1928

AROTH v. CRAIG JUTE MILLS, LIMITED.

RANKIN C. J.

"regularly attended by a qualified medical practitioner" should be construed as if it read "by another "qualified medical practitioner". For the purposes, however, of the present case, and cases of the same character, that is necessarily the meaning of the phrase. The question referred to us for our decision is thus answered. There will be no order as to costs.

GHOSE J. I agree.

S. M.

APPELLATE CIVIL.

Before Page and Mallik JJ.

AGHORE NATH HALDAR

v.

DWIJAPADA CHATTERJEE.*

1928

Feb. 9.

Occupation—"Persons occupying holdings", construction of—Bengal Municipal Act (III of 1884), ss. 85 (a), 6 (3), 15 (iii).

Occupation of a holding in order to render a person amenable to a personal tax imposed upon "persons occupying holdings" under section 85 (*a*) of the Bengal Municipal Act connotes actual possession by the person liable to be assessed, or by his servant or agent in furtherance of the duties which such servant or agent has engaged to perform for the assessee.

In re Chelsea Waterworks (1), *Cory* v. *Bristow* (2) and other cases discussed and referred to.

* Appeal from Appellate Decree, No 2013 of 1925, against the decree of B. Mukerjee, District Judge of Murshidabad, dated April 27, 1925, reversing the decree of Tarak Nath Bose, Munsif of Jangipur, dated Sep. 27, 1924.

(1) (1833) 5 B. & Ad. 156. (2) (1877) 2 A. C. 262.

1928

AGHORE NATH HALDAR v. DWIJAPADA CHATTERJEE.

SECOND APPEAL by Aghore Nath Haldar, the plaintiff.

This second appeal arose out of a suit to recover a certain tax that had been levied upon the plaintiff, who is the head master of the High English School at Jangipur, under section 85 (*a*) of the Bengal Municipal Act of 1884. The plaintiff resided and obtained board and lodging in the hostel of the school of which he was the head master. The trial Court decreed the suit, but the lower Appellate Court allowed the appeal by the Municipality and dismissed the suit.

Babu Pyari Mohan Chatterjee, for the appellant.

Babu Rupendra Kumar Mitra and *Babu Byomkesh Basu*, for the respondent.

PAGE J. The issue raised in this appeal involves the construction of the term "persons occupying holdings" in section 85 (*a*) of the Bengal Municipal Act (III of 1884).

The appellant is the head master of the High English School at Jangipur. From October 1921 to October 1923 he resided in a boarding house or hostel for students adjoining the school buildings, but the school building and the hostel for the purposes of the Bengal Municipal Act are, and are to be treated as, separate holdings. The hostel belongs to the School Committee, and its internal affairs are managed by a superintendent. Persons who are accepted as boarders are entitled to reside in the hostel only if, and so long as, they conform to the rules and regulations of the institution. The hostel exists primarily for students, but the appellant was permitted to reside therein as a boarder upon the usual terms, and became entitled to occupy a seat or bed in one of the rooms on the upper

1928

AGHORE NATH HALDAR v. DWIJAPADA CHATTERJEE.

PAGE J.

storey, and to partake of the meals supplied in the hostel, for an inclusive charge of Rs. 7-8 per month.

The appellant, however, was not entitled to the use of any particular seat or bed, and so long as he was given a seat in any one of the rooms on the upper storey he was liable to have his seat changed from time to time as the superintendent might direct, or the exigencies of the hostel might require.

In these circumstances an assessment was made upon the appellant under section 85 (*a*) of the Bengal Municipal Act, and the amount of the tax was realized by the issue of distress warrants. The appellant thereupon brought the present suit to recover *inter alia* the amount of the tax that had been levied upon him. The trial Court decreed the suit, holding that the assessment upon the appellant was illegal, but the lower Appellate Court reversed the decree of the trial Court and dismissed the suit. From the decree of the lower Appellate Court the appellant has preferred the present appeal.

The material sections of the Act are :—

Section 85.

"The Commissioners may, from time to time, ... "impose within the limits of the Municipality one or other or both of the "following taxes :—

"(*a*) a tax upon persons occupying holdings within the municipality according to their circumstances and property within the municipality ;

"Provided that the amount assessed upon any person in respect of the "occupation of any holding shall not be more than eighty-four rupees per "annum ; or

"(*b*) a rate on the annual value of holdings situated within the municipality."

Section 6.

(3) 'holding' means land held under one title or agreement, and "surrounded by one set of boundaries ; provided that where two or more "adjoining holdings form part and parcel of the site or premises of a "dwelling house, manufactory, warehouse or place of trade or business,

"such holdings shall be deemed to be one holding for the purposes of this "Act other than those mentioned in clause (*a*) of section 85 ;

"(4) 'house' includes any hut, shop, ware-house or building ;

"(5) 'immoveable property' and 'land' include (besides land) "benefits arising out of land, houses, things attached to the earth, or "permanently fastened to anything attached to the earth."

The issue to be determined is whether the appellant is a person "occupying a holding" within section 85 (*a*) of the Bengal Municipal Act.

Two contentions have been raised in support of the appeal.

The learned vakil on behalf of the appellant urged that the occupation of the appellant was that of a servant or agent of the School Committee, and that the hostel was being occupied by the School Committee, and not by the appellant. *Ambika Churn Mozumdar* v. *Satish Chunder Sen* (1), *Gobinda Chandra Ganguly* v. *Kailash Chundra Sanyal* (2). In my opinion this contention is ill-founded. The appellant was not residing in the hostel because he was required to do so for the better performance of his duties as the head master of the school. Indeed, the hostel was not intended to be a boarding house for the masters but for the students, and it was only after obtaining the permission of the Secretary of the School Committee that the appellant was allowed to reside in the hostel at all.

"The governing principle is that, in order to constitute an occupation "as a servant, it must be an occupation ancillary to the performance of "the duties which the occupier has engaged to perform." *per* Mellor *J.* in *Smith* v. *Seghill* (3), *Fox* v. *Dalby* (4), *Clifton College* v. *Tompson* (5), *Charterhouse School* v. *Gayler* (6).

The first contention, therefore, raised on behalf of the appellant fails.

(1) (1898) 2 C. W. N. 689.
(2) (1905) 15 C. L. J. 689.
(3) (1875) L. R. 10 Q. B. 422, 429.
(4) (1874) L. R. 10 C. P. 285.
(5) [1896] 1 Q. B. 432.
(6) [1896] 1 Q. B. 437.

1928

AGHORE NATH HALDAR v. DWIJAPADA CHATTERJEE.

PAGE J.

It was further contended that in the circumstances the appellant by residing in the hostel did not "occupy a holding" within section 85 (*a*) of the Bengal Municipal Act.

Now, "occupier" and "occupation" are not defined in the Act, but, in my opinion, occupation of a holding in order to render a person amenable to a personal tax imposed upon "persons occupying "holdings" under section 85 (*a*) connotes actual possession by the person liable to be assessed or by his servant or agent in furtherance of the duties which such servant or agent has engaged to perform for the assessee. Such possession must be beneficial to the assessee; it must be intended that the possession should be continuous and not merely casual or intermittent, and the assessee or joint assessees of the holding must be entitled to the exclusive use and enjoyment of the holding as of right and not on sufferance, free from interference from outsiders, and without the user and enjoyment being subject to a paramount right of regulation or control by the party who put them in possession or any other person. It is not essential, however, that the possession should be permanent in the sense that the assessee should be entitled to the exclusive use and enjoyment of the holding for a definite term or a certain period, for

"A tenant-at-will is, until the will be determined, an occupier" (*per* Denman C. J. *In re Chelsea Water-works*, (1)

and

"It would be a confusion of ideas to say that it (that is, a liability to "determination) interferes with the exclusive possession any more than a "right of re-entry on the part of a landlord in certain given events could "be said to interfere in any way with the right of the tenant during the "time he is holding He is in beneficial occupation for a term, though "that term is limited by certain contingencies which may possibly

(1) (1833) 5 B. & Ad. 156, 169.

"determine his interest at an earlier period" *per* Lord Hatherley in *Cory* v. *Bristow* (1).

In other words, it is the mode of user and not the length of the term that determines whether or not the occupation is such that the person occupying the holding is liable to assessment. Further, it is to be observed that exclusive user and enjoyment is not the same thing as exclusive occupation, for

"A lodger in a house, although he has the exclusive use of rooms in "the house, in the sense that nobody else is to be there, and though his "goods are stowed there, yet he is not in exclusive occupation in that "sense, because the landlord is there for the purpose of being able, as "landlords commonly do in the case of lodgings, to have his own servants "to look after the house and the furniture, and has retained to himself the "occupation, though he has agreed to give the exclusive enjoyment of the "occupation to the lodger. Such a lodger could not bring ejectment or "trespass *quare clausum fregit*, the maintenance of the action depending "on the possession; and he is not rateable" *per* Blackburn J. in *Allan* v. *Liverpool* (2); and

although a person may be entitled to exclusive enjoyment of a holding that is so also

"where a guest in an inn, or a lodger in a house has a separate apart-"ment, or where a passenger in a ship has a separate cabin; in which case "it is clear that the possession remains in the inn-keeper, lodging-house "keeper, or ship owner" *per* Hill J. in *Smith* v. *St. Michael's Cambridge* (3), *Smith* v. *Lambeth* (4), *Curzon* v. *Westminster Corporation* (5).

Now, in determining the question whether the occupation of a holding is such that it renders the occupier liable to a personal tax imposed under section 85(*a*) regard must be had to the circumstances of each case, for

"it is the intention of the parties which has to be looked at; it is not "the words only that are to be regarded. The whole of the circumstances "must be taken into consideration. It is the substance of the transaction "rather than the form that determines the question whether such an exclusive occupation exists as will make the property rateable" *per*

(1) (1877) 2 A. C. 262, 276.
(2) (1874) L. R. 9 Q. B. 180, 191.
(3) (1860) 3 E. & E. 383, 390.
(4) (1882) 9 Q. B. D. 585; 10 Q. B. D. 327.
(5) (1917) 86 L. J. K. B. 198.

1928

AGHORE NATH HALDAR v. DWIJAPADA CHATTERJEE.

PAGE J.

Lopes L. J. in *Rochdale Canal Co.*, v. *Brewster* (1), *Lord Bute* v. *Grindall* (2), *The Queen* v. *Lady Emily Ponsonby* (3), *R.* v. *St. Pancras* (4), *Cory* v. *Bristow* (5), *Bradley* v. *Baylis* (6), *Holywell Union* v. *Halkyn* (7), *Liverpool Corporation* v. *Chorley* (8), *Jalpaiguri Municipality* v. *Jalpaiguri Tea Co., Ltd.* (9).

In my opinion, however, there cannot be separate occupiers of separate parts of one and the same holding assessable to the tax in respect of the portions that they respectively occupy, for the term "holding" in section 85(*a*) does not mean or include "part of a "holding" [sections 6 (3) (4) (5)]; although, no doubt, there may be more persons than one in joint occupation of a holding, in which case each of the joint occupiers is, or may be, amenable to the tax according to "his circumstances and property within the "municipality" *Jalpaiguri Municipality* v. *Jalpaiguri Tea Co., Ltd.* (9), *R.* v. *Paynter* (10).

Reliance was placed by the respondent on section 15 (*iii*), but section 85 and section 15 do not relate to the same subject-matter. In enacting section 15 the Legislature was not concerned with the incidence of taxation, but with the qualifications for the electoral franchise, and in section 15 (*iii*) where the words "occupies "a holding or part of a holding" occur, the Legislature were prescribing the qualifications of one class of electors, upon the supposition that persons who had passed one of the tests therein set out and were occupying a holding or a part of a holding rated at not less than a certain sum probably were possessed of sufficient perspicacity and intelligence to exercise the electoral franchise in a reasonable way. In section

(1) [1894] 2 Q. B. 852, 858.
(2) (1786) 1 T. R. 338; 2 H. Bl. 265.
(3) (1842) 3 Q. B. 14.
(4) (1877) 2 Q. B. D. 581.
(5) (1877) 2 A. C. 262.
(6) (1881) 8 Q. B. D. 195.
(7) [1895] A. C. 117.
(8) [1913] A. C. 197.
(9) (1921) 26 C. W. N. 311.
(10) (1845) 7 Q. B. 255.

85 the Legislature were concerned with the imposition of taxation, and the term "holding" in that section, in my opinion, bears the meaning attributed to it in section 6 (*3*), *viz.*, "land held under one title of agree-"ment and surrounded by one set of boundaries" [*Syed Shah Hamid Hossain* v. *Patna Municipality* (1)], and does not, and cannot reasonably be construed to, mean or include a part of a holding. Now, applying the tests that I have endeavoured to explain to the facts of the present case, in my opinion it is clear that the appellant did not "occupy a holding" within section 85(*a*), for it cannot reasonably be contended that he was in occupation of the hostel, and further, his right to the use and enjoyment of a seat or bed on the upper storey of the hostel was not such occupation as would render him liable to assessment under section 85(*a*).

For these reasons the appeal will be allowed with costs, the decree of the lower Appellate Court will be discharged, and the decree of the trial Court restored. The appellant is entitled also to his costs in the lower Appellate Court.

MALLIK J. I agree.

B. M. S. *Appeal allowed.*

(1) (1911) 17 C. W. N. 812.