Bechu Ram Vs The Chairman Chapra Municipality

Court: Calcutta High Court

Date of Decision: Jan. 6, 1911

Judgement

1. This appeal involves a question under the Bengal Municipal Act, 1884, with reference to the levy of latrine tax. The Plaintiff"s holding No. 173

has been assessed with Rs. 41-4 on the annual value of that holding including the upper storey, which is his dwelling-house, and the eight shops in

the verandah of the ground-floor of which none are occupied by the Plaintiff himself. His complaint is that the latrine tax is payable in respect of the

dwelling-house only.

2. It has been found that none of the shopkeepers pay latrine tax within the Municipality in question for their separate dwelling-houses. The

Plaintiff"s dwelling-house has a privy attached to it.

3. Both the lower Courts have dismissed the suit. The Munsif remarked incidentally, that no scale had been adopted for the fixation of latrine fees,

but one consolidated rate has been fixed for the latrine tax on the valuation of the holding."" This point, however, had not been urged in the first

Court, and lower Appellate Court has not alluded to it.

4. In second appeal it has been argued (1) that no scale having been sanctioned by the Municipal Commissioners at a meeting, the levy of latrine

tax was illegal and (2) that the eight shops are, practically, in the possession of the Plaintiff who already pays the tax for the upper storey and is,

therefore, exempted from further liability. Sec. 321, Act III of 1884, provides that The Commissioners may levy fees, to be fixed on such scale,

with reference to the annual value of holdings containing dwelling-houses or privies within the limits of the Municipality, or such part thereof as

aforesaid, as the Commissioners at a meeting may direct.

5. The proviso to sec. 322 is as follows :- No such fee shall be levied in respect of any shop or place of business which does not contain any

privies or cesspools, when a fee under this Part (IX) is levied from the occupier thereof in respect of his dwelling-house within the same

Municipality.

6. The second contention on behalf of the Plaintiff-Appellant turns on a construction of the proviso to sec. 322. The meaning of the proviso is this

that when a shop-keeper lives elsewhere, and pays latrine tax for his house, he shall not be made to pay again for his shop, unless the shop

contains a privy or cesspool. The Plaintiff is not occupier of the eight shops :

7. He cannot, therefore, claim exemption under the proviso. The Plaintiff is the owner of the shops which, together with the dwelling-house, are all

included in one holding, No. 173, and the fees are to be levied on the annual value of the holding inclusive of the shops. The wording of the sec.

321 shows that the fees are to be levied with reference to the annual value of holdings containing dwelling-houses or privies and not with reference

to dwelling-houses only. The second contention, therefore, must be overruled.

8. There is force in the first argument of of the learned Vakil, but we are not in possession of the full facts. If as a matter of fact the Commissioners,

at a meeting, did not fix any scale for the levy of latrine fees, as enjoined by sec. 321 of the Act, the assessment and levy of the latrine tax must be

deemed to be ultra virus. The scale has to be fixed at a meeting. The scale is not to exceed the limits imposed by the second and third paragraphs

of sec. 321. We express no opinion as to the meaning of the word '' scale.''

9. The necessary facts must be found by the lower Appellate Court and a fresh decision arrived at with reference to the observations we have just

made. It is possible that a '' scale'' was duly fixed, if so, the fact must be strictly proved : the parties will be entitled to adduce additional evidence

on this point. The appeal is allowed in part. The case will be returned to the lower Appellate Court to be dealt with in accordance with law. Future

costs will abide the ultimate result. Costs hitherto must be borne by the Appellant.