

(1934) 08 AHC CK 0034
In the Allahabad High Court

Upendra Nath Basu

APPELLANT

Vs

Municipal Board

RESPONDENT

Date of Decision : 17-08-1934

Acts Referred:

Citation : AIR 1934 All 1007 : 153 Ind. Cas. 359

Final Decision : Disposed Off

Judgement

1. This is a defendant's appeal arising out of a suit brought by the Municipal Board for recovery of house and water taxes assessed on the defendant's house and garden. For a part of the period in dispute the defendant did not personally occupy the premises in the sense that neither he nor his relations lived there. It is also a fact that during part of the period no tenant ever occupied the premises. But during this time the defendant maintained the garden in the compound. He had a gardener whom he naturally paid a monthly salary and who was living in a hut in the compound, and he also had bullocks working in order to irrigate the numerous fruit trees and plants in the compound. During this time he also appropriated the produce of the garden. There is no suggestion that he sold the produce. Certainly he did not let out the fruit trees during part of the period. But inasmuch as the defendant got some produce from the garden, although he spent money in maintaining the same, the Courts below have held that the building with the compound did "not remain vacant" and unproductive of rent" and that accordingly the defendant was liable to pay the Municipal taxes. The case depends on an interpretation of Section 151, Municipalities Act; it is headed as "remission by reason of non occupation." and provides that when a building or land has remained vacant and unproductive of rent for 90 or more consecutive days during any year the Board shall, remit or refund a proportionate amount of the tax.

2. The, important words are "remained vacant" and "unproductive of rent." Obviously the word "vacant" does not mean that the land should be barren land and be not covered by trees or vegetation. Obviously the word "vacant" is used in

the sense of non-occupation, that is to say, although there may be a garden on the land, it may nevertheless be in some cases unoccupied. Similarly the words "unproductive of sense" would not mean a building which is not capable of producing rent. If that were the meaning attributed to it, then the result would be that SO long as the building is habitable and therefore capable of producing sense, it would be liable to taxes, although it remains unoccupied. We do not think that that is the meaning of the section. It means that a building, is vacant and unproductive of sense when neither the owner nor his relations or friends occupy it; nor is it let out to any tenant or lessee, The difficulty in the present case arises from the fact that the compound covers a large area within which the building is situated. The building has no doubt remained unoccupied and unprinted during the period in dispute. But the garden has been maintained by the owner, and on the one hand the owner has spent money in maintaining it and on the other he has taken the produce from this garden. The question then arises whether the building with the land has remained vacant and unproductive of sense or not. There would be no difficulty in deciding the point in extreme cases. The difficulty, of course, arises in cases which are on the border line. In a case where a compound is a mere appurtenance to a building, and while waiting for the building to be rented the owner maintains the compound in order that the house may not deteriorate, then if he takes the produce while waiting for some tenant to take the house it would be difficult to say that he is occupying the premises or that the premises are productive of rent. On the, other hand, if he deliberately neglects the house, but prefers to make profit out of the maintenance of the garden in the large compound, it would be difficult to hold that he is not occupying the land but keeping it vacant. It therefore follows that each case has to be considered on its own circumstances, and it is impossible to lay down any hard and fast and inflexible rule applicable to all cases. Much will depend on the relative value of the garden and the house and the ratio of the income which the garden can yield and the amount of sense which the house can fetch. The intention of the owner may also have to be taken into account, and the position would vary according as he is maintaining the garden and taking the produce under pressure of necessity because his house remains unprinted, or whether he neglects the house and deliberately makes profit out of his garden.

3. The Courts below have not approached this case from this standpoint and have assumed that if the owner takes any produce, however small, he occupies the whole building with the compound. This in my opinion is not the correct view to take. There ought to be a clear finding whether in the special circumstances of this case the premises can be said to have remained vacant or whether they were occupied by the owner. The learned advocate for the appellant has urged before us that there should be a further issue, as to whether notice had been given that water connexion should be cut off. This point does not appear to have been pressed before the lower appellate Court for the obvious reason that if the premises were really occupied, then the defendant would not be exempt from the payment of water tax merely because he had got the connexion cut off. We

accordingly send down the following issue to the trial Court through the lower appellate Court for determination in the light of the observations made above. Did the premises, which constitute one tenement, remain vacant and unproductive of sense during the periods in dispute? As the issue is practically a new one, we direct that the parties would be at liberty to produce any fresh evidence which they may choose to offer. The findings are to be returned within the month if practicable.