

APPELLATE CIVIL.

Before Teunon and Newbould JJ.

CHAIRMAN, JAYNAGAR MUNICIPALITY

v.

SAILABALA DUTT.*

1920

July 5.

Assessment—Bengal Municipal Act (Beng. III of 1884) ss. 85, 87—“Circumstances and property within the Municipality,” meaning of.

It is now settled law that the words “within the municipality” in s. 85 of the Bengal Municipal Act (Beng. III of 1884) govern both “circumstances” and “property,” and that the word “circumstances” is in substance the equivalent of “means.”

Deb Narain Dutt v. Chairman of the Baruipur Municipality (1) & (2), *Chairman of Giridih Municipality v. Srish Chandra Mozumdar* (3) referred to.

Income brought to be spent and enjoyed within the municipality in which the rate-payer is resident becomes part of the means or circumstances within that municipality and liable to assessment there under s. 85 of the Bengal Municipal Act (Beng. III of 1884).

Kameshwar Pershad v. Babua Municipality (4) distinguished.

THESE second appeals by the Chairman of the Jaynagar Municipality arose out of suits by certain rate-payers for declarations that the assessments made upon them by the Commissioners were illegal, *ultra vires* and not binding on them. There was also an allegation that there was no valuation made for

* Appeals from Appellate Decrees, Nos. 668 and 696 to 699 of 1918, against the decree of A. J. Chotzner, District Judge of 24-Parganas, dated Jan. 2, 1918, affirming the decree of Ramesh Chandra Bardhan, Munsif of Baruipur, dated March 6, 1917.

(1) (1911) I. L. R. 39 Calc. 141. (3) (1908) I. L. R. 35 Calc. 859;

(2) (1913) I. L. R. 41 Calc. 168. 12 C. W. N. 709

(4) (1900) I. L. R. 27 Calc. 849.

1920
 CHAIRMAN,
 JAYNAGAR
 MUNICI-
 PALITY
 v.
 SAILABALA
 DUTT.

the assessment of latrine-tax so that fees levied under this head were also illegal. The learned Munsif found that the assessments were not based upon the circumstances and property of each individual tax-payer within the municipality as provided for in s. 85 of the Bengal Municipal Act, and therefore could not be enforced. As regards the latrine-tax, however, he held that the holdings were valued as required by law and therefore, excepting in one case, the Municipality have been acting within their rights. He accordingly gave the plaintiffs a partial decree. The appeals to the learned District Judge were dismissed on a finding that income from sources outside the municipality was considered in making the assessments.

Dr. Dwarka Nath Mitter and Babu Hira Lal Chakravarty, for the appellants, referred to *Deb Narain Dutt v. Chairman of the Baruipur Municipality* (1), *Chairman, Raypur Municipality v. Nagendra Nath Bagchi* (2) in which it was held that circumstances and property are to be both within the municipality. The plaintiffs' earnings were brought and spent within the municipality. Hence the assessments were legally made according to circumstances and property within the municipality. The latrine-tax enforced exceeds by 6 pies the legal maximum. It may be reduced.

Babus Mahendra Nath Roy and Abinash Chandra Ghosh, for the respondents, submitted that "circumstances" in cl. (a) s. 85 of the Bengal Municipal Act include income.

[TEUNON J. If a man brings his income from outside, does it not become his means within the municipality in which he lives?]

(1) (1911) I. L. R. 39 Calc. 141.

(2) (1919) 29 C. L. J. 379.

He would be assessed with a personal tax within the municipality in which he earns.

[TEUNON J. Does circumstance include only income within municipality?]

Referred to *Chairman of Giridih Municipality v. Srish Chandra Mozumdar* (1). The assessment was to be made on the whole amount earned and not what he spent within the municipality. Regard to income outside municipality is illegal.

[TEUNON J. A person living in Barrackpur earns income in Calcutta, where is he to be taxed?]

Mode of living within the municipality may be regarded. If he spends his income earned outside, it may be regarded. Referred to *Deb Narain Dutt v. Chairman, Baruipur Municipality* (2). The burden of proving the value "of circumstances and property" is on the municipality.

Dr. Dwarka Nath Mitter, in reply, submitted that circumstances mean economical condition of a man or his position in life: *Chairman of Giridih Municipality v. Srish Chandra Mozumdar* (1).

Cur. adv. vult.

TEUNON J. These second appeals arise out of certain suits brought by tax-payers occupying holdings within the Jaynagar Municipality to have it declared that the assessments made upon them by the Commissioners in respect both of personal tax under the provisions of sections 85 and 87 of the Bengal Municipal Act and also of latrine-fees or tax under the provisions of Chapter IX are illegal and *ultra vires*. As regards the personal tax the plaintiffs have succeeded in both the lower Courts, while as regards latrine tax they have failed in all cases but one. The

1920

CHAIRMAN,
JAYNAGAR
MUNICI-
PALITY
c.
SAILABALA
DUTT.

(1) (1908) I. L. R. 35 Calc. 859.

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1920

CHAIRMAN,
JAYNAGAR
MUNICI-
PALITYv.
SAILABALA
DUTT.

TEUNON J.

appeals to this Court have been preferred by the Municipal Commissioners.

As regards latrine tax, the point is a small one. The holding in question was valued at Rs. 436. The scale fixed by the Commissioner under the provisions of section 321 is 2 per cent. on the annual value. In the present cases the fee should therefore have been say Rs. 8-11-6 while the assessment is Rs. 8-12. As it has been found that as regards latrine tax or fees the Commissioners have proceeded on correct principles, we are of opinion that the above small error in calculation should not have been held to vitiate the whole assessment. The assessment will be reduced by the sum illegally added, that is, by a sum of six pies.

The substantial question in the appeals then is whether the plaintiffs respondents have succeeded in showing that in assessing them to the tax upon persons, the Commissioners have acted otherwise than in accordance with the provisions of the law. This question again depends upon the construction to be placed upon the words in section 85—"according to their circumstances and property within the municipality."

It is now settled law [*Deb Narain Dutt v. Chairman of the Baruipur Municipality* (1)], that the words "within the municipality" govern both "circumstances" and "property", and in the same case of *Deb Narain Dutt v. Chairman of Baruipur Municipality* (2) and also in the case of *Chairman of Giridih Municipality v. Srish Chandra Mozumdar* (3), it has further been held that the word "circumstances" must be interpreted to be in substance the equivalent of "means". In reliance on an earlier case of *Kameshwar Pershad v. Babua Municipality* (4), the

(1) (1911) I. L. R. 39 Calc. 141.

(2) (1913) I. L. R. 41 Calc. 168 ;
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12 C. W. N. 709.

(4) (1900) I. L. R. 27 Calc. 849.

contention of the plaintiffs respondents here and in the Courts below was and is that the words "circumstances" (or "means") within the municipality "must further be restricted to income earned or accruing from sources within the municipality." On its own facts the case cited was no doubt rightly decided, but the essential distinction between that case and the present cases is that in the former the tax-payer though occupying a holding for business purposes within Babua was resident elsewhere, while here the plaintiffs tax-payers are resident in their holdings within Jaynagar. To their homes in Jaynagar they bring the whole of their income no matter where earned and no matter from what source derived. Income thus brought within Jaynagar there to be spent and enjoyed, in our opinion, becomes part of their "means" or "circumstances" within Jaynagar and liable to assessment there under section 85.

Now all that the plaintiffs have succeeded in showing is that the Commissioners in making the assessments in question did not limit themselves to income earned, or derived from sources, within the municipality, but took into account also the income brought into and spent within the municipality. This, in our view, the Commissioners were entitled to do, and the plaintiffs have made no attempt to show that when such outside income is taken into account the assessments are inequitable. On the contrary, the suggestion made that the Commissioners had acted arbitrarily and out of malice has been negatived.

In the result with the slight modification indicated in the foregoing judgment in Appeal No. 696, these appeals are decreed and the suits dismissed with costs in all Courts.

NEWBOULD J. I agree.

P. M. C.

Appeals allowed.

1920

CHAIRMAN,
JAYNAGAR
MUNICI-
PALITY

C.
SAILABALA
DUDD.

TECNON J.