

(1928) 06 CAL CK 0031

Calcutta High Court

Case No: Rev. No. 280 of 1928

Pradip Singh Jamadar and
Another

APPELLANT

Vs

Chairman, Muktagacha,
Municipality

RESPONDENT

Date of Decision: June 22, 1928

Final Decision: Dismissed

Judgement

Mitter, J.

This Rule was issued on the Chairman of the Muktagacha Municipality to show cause why the decree of the Small Cause Court of the 2nd Subordinate Judge of Mymensingh for recovery of Rs. 105 from the Defendants who are Petitioners before me should not be set aside. Two grounds are urged in support of this Rule. It is said that the Municipality had no right to levy this personal tax as the Defendants were not persons who were occupiers of holding within the meaning of sec. 85 of the Bengal Municipal Act. It is argued in the second place that, in any event, the assessment of the Municipality is ultra vires, seeing that the assessment was a joint assessment against both the Defendants who are Petitioners before me. It appears that the Petitioners who are the servants of the Maharaja obtained an ijara of a certain place which is described as a cattle market within the Municipality and they make their collection of rent and carry on their business on holding No. 282 in respect of which the assessment has been made although they reside elsewhere. It appears that on this holding a cattle market is held on Hal days and the holding remains vacant on other days. The persons who sell their wares in the market are sort of licensees under the ijaradars, i.e., the Defendants and the ijaradars are the persons who really occupy the holding within the Municipality. The first contention, there-Pore, that the Municipality had no authority to assess tax on the Defendants because they did not occupy the holding within the Municipality must fail. The second ground taken is one of substance and must prevail. It appears that there has been a joint assessment under sec. 85, cl. (a) of the Bengal Municipal Act against

both the Defendants. Sec. 85(a) reads as follows: I need only quote the material portion, "The Commissioners may, from time to time, at a meeting convened expressly for the purpose, of which due notice shall have been given, and with the sanction of the Local Government, impose within the limits of the Municipality one or other, "or" both, of the following taxes:-

(a) A tax upon persons occupying holdings within the Municipality according to their circumstances and property within the Municipality."

2. Whether the holding is claimed jointly by two or more persons, cl. (a) suggests to my mind that a tax is to be assessed on each separately according to the circumstances and property of each within the Municipality. The contention raised by the learned vakil for the Opposite Party that these persons should be treated as one person seems to me not to be tenable. For, to accept that construction would be to take a view inconsistent with the language of cl. (a) which suggests that each person must be taxed personally according to the circumstances and property of each within the Municipality. The circumstances and the property of two joint occupiers must of necessity vary and two persons occupying holdings could not be regarded either as a Corporation consisting of several members as one person in the eye of the law or as one Company consisting of several members. This view receives support from a decision of the Privy Council in the case of *The Chairman of the Jalpaiguri Municipality v. The Jalpaiguri Tea Co., Ltd.* 26 C. W. N. 311 S.C. 34, C. L. J. 283 (1921). Mr. Justice Mookerjee in dealing with the Question as to what is the proper interpretation which is to be put upon sec. 85(a) observed as follows:-"The language does not justify such a restricted interpretation; and there is no good reason why in places where the personal tax is in operation, several persons occupying the same holding should not each be subject to assessment, according to their respective circumstances and property within the Municipality." Mr. Justice Buckland concurred with Mr. Justice Mookerjee and observed that in his judgment "the tax under sec. 85(a) was in the nature of a poll-tax leviable on persons. Not however merely as persons, but according to their circumstances and property within the Municipality" and he held that there were two Companies in that case who were occupying the holding though joint occupiers of holding and each of them was liable to be taxed under sec. 85(a). In that case separate tax was assessed on each of the Companies and the contention was that they should have been jointly assessed. That contention, however, was not accepted and the view was taken that each person occupying the holding should be assessed separately. The Municipality of Muktagacha by assessing a joint personal tax on each of the two Defendants has contravened the provisions of sec. 85(a) of the Bengal Municipal Act. Their action must consequently be regarded as ultra vires and the suit based on such an action which was beyond the powers of the Municipality must be dismissed. The Rule is made absolute and the judgment and decree of the "lower Appellate Court must be set aside. There will be no order as to costs.