood. Now the Subordinate Judge appears to have proceeded upon the following findings:

1. The zemindari properties of the plaintiffs let out in patna are situated outside the municipality. The income on this head is Rs. 5,487 odd a year. The rents from the patnidars are realized within the municipality at the house of the plaintiff. In 1328 the total realization amounted to Rs. 4,101 odd and in 1329, Rs. 18,921 odd.

2. In 1328 the plaintiffs received within the municipality.

Rs. 1,293 on account of interest on G. P. Notes.

Rs. 852 on account of dividends on shares in companies.

Rs. 108 on account of interest from the Post Office Savings Bank.

Rs. 7,624 on account of decial and other dues.

Rs. 303 on account of interest from deposit in the Pabna Savings Bank.

Rs. 944 on account of fees of plaintiff 2 as managing Director of a Limited Company.

3. The total amount of patina rent payable to the plaintiffs for properties within the municipality is Rs. 642.

4. The collections made at the plaintiffs' house within the municipality are remitted to Tantiband from where they go back to the Bank within the limits of the municipality.

3. The question that arises is whether on these findings it can be said that the "circumstances and property" of the plaintiffs "within the municipality" can be fairly estimated at Rs. 9,000, so as to admit of a personal tax of Rs. 21 per quarter.

4. Upon the decisions that have been cited before us the following points may be treated as settled.

1. The word "circumstances" is equivalent to " means ": Chairman of Giridih Municipality v. Suresh Chandra [1908] 35 Cal. 859; Deb Narayan Dutt v. Chairman, Baruipur Municipality [1911] 39 Cal. 141.

2. The expression "within the municipality " governs both " circumstances " and "property": Debendra Nath Rai Chaudhuri and Others Vs. Pranab Chandra Ghose, Chairman, Taki Municipality, .

3. The word "property" includes both real and personal property or estate and tangible as well as intangible rights of value: Chairman Giridih Municipality v. Suresh Chandra [1908] 35 Cal. 859.

4. When income or sale proceeds are brought from outside within the limits of the municipality and put into a Bank to the credit of a person it may without undue strain on the language, be described as his circumstance and property: Chairman Jalpaiguri Municipality v. Jalpaiguri Tea Co. Ltd. AIR 1922 Cal. 46 per Mookerjee, J. The proceeds so deposited are property within the municipality: per Buckland, J.

5. What constitutes the circumstances and property of a person within the municipality must on a large measure depend upon the facts of the particular case: Chairman, Jalpaiguri Municipality v. Jalpaiguri Tea Co. Ltd. AIR 1922 Cal. 46.

5. It is true that in assessing the assessee's circumstances and property within the meaning of Section 85 (a) of the Act his circumstances and property which are only within the municipality itself have to be considered Kameswar Pershad v.

Chairman, Bhabua Municipality [1900] 27 Cal. 849 and Chairman, Rajpur Municipality v. Nagendra Nath Bagchi 23 C.W.N. 475. But despite the able arguments of Dr. Mukerjee I am unable to see that in this case any question arises as to whether the measure of the assessee's liability is what he gets and not what he spends, such as arose and was decided in the case of Chairman, Girdih Municipality v. Suresh Chandra Muzumdar [1908] 35 Cal. 859, and Debendra Nath Rai Chaudhuri and Others Vs. Pranab Chandra Ghose, Chairman, Taki Municipality, or whether the list in respect of income brought from outside is the extent to which it is to be spent within the limits of the municipality as was laid down in the case of the Chairman of the Commissioners of the Joynagar Municipality Vs. Srimati Sailabala Dutta and Others, .

6. Here apart from anything else there are two items in the findings of the Courts below which give us a fair estimate of the amount which was in the Post Office and the Savings Bank to the credit of the appellants. These items are Rs. 108 (on account of interest from the Post Office Savings Bank) and Rs. 303 (on account of interest from deposit in the Pabna Saving Bank). These two items indicate the amount in deposit in these two places to be very near Rs. 9,000 if not more. This amount is undoubtedly " property within the municipality " within the meaning of the" words as used in Section 85, Clause (a). Mookerjee, J. in Chairman, Giridih Municipality v. Suresh Chandra [1908] 35 Cal. 859 observed:

I am unable to hold that the word " circumstances" was introduced in Section 85 to restrict the term " property." The intention on the other hand seems to have been to widen the scope of the section so as to make taxable what might perhaps be not properly comprised under the term property and at the same time ought not to escape assessment.

7. If, then, to the two items mentioned above, it is still necessary to add anything to make up Rs. 9,000 the " circumstances " of the appellants within the municipality are available for being taken into account. It is not easy to define what the " circumstances " are They are not matters which can accurately be put down in ,?. s. d. But the amounts mentioned in the findings of the learned Subordinate Judge which pass through the limits of the municipality and are available to the appellants at any moment they may like to spend them and the fact that the appellants are wealthy zemindars can not be altogether ignored. We are of opinion that there in no error of law or of principle upon which the Courts below have proceeded and we accordingly dismiss the appeal with costs.