ORIGINAL CIVIL.

Before Lort-Williams J.

CORPORATION OF CALCUTTA

1936
May 26.

v.

PHUL KUMAREE DASEE.*

Municipality—Consolidated rates—Occupier's share of rate, if first charge on premises—Construction—Calcutta Municipal Act (Beng. III of 1923), s. 205.

Section 205 of the Calcutta Municipal Act makes the consolidated rate, whether payable by the owner or the occupier, a first charge on the land or building concerned.

On a true construction of the section, the words "and belonging to the said person" can have reference only to the words immediately preceding, namely, "movable property found within or upon such land or building."

Akhoy Kumar Banerjee v. *Corporation of Calcutta* (1) and *Secretary of State for India* v. *Bombay Municipality* (*No. 1*) (2) followed.

Section 205 of the Calcutta Municipal Act is not consistent with the scheme of the Act and should be redrafted suitably.

ORIGINAL SUIT.

The facts of the case and arguments of counsel appear fully from the judgment.

N. C. Chatterjee and *S. B. Sinha* for the plaintiffs.

S. N. Banerjee (Jr.) for the defendant.

LORT-WILLIAMS J. The plaintiff Corporation claims the sum of Rs. 394-14 on account of the consolidated rate payable in respect of land and buildings in premises No. 16/1, Loudon Street, Calcutta. Further, it claims a declaration of first charge on the premises for that sum with costs and interest, and a decree under O. XXXIV, r. 4, of the Code of Civil Procedure in Form 5A in App. D to the First Schedule.

*Original Suit No. 731 of 1935.

(1) (1914) I.L.R. 42 Cal. 625. (2) (1935) I. L. R. 59 Bom. 681.

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The sum claimed represents arrears of the occupier's share of the rate payable in respect of these premises and the defendant contends that the Corporation cannot obtain a declaration of first charge on the premises in respect of the occupier's share, because by so doing it would be levying the entire consolidated rate upon the owner of the premises: whereas the scheme of the Calcutta Municipal Act, 1923, is to divide the incidence of the rate between the owner and the occupier.

Section 205 of the Act provides that—

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

On behalf of the plaintiff it has been urged that the meaning of this section is that the consolidated rate whether payable by the owner or the occupier in respect of any land or building shall be a first charge upon that land or building. Also, that it is a first charge upon any movable property found within or upon such land or building, it if belongs to the person by whom the rate claimed is payable under the Act.

It is contended on behalf of the defendant that the words at the end of the section "and belonging "to the said person" refer not only to the words immediately preceding, namely, "movable property found "within or upon such land or building" but also to the words "land or building" which immediately precedes the words to which I have just referred; that is to say, the argument is that there cannot be a first charge on the land or building except for rates payable by the person owning that land or building, just as there cannot be a fixed charge on the movable property within or upon such land or building except in respect of rates payable by the owner of such movable property.

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In order to decide this point of construction it is necessary first to ascertain what is the scheme of the Act with regard to the payment of rates, and whether this section so construed is in harmony with that scheme and with the rest of the sections of the Act.

Section 124 provides that a consolidated rate not exceeding 23 per cent. on the annual valuation may be imposed by the Corporation upon all lands and buildings in Calcutta.

Section 149 provides that one half of the consolidated rate shall be payable by the owner of the lands and buildings and the other half by the occupiers thereof.

Those sections fall within Chapter X which deals with the consolidated rate, of Part IV which deals with taxation. The next chapters deal with other forms of taxation, until Chapter XVI is reached and that deals with the recovery of the consolidated rate and other taxes.

Section 188, which is the first section of that chapter, provides that the provisions of this chapter shall be deemed to be in addition to, and not in derogation of, any powers conferred by or under other chapters of this Act for the collection or recovery of the consolidated rate and other taxes. The succeeding sections deal with the recovery of rates and taxes personally against those by whom the rates and taxes are payable.

Section 199 gives power to recover the owner's share of the rate from the occupier, and, except for s. 205 which is in the same chapter, there is no provision in the Act by which the owner can be made liable for the occupier's share of the rate.

The scheme of the Act, therefore, seems to make the occupier primarily liable for the consolidated rate, and in this view s. 205 does not appear to be consistent with such a scheme. It is the only section, which makes the owner liable for the occupier's

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share of the rate. Section 205 is very similar to s. 212 of the City of Bombay Municipal Act, which provides that—

> Property-taxes due under this Act in respect of any building or land shall, subject to the prior payment of the land-revenue, if any, due to Government thereupon, be a first charge upon the said building or land and upon the goods and chattels, if any, found within or upon such building or land and belonging to the person liable for such taxes.

Apparently, this Act was passed one year before the original Calcutta Act, and it looks very much as if the analogous section of the Calcutta Act was copied from or moulded upon the section in the Bombay Act. In the Bombay Act, however, the scheme seems to be different. Section 146 of that Act provides that property-taxes shall be leviable primarily upon the actual occupier of the premises if such occupier holds the said premises immediately from Government or from the Corporation or from a *fazendâr*, otherwise the said taxes shall be primarily leviable upon the lessor or superior lessor or the person who has the right to let the premises.

Thus, the incidence of the rate is placed primarily upon the owner rather than the occupier. That being so, s. 212 of that Act is in harmony with the rest of the scheme.

If, therefore, I had to consider this question apart from previous decisions, I should have been inclined to interpret the section in favour of the argument raised on behalf of the defendant, because such an interpretation would bring the section into harmony with the rest of the scheme of taxation under the Act. But looking at the wording of the section, apart from such consideration, I do not think that there can be any doubt that the meaning is that the words "and belonging to the said person" can have reference only to the words immediately preceding, *viz.*, "movable property found within or "upon such land or building". That is, in my opinion, the correct grammatical construction of the clause.

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But this point has been the subject of a previous decision of this Court in the case of *Akhoy Kumar Banerjee* v. *Corporation of Calcutta* (1).

In that case Sir Asutosh Mookerjee had to consider the analogous section of the old Act, and the contention that s. 228, analogous to the present s. 205, ought to be interpreted so as to restrict the charge on immovable property to arrears for which the owner was liable. The owner in that case contended, under s. 223, that he was liable only to one year's arrears. The learned Judge held that this contention was fallacious as the two sections were concerned with two entirely different aspects of the matter. Section 223 dealt with the question of personal liability (liability in *personam*) of the purchaser of the premises for arrears unsatisfied when the title vested in him, whereas s. 228 dealt with the question of the liability of the premises (liability in *rem*) for the rates due thereon. Section 228 was perfectly general in its terms and made the consolidated rate as it accrued due from time to time, a first charge on the property. He added that no attempt had been made to support the view, unsuccessfully put forward in the Court below, that the expression "belonging to the person liable for such "rate" in s. 228 qualified not only the expression "movable property," but also the expression "build-"ing or land".

Similarly, the Bombay Act has been interpreted by Beaumont C. J. in *Secretary of State for India* v. *Bombay Municipality* (*No. I*) (2), in which this point, among others, was considered and discussed at great length. After referring to s. 212 the learned Judge said that the Advocate-General had suggested that the charge under that section is only imposed upon the interest in the land of the person liable to pay the tax. In his opinion, that construction was quite impossible; the tax is a charge in terms upon the building or land, and not upon any particular interest therein.

(1) (1914) I. L. R. 42 Cal. 625. (2) (1935) I. L. R. 59 Bom. 681.

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To my mind, the strongest argument advanced on behalf of the plaintiffs on this point is that Sir Asutosh Mookerjee's judgment was given in 1914, and the Act was amended 10 years after. But no alteration was made in terms of this section. I think it must be held, therefore, that the construction put upon the analogous section by Sir Asutosh Mookerjee is in consonance with the intention of the legislature.

The clause, in my opinion, is not very happily worded and it should be suitably redrafted when opportunity arises. One effect of this interpretation is curious, because though the Corporation may take the owner's land in respect of the occupier's tax, they cannot take his goods which happen to be upon the same premises, that is, they cannot have a first charge upon those goods. Another curious result is that, as the Act provides that persons may approach the Corporation for the purpose of getting their names entered in the assessment book as owners or occupiers, it follows that the person liable as owner in respect of his own or the occupier's tax may not be the actual owner of the land or building. Thus, the owner of the land or building may be responsible for rates payable by two other persons whose names are entered in the books of the Corporation as owner and occupier of the premises. For these reasons, and especially for the reason that as the section stands at present it seems out of harmony with the scheme of the Act, I trust that an early opportunity will be taken to make the position more clear and definite.

The result is that there must be judgment for the plaintiffs and a declaration made in the terms of the prayer of the plaint.

Attorney for plaintiff: *T. C. Mitra.*

Attorneys for defendant: *S. S. Banerjee & Co.*

S. M.