

APPELLATE CIVIL

Before Mr. M. C. Chagla, Chief Justice

1952
June 18

ANANT SADASHIV PANDIT (ORIGINAL PLAINTIFF), APPLICANT v.
RATNAGIRI DISTRICT LOCAL BOARD (ORIGINAL DEFENDANT),
OPPONENT.*

Bombay Local Boards Act (Bom. VI of 1923), ss. 3 (ff) (gg), 3A, 4, 100 (1)—Rules framed by District Local Board defining† “octroi” and “octroi limits”—Rules permitting levy of octroi duty on goods brought from one part of district into another—Subsequent amendment of Act—Effect of amendment—Levy allowed only on goods entering into one district from another district—Whether rules rendered ultra vires—Legality of levy.

The rules framed by the District Local Board of Ratnagiri in 1929 defining “octroi” and “octroi limits” have been rendered *ultra vires* by the subsequent amendments made to the Bombay Local Boards Act, 1923.

The rules framed by the District Local Board of Ratnagiri in 1929 under the Bombay Local Boards Act, 1923, permitted levy of octroi duty on goods brought within the octroi limits, which meant the whole of the district excepting the portion thereof which was within the limits of a municipal district. The plaintiff sent certain goods from Sawantwadi to Kunkeri and the District Local Board levied octroi duty on those goods when they entered Kunkeri. Kunkeri was in the district of Ratnagiri; after merger Sawantwadi too became part of ~~the~~ district, but it had a Municipality and constituted a municipal district. The plaintiff having filed a suit for refund of the duty paid by him, the District Local Board contended that it was within its rules in levying duty because the goods came from outside the octroi limits of the Board into those octroi limits. The plaintiff challenged the validity of the rules by relying on certain amendments which were introduced into the Bombay Local Boards Act, 1923, after 1929. The trial Court dismissed the plaintiff's suit. In revision:

Held, (i) that after the amendment of the Bombay Local Boards Act, 1923, it was not open to the District Local Board to levy octroi when goods came from one part of the district into another although the part from which the goods came was not within the octroi limits of the District Local Board;

* Civil Revision Application No. 458 of 1951.

† The Rules ran as follows:—

“Octroi” means a tax on goods brought within the Octroi limits for the purpose of consumption, use or trade therein.

“Octroi limits” means the whole of the area subject to the jurisdiction of the Board under s. 4 of the Act.

- (ii) that the rules framed by the District Board defining "octroi" and "octroi limits" had become *ultra vires* on account of the amendments;
 (iii) that, therefore, the plaintiff was entitled to succeed.

CIVIL REVISION APPLICATION against the order dismissing Small Cause Suit No. 75 of 1950 in the Court of the Civil Judge (J. D.) at Sawantwadi.

R. G. Samant, for the applicant.

Purshottam Tricumdas, for the opponent.

CHAGLA C. J. This revision application raises a short but rather interesting question as to the competency of a District Local Board to levy octroi duty. The petitioner sent certain goods from Sawantwadi to Kunkeri and the District Local Board of Ratnagiri levied octroi duty on these goods when they entered Kunkeri. Kunkeri is in the Ratnagiri District and after merger Sawantwadi has also become part of the Ratnagiri District. The plaintiff filed a Small Cause Court suit for recovery of the amount which he had paid under protest as octroi duty and the Small Causes Court Judge dismissed the suit holding that the duty had been properly levied. It is from that decision that this revision application is preferred.

Now, the duty has been levied under rules framed by the District Local Board of Ratnagiri and in these rules "Octroi" is defined as a tax on goods brought within the octroi limits for the purpose of consumption, use or trade therein, and "octroi limits" is defined as the whole of the area subject to the jurisdiction of the Board under s. 4 of the Act. It cannot be disputed that if the rules framed are within the scope of the Act then the levy has been properly made. But Mr. Samant's contention is that looking to certain amendments which were introduced into the Local Boards Act of 1923 these rules are *ultra vires*. Now, two new definitions were added in s. 3 of the Bombay Local Boards Act. One was the definition of "district" and "district" was defined as the district referred to in sub-s. (1) of s. 3A or the local area declared as a district under sub-s. (2) of that section, as altered by the notification, if any, issued under sub-s. (3) of the same section. Turning to s. 3A, under sub-cl. (1) a district is the same as a local area constituted as a district. Then sub-cl. (2) empowers the State Government in special circumstances to declare any local area whether in the same district or in any other district to be a district for the purposes of the Act, and sub-cl. (3) empowers the State Government by a notification in the Official Gazette to exclude from any district

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any local area comprised therein, or include in any district any local area in the vicinity thereof. No notification has been issued either under sub-cl. (2) or sub-cl. (3) of s. 3A and it is not disputed that the Ratnagiri District is the same district for the purposes of the Land Revenue Code as for the purposes of the Bombay Local Boards Act, 1923. Then we have the definition "octroi" which is defined as a tax by way of cess on the entry of goods into a district for consumption, use or sale therein. Therefore it is clear from this definition that it is only where goods enter into a district from another district that the octroi tax can be levied. No tax would be an octroi tax if it is levied on goods which come from one part of the district into another. Then the other relevant section is s. 4 which provides that the State Government may establish a district local board for an area constituted as a district, and in this case a district local board has been constituted for the Ratnagiri district, and turning to sub-s. (3), a district local board shall have authority for the purposes of this Act over the area for which it has been established, except such portion thereof as is for the time being within the limits of a municipal district or cantonment. This sub-section, therefore, defines the jurisdiction of the district local board and it is true that the jurisdiction of the local board is not co-extensive with the district but it is limited to the whole of the district excepting those portions therein which are within the limits of a municipal district or cantonment. In this particular case it is again common ground that Sawantwadi has a municipality and constitutes a municipal district.

Now, the contention of Mr. Purshottam on behalf of the local board is that the jurisdiction of the district local board did not extend to the municipal limits of Sawantwadi, and as the goods came from Sawantwadi into an area over which the district local board had jurisdiction, it was competent for the district local board to levy octroi duty. This contention is consistent with the rules framed by the district local board to which I have already drawn attention. If it was competent for the district local board to levy octroi duty on goods which are brought within its octroi limits and if octroi limits were to mean the whole of the area subject to the jurisdiction of the board under s. 4 of the Act, then undoubtedly the district local board was within its rights in levying octroi on goods which came from Sawantwadi to Kunkeri because the goods came from outside the octroi limits of the district local board into those

octroi limits. But unfortunately these rules were first framed as far back as 1929 and these rules have continued to remain the same notwithstanding the amendments introduced into the Act to which I have drawn attention. It is clear that the rules framed by the district local board cannot go beyond the scope of the Act itself, nor can they be inconsistent with the Act, and therefore, we have got to look at the Act as it is amended to consider whether these rules are proper rules. If octroi means, as it does mean under the amended Act, a tax on the entry of the goods into a district, then it is not open to the district local board to levy octroi when goods come from one part of the district into another although the part from which the goods come are not within the octroi limits of the district local board. The district contemplated in the definition of "octroi" under the Act is the district defined in the Act itself and that is either the revenue district or the revenue district altered or modified by a notification by Government under s. 3A. If the limits of the district had not been altered, then the revenue district is the same as the district for the purposes of the Local Boards Act and for the purposes of considering the right of the district local board to levy octroi on goods entering into the district. Mr. Purshottam asks me to read the definition in s. 3 with s. 4 and Mr. Purshottam says that the district in the definition of "octroi" can only mean not the whole of the revenue district but only that portion of the district over which under s. 4 the district local board has jurisdiction. I am unable to accept that contention. When an expression is defined in the Act, that definition must apply wherever that expression occurs in the statute, unless the Act itself indicates to the contrary, and, therefore, I can only read the expression "district" in the definition of "octroi" as defined by the Act itself. The purpose of s. 4 is entirely different. It prescribes the limits of the jurisdiction of the district local board, whereas the definition of "octroi" defines what that particular tax is and it makes it clear that the tax can only be an octroi tax provided the goods entered into a district from another district. Mr. Purshottam says that this interpretation may lead to evasion of the tax by people taking goods to Sawantwadi and then bringing it into the other parts of the district over which the district local board has jurisdiction. I am not really concerned with the possibility of evasion of tax. I am considering rules which are taxing rules and they must be strictly construed in favour of the subject. Therefore, in my opinion, the rules framed by

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the district local board defining "octroi" and "octroi limits" are *ultra vires* and it was not competent to the district local board of Ratnagiri to levy octroi on goods which entered Kunkeri from Sawantwadi.

The result is that the rule will be made absolute with costs, and there will be a decree in favour of the applicant for Rs. 4-6-0.

Rule absolute.

M. W. P.

APPELLATE CRIMINAL

Before Mr. M. C. Chagla, Chief Justice.

GULAM KADAR INAMDAR v. THE STATE*

1952
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Bombay Provincial Municipal Corporations Act (LIX of 1949), Sch. Chap. IX, r. 11 (1) (a)—"Owner of premises", meaning of—Land and building owned by different persons—Whether the owner of the land liable under the aforesaid rule.

The accused, who was the owner of an open site in Poona, let the land to several persons who erected small huts on the land. The Poona Municipal Corporation issued a notice calling upon the accused to construct six privies and sinks and bath-rooms and to arrange drainage, within sixty days. The accused, having failed to comply, was prosecuted under r. 11 (1) (a) of chap. IX of the Schedule to the Bombay Provincial Municipal Corporations Act, 1949.

Held, although the definition of "premises" given in the Act includes both buildings and open lands, the primary question to decide in each case is whether the requisition by the Municipality is for the purposes of the building or land; it is only the owner of the building or the owner of the land who will be liable as the case may be.

Municipality of Bombay v. Shapurji Dinsha⁽¹⁾, relied upon.

CRIMINAL REFERENCE made by V. S. Metrani, Additional Sessions Judge, Poona.

One Gulam Kadar Inamdar (accused) was the owner of an open site in Poona. He let the land to members of wandering tribes who erected small huts on the land. The Poona Municipal Corporation issued a notice requiring the accused to construct six latrines and sinks and bathrooms and to arrange

*Criminal Reference No. 46 of 1952.

⁽¹⁾ (1896) 20 Bom. 617.