APPELLATE CIVIL—FULL BENCH.

Before Mr. Justice Ayling, Mr. Justice Coutts Trotter and Mr. Justice Ramesam.

1922, February 21.

THE CHIEF COMMISSIONER OF INCOME-TAX, MADRAS (REFERRING OFFICER),

v.

ZAMINDAR OF SINGAMPATTI (ASSESSEE).*

Income-tax Act (VII of 1918)—Zamindari of Singampatti—Income derived from forests and fisheries—Liability to income-tax—Madras Regulation XXV of 1802, effect of.

Where the peshkash of a permanently-settled estate was fixed in commutation, not only of the rentals of the cultivated lands but also of all income which might be derived from forests or fisheries, *held*, that both under the terms of the sanad and of section 1 of Regulation XXV of 1802, these incomes were exempt from further taxation by the Government, and section 3 of the Income-tax Act did not abrogate this exemption.

Quaere.—Whether the income from forests and fisheries would not be "agricultural" income within the meaning of section 4 of the Act, and, therefore, not chargeable to income-tax.

CASE referred for the decision of the High Court under section 51 of Act VII of 1918 by the Secretary to the Chief Commissioner of Income-tax, Madras.

The material portions of the Letter of Reference are as follows:

(2) The Collector of Tinnevelly assessed the Zamindar of Singampatti for the year 1920-21 on an income of Rs. 65,080 of which Rs. 63,750 was derived from forests and fisheries within his estate. The Zamindar has appealed to the Board against the assessment and claims that income from forests and fisheries in a permanently-settled estate is exempt from income-tax.

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* Referred Case No. 12 of 1921.

(3) His contentions are (*a*) that the forests have been included in the zamin lands on which he has to pay peshkash, (*b*) that under clause (8) of the sanad granted to him no increase of the jumma or peshkash can ever be made under any circumstances and that tax levied on the income from the produce of forests within the zamindari is in effect an addition to the peshkash and therefore contrary to the terms of the sanad, and (*c*) that forest produce is of the nature of agricultural produce and that income derived from it is income derived from agriculture which is exempt from tax.

(4) The sanad granted to the Zamindar under the Permanent Settlement Regulation, 1802, specifies only the name of the three villages comprising the zamindari. It does not state that the forests or the hills referred to are included in the zamindari lands on which the peshkash to be paid to Government is fixed but it is pointed out on behalf of the Zamindar that the Privy Council have held in another connexion (vide I.L.R., 15 Madras, 101 to 111) that the tract of hills and forest near the zamindari are included in the sanad. There is nothing to show that in settling the peshkash of the zamin these hills and forests were taken into account as alleged.

Clause (8) of the sanad runs as follows: "Nor any increase of the *fixed* jumma be ever made under whatever charges or improvements your interests or your pleasure may lead you to introduce into the zamindari." The clause merely gives protection to the Zamindar from any enhancement of the fixed peshkash in case of subsequent improvements in the estate. On the other hand clause (4) of the sanad which enumerates the heads of revenue that the fixed jumma shall be exclusive of refers to 'personal and professional taxes' in the category and in the concluding portion of the clause the power to add to or abolish the items of revenue under any of these heads is distinctly reserved to Government.

Income-tax is essentially of the nature of a tax on a person, and it does not seem in the circumstances that it can be construed to be an addition to peshkash. In regard to the third contention of the Zamindar, the statement of receipts and expenditure filed by him show that the greater portion of the income is derived from sale of coupes, minor forest produce, sale of poles, etc., and the expenditure is mostly on establishment,

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travelling allowance and cutting of timber and to a small extent on plantation and sadalwar and printing charges. None of the items of expenses seems to be on agriculture proper.

(5) The question for decision is whether the income from this source falls under any of the exceptions mentioned in section 2 (1) (*a*) and (*b*) (1) of the Income-tax Act, 1918. Sub-clauses (*a*) and (*b*) apply to the same source of income from agriculture, although one refers to rent or revenue and the other to the direct practice of agriculture and the section is practically the same as section 5 (1) of the old Act II of 1886. It was held under the old Act that income derived by Zamindars from the produce of forests or jungle lands was not exempt as it was not income derived from lands used for agriculture. This has been the practice followed by the Board and in support of the position reference may be made to the discussions in I.L.R., 24 Madras, 421. Mr. Justice BHASHYAM AYYANGAR in discussing the meaning of agriculture stated that the primary meaning of agriculture is the cultivation of the ground "with the object of raising grain and other field crops for men and beasts and that in the more general sense it meant the cultivation of the ground for the purpose of procuring vegetables and fruits for men and beasts, including gardening or horticulture and the raising or feeding of cattle and other stock." And Mr. Justice SHEPPARD said that one "who planted and maintained trees for firewood or other such purposes" would not be called an agriculturist. The High Court in short held that the word "agriculture" includes the cultivation and the tillage of land for crops, grass, orchards and fruit trees, but does not include forestry.

(6) It seems from the above that forestry in all its branches, for example, quarrying stones or gravel, cannot be said to be agriculture and that the mere fact that forest land is susceptible of being used for agricultural purposes or that some of its produce is of the nature of agricultural produce is not enough to justify exemption; section 2 (1) refers to actual agriculture and the question will have to be decided on the merits in each case. As the question is of importance and as the assessee desires the decision of the High Court on it, I am asked to request that the case may be placed before the High Court and their decision communicated.

L. A. Govindaraghava Ayyar for assessee.—I contend (*a*) that by the terms of the sanad the items in respect of which income-tax is sought to be assessed are exempt. They were considered at time of settling the peshkash. (*b*) It is agricultural produce and as such exempt from income-tax.

(*a*) Reference was made to the various clauses of the sanad. The sanad provides that the revenue is not to be increased on any account or under any circumstances. Section 1 of Regulation XXV of 1802 was practically repeated in clause (2) of the sanad. The Income-tax Act has not repealed the Regulation. The later enactment does not set aside the earlier enactment unless it specifically does so: *Associated Newspapers, Limited* v. *City of London Corporation*(1), *Pole-Carew* v. *Gaddock*(2). The principle of construction is well set out in Maxwell on the Interpretation of Statutes, page 313.

(*b*) The Act does not define agriculture. 10 Ed. VII, Chapter 8 defines "agriculture." Reference made to Webster's Dictionary. In England income from land is assessed. In India agricultural land pays tax in the way of kist. At the time of settlement all potential increase in the revenue was considered. Fisheries also come within the definition "agriculture." When land passes to me fisheries thereon also pass to me. Land includes water and water includes the fish therein. Fisheries are therefore also granted to me under the sanad.

The Government Pleader (*C. Madhavan Nayar*) for Referring Officer.—Section 3 of the Income-tax Act applies to all incomes from whatever source derived. The only question for determination is whether the income from forests and fisheries falls under section 2 (1) (*a*) or

(1) [1916] 2 A.C., 429. (2) [1920] 3 K.B., 109.

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2 (1) (*b*) of the Act. The primary meaning of agriculture is culture of the land: Murray's Dictionary. Felled timber is not included: *Murugesa Chetti* v. *Chinnathambi Goundan*(1). See also *Raja of Venkatagiri* v. *Ayyapareddi*(2), *Inland Revenue Commissioners* v. *William Ransom & Son*(3). Only cultivable land was taken into account in fixing the peshkash: see Montgomery's Report.

The Court delivered the following OPINION:

This reference arises out of the assessment of income-tax under Act VII of 1918 of the income derived by the Zamindar of Singampatti from forests and fisheries within the ambit of his zamindari. The assessee objects to the assessment (1) on the ground that the income is agricultural income within the meaning of section 4 of the Act and, therefore, not chargeable to income-tax; (2) that the assessment is illegal as contravening the terms of his permanent sanad for the zamindari and the provisions of Regulation XXV of 1802.

It is convenient to consider first the effect of the sanad, a copy of which has been filed before us, and the terms of the Regulation. The sanad is a lengthy document largely reproducing the language of the Regulation under which it was granted. Its general effect is this—in view of the bad effect of fluctuations in the assessment of land revenue, both in obstructing the development of the country and diminishing the security of property, the British Government has resolved "to fix for ever a moderate assessment of public revenue on the lands" held by Zamindars and others; and to that end has fixed the permanent annual jumma (total demand) of the Singampatti zamindari at 2,300 star pagodas. Clause (4) of the sanad says:

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(1) (1901) I.L.R., 24 Mad., 421. (2) (1915) I.L.R., 38 Mad., 738, 741.
(3) [1918] 2 K.B., 709.

"This permanent assessment of the land on your zamindari is exclusive of the revenue derived from the manufacture and sale of salt and saltpetre, exclusive of the sayer or duties of every description, whether by sea or land, the entire administration of which the Government reserves to itself; exclusive of the abkāri or tax on the sale of spirituous liquors, and intoxication drugs; exclusive of the excise which is or may be levied on commodities or articles of consumption; exclusive of all taxes personal and professional, as well as of those from markets, fair and bazaar; exclusive of Lakhiraj lands (lands exempt from payment of public revenue) and of all other alienated lands paying a small quit rent (which quit rent unchangeable by you, is included in the assets of your zamindāri) and exclusive of all lands and Russooms heretofore appropriated to the support of Police establishment. The Government reserves to itself the entire exercise of its discretion in continuing or abolishing temporarily or permanently, the articles of revenue included, according to the custom and practice of the country, under the several heads above stated."

A later clause (No. 8) provides that no increase of the fixed jumma shall ever be made, whatever changes or improvements the grantee's interest or pleasure may lead him to introduce into the zamindari.

This is the grant under which the zamindari has been held since 1802. A dispute at one time arose as to whether it included the forest tracts with which we are now concerned, or only covered the villages and cultivated lands situated on the plains and contiguous thereto. This dispute was settled by the judgment of this Court in *Sivasubramanya* v. *Secretary of State for India*(1) confirmed on appeal by the Privy Council in the *Secretary of State for India in Council* v. *Nellakutti Siva Subramania Tevar*(2), and it was decided that the forest tracts also were included in the zamindari held under the sanad and that the latter was not confined to the plain

(1) (1886) I.L.R., 9 Mad., 285. (2) (1892) I.L.R., 15 Mad., 101.

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villages and cultivated tracts. The learned Government Pleader has however argued that the peshkash was calculated on the rental of cultivated lands actually received by the Zamindar at the time of the grant, and that no allowance was made for profits to be made out of forests and fisheries. He would have us therefore hold that income from such sources was not included in the jumma, which was commuted into a fixed peshkash, and is therefore assessable to tax apparently under any designation.

Admittedly there is no record of the basis of calculation of the peshkash for this zamindari. It is quite possible that only the rentals of cultivated lands were taken into account, receipts from other sources being at that time so small as to be negligible. But even assuming this to be so, it does not follow that the neglected items were not included in the commutation. On the contrary, it seems to us they must be held to be covered by the permanent annual jumma of the zamindari. But, in simple language, the effect of the document seems to be that, subject to the payment of the peshkash and the various demands referred to in clause (4), the zamindari is given to the zamindar to make what he can out of it (the possibilities of improvements and developments being distinctly contemplated) free of all further demands from Government. If it had been intended to exclude profits from forests and fisheries, such profits would surely have been mentioned in clause (4) along with such items as salt, sayer, abkāri, excise and markets. We may add that if the Government Pleader's contention is correct, then apart from the claim to ownership of the forests, which was first put forward by Government in 1865 and finally negatived by the Privy Council decision in 1891, it was at any time open to Government to add to the peshkash a direct cess on the forests, without having recourse to

the indirect medium of the Income-tax Act. As far as appears, there has never been any question of doing this.

It was argued that "Income-tax" is covered by the fifth item in clause (4) ("all taxes personal and professional"). We do not think this argument can be accepted. The last sentence in the clause shows that as regards clause (4) the Government had in mind items of taxation then in force; and income-tax is of much later intention. Exactly what imposts were had in mind under this head we are not in a position to say; but the allocation of the words "personal" and "professional" seems to suggest taxes on individuals by reason of their status (caste or calling). Power to levy a tax in the shape of a percentage on income derived from the zamindari itself would apply to the rental of cultivated lands just as well as to income from forests and would render entirely nugatory the guarantee of fixity of demand, which was the keynote of the Government's policy.

We can only conclude therefore that the peshkash was fixed in commutation, not only of the rentals of cultivated lands but also of all income which might be derived from forests or fisheries; and the sanad and Regulation alike make it clear that these incomes in the lands of the Zamindar were exempted from further taxation by the Government.

For the explicit nature of the exemption we may quote the words of section 1 of the Regulation, which recites that Government has resolved "to fix for ever a moderate assessment of public revenue on such lands, the amount of which shall never be liable to be increased under any circumstances"; and these words are reproduced in clause (2) of the sanad with the immaterial substitution of the word "change" for "increase."

That this exemption applies to taxes which might be imposed thereafter, as well as to taxes in force at the time

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of the sanad, is clear from the judgment of the House of Lords in *Associated Newspapers, Limited* v. *City of London Corporation*(1), and it is no less clear from the same judgment that although it is competent to the legislature to withdraw or modify such an exemption by subsequent enactment, this can only be done expressly and not in general terms or by implication. For the latter proposition we may also refer to Maxwell on Interpretation of Statutes (6th Edition) Chapter VII, section 3.

There is nothing in the Income-tax Act to indicate that the attention of its framers was ever drawn to Regulation XXV of 1802; and we find it impossible to treat as a legal and effective abrogation of the exemption the words of section 3:

"Save as hereinafter provided, this Act shall apply to all income from whatever source it is derived, if it accrues or arises or is received in British India, or is, under the provisions of this Act, deemed to accrue or arise or to be received in British India."

In our opinion the assessee's objection based on the terms of the sanad is sound and must prevail.

It is therefore not necessary to determine whether income from forests and fisheries comes under the definition of "agricultural." At first glance it may seem difficult to include either, and especially the fishery income. It may however be pointed out that a reference to Murray's and Webster's dictionaries shows that the word "Agriculture," while sometimes used in the narrow sense of the art or science of cultivating the ground, is also used in a much wider sense so as to include even "forestry," according to Webster. In which sense it was used by the framers of the Income-tax Act would be a matter for determination and to this end it would not be out of place to consider the probable reason for the

(1) [1916] 2 A.C. 429.

exemption of agricultural income from income-tax. No other reason is suggested than the equity of exempting from further burden income which had already paid toll to the State in the shape of land revenue. This applies equally whether the land is liable to ryotwari assessment, or whether Government demands have been permanently commuted as in the case of a permanently-settled estate. Logically, the exemption from further burden should apply to both; and it would seem that it ought to cover all sources of income which had been commuted under a permanent settlement.

We would answer the Reference by saying that the income from forests and fisheries in the Singampatti zamindari is not liable to income-tax.

M.H.H.

APPELLATE CIVIL.

Before Mr. Justice Oldfield and Mr. Justice Venkatasubba Rao.

JOSEPH NICHOLAS (PLAINTIFF), APPELLANT,

v.

SIVARAMA AYYAR AND ANOTHER (DEFENDANTS), RESPONDENTS*

1922. January 10.

Malicious attachment before judgment—Steps taken to effect attachment but not completed—Suit for damages—Payment of amount mentioned in attachment—Defendants causing proceedings to be dropped—Necessity of proving favourable termination of proceedings.

In executing an order for attachment before judgment obtained by the defendant against the plaintiff, the Amin proceeded so far as to take out the plaintiff's cloths from the shelves of his shop and to measure them, when the plaintiff paid

* Appeal Suit No. 67 of 1920.