CRIMINAL REVISION.

Before Imam and Chapman, JJ.

1913

June 5.

RATNENDRA LAL MITTER

v.

CORPORATION OF CALCUTTA.*

Bustee Land—Notice on owners to carry out improvements thereon—"Owner," meaning of—Co-sebait during turn of management of debutter property and collection of rents and profits by another sebait—Liability of sebait not in receipt of rents and profits—Previous convictions—Calcutta Municipal Act (Beng. III of 1899), ss. 3 (32), 408, 575.

Where *debutter* property is managed according to a settled scheme by the co-sebaits in rotation, and the rents and profits collected, for the time being, by the persons enjoying their turn, a sebait out of turn is not an "owner" within the meaning of s. 3 (32) of the Calcutta Municipal Act, nor in any other sense, and is not liable to carry out a requisition under s. 408 of the Act.

A sebait is not an owner but only a manager for the deity.

THE ancestors of the petitioners created an endowment of certain properties in and out of Calcutta, including a bustee, No. 112, Machua Bazar Street, in favour of two idols, and appointed their heirs sebaits. In 1893 a dispute arose among the latter as to the right of management of the *debutter* properties, and a suit was filed in the Court of the Subordinate Judge of the 24-Pergunnas for the settlement of a scheme of management. The Subordinate Judge decided that the parties were to enjoy a turn of worship in rotation, and that the persons, for the time being in office, were to exercise absolute control over the *seba* of the *thakurs* and the management of the properties, and to collect the rents and profits thereof. The decree of

* Criminal Revision No. 534 of 1913, against the order of N. C. Ghatak, Municipal Magistrate, Calcutta, dated Feb. 27, 1913.

the Subordinate Judge was affirmed by the High Court, on appeal, except that the order of rotation was varied with the consent of the parties. According to the scheme so settled, the petitioners had their turn of management in 1905-1906, and since then other co-sebaits had succeeded to the management; the present incumbents being Khetter Lal Mullick and others who were collecting the rents and profits and who had filed a suit, still pending, in the Subordinate Judge's Court for the settlement of a fresh scheme.

A notice under s. 408 of the Calcutta Municipal Act, dated the 3rd February 1910, was served on the petitioner, who, having failed to carry out the bustee improvements directed therein, was convicted in that year and fined. Fresh notices were issued against him from time to time and he was fined each time. He was again prosecuted, convicted and sentenced to a fine of Rs. 60 on the 27th February 1913 by the Municipal Magistrate, whereupon he moved the High Court and obtained the present Rule.

Babu Manmatha Nath Mukerjee, for the Corporation. A sebait is a trustee. An agent or trustee is treated as the "owner" in the definition given in the Act. See also *Hornsey District Council* v. *Smith*(1) under the English Public Health Act 1875. The owner's liability as such continues even where he has leased the property for a long period, though he cannot enter thereon and execute the works required of him without the tenant's permission: *Parker* v. *Inge*(2). Section 645 of the Calcutta Act gives the General Committee power to determine the person liable as owner, and the High Court cannot question their decision: *Shamul Dhone Dutt* v. *Corporation of Calcutta*(3). They have selected the petitioner.

(1) [1897] 1 Ch. D, 843. (2) (1886) 17 Q. B. D. 584.
(3) (1906) I. L. R. 34 Calc. 30.

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Babu Uma Charan Laha, for the petitioners. The *thakur* or the idol is a juridical person, and the legal estate is vested in it and not in the sebait: *Maharanee Shibessuree Debia* v. *Mothooranath Acharjo*(1) *Syud Shah* v. *Musst. Bibee Nuseebun*(2) *Babajirao Gambhirsing* v. *Laxmandas Guru Raghunath Das*(3). The petitioners are not "owners" under s. 3(32) of the Calcutta Municipal Act, because they do not receive the rents and profits of the *debutter* properties at present. The improvement must be made from the *debutter* funds which are now in possession of another sebait. The case of an owner subletting is different as the legal estate is still in him.

Cur. adv. vult.

IMAM AND CHAPMAN, JJ. The petitioner in this case is one of a large number of sebaits who worship two family deities and manage the *debutter* properties dedicated to the gods in turns settled by Court. The petitioner's last turn of worship and to hold and manage the properties was in 1905-1906. Since then he has had no hand in the management of the properties and it is difficult to say when he will get a turn again as a suit has been instituted to settle a fresh scheme of worship and management. One of the properties dedicated to the gods is bustee No. 112 Machua Bazar Street in the town of Calcutta. The Corporation of Calcutta, by a notice dated the 3rd February 1910, under section 408 of the Calcutta Municipal Act (Beng. III of 1899), called upon the petitioner as owner to carry out certain improvements in that bustee in accordance with the standard plan prepared by the Corporation. On non-compliance with the notice, the petitioner was convicted under

(1) (1869) 13 W. R. (P. C.) 18. (2) (1874) 21 W. R. 415, 416.
(3) (1903) I. L. R. 28 Bom. 215.

sections 574 and 408 of the Calcutta Municipal Act. Since then he has been served several times with similar notices and on non-compliance has been convicted each time under sections 574 and 408. It is against the last of such convictions that the petitioner has moved this Court.

The Rule in this case was issued on the ground that the petitioner not being in possession of the *debutter* properties, nor having any control over the management of the same, is not liable to be punished for non-compliance with the direction in the notice under section 408.

The only question that requires to be considered in this case is whether the petitioner is an "owner" within the meaning of the Act. According to the Act "owner" includes "the person for the time being receiving the rent of any land or building or of any part of any land or building, whether on his own account or as agent or trustee for any person or society or for any religious or charitable purpose, or who would so receive the same if the land, building or part thereof were let to a tenant" (section 3, sub-section 32). The petitioner undoubtedly does not come within this definition as he has not been receiving the rent since 1906, nor can he be said to be entitled to receive the rent if the land were let to a tenant, and he cannot be held to be an owner in any other sense, as, on the authority of several reported cases, it has to be held that a *sebait* is only a manager for the deity. In the case of the petitioner, the conviction is wrong inasmuch as, though he may be regarded as a manager for the deity, yet he is not receiving the rent. In these circumstances, the conviction must be set aside, and the Rule must be made absolute. The fine, if paid, shall be refunded.

E. H. M. *Rule absolute.*