

SPECIAL BENCH.

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

AKYAB ELECTRIC SUPPLY CO.

v.

AKYAB MUNICIPAL ASSESSMENT
SUB-COMMITTEE.*

1936

Aug. 17.

Municipal assessment—Municipal property exempt from taxes—Streets, pavements and erections thereon—Overhead mains of an electric company in streets—Assessment of property of company—Value of the overhead mains for purposes of assessment—Burma Municipal Act (Burma Act III of 1898), s. 93—Burma Municipal Rules, Ch. 3, paragraph 3.

By virtue of Chapter VI of the Burma Municipal Rules, paragraph 3, property vested in a municipal or town committee under s. 93 of the Burma Municipal Act is exempted from municipal taxes. Such exempted property includes *inter alia* streets, pavements and erections on them. Consequently the overhead mains, cables or wires of an electric supply company passing over such streets are not assessable property. The value of the overhead mains and wires can be taken into account as enhancing the value of the property over which they are situate only if such property is subject to assessment

Paget for the assessee. S. 62 of the Burma Municipal Act specifies the properties on which taxes may be imposed. Electric mains and cables in the streets are not included in the list and the committee has assessed something which is not assessable. The assessor may take into consideration the value of machinery on the premises that are assessable as enhancing the value of the premises, but he cannot tax the machinery as such.

Rangoon Electric Tramway and Supply Co., Ltd. v. The Rangoon Municipality (1); *Kirby v. Hunslet Union Assessment Committee* (2); *R.M.P.V.M. Firm v. The Corporation of Rangoon* (3); *The Tyne Boiler Works Co. v. The Overseers of Longbenton* (4).

* Civil Reference No. 11 of 1936 made under s. 79 (5) of the Burma Municipal Act.

(1) 7 L.B.R. 119.

(2) (1906) A.C.

(3) I.L.R. 4 Ran. 178.

(4) 18 Q.B.D. 81

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[LEACH, J. There can be no assessment of machinery apart from the premises which are assessable.]

Rule 3 of Chap. VI of the Burma Municipal Rules exempts municipal property from tax. Therefore mains and cables passing over streets cannot be taxed. They are not part of the company's premises which are subject to assessment.

Tun Aung for the committee. The property exempted from taxation is solely the property vested in the municipal committee by virtue of s. 93 of the Act. The cables of the company though they are not on the company's premises may be taken into consideration as enhancing the value of the premises that are assessed.

GOODMAN ROBERTS, C.J.—This matter comes before us by way of a reference from the Deputy Commissioner of Akyab who was considering the appeal from a Municipal Committee under section 79, sub-section (5) of the Burma Municipal Act by the Electric Supply Company against an increased assessment by the Municipal Assessment Sub-Committee for the year 1935-36. The Committee purported to assess the appellants in respect of four items separately, namely, an electric power house, living quarters of the engineer, machinery, plant and tools, and fourthly the matter with which we are solely concerned to-day, namely, overhead mains.

Overhead mains are not assessable under the Act at all, but the first paragraph of the Deputy Commissioner's order of reference says "The matter which concerns us is that dealt with in paragraph 4 of the memorandum, the claim of the Municipal Committee to levy taxes on the Company's overhead mains." We think that that is not quite an accurate way of telling what the real position was, and may have misled the Deputy Commissioner in coming to the conclusion which he did.

By virtue of Chapter VI of the Burma Municipal Rules, paragraph 3, it appears quite clear that property vested in a Municipal or Town Committee by virtue of section 93 is exempted from municipal taxes (other than taxes payable by the occupier under section 84 due on residential buildings so vested in a Committee); and turning to section 93 we find that subject to any special reservation made by the Local Government all property in a municipality hereunder specified shall be vested in and belong to the Committee, and amongst the property so defined are included all streets and the pavements, stones and other materials thereof and also all trees, erections, materials, implements and things provided for such streets. We therefore come to the conclusion, as Mr. Paget puts it, that something has been assessed here which is not assessable. The hereditament was not subject to assessment, and that being so there is an end of the matter.

It has been pointed out that overhead wires and mains may have their value taken into account as enhancing the value of the hereditament over which they are situate, but no account can be taken of their value except in respect of enhancement of the value of the hereditament. Since the hereditament in this case is not assessable no attempt can be made to find out any basis upon which these overhead mains could be assessed, and, in my opinion, the appellants succeed. The assessment of the premises and hereditaments belonging to the Akyab Electric Supply Company should be made without taking into account any value in respect of the overhead mains, cables or wires, and the Municipal Committee will pay the costs of this reference 15 gold mohurs.

LEACH, J.—I agree.

DUNKLEY, J.—I agree.

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