

complainant had sent a notice to the first accused, whereby he acknowledged the first accused's possession and stated that he would be held responsible for all damage. The Sabha only authorized the complainant to endeavour to remove the paddy peaceably and if he met with any resistance directed him to resort to a Civil Court. The complainant endeavoured to take possession of the paddy forcibly with his servants and the acts complained of were done by the first accused and the petitioners in resisting this attempt to take possession and in maintaining the possession of the first accused.

In the circumstances no offence was committed and the petitioners and the first accused should have been acquitted.

We set aside the convictions and acquit and discharge all the petitioners.

The fines, if paid, will be refunded.

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SAMY AIYAR.

APPELLATE CRIMINAL.

Before Mr. Justice Davies and Mr. Justice Moore.

KING-EMPEROR (APPELLANT),

v.

ALEXANDER ALLAN (ACCUSED), RESPONDENT.*

1901,
August 7.
October 18.

Madras District Municipalities Act—Act IV of 1884, s. 63 (3)—Madras District Municipalities Amendment Act—Act III of 1897, s. 49—“Lands used solely for agricultural purposes”—Liability to tax.

By sub-section (3) of section 63 of the Madras District Municipalities Act, 1884, as amended by the Madras District Municipalities Amendment Act, 1897, lands used “solely for agricultural purposes” are exempted from the enhanced rates of taxation that may be imposed in certain cases under that sub-section:

Held, that lands on which potatoes, grain, vegetables, &c., are grown, as well as pasture lands, are used “solely for agricultural purposes” within the meaning of the sub-section.

APPEAL by the Public Prosecutor under section 417 of the Code of Criminal Procedure against an order of acquittal. The case had come before a Bench of Magistrates on a previous occasion when defendant was acquitted. An appeal was then preferred against

* Criminal appeal from an order of acquittal passed in Summary Case No. 348 of 1900 by a Bench of Magistrates at Ootacamund.

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that acquittal, when the High Court set aside the order of acquittal and remanded the case for trial, as there were questions which the Bench had left undecided (*Queen-Empress v. Allan*(1)).

The facts, which are more fully set out in the report of the previous case, were that the defendant objected to a demand made by the Ootacamund Municipality for land, water and drainage tax for the years 1897-98 and 1898-99, amounting to about Rs. 335 on lands which were admittedly not appurtenant to any building or attached thereto for any purpose, but which were held by defendant within municipal limits. The chief ground of objection was that the lands were used solely for agricultural purposes, and were consequently exempt from taxation by reason of the proviso to clause 3 of section 63 of the Madras District Municipalities Act of 1884 (Madras Act IV of 1884), as amended by the Madras District Municipalities Amendment Act of 1897 (Madras Act III of 1897). A statement containing a description of the lands was made by the Municipal overseer and filed as exhibit D, the correctness of which was not traversed by the defendant. In this, certain lands, over 44 acres in extent, were described as "waste." These were said by the defendant to be under grass—a statement which the prosecution did not deny. After considering the meaning and application of the term "agricultural purposes" the Bench found that 44·56 acres were let for cultivation, of which 35·05 were in actual cultivation, chiefly with potatoes and koral, a species of grain, one acre only was being used for growing market vegetables, and 9·51 acres were waste. They also found that four fields Nos. 117, 118, 119 and 120, aggregating 44·07 acres were "given for cattle grazing to Mrs. Reynolds." A majority held that the 44·56 acres let for cultivation as well as the 44·07 acres let for pasturage were lands used solely for agricultural purposes and were not liable to taxation. They accordingly acquitted the defendant under section 245 of the Code of Criminal Procedure.

Against that order of acquittal the Public Prosecutor preferred this appeal.

The Public Prosecutor for appellant.

Mr. W. Barton for respondent.

JUDGMENT.—This is an appeal preferred on behalf of Government from a judgment of the Bench of Magistrates in Ootacamund

acquitting the defendant Mr. Allan who had been prosecuted by the Municipality under section 103 of the Madras Municipalities Act (IV of 1884 as amended by Act III of 1897).

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The only question which has arisen for decision at the hearing of this appeal is as to whether all or any portion of the lands owned by Mr. Allan, the details as to which are given in exhibit D, should be held to be lands used solely for agricultural purposes and as such exempted from the enhanced rates of taxation that may be imposed in certain cases under section 63, sub-section 3 of the Madras Municipalities Act.

The expression "agricultural" is not defined in the Act. The only decisions of this Court to which our attention has been drawn in which an attempt has been made to define the word "agricultural" are that of *Kunhayen Haji v. Mayan*(1), where it was held that a lease of a coffee garden or a lease of certain coffee plants in a garden, for as to this the judgment is not very clear, is not an agricultural lease within the meaning of section 117 of the Transfer of Property Act and the judgment in Civil Revision Petition No. 337 of 1900 (*Murugesu Shetti v. Chinnathambi Goundan*(2)) in which it has been decided that a lease of land for betel cultivation should be held to be an agricultural lease in so far as that section is concerned.

On referring to the Agricultural Rates Act (59 and 60 Vict., cap. 16) passed in 1896 for the purpose of exempting the occupiers of agricultural lands in England from paying as high rates on such lands as those levied on buildings and other hereditaments we observe (section 9) that "agricultural land" is there defined as follows:—The expression "agricultural land" means any land used as arable, meadow, or pasture ground only, cottage gardens exceeding one-quarter of an acre, market gardens, nursery grounds, orchards, or allotments, but does not include land occupied together with a house as a park, gardens other than as aforesaid pleasure grounds or any land kept or preserved mainly or exclusively for purposes of sport or recreation or land used as a race course.

We also find that in the Oxford English Dictionary edited by Dr. J. A. H. Murray, which is admitted to be the standard authority in such matters, agriculture is defined as follows:—"The

(1) I.L.R., 17 Mad., 98.

(2) I.L.R., 24 Mad., 421.

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science and art of cultivating the soil, including the allied pursuits of gathering in the crops and rearing livestock, tillage, husbandry, farming (in the widest sense).” We also note that it is there pointed out that the restriction of the word agriculture to tillage, as in the following quotation, is rare. The lands were not fields for agriculture but pastures for cattle. We believe that we cannot do better than follow these definitions in attempting to decide what, for the purposes of sub-section 3 of section 63 of the Municipalities Act, are or are not lands used solely for agricultural purposes. Referring again to exhibit D, we have no hesitation in holding that land on which potatoes, grain, vegetables, &c., are grown are lands used solely for agricultural purposes. We do not consider that any distinction can be drawn between large and small plots of lands on which roots or grain are cultivated. All such land must be held to be land used solely for agricultural purposes. We have next to consider the lands over 40 acres in extent entered in exhibit D as “waste.” Mr. Barton, on behalf of Mr. Allan, has urged before us that these so-called waste lands are pasture lands and as such should be held to be lands used solely for agricultural purposes. Turning again to the definition of the word “agricultural” which we have accepted we find that agricultural lands include lands set apart as “pasture ground only” and also lands used for “rearing livestock.” If, therefore, it could be shown that these so-called waste lands were in reality pasture grounds or lands used for rearing livestock, we should certainly decide that they were lands used solely for agricultural purposes. We cannot, however, hold on the evidence on the record that it has been shown that they are so used. All that we can find in the papers sent up bearing on the question as to how these lands are used is the following statement of the defendant Mr. Allan “Nos. 117, 118, 119 and 120 are in the occupation of Mrs. Reynolds; defendant receives no rent. Mrs. Reynolds pay the Government quit-rent; he uses it for grazing.” If this is all the evidence that is forthcoming as to how the lands are used, we should most certainly hold that they are not pasture grounds “or lands used for rearing livestock.” It is, however, urged by Mr. Barton that attention was not clearly drawn to this question when the case was before the Magistrates and that if opportunity be given to his client he will be able to put forward fuller and clearer evidence as to how this waste land is really

used. As it is most inadvisable that we should decide this question, which is one of some general importance, in a case in which all the evidence available as to the manner in which the lands are used is not on the record, we, under section 428 of the Criminal Procedure Code, send back the case to the Bench of Magistrates and direct them to take such further evidence as may be put forward by the Municipality and Mr. Allan as to the purposes for which the land shown in exhibit D as waste is used, the fullest details possible being given, and to submit the same for the consideration of this Court.

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The evidence of two witnesses, called for the defence, was taken by the Magistrates. This showed that the lands in question were used as pasture land.

The case again came before the same Bench, when the Court, after hearing the arguments of the same counsel, passed the following

JUDGMENT.—The further evidence shows clearly that the 44 acres odd regarding which we had some doubt are pasture lands and the learned Public Prosecutor does not dispute the fact. That being so it follows from the views we have already expressed that the land is used solely for agricultural purposes and is therefore exempt from taxation.

The appeal is therefore dismissed.
