REVISIONAL CIVIL

Before Mr. Justice Bennet and Mr. Justice Verma

1938
December, 19

DISTRICT BOARD, DEHRA DUN (PLAINTIFF) *v.* CAPTAIN TROTTER (DEFENDANT)*

District Boards Act (Local Act X of 1922), sections 108, 114(a)—Tax on circumstances and property—Intra vires *of local legislature—Not Income-tax—District Boards Act, section 1(2)—"Territories administered by Local Government"—Forest Research Institute, Dehra Dun, administered by Government of India—Included within operation of Act—Employee of the Institute liable to the tax.*

The imposition of a tax on circumstances and property, under sections 108 and 114 of the U. P. District Boards Act, 1922, is *intra vires* the local legislature, as the previous sanction of the Governor-General required by section 80A(3) of the Government of India Act, 1915, was obtained to the passing of the U. P. District Boards Act. The validity and propriety of the tax cannot be called in question by the civil court.

The tax on circumstances and property is not income-tax.

Though the Forest Research Institute, Dehra Dun, is a department administered by the Government of India, the land covered by the Institute is not excluded from the "territories administered by the Local Government" to which section 1(2) of the U. P. District Boards Act extends the Act. The Act therefore applies to the area covered by the Institute, and a Government employee who works and resides in that area is liable to the tax on circumstances and property imposed by the Act.

Mr. *Binod Behari Lal*, for the applicant.

Mr. *P. L. Banerji*, for the opposite party.

BENNET and VERMA, JJ.:—This is a petition in revision by the plaintiff against a decree of the learned Judge of the court of small causes at Dehra Dun. The suit was for the recovery of a total sum of Rs.547-6-0 alleged to be due from the defendant as "tax on circumstances and property" for a certain number of years. The defendant raised various pleas in defence, but we are concerned with only two of them, namely, (1) that the defendant "did not come within the purview of section

*Civil Revision No. 383 of 1936.

114, clause (*a*) of the District Boards Act", and (2) that, at any rate, a portion of the claim was barred by time. The learned Judge has dismissed the entire suit.

The learned Judge has held in favour of the plaintiff that the defendant assessee, residing as he does within the "rural area" in question, is not entitled to say that he is outside the purview of section 114(*a*) of the United Provinces District Boards Act (X of 1922). He has, however, dismissed the suit because, to put it briefly, in his opinion the tax is unjust and would operate harshly, so far at any rate as Government servants residing only for certain periods within the jurisdiction of the District Board in question are concerned. We are unable to agree with the learned Judge that such considerations can justify the dismissal of the suit. The provisions laid down in sections 128 and 131 of the Act make it perfectly clear that the learned Judge was not right in adverting to these considerations and in basing his judgment upon them. Another reason given by the learned Judge for holding in favour of the defendant and dismissing the suit is that the defendant pays income-tax and is "therefore free from a second assessment". This view is clearly erroneous. The learned Judge is not right in thinking that the tax on "circumstances and property" which the District Board imposes is income-tax. No question of a second assessment arises.

The previous sanction of the Governor-General, as required by the third sub-section of section 80A of the Government of India Act then in force, was obtained to the passing of the United Provinces District Boards Act (X of 1922). That being so, the Local Government was entitled to enact the sections which authorise the imposition of taxes by the District Boards. Section 108 of the United Provinces District Boards Act runs as follows: "With the previous sanction of the Local Government a Board may, by notification, impose and may in like manner abolish or alter the rate of

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either or both of the following taxes: (*a*) a local rate under section 3 of the United Provinces Local Rates Act, 1914, as modified by this Act; (*b*) a tax on persons assessed according to their circumstances and property (hereinafter referred to as the 'tax on circumstances and property') in accordance with section 114: Provided that a Board shall not effect an increase in the amount of the local rate in force at the commencement of this Act unless a tax on circumstances and property has been imposed under clause (*b*)."

The relevant portion of section 114 may also be quoted: "The power of a Board to impose a tax on circumstances and property shall be subject to the following conditions and restrictions, namely,—(*a*) the tax may be imposed on any person residing or carrying on business in the rural area, provided that such person has so resided or carried on business for a total period of at least six months in the year under assessment. . . ."

It is perfectly clear therefore that the District Board was authorised in law to impose a tax on persons residing in the rural area, assessed according to their circumstances and property. The argument of Mr. *Banerji*, who appears for the defendant respondent, is that the area covered by the Forest Research Institute at Dehra Dun, within which area the defendant resides, is not within the rural area and is, therefore, outside the jurisdiction of the District Board. He refers to section 1(2) of the Act which lays down that the Act extends to "the territories for the time being administered by the Local Government of the United Provinces", and urges that the Forest Research Institute is outside such territories. He is unable, however, to place any materials whatsoever before us which would justify such a conclusion. All that he is in a position to say in support of his argument is that the Forest Research Institute is a department administered by the Government of India. That may be so, but it does not follow from that circumstance that the land covered by the Forest Research Institute

is excluded from the territories for the time being administered by the Local Government of the United Provinces. The areas which are excluded from the operation of the United Provinces District Boards Act are mentioned in the Act itself in the definition of the expression "rural area" which is given in section 3(10) and is as follows: "'Rural area' means the area of a district excluding every municipality as defined in the United Provinces Municipalities Act, 1916, and every cantonment as defined in the Cantonments Act, 1910."

This argument of the learned counsel therefore is without force.

The second contention raised by the learned counsel for the defendant respondent is that mere residence in the rural area is not sufficient to make a person liable to pay the tax. This contention also is clearly not well founded as the very words of clause (*a*) of section 114 of the Act clearly show. It may also be pointed out that in the year 1932 Government, acting under the powers conferred on them by section 124(3) of the Act, had issued G. O. No. 2341/IX—409, dated the 10th of November, 1932, by which they had exempted from the payment of the tax on circumstances and property all Government servants who had resided in their official capacity in the rural area within the jurisdiction of any District Board for a period of less than six months of the year of assessment. That also indicates that residence within the rural area is by itself sufficient to bring a person within the purview of the powers conferred on District Boards to impose the tax. We have, therefore, come to the conclusion that the decision of the court below holding that the defendant is not liable to pay the tax is erroneous.

The learned counsel appearing for the plaintiff applicant has, however, not been able to show that the decision of the court below that the claim for all tax due before the 30th of March, 1933, is time barred, is incorrect. The learned Judge is clearly right in arriving at that conclusion.

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For the reasons given above we allow this application in revision, set aside the decree of the court of small causes and remand the case to that court for the determination of the amount due to the plaintiff in accordance with the observations made above. In view of the fact that the District Board included in its claim tax for a period which was clearly beyond limitation, we direct that the parties shall bear their own costs.

Before Mr. Justice Ganga Nath

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December, 19

SRI BHAGWAN (PLAINTIFF) *v.* SECRETARY OF STATE FOR INDIA AND ANOTHER (DEFENDANTS)*

Civil Procedure Code, order XXVII, rules 4, 8B—Suit against Government—Agent of Government for receiving process—No Crown pleader appointed by Central Government—Government of India (Adaptation of Indian Laws) Order, 1937, rules 9 and 10—Continuance of former authority—Suit against Government in matters concerning East Indian Railway—Agent, East Indian Railway, Calcutta, is the person on whom the process is to be served.

Held, that in a suit against the Secretary of State for India in Council, arising out of a claim for damages against the East Indian Railway, process for the defendant was rightly served on the Agent, East Indian Railway, Calcutta.

The Central Government not having appointed, as contemplated by order XXVII, rule 8B, of the Civil Procedure Code, any pleader as the Crown pleader for the purposes of that order, there was no Crown pleader who could receive processes against the Crown, under order XXVII, rule 4. In the absence of such a Crown pleader the provisions of rules 9 and 10 of the Government of India (Adaptation of Indian Laws) Order, 1937, will apply and the appointment made by the Governor-in-Council, by Notification No. 1084/VII—180, dated the 26th of August, 1925, under order XXVII, rule 4 as it then stood, of the Agent, East Indian Railway, Calcutta, as the agent of the Government for the purpose of receiving processes issued from the civil courts of the United Provinces against the Secretary of State for India in Council in connection with all cases concerning the East Indian Railway, must be deemed to continue in force.

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*Civil Revision No. 121 of 1938.