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(1953) 08 AHC CK 0011

Allahabad High Court

Case No: First Appeal No. 269 of 1948

Municipal Board of Kanpur		APPELLANT
	Vs	
Dominion of India, as owner of East Indian Railway		RESPONDENT

Date of Decision: Aug. 3, 1953

Acts Referred:

- Constitution of India, 1950 - Article 285
- Railways (Local Authorities Taxation) Act, 1941 - Section 3, 3(2)
- Railways Act, 1890 - Section 135

Citation: AIR 1954 All 56

Hon'ble Judges: Malik, C.J; V. Bhargava, J

Bench: Division Bench

Advocate: A.P. Pande, for the Appellant;

Final Decision: Dismissed

Judgement

Malik, C.J.
This is an appeal filed on behalf of the Municipal Board of Kanpur in a suit filed by the Dominion of India as the owner of the East Indian Railway through the General Manager, East Indian Railway, for the following relief:

"The plaintiff claims that the defendant be restrained by injunction from cutting off water supply from all or any of the holdings of the plaintiff East Indian Railway Administration mentioned in para. 2 of the plaint."

The learned Civil Judge of Kanpur decreed the plaintiff''s suit and it is against the order of the learned Civil Judge that this appeal was filed by the Municipal Board of Kanpur. The Municipal Board appears to have taken up a hopeless position as the facts given below will show:

2. The Municipal Board of Kanpur revised the house tax and water-rate of the buildings within its jurisdiction and enhanced the rate with the result that it demanded from the East Indian Railway Administration house tax and water-rate at the rate of Rs. 19,860/- per annum with effect from 1-4-1943, for a period of five years. The Railway Administration, u/s 135, Indian Railways Act, referred the matter to Shri P. N. Crofts, District Judge, Kanpur, for adjudication as he was the officer empowered by a notification of the Government issued under the Railways (Local Authorities'' Taxation) Act (Act No. 25 of 1941) to determine the amount payable in lieu of taxes by the Railway Administration. Shri Crofts gave his award on 1-8-1945, and determined that the sum of Rs. 8,000/- per annum was the proper amount payable by the Railway Administration to the Municipal Board as house tax and water-rate. As the determination was in respect of a lump sum for six properties which were separately numbered, he was asked to apportion the amount between the various properties and fix their liabilities separately. He, therefore, gave a supplementary award on 21-3-1946. Soon after the award was made by Shri Crofts, the Municipal Board passed a resolution, claiming to enhance the house tax and water-rate from Rs. 8,000/- per annum to Rs. 12,038/- and, to a protest made by the Railway Administration, it sent a reply dated 13-11-1946, that the Municipal Board had the right to increase the amount and that if the Railway Administration felt aggrieved, they can pay he amount under protest and take up the matter again before the District Judge.
The position taken, therefore, was that the Board had a right to fix such amount as it thought proper for house tax and water-rate and it was for the Railway Administration, if they did not like the decision of the Board, to move the District Judge for a fresh award. It is this position which has been maintained by learned counsel for the appellant. It will, therefore, be necessary to refer to the various provisions under which the local authorities are allowed to levy taxes on government properties.

3. Section 154, Government of India Act, 1935, (before the Adaptation Order) provided:

"154. Property vested in His Majesty for purposes of the government of the Federation shall, save in so far as any Federal law may otherwise provide, be exempt from all taxes imposed by, or by any authority within, a Province or Federated State:

Provided that, until any Federal law otherwise provides any property so vested which was immediately before the commencement of Part III of this Act liable, or treated as liable, to any such tax, shall, so long as that tax continues, continue to be liable, or to be treated as liable, thereto."

Similar provisions were made in Article 285 of the Constitution but as this case is not governed by the provisions of the Constitution, it is not necessary for us to refer to the terms of that Article.

The Federal Law referred to in Section 154, Government of India Act, 1935, is Section 135, Indian Railways Act (Act 9 of 1890) which runs as follows:

"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 (general controlling authority) has by notification in the official gazette, declared the railway administration to be liable to pay the tax.

"(2) While a notification of the general controlling authority under Clause (1) of this section, is in force, the Railway administration shall be liable to pay to the local authority either the tax mentioned in the notification or, in lieu thereof, such sum, if any, as an officer appointed in this behalf by the general controlling authority may, having regard to all the circumstances of the case, from time to time, determine to be fair and reasonable.

(3) The general controlling authority may at any time revoke or vary a notification under Clause (1) of this Section."

It is not necessary for us to quote the other two clauses as they are not relevant for purposes of this case. Then we come to the rules under the U.P. Municipalities Act (Act No. 2 of 1916) and, in Part II of Volume I of the Municipal Manual, 1952 Edition, page 307, under the heading "Taxation of railways," the rule provides that

"a municipal board has no power to levy any of its taxes from a railway company until the Central Government has notified, u/s 3 (1), Railways (Local Authorities'' Taxation) Act 25 of 1941 that the railway administration is liable to pay the particular tax. When a board wishes to levy a tax from a railway administration, an application for sanction must be submitted to the State Government explaining clearly the amount of the tax to be demanded and the direct or indirect services which justify the imposition of the particular tax on the railway administration,"

The only other Act that need be referred to is the Railways (Local Authorities'' Taxation) Act (Act No. 25 of 1941), Section 3 of which is important and is to the following effect:

"3 (1). In respect of property vested in His Majesty for the purposes of the Central Government, being property of a railway, a railway administration shall be liable to pay any tax in aid of the funds of any local authority if the Central Government, by notification in the official Gazette, declares it to be so liable.

(2) While a notification under Sub-section (1) is in force, the railway administration shall be liable to pay to the local authority either the tax mentioned in the notification or in lieu thereof such sum, if any, as a person appointed in this behalf by the Central Government may, having regard to the services rendered to the

railway and all the relevant circumstances of the case, from time to time determine to be fair and reasonable. The person so appointed shall be a person who is or has been a Judge of a High Court or *a District Judge."

Admittedly, the procedure prescribed in Sub-section (2) of Section 3, Railways (Local Authorities Taxation) Act (Act No. 25 of 1941) was not followed in this case and neither there is any notification authorising the Municipal Board to charge the sum of Rs. 12,038/- per annum as house tax and water-rate, nor has any person appointed by the Central Government varied the award already given, by Shri Crofts. The Municipal Board could not, therefore, claim in its own right to enhance the amount arid make a demand and, on failure of the Railway Ad-ministration to meet that demand, to issue a distress warrant or threaten to cut off the water supply. Though, in this case, it does not appear from the record that the Government anywhere by any order specifically directed the increase of the amount of tax from Rs. 8,000/- to Rs. 12000/-and odd, in view of the provisions of Section 135 Indian Railways Act and Section 3, Railways (Local Authorities Taxation) Act (Act No. 25 of 1941), we doubt whether the State Government could have any power to grant the sanction and allow the Municipal Board to enforce its claim against the Railway Administration.

A reference to the State Government was probably made in the Municipal manual as it was intended that, when the Municipal Board had moved the State Government, the State Government would move the Central Government to issue a new notification or appoint a person in accordance with the provisions of Sub-section (2) of Section 3, Railways (Local Authorities'' Taxation) Act (Act No. 25 of 1941) to determine afresh the amount of tax to be paid by the Railway Administration.

4. The appeal has no force and is dismissed. As the respondent is not represented, we make no order as to costs.