

APPELLATE CRIMINAL

Before Mr. Justice Bavdekar and Mr. Justice Chainani.

STATE v. MANSI KARAMSI.*

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Mar 10

Bombay Municipal Boroughs Act (Bom. XVIII of 1925), s. 61 (1) (f)—By-law framed by Municipality requiring licence for sale of milk product—Ghee whether a milk product—Marginal note and heading of section—Meaning of section not controlled when it is clear.

A by-law of the Thana Municipality framed under s. 61 (1) (f) of the Bombay Municipal Boroughs Act, 1925, required every person who used any place for selling milk, butter or other milk products to obtain a licence. The accused had within the municipal limits a shop where the principal business was done in grocery and a small business in ghee. In a prosecution against the accused for contravention of the by-law, the accused claimed exemption on the ground that his shop was not a milk shop or a milk-products shop. The trial Court accepted that contention relying mainly on the marginal note to s. 61 (1) (f) and the heading of the by-laws; and acquitted the accused. In appeal:—

Held; (i) that ghee, other than what was commonly known as vegetable ghee, was a milk product in that the primary substance from which it was made was milk, and, therefore, the Municipality was competent to make a by-law requiring that a licence must be obtained for carrying on trade or business in ghee;

(ii) that the marginal note could not control or restrict the plain meaning of the section, especially when the marginal note was not accurate;

(iii) that the heading could not control the plain meaning of the by-law which was clear in terms;

(iv) that as the by-law did not state that a licence was necessary only if the principal business done was in butter or other milk products, the accused was wrongly acquitted.

Emperor v. Sadashiv,⁽¹⁾ *Emperor v. Ismail Sayadsaheb*,⁽²⁾ and *Ramkrishna v. Bapurao*,⁽³⁾ referred to.

CRIMINAL APPEAL from order of acquittal passed by B. M. Agnihotri, Esquire, City Magistrate, First Class, Thana.

H. M. Choksi, Government Pleader, for the State.

K. S. Daundkar, for the accused.

Chainani J. This is an appeal by the State of Bombay. The opponent owns a grocery shop within Thana Municipal limits. In this shop he used to store and keep for sale ghee made from milk. Clause (f) of sub-s. (1) of s. 61 of the Bombay Municipal Boroughs Act, which applies to the Thana Municipality,

* Criminal Appeal No. 63 of 1953.

⁽¹⁾ (1947) 49 Bom. L. R. 526.

⁽²⁾ (1933) 35 Bom. L. R. 886 (F.B.).

⁽³⁾ (1937) 40 Bom. L. R. 390.

empowers the Municipality to make by-laws prescribing "the conditions on which sweet-meats, milk, butter or other milk products may be sold and on which licences may be granted, refused, suspended, or withdrawn for carrying on the trade or business of a dealer in sweet meats, milk, butter or other milk products, or for the use, for purposes of trade, of any place for stabling milch cattle, for storing or selling milk, or for making storing or selling butter or other milk products." The marginal note to clause (f) is "milk shops". Under this clause of s. 61 the Thana Municipality has made by-laws, the heading of which is "Licensing of Milk Shops and Milk Product Shops."

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The first by-law is as follows:—

"Unlicensed places for storing or selling Milk and milk products prohibited—Every person who uses any place for storing or selling milk or for making, or storing or selling butter or other milk products shall obtain a licence in the appended form, which shall be distinct from and in addition to the licence for stabling milch cattle."

By-law No. 2 prescribes the conditions to be observed by a licensee, while by-law No. 3 prescribes the penalty for contravention of these by-laws, which is a fine which may extend to Rs. 50. As the opponent was keeping *ghee* for sale at his shop, the Chief Officer of the Thana Municipality asked the opponent to obtain a licence, as required by the above by-laws. As the opponent did not do so, he was prosecuted for storing and selling *ghee* at his shop, without obtaining a licence from the Municipality. The opponent pleaded not guilty to the charge. He stated that his shop was a grocery shop, where he sold all kinds of articles, tea, coffee, aerated waters, hair oils, stationery etc., and that he sold only small quantities of *ghee* at this shop. He, therefore, contended that his shop was not milk shop or a milk products shop and that consequently the above by-laws did not apply to him. The learned Magistrate accepted this contention, and in doing so he principally relied on the marginal note to clause (f) of sub-s. (e) of s. 61 and the heading of the by-laws. He was of the opinion that the above by-laws apply only to those shops, where the principal business is done in milk, or in the milk products. He accepted the opponent's statement that his shop is mainly a grocery shop, and that he only did small business in *ghee* at this shop. The learned Magistrate, therefore, held that it was not necessary for the opponent to obtain a licence and accordingly acquitted him. Against his

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order acquitting the opponent, the present appeal has been filed.

Chainani J. It cannot be seriously disputed that ghee, other than what is commonly known as vegetable ghee, is a milk product, in the sense that the primary substance from which it is made is milk. It has been urged that as it is not directly produced from milk, but is made from butter, it cannot be said to be a milk product. This contention is, in our opinion, unsound. It is true that in order to make ghee, one has first to make butter. But the only further process that has to be gone through in order to produce ghee, is to melt butter. No other substance is added to butter in order to make ghee. Ghee produced from butter, which is made from milk, is, therefore, clearly a milk product. Under cl. (f) of sub-s. (1) of s. 61, of the Bombay Municipal Borough Act, the Thana Municipality was, therefore, competent to make a by-law requiring that a licence must be obtained for carrying on trade or business in ghee. It is true that the wording of the marginal note to this clause is "milk shops". But a marginal note cannot control or restrict the plain meaning of section; see *King Emperor v. Sadashiv Narayan Bhalerao*.⁽¹⁾ Moreover, the marginal note in this case is not quite correct, for cl. (f) in terms refers, not only to places, at which trade or business is done in milk, but also to places, at which trade or business is done in sweet-meats, butter and other milk products and to places for stabling milch cattle.

The learned Magistrate has also relied on the heading to the by-laws, which is "Licensing of Milk Shops and Milk Product Shops." But like a marginal note, a heading can be referred to for the purpose of finding out the meaning of a doubtful expression in a section. It cannot control the plain meaning of the section; see *Emperor v. Ismail*⁽²⁾ and *Ramkrishna v. Bapurao*⁽³⁾. By-law No. 1, which I have quoted above, is clear in terms, and states that every person who uses any place for storing or selling butter or other milk products shall obtain a licence in the form prescribed. The by-law does not state that a licence is necessary only if the principal business done is in butter or other milk products. The by-law makes it necessary to obtain a licence, if any place is used for storing or selling butter or other milk products.

⁽¹⁾ (1947) 49 Bom. L. R. 526. ⁽²⁾ (1933) 35 Bom. L. R. 886.

⁽³⁾ (1937) 40 Bom. L. R. 390.

Consequently, it was necessary for the opponent to obtain a licence from the Municipality under by-law 1. He was, therefore, wrongly acquitted. We set aside his acquittal, convict him under by-law 3 of the by-laws made by the Thana Municipality for "Licensing of Milk Shops and Milk Product Shops" and impose upon him a fine of Rs. 10.

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Appeal allowed.

M. W. P.

INCOME-TAX REFERENCE

Before Mr. M. C. Chagla, Chief Justice and Mr. Justice Tendolkar.
PROVIDENT INVESTMENT CO., LTD., BOMBAY, APPLICANTS v. THE
COMMISSIONER OF INCOME-TAX, BOMBAY CITY, RESPONDENT.*

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Indian Income-tax Act (XI of 1922), s. 12B—Capital gains—Profits arising from sale or transfer of capital assets—Original contract requiring transfer of managing agency along with sale of shares of Mills—Subsequent modification in terms of contract—No transfer of managing agency but Managing Agents required to resign from their office—True nature of transaction—Whether it is open to Court to look at substance of the matter ignoring true legal position—Difference between Sale and Relinquishment—Compensation paid to Managing Agents—Whether such compensation liable to tax under s. 12B.

P. I. Ltd. were the Managing Agents of certain Mills. The Mills had issued conversion shares all of which were owned by P. I. Ltd. On September 14, 1946 D. Co. made an offer of purchase of all the conversion shares at a certain rate, the offer stipulating for the transfer of the managing agency to them along with the sale and transfer of the shares. The Board of Directors of P. I. Ltd. accepted the offer and resolved that out of the amount received on the sale of shares a sum of Rupees one crore should be paid to P. I. Ltd. as compensation for the loss of managing agency of the Mills. The contract was modified on October 7, 1946 and the modification was to the effect that the Managing Agents should resign from their office on the sale of shares taking place instead of transferring the managing agency to D. Co. On the sale and transfer of shares to D. Co., P. I. Ltd. resigned their office of Managing Agents and on their resignation being accepted, received the sum of Rupees one crore as compensation for the loss of managing agency. On the question whether compensation paid to P. I. Ltd. resulted in capital gains liable to tax under s. 12B of the Indian Income-tax Act, 1922,

Held, that P. I. Ltd. by resigning their office of Managing Agents relinquished their rights in the managing agency. There was no transfer or sale of their managing agency and therefore compensation received by them did not result in capital gains in respect of any profits or gains