

APPELLATE CIVIL.

Before Guha and M. C. Ghose JJ.

BIJAYKUMAR ADDY

v.

THE CORPORATION OF CALCUTTA.*

1932

June 30 ;
July 4, 7.

Municipality—'Bâzâr', if includes 'hâts' or periodical collection of shops or stalls—Power to extend limits—Calcutta Municipal Act (Beng. III of 1923), ss. 3 (5), 400.

A *hât* or a place, where the sellers of commodities assemble one or two days in the week and where no one has any sort of a right of occupying any particular spot for the sale of his goods, is a *bâzâr* within the meaning of section 3(5) of the Calcutta Municipal Act.

The power given to the Corporation under section 400 of the Calcutta Municipal Act to define the limits of a *bâzâr* includes the power to extend the limits once defined.

Palmer v. Thatcher (1) and *Rothschild & Sons v. Commissioners of Inland Revenue* (2) referred to.

SECOND APPEAL by the plaintiffs and cross-objection by the municipality, defendant.

The facts and arguments are fully set out in the judgment.

Sharatchandra Raychaudhuri and *Gourmohan Datta* for the appellants.

Brajlal Chakrabarti and *Gopendrakrishna Banerji* for the respondent.

Cur adv. vult.

GUHA J. The plaintiffs in the suit, out of which this appeal has arisen, prayed for a declaration that the Corporation of Calcutta had illegally declared premises No. 56, Chetlâ Road, a *bâzâr*, and for a further declaration that the

*Appeal from Appellate Decree, No. 809 of 1930, against the decree of Bakulal Biswas, First Additional Subordinate Judge of 24-Parganas, dated Oct. 1, 1929, affirming the decree of Dheerendranath Basu, First Munsif of 24-Parganas, dated Feb. 13, 1929.

(1) (1878) 3 Q. B. D. 346.

(2) [1894] 2 Q. B. 142.

action of the Corporation in extending the limits of the *bâzâr* to premises Nos. 56/1, 56/2, 56/3 and 58, Chetlâ Road, was *ultra vires* and without jurisdiction. The plaintiffs also prayed for permanent injunction in the matter of the prosecution of the plaintiffs before the municipal magistrate on failure to comply with the Corporation's requisition to make improvements of the area comprised in the premises mentioned above. The plaintiffs' claim in the suit was resisted by the Corporation of Calcutta, who claimed that the action of the Corporation, to which reference had been made in the plaint, was legal and *intra vires*, and that the premises mentioned above in regard to which the plaintiffs were served with requisition for making improvement constituted a *bâzâr* as defined by the Calcutta Municipal Act. The courts below have agreed in holding that premises No. 56, Chetlâ Road was a *bâzâr*, but that the act of the Corporation in including premises Nos. 56/1, 56/2, 56/3 and 58, Chetlâ Road within the limits of the *bâzâr* at No. 56, Chetlâ Road, was *ultra vires*. The courts below have agreed in granting consequential reliefs, following upon their decision as mentioned above. The plaintiffs have appealed to this Court from the decision of the courts below, so far as it went against them in regard to premises No. 56, Chetlâ Road; and cross-objections have been preferred by the Corporation of Calcutta, respondent in this appeal, challenging the decision of the courts below holding that the action of the Corporation, so far as it concerned the other premises Nos. 56/1, 56/2, 56/3 and 58, Chetlâ Road, was *ultra vires*.

The first question requiring consideration in this appeal is whether premises No. 56, Chetlâ Road was legally declared to be a *bâzâr*. If that question be decided against the plaintiffs appellants, questions relating to the action of the Corporation of Calcutta in regard to the other four premises mentioned above would have to be considered in disposing of the cross-objections by the respondent in the appeal.

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The premises No. 56, Chetlâ Road is the *khâs* property of the plaintiffs, and is known as *Jâmâhâtâ* or *Darjîhâtâ*, where, on every Wednesday, a *hât* is held for the sale of ready-made clothes, such as shirts, coats and other wearing apparel; and many hundreds of sellers with their goods congregate there. The Munsif made a local inspection of the place, and, in his opinion, as recorded in his judgment, the place "was of enormous dimension". According to the plaintiffs themselves, the sellers congregate under a structure made of corrugated iron sheets, once a week, and the sellers pay tolls to the plaintiffs. The question then is whether or not No. 56, Chetlâ Road is a "*bâzâr*", which, under the Calcutta Municipal Act, 1923, means "any place of trade (other than a "market) where there is a collection of shops". It has been pointed out that a shop, according to the Oxford Dictionary, is "a building or room set apart "for the sale of merchandise". In Bouvier's Law Dictionary, we find, "a place kept and used for the "sale of goods" is a shop. The real meaning of the word "shop", as used in the Calcutta Municipal Act, must, however, be ascertained, according to the meaning which the word has acquired in the country or the locality where the statute is applicable, and that must be taken to be the ordinary meaning of the word. In Bengal generally, *hâts* are held on a particular day or days in a week, while *bâzârs* are held daily. The *hâts* and *bâzârs* consist of a number of shops, large and small, these shops are places, in which goods are sold by retail. The meaning given to a *bâzâr* by the Calcutta Municipal Act does not, therefore, militate against the ordinary meaning of the word, and a *bâzâr*, which is known as a *hât*, for the reason that it is held on a particular day or days in the week, would not cease to be a *bâzâr*. That the sellers of commodities assemble only on one day at a *bâzâr*, and have no sort of right of occupying any particular place for the sale of their commodities cannot have the effect of taking the place occupied by them, out of the category of shops—a collection of

which would ordinarily be denominated a *bâzâr*, and is a *bâzâr* within the meaning of the Calcutta Municipal Act. It would appear that section 336 of the Bengal Municipal Act, defining a market to be a number of shops, stalls, or standings, erected for the sale of goods, is more in accordance with the state of things prevalent in this country than the somewhat artificial distinction made by the Calcutta Municipal Act, which cannot be overlooked; as between a market and *bâzâr*, and a stall and a shop, by provisions contained in sections 3(5), 3(39), 399 and 400 of the Act. It may sometimes be difficult to ascertain what the legislature exactly meant, but we must determine what its language means: *Palmer v. Thatcher* (1), *Rothschild v. Commissioners of Inland Revenue* (2). On giving a plain meaning to the language used in section 3(5), we have no hesitation in coming to the conclusion that premises No. 56, Chetlâ Road, described as a *Jâmâhâtâ* or *Darjihatâ* is a place of trade, where there is a collection of shops, and, as such, the act of the Corporation of Calcutta in declaring the same to be a *bâzâr*, was not *ultra vires* or illegal in any way. This disposes of the appeal by the plaintiffs in the suit; the declaration prayed for by the plaintiffs that the premises No. 56, Chetlâ Road, was not a *bâzâr* must be refused.

As indicated already, the respondent in this appeal has preferred cross-objection directed against the decision arrived at by the courts below that the act of the Corporation of Calcutta in extending the limits of the *bâzâr* to premises Nos. 56/1, 56/2, 56/3 and 58, Chetlâ Road, was *ultra vires*. The position, so far as this part of the case before us is concerned, appears to be this: the four premises mentioned above are the front portion of premises No. 56, Chetlâ Road, and they abut on the public road; they are held by tenants settled by the plaintiffs as the owners, the tenants so settled have their permanent shops there, which have been separately assessed and

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numbered by the Corporation, and, in respect of which, separate licenses are granted by the Corporation, license taxes being paid by the shopkeepers themselves. As held by us, premises No. 56 is a *bâzâr*, and the question is whether the Corporation had the power, vested in it under the law, to determine the limits of that *bâzâr* by the inclusion of the four other premises mentioned above. The provisions contained in section 400 of the Calcutta Municipal Act, under which the Corporation acted in this behalf, give power to define the limits of any *bâzâr*. The power to define limits must, in our judgment, include the power to extend the limits according to the facts and circumstances of a particular case. If, in the opinion of the Corporation, it was expedient or necessary to include premises Nos. 56/1, 56/2, 56/3 and 58, Chetlâ Road within the limits of the *bâzâr* at No. 56, the action taken by the Corporation in this behalf could not be characterised as *ultra vires* or illegal. The resolution of the Calcutta Corporation, Ex. A(3), passed on the 12th May, 1926, shows clearly that these four premises along with premises No. 56 were declared to be a *bâzâr*, and the previous resolution of the Corporation, dated the 16th September, 1925, defining the limit of the said *bâzâr*, under section 400 of the Calcutta Municipal Act, was adhered to. It would be doing violence to the language of the statute if we were to hold that there must be a previous resolution passed, before action could be taken under section 400 of the Act, for the purpose of defining the limits of a *bâzâr*, with a view either to extend the limits or curtail the same, as the necessity of a case might require. Both the things could, under the law, as it stands, be done at the one and the same time, as it appears to have been done in the case before us. The fact that the shops in the four premises in question were occupied by tenants under the plaintiffs could not affect the operation of section 400 in any way. The provisions of the law, as contained in sections 399 and 400, speak of both the owner and the

occupier, and it may be open to the owner or the occupier to raise any objection that he may be entitled to raise, when the Corporation takes action under any of those sections. It is somewhat difficult to appreciate how, in the face of definite provisions of law, the "strong and valid reasons," mentioned in the judgment of the trial court, and upon which stress was laid in the course of argument before us, could weigh in favour of the plaintiffs in the suit; nor is it possible to hold that there was any equity in favour of the plaintiffs which could make the action of the Corporation *ultra vires*. The position that the shop-keepers, occupying the premises in question, as tenants of the plaintiffs, had been granted separate licenses, could not possibly stand in the way of amalgamation of these shops with the *bâzâr* at No. 56, Chetlâ Road; and there was no question of unfairness on the part of the Corporation in its having taken action under section 400 of the Calcutta Municipal Act. Our conclusion, therefore, is that the courts below were not justified in granting a declaration to the plaintiffs in the suit that the act of the defendant Corporation in including premises Nos. 56/1, 56/2, 56/3 and 58, Chetlâ Road within the declared *bâzâr* at No. 56, Chetlâ Road, was *ultra vires*. It may be open to the plaintiffs, on a prosecution being started by the Corporation against them, to raise in defence, any objection that may be raised under the law, as the owners and not the occupiers of these premises, which, in our judgment, have legally been included within the limits of the *bâzâr* at No. 56, Chetlâ Road.

In the result, the appeal by the plaintiffs is dismissed, and the cross-objection preferred by the defendant respondent is allowed; the plaintiffs' suit is dismissed. The parties are to bear their own costs in all the courts.

M. C. GHOSE J. I agree.

Appeal dismissed.

Cross-objection allowed.

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