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Srivastava,
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therefore accept the office report. The plaintiff must make good the deficiency of Rs.39-8 in the court-fee for the court of first instance, Rs.32-12 for deficiency in the lower appellate court and Rs.40 for deficiency in the court-fee paid in this Court, total Rs.112-4. The defendant also will make good the deficiency of Rs.8 in the court-fee paid by them in the lower appellate court and of Rs.4 in this Court, total Rs.12.

Both the parties will be allowed one month's time within which to make good the deficiency.

FULL BENCH

Before Mr. Justice Muhammad Raza, Mr. Justice Bisheshwar Nath Srivastava, and Mr. Justice H. G. Smith

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December, 17

GAURI SHANKAR VARMA (APPLICANT) *v.* THE MUNICIPAL BOARD, SITAPUR (OPPOSITE-PARTY)*

United Provinces Municipalities Act (II of 1916), sections 2(7) and 128(1)—Words "carrying on business" in section 2(7), meaning of—Inhabitant tax—"Inhabitant", definition of—Subordinate Judge residing outside Municipal limits but performing the duties of his office within Municipal limits—Subordinate Judge, whether liable for the tax.

A Subordinate Judge not residing within Municipal area but performing the duties of his office as Subordinate Judge within that area cannot be regarded as "carrying on business" within the Municipal area within the meaning of those words as used in the definition of "inhabitant" in section 2(7) and as such is not liable to a tax on inhabitants under section 128(1) of the United Provinces Municipalities Act (II of 1916).

No one for the applicant.

Mr. *Nisar Ahmad*, for the opposite-party.

RAZA, SRIVASTAVA, and SMITH, JJ. :—This is a reference under section 162 of the United Provinces Municipalities Act, 1916.

Babu Gauri Shankar Varma, who was a Subordinate Judge at Sitapur, was assessed by the Tax Committee

*Civil Reference No. 1 of 1932, made by G. L. Vivian, Esqr., Deputy Commissioner of Sitapur, by his order dated the 27th of May, 1932.

of the Municipal Board of Sitapur to a tax of Rs.85 on his salary, which amounted to Rs.9,120 per annum.

His objection was disallowed, and then he appealed to the District Magistrate of Sitapur, who made the reference under consideration. The appeal was based on the fact that the appellant resided in the Cantonment of Sitapur, and was not an inhabitant of the Municipal area, and was not, therefore, liable to the tax in question.

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The learned District Magistrate was of opinion that the appellant was carrying on business within the Municipal area and so he was liable to the tax in question. Though the learned District Magistrate expressed this opinion on the point under consideration, he thought it proper to refer the matter to this Court. The reference was made to this Court under these circumstances.

The tax to which Babu Gauri Shankar Varma was assessed was "a tax on inhabitants assessed according to their circumstances and property." [See section 128(1)(ix) of the United Provinces Municipalities Act, 1916.] The word "inhabitant" is defined in section 2(7) of the Act as follows :

" 'Inhabitant' used with reference to a local area means any person ordinarily residing or carrying on business or owning or occupying immoveable property therein."

Admittedly Babu Gauri Shankar Varma was not residing within the Municipal area and was not owning or occupying any immoveable property therein. The question is whether in performing the duties of a Subordinate Judge he was "carrying on business" or not. The learned District Magistrate is of opinion that the word "business" is of wide application and can embrace any trade, vocation, or calling, and that it was not intended by the legislature to exclude government

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servants from the application of the expression "carrying on business." In his view the Subordinate Judge was carrying on business within the Municipal area.

We are not prepared to agree with the opinion of the learned District Magistrate in this matter.

The referring order shows that there was an exactly similar case before Mr. Cruickshank, the then District Magistrate of Sitapur, in the year 1927. In that case Babu Jhummak Lal, Deputy Collector, who resided in the Cantonment, appealed against being assessed to the tax in question. Mr. Cruickshank held that Babu Jhummak Lal's work as Deputy Collector was not "business." He accepted the contention of Babu Jhummak Lal, and was of opinion that it was not the intention of the Act and legislature to include in the term "carrying on business" the work of a government servant on fixed salary. He was also of opinion that the term "carrying on business" implied something of a private or semi-private nature, and not the work of a government official.

We are in substantial agreement with the opinion of Mr. Cruickshank. In our opinion, the appellant was not "carrying on business" within the Municipal area in discharging the duties of his office as Subordinate Judge, Sitapur. In *Lewis v. Graham* (1) it was held that a clerk employed by a solicitor at offices in the city of London does not "carry on business" there within the meaning of the Mayor's Court Extension Act, 1857, so as to be subject to the jurisdiction of the Mayor's Court. The following observations were made by Lord COLERIDGE, C.J., in his judgment in that case :

"In a certain sense the defendant was carrying on business, because he was employed in the City, and if the words 'carry on business' must be held to extend to every kind of employment the argument of his learned counsel is wrong. But that is not a

(1) (1858) 20 Q. B. D., 780.

fair interpretation of the words. The business must be some business in which he has control, or acts as one of the partners engaged in carrying it on. A particular clerk or workman who is engaged about the business, but has no control over it whatever, cannot be said to be carrying on business in the City. That would be my opinion if the matter were new. But it is not new. There are two cases in the Court of Exchequer in which the questions were as to the jurisdiction of an inferior court. It was contended in one of those cases that a clerk in the Admiralty, and in the other that a clerk in the Privy Council carried on business within the jurisdiction. In both cases the Court held that the clerk did not 'carry on his business' for the purposes of the respective Acts within the jurisdiction, because he was a mere servant employed in a department of the State. 'Those cases would be directly in point, except for the word 'his' in the Acts on which they arose. But I think that word makes no difference, because the words 'carry on business' must mean carry on his business.'

MATHEW, J., in that case said, "I think the words 'carry on' apply to much more than mere service."

We are clearly of opinion that Babu Gauri Shankar Varma could not be said to have been "carrying on business" within the Municipal area in discharging his duties as the Subordinate Judge of Sitapur.

Hence we hold that he was not liable to the tax in question. We decide the question referred to the Full Bench accordingly.

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