APPELLATE CIVIL.

Before Sir Murray Coutts Trotter, Kt., *Chief Justice and Mr. Justice Anantakrishna Ayyar.*

THE MUNICIPAL COUNCIL, CUDDAPAH (DEFENDANT), APPELLANT,

1929, February 12.

v.

THE MADRAS AND SOUTHERN MAHRATTA RAILWAY COMPANY, LIMITED (PLAINTIFF), RESPONDENT.*

The Madras District Municipalities Act (V of 1920), sec. 81—Property tax—If railway administration liable to, in absence of notification under sec. 135, Indian Railways Act (IX of 1890)—Notification empowering local authority functioning under Madras Act IV of 1884 to levy taxes in respect of "Houses, land and water"—If will entitle to imposition of "property tax," under Madras Act V of 1920.

A notification of the Government of India issued under section 135 of the Indian Railways Act, empowering a local authority, functioning under the Madras District Municipalities Act (IV of 1884), to levy taxes in respect of "Houses, land and water," will not entitle that local authority, functioning under the Madras District Municipalities Act (V of 1920), which repealed the earlier enactment, to impose "Property tax" under section 81 of the later enactment, as the taxes in respect of which the notification was issued are substantially different from the "property tax" mentioned in Act V of 1920.

APPEAL against the decree and judgment of Mr. Justice SRINIVASA AYYANGAR passed in the exercise of the Extraordinary Original Civil Jurisdiction of the High Court in C.S. No. 123 of 1925.

The facts necessary for this report appear in the Judgment.

---

* Original Side Appeal No. 35 of 1927.

MUNICIPAL COUNCIL, CUDDAPAH v. M. & S.M. R. CO., LTD.

The relevant portion of section 135 of the Indian Railways Act (IX of 1890) is as follows :—

Notwithstanding anything to the contrary in any enactment or in any agreement or award based on any enactment the following rules shall regulate the levy of taxes in respect of railways and from railway administrations in aid of the funds of local authorities, namely :—

(1) A railway administration shall not be liable to pay any tax in aid of the funds of any local authority unless the Governor-General in Council has, by notification in the Official Gazette, declared the railway administration to be liable to pay the tax.

* * * *

C. Sambasiva Rao for appellant.—The notification of the 24th November 1911 authorizes the defendant-municipality to levy on the railway administration "Houses, land, and water-taxes." Under section 81 of the Madras District Municipalities Act "property tax" is leviable in respect of land, which is one of the items mentioned in the notification of 1911. The tax in question was therefore clearly authorized. Even if it is argued that the notification of 1911 did not authorize the levy, I can rely on the prior notification of the Government of India issued in November 1907 under which every railway administration was made liable to pay any legal imposition of tax in respect of land within any local area. The terms of that notification are very wide.

R. N. Aingar for respondents.—Under section 135 of the Railways Act no tax can be levied by a local authority in aid of their funds unless authorized by a notification of the Government of India. In this case there is no notification authorizing the levy of "property-tax." "Property-tax" cannot be said to be identical with or covered by "houses, land and water-taxes." The incidence as well as the scale of levy vary. The appellant is not entitled to rely on the notification of 1907 because the notification of 1911 in terms supersedes all earlier notifications.

JUDGMENT.

COUTTS TROTTER, C.J.

COUTTS TROTTER, C.J.—Under section 135 of the Indian Railways Act, IX of 1890, it is laid down that a Railway administration shall not be liable to pay any tax in aid of the funds of any local authority unless the

Governor-General in Council has, by notification in the Official Gazette, declared the Railway administration to be liable to pay the tax. This tax is sought to be imposed by virtue of Act V of 1920, the District Municipalities Act, whereby Municipal Councils are entitled to levy property tax under section 81. In fact no notification has been issued by the Government of India since Madras Act V of 1920 came into force and the Municipal Council can only rely upon a notification of the 24th November 1911 which was issued under the previous Act. It is said that the new section of the Act of 1920 amounts to no more than a compressing into one category of what under the old Act had fallen under three. To my mind that argument is unsound. Taxing statutes are to be construed strictly and the argument appears to me to violate all recognized principles of statutory construction. That is enough to dispose of this case. That is the conclusion that the learned Judge came to, and we think that his judgment should be confirmed, and the appeal dismissed with costs.

But it is obvious that a wider question is in the offing, and though it is not necessary for the decision of this case, I think I ought to indicate it, in the hope that a consideration of it may avoid future difficulties. In the notification of 1911, the taxes which the Railway administration was declared liable to pay were defined generally as house, land and water tax, in the schedule to that notification. I entertain very great doubts as to whether a notification in such terms is *intra vires* of the statute. What an assessee wishes to know is, not so much what is the nature of the tax and to what subject-matter it applies, as his liability to pay under the section of the District Municipalities Act in force at the time, in other words, he is not greatly interested whether he is

MUNICIPAL COUNCIL, CUDDAPAH v. M. & S. M. R. CO., LTD.

COUTTS TROTTER, C.J.

paying a tax on land or in respect of the supply of water, but he is vitally interested to know how much he is called upon to pay, and that depends upon the particular section applicable of the District Municipalities Act. I am strongly inclined to think that the notification required should not be in mere general terms specifying the nature of the tax which leaves the Municipality free to impose a tax of any amount they choose, provided it falls into the class specified by the notification. However, this case can be decided on the narrower ground I have indicated in the first part of this judgment, and it is not necessary to base it on the wider one that the mere notification of categories of taxation sanctioned without specific reference to the section of the District Municipalities Act which purports to impose such a tax is *ultra vires* of the Government of India. But I think it is a point which the Government of India should carefully consider, and, if necessary, rectify in future notifications.

ANANTAKRISHNA AYYAR, J.

ANANTAKRISHNA AYYAR, J.—The Municipal Council, Cuddapah, is the appellant in this appeal. The Municipal Council assessed the Madras and Southern Mahratta Railway Company to property tax in respect of certain vacant sites belonging to the Railway Company. After paying the amount of the tax under protest, the company filed Original Suit No. 615 of 1924 on the file of the District Munsif's Court, Cuddapah, for a declaration that the assessment was illegal and for refund of the amount of the tax with interest. The suit was transferred, and withdrawn, to the file of the High Court, and the learned Judge who tried the suit on the Original Side of this Court granted the reliefs prayed for by the plaintiff company.

The ground on which the learned Judge held in favour of the plaintiff is that no proper notification has

been issued by the Government of India under the Railways Act, making the Railway Company liable to pay the property tax claimed by the Municipal Council. To appreciate the dispute between the parties, it is necessary to state that under section 135 of the Indian Railways Act (IX of 1890), etc. [his Lordship here quoted the relevant portion of the section].

It is common ground that on 29th of November 1907 a notification was issued by the Government of India under section 135 of the Indian Railways Act. But on the 24th of November 1911, Notification Number 230 was issued by the Government of India, Railway Department, in these terms :—

"In pursuance of section 135 of the Indian Railways Act, 1890 (IX of 1890) and in supersession of all previous notifications on the subject, the Governor-General in Council is pleased to declare that the administration of the Madras and Southern Mahratta Railway shall be liable to pay in aid of the funds of the local authorities set out in the schedules hereto annexed, the taxes specified against each in the second column thereof.

Schedule.

Local authorities.	Taxes.
Cuddapah	House, land and water taxes.

(Signed) VOLKERS,
Secretary, Railway Board

On the date of the above notification, Madras District Municipalities Act (IV of 1884) was in force in this Presidency. Under that Act, the Municipal Council had authority to levy tax on buildings or lands or both, under section 63, and also levy water-tax under section 75. Act IV of 1884 has since been repealed by Madras Act V of 1920. Under Act V of 1920, Municipal Councils have got authority to levy property tax under section 81. That section enacts that property

MUNICIPAL COUNCIL, CUDDAPAH v. M. & S. M. R. Co., LTD.

ANANTA-KRISHNA AYYAR, J.

tax which shall be levied at a consolidated rate on all buildings and lands, shall comprise a tax for general purposes and may also comprise:—

(*a*) Water and drainage tax.

(*b*) Lighting tax.

(*c*) A railway tax.

No notification has been issued by the Government of India after Madras Act V of 1920 came into force. The question for consideration is whether the Municipal Council, Cuddapah, is entitled to levy "property tax" in respect of vacant sites of the Railway Company by virtue of the notification issued by the Government of India in 1911 quoted above. The learned trial Judge has answered the question in the negative, and in my opinion, he is right.

It was argued by the learned Counsel who appeared for the Municipal Council that the notification of 1911 should be taken to authorize the Municipal Council to levy what is mentioned as property tax in section 81 of the District Municipalities Act of 1920 in respect of lands. He argued that the property tax mentioned in section 81 was to be levied on all buildings and lands within municipal limits and that the same shall comprise a tax for general purposes and may also comprise a water and drainage tax, and that as under the notification the levy of house, land and water taxes was authorized, property tax also should be taken to have been authorized in so far as tax on lands is concerned. I am unable to agree with that contention. Section 135 of the Indian Railways Act makes it clear that a railway administration is not liable to pay any tax in aid of the funds of any local authority, unless the Governor-General in Council has by notification in the official gazette declared the railway administration to

be liable to pay *the* tax. When therefore a Municipal Council seeks to make a railway administration liable for any tax, it should be able to produce a notification by the Government of India declaring the railway administration to be liable to pay that tax. What is now sought to be levied, is "property tax." The Municipal Council should produce a notification by the Government of India declaring the railway administration to be liable to pay the "property tax." It is not enough if the Council is able to produce a notification declaring the railway administration liable to pay "house, land and water taxes." The two are substantially different. Under section 63 of the Municipal Act of 1884, there was a limit to the rate at which taxes on buildings and lands could be levied, namely, 8½ per cent on the annual value of the buildings or lands or both. Under Act V of 1920 there is no such limit, and what is called the "property tax" in section 81 comprises many things which could not be held to come under "house, land and water taxes." Taxing enactments should be strictly construed and the right to tax should be clearly established. Conditions precedent to the imposition of any tax should be strictly complied with. In the absence of any notification by the Government of India declaring the railway administration to be liable to pay "property tax", I think the learned Judge was right in his view that the Municipal Council had no right to levy tax in respect of vacant sites owned by the Railway Company in question. The policy of the Legislature would seem to be to reserve to the Governor-General in Council the right to decide what taxes railway administrations are to be made liable for and to what extent. The Governor-General in Council had no occasion to consider whether the railway administration in question should pay "the property tax" mentioned in section 81

MUNICIPAL COUNCIL, CUDDAPAH v. M. & S. M. R. Co., LTD.

ANANTA-KRISHNA AYYAR, J.

of Act V of 1920. The taxes in respect of which the notification was issued in 1911 are in my opinion substantially different from the "property tax" mentioned in section 81 of Act V of 1920. The rates are different and the incidence also different. Therefore the notification of 1911 would not, in my opinion, be of any avail to the Municipal Council.

It was further argued by the learned Counsel for the appellant that there was a prior notification by the Government of India on 29th November 1907 under which the Governor-General in Council was "pleased to declare that every railway administration in British India shall hereafter be liable to pay in respect of property within any local area, every tax which may lawfully be imposed by any local authority in aid of its funds, under any law for the time being in force." He argued that the words of that notification were wide enough to include any tax which may be imposed by a Municipal Council under any Act. But I think it is enough to say in answer to this contention that the notification of 1907 ceased to exist when the notification of 1911 was issued. For the notification of 1911 specifically says that the same was issued "in supersession" of all previous notifications on the subject. Its wording is: "in pursuance of section 135 of the Indian Railways Act IX of 1890 and in supersession of all previous notifications on the subject, the Governor-General in Council is pleased to declare, etc." Thus it is clear that the notification of 1907 ceased to be in force after 1911 and that the same could not be invoked by the Municipal Council for the levy of any tax in 1924. I do not therefore consider it necessary to examine whether the notification of 1907 is open to any other legal objection.

The argument of the learned Counsel for the appellant regarding the notification of 1907 therefore fails.

For the above reasons, I think the appeal fails and is dismissed with costs.

King & Partridge—Attorneys for respondent.

B.C.S.

APPELLATE CIVIL.

Before Mr. Justice Odgers and Mr. Justice Wallace.

VENKATASOMARAJU AND 3 OTHERS (PLAINTIFFS), APPELLANTS,

1929, January 25.

v.

VARAHALARAJU AND 21 OTHERS (DEFENDANTS), RESPONDENTS.*

Art. 47, *Limitation Act* (*IX of* 1908)—*Sec.* 145, *Criminal Procedure Code* (*V of* 1898)—*Adverse order, under section, on Manager of joint Hindu family—Effect of, on the other members.*

An adverse order passed with jurisdiction in proceedings under section 145, Criminal Procedure Code (V of 1898) against a father of a joint Hindu family in his capacity as the representative of the family, binds the other members of the family (viz., his sons), though they were not *eo nomine* parties to the proceedings. Hence a suit by the sons for possession of the properties concerned, brought more than three years after the adverse order, is barred under article 47 of the Indian Limitation Act (IX of 1908).

APPEAL against the decree of the District Court of Godavari at Rajahmundry in A.S. No. 63 of 1922

* Second Appeal No. 297 of 1925.