

1936

DHARWAR
URBAN
BANK LTD.

v.

KRISHNARAO

Rangnekar J.

That section implies exactly the same prohibition, which is implied by the terms of section 31 of the Bombay Land Revenue Code in these terms :

“(2) purchase or bid either in person or by agent, or in his own name or in the name of another, or jointly or in shares with others, for any property . . .”

In my opinion, the purchase by the respondent was in contravention of section 31(2). His title, therefore, failed.

In the result, therefore, the appeals must be allowed, the orders made by the lower Courts set aside, and the application of the respondent rejected, with costs throughout. There will be separate sets of costs—one set of costs for the receiver, and one set of costs for the appellant in each appeal.

Appeals allowed.

Y. V. D.

APPELLATE CRIMINAL.

Before Mr. Justice Barlee and Mr. Justice Tyabji

1936
October 1

EMPEROR v. VISHNUSHANKAR VASANTRAM (ORIGINAL ACCUSED No. 1),
APPLICANT.*

Bombay District Municipal Act (Bom. Act III of 1901), sections 46, 48, 49—District Municipality—Toll to be levied by Municipality—A matter to be regulated by a rule and not by a bye-law—Bye-law 152† made by Godhra Municipality against evading payment of toll tax—Ultra vires bye-law.

Under the Bombay District Municipal Act, 1901, matters relating to the payment of toll on conveyances ought to be dealt with by rules under section 46 of the Act and not by bye-laws under section 48 and therefore bye-law 152 (1) and (2) framed by the Godhra Municipality under section 48 (1) (a) of the Act imposing a penalty against evading payment of toll tax is *ultra vires*.

* Criminal Revision Application No. 245 of 1936.

† Bye-law 152 runs as follows :—

“152. (1) No person shall, with the intention of evading payment of the toll-tax, take or attempt to take any conveyance liable to pay such tax into the limits of the Municipality, without paying the tax at the toll naka.

(2) A breach of this bye-law shall, on conviction, be punishable with fine which may extend to five rupees for each offence.”

CRIMINAL REVISION APPLICATION against the order passed by R. S. Mani, Additional District Magistrate, Broach and Panch Mahals, confirming the conviction and sentence passed by Honorary Second Class Magistrate, Godhra.

1936
EMPEROR
v.
VISHNUSHANKAR
VASANTRAM

The accused was a resident of Godhra. He owned a motor car which he plied for hire between Godhra and Kalol. The car was kept in a garage at Godhra.

The Municipality of Godhra levied toll-tax on vehicles coming within the limits of the Municipality. Before April 1, 1934, the Municipality leased out the collection of toll but since that date the Municipality began to collect the toll-taxes departmentally.

Between 1931 to 1934 the accused paid to the Municipality wheel-tax but refused to pay the toll-tax. On March 30, 1934, the Municipality gave a notice to the accused that his car would not be assessed to wheel-tax and that it would be liable to pay the toll-tax. Thereafter the car entered the limits of the Godhra Municipality on May 12, 13 and 14 ; but the accused refused to pay any toll demanded from him. The Municipality, therefore, lodged complaints against the accused under bye-law 152 for its wilful breach by the accused.

The Bench of Magistrates, which tried the accused, convicted him and sentenced him to pay a fine of Rs. 5 for each of the three breaches complained of.

On appeal, the Additional District Magistrate confirmed the conviction and sentence giving reasons as follows :—

“The first ground urged in appeal is that the Municipality was not empowered by the District Municipal Act to enact a penal bye-law for breach of the toll-tax rules and that therefore this penal bye-law has no force of law although it was sanctioned by Government from time to time. It might at the outset be admitted that, in fact the District Municipal Act does not empower the Municipality to enact such a bye law, no sanction of Government will make it valid. Section 48 (1) authorises the Municipality to enact, with the previous sanction of the Government, bye-laws in respect of certain specified subjects and also, under sub-clause (a) thereof, in respect ‘ of the Regulation of all matters relating to Municipal Administration ’. Toll tax is not one of the items expressly specified in the sub-clauses of section 48 (1) and

1936

EMPEROR
v.VISHNUSHANKAR
VASANTRAM

hence the bye-law falls under sub-clause (u). *Prima facie* it is clear that the collection of toll-tax is a matter relating to municipal administration and provision under a bye-law can therefore be made for evasion of payment of this tax, under the last paragraph of section 48 (I) of the Act. But it is urged on behalf of the appellant that the Municipal Act itself contains provisions regarding the collection of toll-tax under sections 78 and 79 and therefore any additional powers regarding this item cannot be assumed under the guise of a bye-law. I am unable to agree with this view. Sections 78 and 79 confer certain powers on all Municipalities whereas section 48 authorises the Municipalities to assume certain additional powers by the enactment of bye-laws subject to the sanction of a higher authority. Thus, although sections 78 and 79 contain certain provisions regarding octroi, sections 48 (I) (j) authorises the Municipality to enact further bye-law in respect thereof. Section 79 prescribes means of collecting a toll-tax; a bye-law prescribing a punishment for evasion of payment of toll-tax is by no means inconsistent with this section and this is certainly a matter relating to municipal administration. Thus I hold that the Municipality was empowered to enact the bye-law."

The accused applied in revision.

G. N. Thakor, with *B. G. Rao*, for the accused—applicant.

U. L. Shah, for the opponent.

No appearance for the Crown.

TYABJI J. We are not prepared to disturb the finding that the payment of toll has been evaded by the applicant. On this finding (subject to an argument that the applicant was not liable to pay the toll at all) the decision of this application depends on whether the Bombay District Municipal Act, 1901 (Bom. III of 1901), empowers the Godhra Municipality to make a bye-law to the following effect :

"(1) No person shall, with the intention of evading payment of the toll-tax take or attempt to take any conveyance liable to pay such tax into the limits of the Municipality, without paying the tax at the toll-naka.

(2) A breach of this bye-law shall on conviction be punishable with fine which may extend to five rupees for each offence".

The powers of the Municipality to make bye-laws are contained in section 48 of the Bombay District Municipal Act. That section empowers the Municipality (with certain restrictions not now material) to make bye-laws not inconsistent with the Act regulating the matters mentioned

in its numerous clauses. The only clause of section 48 that is relied on is the last, denominated by the letter (*u*). Under clause (*u*) every Municipality may make bye-laws "generally for the regulation of all matters relating to municipal administration".

1936

EMPEROR
v.
JISHNUSHANKAR
VASANTRAM

Tyabji J.

A prohibition against taking conveyances into the limits of the Municipality may be the subject of a bye-law if it can be brought within the terms of clause (*t*). The bye-law in question, however, cannot be brought under the clause (*t*). But it is urged that this particular prohibition falls under the clause (*u*), because it regulates a matter regarding municipal administration in this manner: that a rule—rule 152—has been framed under section 46 of the Act, by which it is prescribed that the toll in question shall be levied,—a toll under section 3 (*1A*) of the Act being included in the term "tax": that the prohibition in the bye-law in question subserves rule 152 for payment of the toll; and that the prohibition thus becomes a matter regulating municipal administration. According to this argument though a matter (like imposing a toll) may originally have to be regulated by a rule, yet after a rule has been made the enforcement of the rule may become a matter relating to municipal administration; and in that manner, the recovery of a toll may become a matter relating to municipal administration, and consequently a prohibition connected with the enforcement of the toll may be the subject of a bye-law: section 48 (*u*); and then the Municipality may prescribe a fine for the infringement of the bye-law containing the prohibition by which the payment of the toll is required not to be evaded. Three steps are involved in this argument: first, a rule validly made, secondly, a bye-law regulating the matter governed by the rule,—which matter has by reason of the rule become a matter relating to municipal administration; thirdly, a fine prescribed for the infringement of the bye-law (not of the rule).

1936

EMPEROR

v.

VISHNUSHANKAR
VASANTRAM

Tyabji J.

The argument requires a consideration of the provisions of the Act empowering Municipalities to make rules and bye-laws. They are contained in sections 46-49 which constitute Chapter IV : sections 46, 46A and 47 deal with rules ; section 48 deals with bye-laws, section 49 with which Chapter IV closes, is ancillary (making copies of rules and bye-laws available to the public for inspection and purchase). Under these sections rules are clearly discriminated from bye-laws. The matters to be regulated by rules are mentioned in section 46 and those to be regulated by bye-laws are mentioned in section 48. It is true that both rules and bye-laws may be made by the Municipality, and both require to be approved or sanctioned by the Governor in Council or Commissioner. But, to mention two salient matters in which they differ :—

(1) Rules have effect when they are approved, whereas bye-laws require to be previously sanctioned ; when bye-laws are proposed, their drafts have to be published and objections and suggestions received and considered : bye-laws can be made only after this procedure has been followed.

(2) There is no provision in respect of rules similar to the last paragraph of section 48, sub-section (1), following clause (u) which provides that “ every Municipality may, with the like sanction, prescribe a fine not exceeding five hundred rupees for the infringement of any such bye-law ”.

A toll may be levied by the Municipality only by a rule being made under section 46, clause (i). That clause contains several restrictions with reference to making rules prescribing taxes : one main restriction is that such a rule can only be made subject to the provisions of Chapter VII. That long Chapter (sections 59 to 81A) contains detailed provisions relating to municipal taxation, to three of which I will refer. *First*, the imposition of a tax or a toll is covered by section 59 (b), sub-clauses (ii) and (iii). These sub-clauses are

mutually exclusive. *Secondly*, the elaborate preliminary procedure laid down in section 60 is also required to be followed before a tax (or toll) can be imposed. This procedure includes the publishing of the draft rules and taking into consideration objections raised to them. *Thirdly*, section 79 provides a special penalty for non-payment of any toll leviable by a Municipality.

This may seem sufficient indication that the legislature did not intend that these two processes should be interchangeable in regard to levying a toll. Taxes and tolls are covered in detail by special provisions relating to the rules by which they may be imposed and their non-payment penalized. Can the legislature have intended that they should be liable to be regulated cumulatively by the altogether different process of making bye-laws—a process governed by its own peculiar procedure and giving rise to distinct sanctions of its own? And yet this is what must happen if a matter primarily to be regulated by a rule is to be circuitously made the subject of a bye-law—if the evasion of a rule may be prohibited by a bye-law, and the infringement of the bye-law prohibiting the evasion of the rule may be made punishable by fine. The paragraph following clause (u) empowers the Municipality to prescribe a fine for infringement of bye-laws. Obviously it is not contemplated by the paragraph that bye-laws should themselves impose fines; otherwise a bye-law may provide for a fine and then for infringement of that bye-law a fine may be prescribed. The language of the paragraph empowering fines to be prescribed by the Municipality is not the same as the language of the clauses empowering rules and bye-laws to be made,—though fines have to be prescribed “with the like sanction”.

Again the Act contains several sections imposing specific penalties for failure to comply with specified directions of a Municipality. I have already referred to section 79. Section 155 is a general section for penalties incurred by

1936

EMPEROR

v.

VISHNUSHANKAR
VASANTRAM

Tyabji J.

1936

EMPEROR
v.
VISHNUSHANKAR
VASANTRAM*Tyabji J.*

infringements of orders and notices not punishable under any other section. The terms of such sections increase the difficulties in the way of holding that it could have been the intention of the legislature to allow such a penal provision as is before us being circuitously enacted by the Municipality under the form of a bye-law.

In our opinion though the bye-law relied upon purports to prohibit the taking of vehicles within certain limits, it is in substance concerned with the enforcement of a toll. It consists of a prohibition against evading payment of a toll. Matters relating to payment of tolls ought to be dealt with by rules under section 46 and not bye-laws under section 48. That being so, assuming that the second part of the bye-law was enacted in conformity with the requirements of the paragraph permitting the prescription of fines for infringement of bye-laws and that section 59, clause (b), sub-clauses (ii) and (iii), have not been in any way violated, the bye-law imposes a penalty for the infringement of a rule, and it is not within the powers of the Municipality to enact such a bye-law.

We make the rule absolute, set aside the conviction, and direct the fine to be refunded.

Rule made absolute.

J. G. R.

APPELLATE CIVIL.

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

1936
October 6

THE COMMISSIONER OF INCOME-TAX, BOMBAY PRESIDENCY AND ADEN, v. Mrs. PIROJBAI N. CONTRACTOR OF NEPEAN SEA ROAD, BOMBAY.*

Indian Income-tax Act (XI of 1922), sections 22, 34—Income escaping assessment—Notice to assessee to submit return in following year—"Escape"—Interpretation.

Under section 34 of the Indian Income-tax Act, 1922, what must escape is assessment, and that means the whole process of assessment, which, in the case of individuals starts with the service of a notice under section 22 (2) of the Act.

* Civil Reference No. 5 of 1936.