ORIGINAL CIVIL.

Before Sir John Beaumont, Chief Justice, and Mr. Justice Rangnekar.

1935
March 8

THE SECRETARY OF STATE FOR INDIA IN COUNCIL (ORIGINAL DEFENDANT No. 5), APPELLANT *v.* THE MUNICIPAL CORPORATION OF THE CITY OF BOMBAY (ORIGINAL PLAINTIFF No. 2), RESPONDENT.*

City of Bombay Municipal Act (Bom. Act III of 1888), section 212—Indian Railways Act (IX of 1890) section 135—Government Notifications under the section—Land belonging to Great Indian Peninsula Railway—Property tax leviable by Bombay Municipality on Railway lands—Charge on such lands.

Section 135 of the Indian Railways Act, with the notifications issued under it by the Government of India, provides that every Railway administration in British India shall be liable to pay, in respect of property owned by such administration within any local area, every tax which may lawfully be imposed by any local authority: hence under section 212 of the City of Bombay Municipal Act, a charge for the payment of unpaid taxes is created on the lands in the city of Bombay which are vested in the Railway administration of the Great Indian Peninsula Railway.

SUIT to recover Municipal taxes.

The Great Indian Peninsula Railway Administration owned a plot of land at Wadi Bunder in Bombay. The Railway Administration in May 1919 leased the said plot to one Mehtabkhan Chandkhan (defendant No. 1) for three years. That plot stood in the Municipal records in the name of Mehtabkhan. He entered into partnership with defendant No. 2 and two others in respect of the said land on which he erected stables for horses and buffaloes. The partners mortgaged the said plot with the structures to defendants Nos. 3 and 4. (It was found at the hearing that the said mortgage was paid off and defendants Nos. 3 and 4 were struck off from the suit). From January to November 1927 the said land was occupied by defendant No. 6. Property taxes amounting to Rs. 6,934-4-0 became due to the Bombay Municipality. The Municipality claimed to recover this amount from defendant No. 1 and Rs. 1,240-8-0 forming part of this amount from defendant No. 6 being the taxes for the period during which he was in occupation of the said land.

*O. C. J. Appeal No. 33 of 1934 : Suit No. 1234 of 1930.

The Municipality further contended that under section 212 of the City of Bombay Municipal Act (subject to the prior payment of land revenue), the amount claimed was a first charge on the said land and the structures on it. The Municipality further prayed *inter alia* that in default of payment of the said amount within 6 months or within such further time as the Court deemed fit, the said land and structures should be sold by and under the directions of the High Court and the sale proceeds applied in payment of the said amount.

Defendant No. 1 contested the plaintiff's claim and put in a counterclaim against the Municipality for damages for not giving him a license for stabling buffaloes. He did not appear at the hearing of the suit and a decree for the amount claimed was passed *ex parte* against him and defendant No. 6.

The Secretary of State for India in Council as the owner and administrator of the Great Indian Peninsula Railway Administration denied his liability to the plaintiff's claim. It was contended on his behalf that by virtue of the provisions of section 135 of the Indian Railways Act, lands which had vested in a Railway administration were not liable to pay any Municipal taxes.

At the hearing of the suit it was proved that three notifications had been issued by the Government under the section. The first one, dated December 4, 1907, ran thus :—

"In pursuance of clause (1) of section 135 of the Indian Railways Act, 1890 . . . the Governor General in Council is pleased to declare that every railway administration in British India shall hereafter be liable to pay, in respect of property within any local area, every tax which may lawfully be imposed by any local authority in aid of its funds, under any law for the time in force."

On May 13, 1914, another notification was issued, which provided :—

"In pursuance of section 135 of the Indian Railways Act, 1890, . . . the Governor-General in Council is pleased to declare that the administration of the Great Indian Peninsula Railway shall be liable to pay in aid of the Funds of the

1935

SECRETARY OF STATE FOR INDIA v. BOMBAY MUNICIPALITY (No. 2)

local authorities set out in the schedule hereto annexed the taxes specified against each in the second column thereof :—

In the schedule was mentioned the Bombay Municipality—General tax, water-tax, halalkhore tax, tax on vehicles and animals, etc. . . ."

The third notification issued, on August 20, 1928, ran as follows :—

"In the schedule to the notification dated May 13, 1914, in the entry in column 2 relating to the Bombay Municipality, for the words 'general tax, water-tax on value, water-tax on measurement, halalkhore tax on value, special halalkhore tax' the words 'general tax, water-tax and halalkhore tax as payable by the Secretary of State for India in Council', shall be substituted."

The suit was heard by Davar J. who passed a decree, *inter alia*, against the Secretary of State for India in Council as prayed by declaring a charge on the said land and directing that it should be sold if default was made in paying the decretal amount.

The Secretary of State for India in Council appealed against that decision.

Kenneth McI. Kemp, Advocate General, with *R. J. Kolah*, for the appellant.

M. C. Setalvad, for the respondent.

BEAUMONT C. J. This is an appeal from a decision of Mr. Justice Davar. The facts giving rise to the appeal are that defendant No. 1 was a tenant from the Great Indian Peninsula Railway, which is a Government-owned railway, and the lands belonging to it are vested in the Secretary of State for India. Certain taxes became due in respect of the property in question under the City of Bombay Municipal Act, 1888, and those taxes were not paid. It appears that on October 21, 1927, the Secretary of State commenced proceedings in ejectment against defendant No. 1, and ultimately a decree was made in 1933. As far as I can ascertain from the record, the bulk of the taxes which are in dispute were incurred during the currency of the tenancy. It may be that a small amount was incurred after the ejectment suit was started, when the tenant would have become

a trespasser. We have held in *Secretary of State for India* v. *Bombay Municipality (No. 1)*[1] that land vested in Government is subject to the charge for municipal taxes created by section 212 of the City of Bombay Municipal Act, 1888. But it is said that that decision does not apply to the facts of this case, because the land in question was vested in the railway administration of the Great Indian Peninsula Railway. Section 135 of the Indian Railways Act, 1890, provides :—

"Notwithstanding anything to the contrary in any enactment, or in any agreement or award based on any enactment, the following rules shall regulate the levy of taxes in respect of railways and from railway administrations in aid of the funds of local authorities, namely :—

(1) A railway administration shall not be liable to pay any tax in aid of the funds of any local authority unless the Governor-General in Council has, by notification in the official Gazette, declared the railway administration to be liable to pay the tax."

There is no other "rule" which seems to me to have any effect upon this case, so that the only rule deals with liability to pay. There have been three notifications, exhibits G, H and I, and the effect of them is that taxes imposed by local authorities, including the Bombay Municipality, and including amongst the taxes the taxes in question in this suit, are made payable by the railway administration to the extent to which the taxes would be payable by the Secretary of State for India in Council. Now I must confess that I feel a certain amount of doubt as to what the real meaning of section 135 of the Indian Railways Act is. All that sub-paragraph (1) does is to destroy the liability of the railway administration to pay, and in the case of these taxes, or at any rate the bulk of them, there never was any liability on the railway company to pay, because the liability was on the tenant under section 146 of the City of Bombay Municipal Act. The effect of the notifications is to restore liability to pay, and in effect the notifications nullified sub-paragraph (1) of section 135, and it is, therefore, argued

[1] (1935) 59 Bom. 681.

1935

SECRETARY OF STATE FOR INDIA v. BOMBAY MUNICIPALITY (No. 2)

Beaumont C. J.

that that section really has no operation at all. It merely destroys the liability of the railway administration to pay, that liability as to the bulk of the taxes in the suit never arose at all, and in so far as there may have been, under the Bombay Act, a liability on the Secretary of State to pay, that liability was restored by the notifications. Therefore, it is said, this case is covered by our previous decision, and section 135 of the Indian Railways Act has no application. On the other hand, it is argued by the Advocate General that the effect of the opening words of section 135, of the provision, that is, "Notwithstanding anything to the contrary . . . the following rules shall regulate the levy of taxes in respect of railways and from railway administrations," is, in substance, to repeal the provisions of the City of Bombay Municipal Act so far as they relate to the levy of taxes on lands under the railway administration, and to substitute therefor the rules laid down in the section, the only rule in fact being a rule as to liability to pay. I do not think that construction can reasonably be placed upon the section, because one must go to the City of Bombay Municipal Act in order to see, at any rate, what is the liability to pay. The Act, with the notifications, provides that every railway administration in British India shall hereafter be liable to pay, in respect of property within any local area, every tax which may lawfully be imposed by any local authority, and we must look at the City of Bombay Municipal Act in order to discover what the liability is, and I think also to discover how the liability is to be enforced. That brings in the charge under section 212. On the whole it seems to me that section 135 of the Indian Railways Act on its proper construction deals only with liability to pay, and having regard to the notifications made thereunder, the section, at the present time, so far as the subject-matter of this suit is concerned, has no effective operation at all. That was the view of the matter taken by the learned Judge. I think his view is right, and that the appeal must be

dismissed with costs, with the same variation as in the other appeal.

RANGNEKAR J. I agree.

Attorney for appellant : Mr. *G. Louis Walker.*

Attorneys for respondent : Messrs. *Crawford, Bayley & Co.*

Appeal dismissed.

B. K. D.

1935

SECRETARY OF STATE FOR INDIA v. BOMBAY MUNICIPALITY (No. 2)

Beaumont C. J.

APPELLATE CIVIL.

Before Sir John Beaumont, Chief Justice, and Mr. Justice Rangnekar.

1935 *March* 27

THE COMMISSIONER OF INCOME-TAX, BOMBAY PRESIDENCY AND ADEN, BOMBAY (REFEROR) *v.* CHUNILAL B. MEHTA, TRADING AS Messrs. CHUNILAL MEHTA AND CO., BOMBAY (ASSESSEE).*

Indian Income-tax Act (XI of 1922), section 4 (1)—Assessee carrying on business in Bombay—Contracts through broker with persons outside British India—Profits from business—If such profits accrued or arose in British India so as to render them taxable.

An assessee who carried on business in Bombay entered into contracts through a broker for the sale and purchase of certain commodities with persons outside British India particularly in New York and Liverpool. The assessee in Bombay instructed by telegram his broker in New York or in Liverpool to buy or to sell those commodities and the broker accepted the instructions and entered into the requisite contracts with third parties on the foreign exchange and notified the assessee accordingly. The contracts in question were future delivery contracts and in some of them no delivery was ever taken or given, while in others delivery was actually taken or given.

During the income-tax year 1933-34 the assessee made a profit of Rs. 11,54,830 from such business. It was admitted that the profits arising from the business had not been received in British India. A question having arisen whether the assessee was liable to be taxed in respect of this sum on the basis that the profits accrued or arose in British India :—

Held, (1) that no distinction in law existed between the two classes of business, namely, whether delivery is given or taken or not, and that in either case the nature of the business was the same ; and

(2) that the profits made by the assessee could not be said to have accrued or arisen in British India so as to render them liable to be taxed under section 4 (1) of the Indian Income-tax Act, 1922.

Board of Revenue, Madras v. *Ramanadhan Chetty*,[1] *Aurangabad Mills, Limited, In re*,[2] referred to.

Commissioners of Taxation v. *Kirk*,[3] distinguished.

*Civil Reference No. 11 of 1934.

[1] (1919) 43 Mad. 75, S. B. [2] (1921) 45 Bom. 1286.

[3] [1900] A. C. 588.