

APPELLATE CIVIL.

Before Bhide J.

BUKKAN SINGH AND ANOTHER (DECREE-HOLDERS)

Appellants

versus

THE DISTRICT BOARD, LUDHIANA.

(JUDGMENT-DEBTOR) Respondent.

Civil Appeal No. 384 of 1932.

Punjab District Boards Act, XX of 1883, section 30: Haisiat tax—imposed under the Act—Decree for permanent injunction restraining Board from levying the tax from decree-holder—Validating Act, III of 1927—Subsequent imposition of Haisiat tax—Executing Court—whether competent to consider whether decree is capable of execution—Civil Procedure Code, Act V of 1908, section 47.

The District Board of Ludhiana had imposed a tax known as the *Haisiat* tax in 1925. The present Appellants instituted a suit and were granted a decree for a permanent injunction restraining the District Board from realizing the tax from them on the ground that the tax was illegal. Subsequently Act III of 1927 was passed validating the imposition of the tax by the District Board, the Act coming into force on 3rd February, 1928. The District Board thereupon proceeded to realize the tax from the assesseees and the plaintiffs presented a petition for execution of their decree against the District Board. It was successfully opposed by the District Board in both the Lower Courts on the ground that the decree in question had ceased to be operative in view of the Validating Act of 1927. In second appeal by the plaintiffs to the High Court:—

Held, that it is a well-established proposition that an Executing Court is not entitled to go behind the decree and must take it as it stands, but the question whether a decree is or is not capable of execution falls within the scope of section 47 of the Civil Procedure Code.

And, as the decree, as properly construed, had only reference to the *Haisiat* tax as imposed under section 30 of the Punjab District Boards Act and the tax which the District Board was now trying to realize, derived its sanction, not

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merely from that Act but the Validating Act of 1927, the decree had no application to such a tax and could not therefore be executed as regards the realization of such a tax.

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Lahore Bank, Limited (in Liquidation) v. Ghulam Jilani (1), *S. A. Nathan v. S. R. Samson* (2), *Subramania v. Kumaraullu Ambalam* (3), *Laladas Naraindas v. Kishordas Devidas* (4), and *Noor Hussain Shah v. Mst. Hussain Bibi* (5), relied upon.

Miscellaneous Second Appeal from the order of Mr. D. Dhawan, District Judge, Ludhiana, dated the 24th November, 1931, affirming that of Pandit Jowind Lal, Subordinate Judge, 3rd class, Ludhiana, dated the 31st March, 1930, rejecting the decree-holders' application for execution.

M. L. PURI, for Appellants.

M. C. MAHAJAN and JHANDA SINGH, for Respondent.

BHIDE J.—The District Board of Ludhiana had imposed a tax known as the *Haisiat* tax under Notification No. 17008, dated the 20th of July 1925. The plaintiffs instituted a suit for a permanent injunction to restrain the District Board from realizing the tax from them on the ground that the tax was illegal. The District Board confessed judgment as it had been decided by this Court in the meantime that the imposition of the tax by the District Board was *ultra vires*. The plaintiffs were accordingly granted a decree. An appeal was preferred to the District Judge in respect of costs but the appeal was also dismissed. Subsequently Act III of 1927 was passed by the Punjab Legislative Council validating the imposition of the tax by the District Board. The

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(1) (1924) I. L. R. 5 Lah. 54. (3) (1915) I. L. R. 39 Mad. 541.
 (2) (1931) I. L. R. 9 Rang. 481. (4) (1896) I. L. R. 22 Bom. 464.
 (5) (1927) I. L. R. 8 Lah. 318.

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Act came into force on the 3rd of February, 1928, and thereafter the District Board proceeded to realize the tax from the assessees. The plaintiffs then presented a petition for execution of their decree against the District Board. The petition was opposed by the District Board on the ground that the decree in question had ceased to be operative in view of the Validating Act referred to above. This contention of the District Board was upheld by the Courts below and the plaintiffs have now preferred a second appeal to challenge the decision.

The learned counsel for the appellant laid great stress on the fact that an executing Court is not entitled to go behind the decree and must take it as it stands *Lahore Bank, Limited (in Liquidation) v. Ghulam Jilani* (1) and *S. A. Nathan v. S. R. Samson* (2). This is a well established proposition and was indeed not disputed by the learned counsel for the respondent. All that the learned counsel for the respondent contended was that an executing Court has the power to see whether the decree is capable of execution and that the Courts below were right in holding that the decree has in the circumstances of the case ceased to be capable of execution. There can, I think, be no doubt that the question whether a decree is or is not capable of execution falls within the scope of section 47 of the Civil Procedure Code, and can be examined by an executing Court (see *inter alia*, *Subramania v. Kumaraullu Ambalam* (3), *Labdas-Naraindas v. Kishordas-Devidas* (4)). In the present instance the decree restrains the District Board from realizing the *Haisiat* tax. The District Board contends that the decree has ceased to be

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(2) (1931) I. L. R. 9 Rang. 481.

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operative owing to the Validating Act (Act III of 1927), passed by the Punjab Legislative Council. It has been held by a Division Bench of this Court in *Ganpat Rai v. District Board* (1) that this latter Act was within the powers of the Punjab Legislative Council and is valid. We have, therefore, to see whether the decree passed against the District Board is still capable of execution. For this purpose we must ascertain the precise meaning of the decree. It seems obvious that the decree could not possibly mean that the District Board was in no circumstances to realize the *Haisiat* tax, e.g. even if it was authorised to levy such a tax by special legislation. The decree in the present case is somewhat brief and ambiguous. To ascertain the precise scope and meaning of the decree, we must therefore, look at the pleadings of the parties [*cf. Noor Hussain Shah & others v. Mst. Hussain Bibi* (2)]. From the pleadings and issues it would appear that what the plaintiffs claimed was that the *Haisiat* tax as imposed under section 30 of the Punjab District Board Act was *ultra vires*, and it was this tax which the decree restrained the District Board from realizing. If the District Board were trying to realize any such tax, *i.e.* a tax for the imposition of which there was no sanction beyond section 30 of the Punjab District Boards Act, the decree would still have force. But the tax which the District Board are now trying to realise derives its sanction not merely from the Punjab District Boards Act but the Validating Act of 1927. To such a tax the decree had no application at all and consequently the decree cannot be executed as regards the realization of such a tax.

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(1) (1931) 134 I. C. 110.

(2) (1927) I. L. R. 8 Lah. 318.