

CIVIL REVISION.

Before Mr. Justice Dunkley.

JAHOO GANI v. U PO THET.*

1936

Apr. 27.

Public market—District Council's power to levy fees on shops—Shop on private property—Exposure of goods within half a mile of public market—Goods sold on private land—Rural Self-Government Act (Burma Act IV of 1921), ss. 2 (h) (ii), 25 (1) (a) and (c).

Under s. 2 (h) (ii) of the Burma Rural Self-Government Act a "public market" means any market belonging to a District Council, or constructed, repaired or maintained out of a District Fund. It cannot, therefore, include any land not vested in the District Council, or any building not belonging to or maintained by the Council. Consequently a District Council has no authority to levy any fee under s. 28 of the Act, from a person who has a shop in his own house built on his own land, although such property may abut on a road or street where there is a public market. Clause (c) of s. 28 (I) entitles the District Council to levy fees for exposing goods for sale on roads or streets within half a mile of a public market, but it applies only to temporary stalls established on a road or street and not to a shop on private property abutting on such road or street.

Chan Htoon for the applicant.

Paw Tun for the respondent.

DUNKLEY, J.—The plaintiff-respondent U Po Thet was the lessee under the District Council of Magwe of the right to collect fees leviable in connection with the Thangangon Bazaar. According to the terms of his lease he purchased "the right for the collection of fees from daily and stall sellers of Thangangon Bazaar and also of the roadside stalls within half a mile of the said bazaar." The plaintiff-respondent sued the defendant-applicant in the Township Court of Yenangyaung for the recovery of a sum of Rs. 68-12-0, which he alleged to be due by the defendant-applicant as the rent of a miscellaneous goods stall which he

* Civil Revision No. 42 of 1936 from the judgment of the Township Court of Yenangyaung in Civil Small Cause Suit No. 73 of 1935.

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maintained permanently within the limits of the Thangangon Bazaar. The defendant-applicant admitted that he had such a stall in his own house, but denied his liability to pay any fee therefor to the District Council.

It is common ground that the Thangangon Bazaar is a public market which has been established by the District Council of Magwe under the provisions of sub-section (1) of section 52 of the Burma Rural Self-Government Act. The limits of this public market have never been defined by rule, bye-law or order, and the burden was on the plaintiff-respondent to show that the defendant-applicant occupied a stall or building or sold goods in the market. The only evidence which he called to establish this was the evidence of the Chairman of the Circle Board and the durwan of the bazaar. They admitted that the applicant's shop was inside his own house, but stated that this house was within the limits of the market, but they obviously only have the vaguest idea as to what are the limits of the market. It appears from the evidence that the back of the applicant's house is towards the stalls constructed by the District Council and that the front of the house abuts on to a public road. The Chairman of the Circle Board says that the limit of the market on this side is the public road, but he gives no reason for this statement.

Under section 2, clause (b), sub-clause (ii), of the Rural Self-Government Act a "Public Market" means any market belonging to a District Council, or constructed, repaired, or maintained out of a District Fund. It cannot, therefore, include any land not vested in the District Council, or any building not belonging to the District Council or not constructed, repaired or maintained out of the District Fund. The evidence shows that the house

occupied by the applicant, within which he keeps his shop, is built on land belonging to the Burmah Oil Company, and was constructed before the establishment of this public market by one Ram Prasad, from whom the applicant purchased it. Consequently this house cannot be in a public market.

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Under section 28, sub-section (1), clauses (a) and (c), of the Rural Self-Government Act the District Council has authority to levy fees (1) for the right to expose goods for sale in any public market or for the use of any building or structure therein, and (2) for the right to expose goods for sale on roads or streets within half a mile of a public market. Therefore no fee can be levied from the applicant under clause (a) of section 28 (1), for his shop is not in a public market. Learned counsel for the respondent now admits the correctness of this conclusion, but urges that the applicant's shop is included within that loose term "roadside stall," and that as it is within half a mile of this public market a fee can be levied from the applicant under clause (c) of section 28 (1). But this clause gives the right to levy fees for exposing goods for sale on roads or streets. Only temporary stalls established on a road or street itself come within its purview, and shops established in buildings built on private property, but abutting on to a road or street, do not come within the clause. This is made quite clear by bye-law 7 of part IV of the bye-laws framed by the District Council under section 52 (1) of the Rural Self-Government Act.

It is therefore plain that the District Council has no authority under the Act to levy any fee from the applicant on account of the shop in his house, and therefore the respondent under his lease had no right

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to collect any such fee from him. The suit of the plaintiff-respondent was bound to fail, and the judgment and decree of the Township Court of Yenangyaung were not in accordance with law. The judgment and decree of that Court are reversed, and the suit of the plaintiff-respondent is dismissed with costs throughout, advocate's fee in this Court two gold mohurs.

APPELLATE CIVIL.

Before Sir Ernest H. Goodman Roberts, Kt., Chief Justice, and
 Mr. Justice Bagley.

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 June 22.

MAUNG HMOOT v. THE OFFICIAL RECEIVER, MANDALAY. *

Insolvency—Joint petition by debtors for adjudication—Order of discharge not necessarily termination of insolvency proceedings—Examination of a person regarding property after discharge of insolvent—Discharge of one joint insolvent—Refusal of discharge of other insolvent—Application to set aside transfer effected by the discharged insolvent—Jurisdiction of the Court to pass order—Pendency of insolvency—Onus of proof—Prima facie case made by official receiver—Onus of adducing evidence in rebuttal—Provincial Insolvency Act (V of 1920), ss. 53, 59A.

A joint petition for adjudication of several joint debtors is permissible in law.

Brojendra Nandan Saha v. N. B. Das, 39 C.W.N. 104; *Maung Kyi Oh v. S.M.A.L. Chetty*, I.L.R. 2 Ran. 309—*referred to*.

An order of discharge does not necessarily put an end to the proceedings in insolvency.

K.P.S.P.L. Firm v. C.A.P.C. Firm, I.L.R. 7 Ran. 126; *Rowe & Co., Ltd. v. Tan Thean Taik*, I.L.R. 2 Ran. 643—*referred to*.

Under s. 59A of the Provincial Insolvency Act the Court can in a proper case make an order for the examination of a person known or suspected to have in his possession any property belonging to the insolvent, or who could give information respecting the insolvent or his dealings even after the discharge of the insolvent; and the Court can also order the examination of the insolvent himself.

In re Coulson, (1934) 1 Ch. 45; *Re Haripada Rakshit*, I.L.R. 44 Cal. 374; *Shadauchandra Bhandari v. S. Golabrai*, I.L.R. 60 Cal. 936—*referred to*.

* Civil Misc. Appeal No. 24 of 1936 from the order of the District Court of Mandalay in Civil Misc. Case No. 8 of 1935.