

1892  
DEC. 19.  
—  
TESTA-  
MENTARY  
JURISDIC-  
TION.  
—  
17 B. 388.

extending the power of Mr. Watkins, by appointing him receiver without security to recover and take possession of all the cash and moveable property belonging to the deceased which has not been produced by the plaintiff to the solicitors of the two parties and entered into the inventory made by them. Costs must be costs in the cause.

Attorneys for the plaintiff: Messrs. *Mansukhlal, Damodar, and Jamsetji.*

Attorneys for the defendants: Messrs. *Chitnis, Motilal, and Malvi.*

17 B. 394 = Chitty's S. C. C. R. 363.

[394] ORIGINAL CIVIL.

*Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Bayley.*

GOVARDHANDAS GOCULDAS TEJPAL (*Plaintiff*) v. THE MUNICIPAL COMMISSIONER (*Defendant*).<sup>\*</sup> [27th January, 1893.]

*Municipal Act (Bombay) III of 1888, s. 158—Tax—Drawback—General conditions prescribed by Standing Committee limiting right to drawback under s. 158—Ultra vires.*

Under s. 158 of the City of Bombay Municipal Act (Bombay Act III of 1888), the following general conditions were prescribed by the Standing Committee with reference to claims for drawback of the general property tax leviable in Bombay:—

"(1) Except with the special sanction of the Commissioner, no claim for drawback shall be entertained unless submitted to the Commissioner not less than 30 days before the commencement of the half-year to which such claim relates.

(2) Drawback of the one-fifth part of the general tax shall be sanctioned by the Commissioner in cases falling within either of the following classes and in no others:—

(a) Chawls or buildings let out for hire in single rooms either as lodging or godowns for the storage of goods.

(b) Properties which, in the opinion of the Commissioner, are usually or frequently vacant either wholly or partially.

(3) No sanction for drawback shall extend or apply to any floor on which trade or manufacture is carried on, or any goods are sold."

The Commissioner having refused to sanction a drawback of the tax liable on certain properties of the plaintiff on the ground that they did not fall within the terms of the above conditions, the plaintiff filed this suit. It was contended in this behalf that the second and third of the above conditions were bad, and that the Standing Committee could not by so-called general conditions limit or curtail the right given to tax-payers by s. 158.

*Held*, that the conditions prescribed by the Standing Committee were not *ultra vires* and that the Commissioner was justified in refusing the drawback.

CASE stated for the decision of the High Court under s. 2 of Act XII of 1888 by C. W. Chitty, Chief Judge of the Court of Small Causes:—

"1. This is an appeal against the decision of the Municipal Commissioner refusing to sanction a drawback of one-fifth part of the general tax leviable in respect of certain immoveable properties belonging to the appellant.

[393] "2. There is no dispute as to the facts of the case. It is admitted that all the properties named in the petition of appeal consists of buildings which are let out in flats; in two cases the ground floor is occupied by shops. With this exception all the premises are used as lodging for tenants, but are not let out entirely in single rooms. The said

<sup>\*</sup> Appeal No.  $\frac{M}{45}$  of 1892.

buildings are let to two or more persons holding in severalty, and the Municipal Commissioner has, for the purpose of assessing such buildings to the property tax, treated the whole of each of such buildings as one property.

"3. The Municipal Commissioner refused to sanction a drawback in respect of the said properties, on the ground that they did not fall within the terms of the general conditions prescribed by the Standing Committee. It should be mentioned that no exception was taken to the first of such general conditions.

"4. On behalf of the appellant it was argued that the second and third general conditions were bad; that, inasmuch as it has been held by the High Court that 'may' in s. 158 is to be read as 'shall,' s. 158 is positive and compulsory, that the Standing Committee cannot by so-called general conditions limit or curtail the right given to tax-payers by s. 158, and that the second and third conditions are inconsistent, one with the other.

"For the respondent it was contended that the drawback was properly refused; that the Act itself limits the right of tax-payers by making the sanction of drawback subject to the general conditions prescribed; and that the general conditions are reasonable, if the Standing Committee have the right to say that the drawback is not to be granted in every case which comes within the terms of s. 158.

"5. The conditions and circumstances under which drawback was allowed when the former Act was in force were prescribed by the Act itself (see Bombay Municipal Act, 1872, s. 76), and it will be seen that the conditions now prescribed are slightly more favourable to the tax-payer, and there can be little doubt that they are not in themselves unreasonable. I had some doubt whether in this case it was open to this Court to go behind such [396] general conditions duly prescribed by the Standing Committee; but assuming that the Court has that power, two questions arise: (1) whether the general conditions of the 10th March 1892 limit the rights of tax-payers under s. 158, and (2) whether the Standing Committee have power to make such conditions.

"6. In expressing my opinion on the above points I may say, with regard to the first question, that, in my opinion, it should be answered in the affirmative. There is nothing in s. 158 itself, except the words 'subject to any general conditions, &c.,' which in any way restrict or limit the right of the tax-payers to the allowance of drawbacks in all cases falling within the terms of the section, whereas the conditions confine the allowance to certain classes of property. As to whether the Standing Committee have power to make such conditions, it would appear from comparison of the former and present Acts that the Legislature intended to vest in the Standing Committee the power of restricting such allowances, which power was formerly exercised by the Legislature itself (s. 76). It would, however, be expected that, if it were so intended, the word 'limitation' or 'restriction' would be used with or in place of the word 'condition,' which applies rather to the method of sanctioning allowances. At the same time I think that the words 'general conditions' are wide enough to include limitations or restrictions, and that therefore the Standing Committee have the power to make such conditions as those in question. There can be little doubt that if the contrary be held, it would have the effect of rendering compulsory the allowance of drawback in many cases where it was never intended, and would be unreasonable."

1893

JAN. 27.

ORIGINAL

CIVIL.

17 B. 394=

Chitty's

S. C. C. R.

363.

1893

JAN. 27.

ORIGINAL  
CIVIL.17 B. 394=  
Chitty's  
S. C. C. R.  
363.

Section 158 of the City of Bombay Municipal Act (III of 1888), is as follows:—

(1) When any building or land is let to two or more persons holding in severalty, the Commissioner may, for the purpose of assessing such building or land to the property taxes, either treat the whole thereof as one property, or with the written consent of the owner of such building or land treat each several holding therein or any two or more of such several holdings together or each floor or flat as a separate property.

(2) When the Commissioner has determined to treat all the several holdings comprised within any one building or land under this section as one property, he may, subject to any general conditions which may from time to time be [397] prescribed by the Standing Committee in this behalf, at any time, not later than seven days before the first day of any half-year for which an instalment of general tax will be leviable in respect of the said property, sanction a drawback of the one-fifth part of the general tax so leviable.

In pursuance of the above section the following notice was issued by the Municipal Commissioner:—

It is hereby notified that the Standing Committee of the Corporation has, under the provisions of s. 158 (2) of the City of Bombay Municipal Act, 1888, prescribed the following general conditions in supersession of those hitherto in force to be observed in granting allowances of one-fifth drawback of the general tax in respect of properties which are let to two or more persons in separate occupancies:

(1) Except with the special sanction of the Commissioner no claim for drawback shall be entertained unless submitted to the Commissioner not less than 30 days before the commencement of the half year to which such claim relates.

(2) Drawback of one-fifth part of the general tax shall be sanctioned by the Commissioner in cases falling within either of the following classes and in no others, *viz*:—

(a) Chawls or buildings let out for hire in single rooms either as lodging or godowns for the storage of goods.

(b) Properties which, in the opinion of the Commissioner, are usually or frequently vacant either wholly or partially.

(3) No sanction for drawback shall extend or apply to any floor on which any trade or manufacture is carried on, or any goods are sold.

Applicants for drawback should see the Assessment Department Ward Superintendents, at their respective Ward Offices, with reference to the second condition prescribed by the Standing Committee.

*Macpherson*, for plaintiff.

for defendant.

#### JUDGMENT.

SARGENT, C. J.—We agree with the Judge of the Small Cause Court that the second and third of the conditions prescribed by the Standing Committee under the provisions of s. 158, clause (2), are not *ultra vires*, and justify the Commissioner in refusal of the drawback. The practical effect of them is doubtless to confine the right to drawback to buildings let on a particular class of holding; but, if the Legislature had intended to exclude conditions in any way restrictive of that right,—and by prescribing conditions nothing more was meant, as was suggested, than to lay down rules as to the time and manner of [398] claiming the right to drawback,—we should have expected different language.

Moreover, the position of the sentence in the section, coming as it does immediately after the mention of the particular description of buildings, points to the conclusion that by the term "conditions" was contemplated a possible qualification or restriction affecting the nature or extent of the holdings already referred to. The Standing Committee, which is a select portion of the Councillors, might well be expected to exercise a sound discretion in deciding upon the necessary conditions. We may remark that the several buildings in question, although deprived of the right to drawback by the conditions, will still be entitled to a refund when the entries are such as to fall under the provision of s. 175.

Costs of this reference to be costs in the municipal appeal, and to be taxed by the Taxing Officer of the High Court as on the original side of the High Court.

Attorneys for plaintiff :—Messrs. *Little, Smith, Nicholson, and Bowen.*

Attorneys for the defendant :—Messrs. *Crawford, Burder, Buckland and Bayley.*

1893  
JAN. 27.

ORIGINAL  
CIVIL.

17 B. 394=  
Chitty's  
S. C. C. R.  
363.

17 B. 398.

APPELLATE CIVIL.

*Before Mr. Justice Jardine and Mr. Justice Telang.*

MANILAL (*Original Defendant*), *Appellant v. BAI TARA*  
(*Original Plaintiff*), *Respondent.*\* [22nd February, 1892.]

*Hindu law—Widow—Widow's right of residence in her husband's house after his death—House mortgaged by plaintiff's husband in his lifetime and sold in execution—Auction-purchaser—Notice of widow's claim to reside.*

In execution of a decree upon a mortgage effected by the plaintiff's husband in his lifetime, the house in dispute was put up to auction, and purchased by the defendant. The defendant was aware that the plaintiff (the mortgagor's widow) was residing in the house at the time of the Court sale. In a suit brought by the plaintiff to establish her right to reside in the house in question,

*Held*, that in the absence of any allegation that the mortgage effected by the plaintiff's husband was not for the benefit of the family, or was in any way in [399] fraud of the plaintiff's rights, the defendant as auction-purchaser took the house free from the plaintiff's right of residence as a Hindu widow, notwithstanding the fact that he had notice of her claim.

[R., 36 P.R. 1907=11 P.L.R. 1908=118 P.W.R. 1907; Cons., 27 M. 45=12 M.L.J. 270 (275).]

SECOND appeal from the decision of J. B. Alcock, District Judge of Surat, in appeal No. 64 of 1891 of the District File.

The plaintiff, Bai Tara, was the widow of one Nandlal Baharilal. In execution of a decree upon a mortgage effected by Nandlal and his son the house in dispute was put up to auction and purchased by the defendant.

The plaintiff thereupon sued for a declaration of her right of residence, as a Hindu widow, in the house in dispute, and for an injunction restraining the auction-purchaser from ousting her.

The Court of first instance rejected the plaintiff's claim.

On appeal, the District Judge found that the auction-purchaser had notice of the fact that the plaintiff was residing, and had a right to reside, in the house in dispute, and that the plaintiff could not be provided with a

\* Second Appeal No. 790 of 1891.