

LETTERS PATENT APPEAL.

Before C. C. Ghose A. C. J. and Pearson J.

THE CHAIRMAN OF THE COMMISSIONERS OF THE HOWRAH MUNICIPALITY

1931

Aug. 20;
Sep. 7.

v.

HARIPADA RAY CHAUDHURI.*

Municipality—Notification extending portions of the provisions of the Calcutta Municipal Act of 1899 to Howrah, if valid after repeal of the Act—Arrears of rates and taxes regarding any holding in Howrah, if a first charge on the holding under the notification—Calcutta Municipal Act (Beng. III of 1899), ss. 228, 641—Calcutta Municipal Act (Beng. III of 1923), ss. 205, 540, 541—Bengal General Clauses Act (Beng. I of 1899), s. 25.

A notification † of 1908 extending *inter alia* the provisions of section 228 of the Calcutta Municipal Act of 1899 with modifications to Howrah is kept alive by virtue of the provisions of section 25 of the Bengal General Clauses Act of 1899 in spite of the repeal of the former Act by the Calcutta Municipal Act of 1923; but the said notification is now entirely nugatory for the purpose of making the arrears of consolidated rates and taxes due in respect of any holding in Howrah, a first charge on the same, as it does not import into its contents the provisions of section 205 of the Calcutta Municipal Act of 1923 which substantially corresponds to section 228 of the repealed Act.

*Letters Patent Appeals, Nos. 3 and 4 of 1931, in Appeals from Appellate Decrees, Nos. 479 of 1929 and 2828 of 1928.

†The notification was published in the *Calcutta Gazette* of the 15th of January 1908 at pages 5 and 6 of Part 1B. The relevant portion of it runs as follows:—

No. 81M.—The 13th January, 1908.—In exercise of the powers conferred by section 641, sub-section (2) of the Calcutta Municipal Act, 1899, the Lieutenant-Governor is pleased to extend to the town of Howrah the portions of that Act which are set forth in the annexure to this notification, subject to the modifications and restrictions shown in antique type in that annexure.

ANNEXURE.

Portions of the Calcutta Municipal Act 1899 extended to Howrah with modifications and restrictions shown in antique type.

228. **Any rate or fee due to the Municipal Commissioners** in respect of any building or land shall, subject to the prior payment of the land revenue, if any, due to the Government thereupon, be a first charge upon the said building or land and upon the moveable property, if any, found within or upon such holding or land and belonging to the person liable for such **rate or fee.**

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APPEALS under section 15 of the Letters Patent by
the plaintiff appellant.

The material facts are stated in the judgment.

*Pugh, Manmathanath Ray, Suryakumar Aich and
Bholanath Ray* for the appellant.

Bjankumar Mukherji for the respondents.

Cur. adv. vult.

GHOSE A. C. J. AND PEARSON J. The facts involved, shortly stated, are as follows: The Chairman of the Municipal Commissioners of Howrah instituted two suits against the present respondents for realisation of arrears of municipal taxes due on a holding situate within the limits of the Howrah Municipality. He prayed for a declaration that the said arrears formed a charge on the holding in question and for an order that he might be at liberty to enforce the said charge. The Munsif decreed the two suits and thereafter appeals from the decision of the Munsif by the present respondents were dismissed by the Subordinate Judge. Thereafter, they (the present respondents) preferred two Second Appeals to this Court. These appeals came on for hearing before Mr. Justice Mukerji, when, by his judgment, dated the 20th January, 1931, he allowed the appeals. Mr. Justice Mukerji was of opinion that the decrees, in so far as they declared a charge and provided for the enforcement thereof, could not be supported. The Chairman of the Municipal Commissioners of Howrah has now preferred the present appeals.

It appears that, by a notification of 1908 issued under section 641 of the Calcutta Municipal Act (Bengal Act III of 1899), some of the provisions of the Calcutta Municipal Act, with certain alterations were extended to the town of Howrah. One of these

provisions was section 228 of that Act, which ran as follows :—

The consolidated rate due in respect of any building or land shall, subject to the prior payment of the land revenue, if any, due to the Government thereupon, be a first charge upon the said building or land and upon the moveable property, if any, found within or upon such building or land and belonging to the person liable for such rate.

The Calcutta Municipal Act of 1899 has now been repealed and has been replaced by the Calcutta Municipal Act of 1923 (Bengal Act III of 1923). Section 228 of the Calcutta Municipal Act of 1899 corresponds to section 205 of the present Calcutta Municipal Act of 1923. Section 540 of the Calcutta Municipal Act of 1923 reserves in the Local Government the power to determine and declare by notification their intention to extend to the municipality of Howrah or to any part thereof, subject to the notifications and restrictions, if any, specified in such notification, all or any portions of the said Act of 1923 which do not already apply thereto. Section 541 of the said Act gives the Local Government power to extend by notification the said portions, after considering the objections that may be preferred against the notifications intended to be issued under section 540. It is common ground that no such notifications under the Calcutta Municipal Act of 1923 have been issued. The question for decision in these appeals is whether, by the repeal of the Calcutta Municipal Act of 1899 by the Act of 1923, the provisions of the Bengal Municipal Act (Bengal Act III of 1884), which had ceased to apply to Howrah by reason of the notification of 1908, were revived and whether the same came to be in force in Howrah.

It appears to be reasonably clear, from a consideration of the relative provisions in the Bengal Municipal Act, that arrears of rates have to be realised by issue of distress warrants and that there is no provision in the Bengal Municipal Act, under

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which the municipal rates and taxes would operate as a charge on any holding. It is argued on behalf of the appellant before us that, by virtue of the provisions of section 25 of the Bengal General Clauses Act (Bengal Act I of 1899), the Government notification extending the operation of section 228 of the Calcutta Municipal Act of 1899 to the Howrah Municipality continues to be still in force and the notification must be deemed to have been issued under the provisions so re-enacted in the Act of 1923. In passing, it may be stated that Mr. Justice Mukerji was of opinion that section 25 of the Bengal General Clauses Act could not possibly assist the present appellant. Mr. Justice Mukerji's reasons are as follows :—

Section 25 of the Bengal General Clauses Act, in my opinion, means that, if a notification was issued *under* a repealed enactment, it would be deemed to have been issued under the corresponding re-enacted provisions, until or unless it is superseded. Applying this section to the present case, the notification of 1908, issued under section 641 of the Act of 1899, will be deemed as having been issued under section 541 of the Act of 1923. But, the whole of the Act of 1899 having been repealed, section 228 of that Act has also been repealed. It is not as if section 25 of the Bengal General Clauses Act will authorise a re-adjustment of the contents of the notification so as to substitute for section 228 of the Act together with the modification, which formed the subject matter of that notification, the provision contained in section 205 of the Act of 1923. What section 25 means is that the notification under the repealed Act remains intact and attaches to the new Act as having been made under that particular provision of the new Act, which is a re-enactment of the old one, under which the notification was issued. I have been asked, on behalf of the respondents, to treat the notification as prescribing a rule, worded in the language of section 228 of the old Act and not extending the section itself and to hold that the same rule should now be regarded as prescribed by a notification under section 541 of the new Act. But the answer to this argument is that the provision, unless it is a part of the Act, will have no statutory force; and treated as a rule, it will be wholly *ultra vires*.

In our opinion, the view taken by Mr. Justice Mukerji is correct. As we understand the matter, it amounts to this: It is true that the notification is kept alive by virtue of section 25 of the General Clauses Act; but the question is whether the notification, having regard to the events which have happened, is not now entirely nugatory because the notification

does not import into the contents thereof the provisions of the corresponding section of the new Act, *i.e.*, the Calcutta Municipal Act of 1923. In our opinion, the notification is entirely nugatory and, that being so, we are of opinion that the judgment of Mr. Justice Mukerji must be affirmed. In that view of the matter, the present appeals must stand dismissed with costs.

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Appeals dismissed.

A. K. D.