

**LETTERS PATENT APPEAL.**

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*Before Addison and Din Mohammad JJ.*

SAROOP SINGH (PLAINTIFF) Appellant

*versus*

SMALL TOWN COMMITTEE, FATEHGARH  
CHURIAN (DEFENDANT) Respondent.

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Feb. 1.

**Letters Patent Appeal No. 3 of 1932.**

*Punjab Small Towns Act, II of 1922, sections 21 (a) (ii), 24, 25 : Haisiyat tax imposed by Committee — whether intra vires — Jurisdiction of Civil Courts — to adjudicate upon the propriety of the amount of the tax — ‘ circumstances ’ of the assessee — meaning of — explained.*

An assessee, assessed to a *haisiyat* tax of Rs.40 per annum by the Small Town Committee of Fatehgarh Churian under the provisions of section 21 (a) (ii) of the Small Towns Act, 1922, sued for a perpetual injunction restraining the Committee from realising the amount by way of tax on the ground that the imposition was *ultra vires*.

*Held*, that the imposition of the tax was within the power of the Committee under section 21 of the Act and the tax was, therefore, not *ultra vires*, and that the question whether the tax had been properly assessed as to *amount* could not come before the Courts. It was for the assessee to object under section 25 to the amount and if he was dissatisfied he could appeal to the Deputy Commissioner and his order would be final.

*Held also*, that the word ‘ circumstances ’ in section 21 is equivalent to ‘ means or material welfare,’ that is, the money, etc. that comes into the assessee’s hands from various sources.

*Letters Patent Appeal from the judgment passed by Dalip Singh J. in C. A. No.588 of 1931, on 2nd December, 1931, affirming that of Sheikh Mohammad Akbar, Senior Subordinate Judge, with special appellate powers, Gurdaspur, dated 12th January, 1931*

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(who affirmed that of Sardar Gyan Singh, Subordinate Judge, 3rd Class, Batala, dated 3rd October, 1930), dismissing the plaintiff's suit.

CHIRANJIVA LAL AGGARWAL, for Appellant.

DIN DAYAL KAPUR, for Respondent.

The judgment of the Court was delivered by—

ADDISON J.—One Sarup Singh was assessed to a *haisiyat* tax by the Small Town Committee of Fatehgarh at Rs.40 per annum under the provisions of section 21 (a) (i) of the Small Towns Act. He sued for a perpetual injunction restraining the Committee from realising this amount by way of tax, as the imposition was *ultra vires*. The trial Court framed an issue:—

Whether the tax had been lawfully imposed? It said that this issue comprised two things, firstly, whether the imposition was in accordance with the procedure and powers of the committee, and secondly, whether the assessment of the tax had been conducted on a right and fair basis. It found against the plaintiff and dismissed his suit. The appeal was also dismissed. A second appeal to this Court was dismissed and he has preferred this Letters Patent Appeal.

Under section 21 (a) (i) of the Act, subject to any rules which the Local Government may make in this behalf, and in accordance with the other provisions of the Act, the Committee may impose a tax upon all residents of the small town assessed according to their "circumstances," provided that the amount assessed on any one person according to his circumstances shall not exceed Rs.7-8-0 per month in any small town. The procedure for assessment is set out in section 24 of the Act. An assessment list has to be

prepared: For each person liable to assessment a unit, to be called the assessment unit, has to be fixed, the amount of which shall indicate the relative tax-paying capacity of such person in comparison with other assesseees. The total amount payable by an assessee will then be his assessment unit multiplied by a given factor to be ascertained in a particular way. Under section 25, a copy of the assessment list prepared has to be posted at the place of meeting of the Committee and such posting has to be proclaimed by beat of drum, while any person may object in writing to the Committee within thirty days of the date of the posting of the list against the assessed annual value of his property or against his name appearing as the owner or occupier of any property, or against the amount of the assessment unit at which he is assessed. The Committee has to consider such objection and to record an order thereon. Further, any person, who is dissatisfied with the order passed by the committee on his objection, may within fifteen days appeal against such order to the Deputy Commissioner whose decision on such appeal shall be final.

The objection taken to the tax in the present case is that it was purely a tax on income. It has, however, been frequently held that the word "circumstances" is equivalent to "means," while one of the dictionary meanings of the word is "material welfare." The tax-paying capacity of an assessee must, therefore, depend upon his means or material welfare, that is, upon the money, etc. that comes into his hands from various sources. That is certainly the principal, possibly the only assessable, component of an assessee's circumstances. The imposition of the tax was certainly within the power of the committee under section

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21 of the Act, and the suit must fail on the ground set forth that the tax is *ultra vires*. Whether the tax has been properly assessed as to *amount* cannot come before the Courts. It was for the assessee to object under section 25 to the amount of the assessment unit at which he was assessed. If he was dissatisfied with the order passed on his objection, he could have appealed to the Deputy Commissioner setting forth any circumstance in his favour and asked for the unit to be reduced. The order passed by the Deputy Commissioner would have been final and could not be challenged in the Courts.

The suit was properly dismissed and this appeal must fail. The Small Town Committee will have its costs in the trial Court and in the Lower Appellate Court. It will bear its own costs in this Court.

A. N. C.

*Appeal dismissed.*

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