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Tilak held. That may be so. What we have to decide, however, is whether the awakening of political consciousness amongst the people by spreading the knowledge of politics is a charitable object. For the reasons mentioned by us in the judgment, we have come to the conclusion that it is a charitable object.

In the result, as we come to the conclusion that the Kesari Maratha Trust is a public trust, the appeal must fail and be dismissed with costs. Costs to come out from the trust funds.

Appeal dismissed.

G. N. V.*

APPELLATE CIVIL

Before Mr. Chagla, Chief Justice and Mr. Justice Dixit.

THE STATE OF BOMBAY, APPLICANT v. THE AHMEDABAD
EDUCATION SOCIETY, OPPONENT.*

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Bombay Sales Tax Act (Bom. V of 1946), ss. 2 (c), (g), 8—Meaning of 'dealer' in s. 2 (c), 'Sale' in s. 2 (g) and the expression "business of selling or supplying goods" in s. 2 (c)—An educational Society setting up a brick factory and lime kiln and producing bricks and lime for use in its buildings,—Furnishing bills to building contractors and debiting to their account—Sale of surplus bricks without any profit to others—Steel imported by the Society directly from Belgium for its buildings and disposed of at the directions of Controller of Steel—Whether Society a 'dealer'—Whether a profit making motive is an essential ingredient in order that an activity should constitute a 'business'—Construction of Taxing statutes—Object of Sales Tax Act.

An educational Society whose object was not to carry on the business of selling or supplying goods but to economise on the construction of its own buildings, is not rendered a 'dealer' within the meaning of s. 2 (c) of the Bombay Sales Tax Act, 1946, by reason of any of the following:

the Society setting up a lime kiln and brick factory, producing lime and kiln for use in its own buildings, furnishing of bills in respect of the supply of bricks and lime to the building contractors and debiting their account with the amounts of such bills; selling surplus bricks without any profit to others; importing steel for the purposes of its buildings and disposing of it as directed by the Steel Controller.

Quære.—Whether a profit-making motive is essential to render an activity a business.

Per Chagla C. J.—"Every Taxing statute must be construed strictly in favour of the subject and it is necessary that the Court must look at the provisions of a taxing statute in order to determine upon whom and in what circumstances the incidence of tax should fall, and when we look at the various provisions of the Sales Tax Act it is clear that substantially and broadly speaking the Legislature wanted to tax business people who did the business of selling various commodities which were made liable to tax."

Reference made by the Bombay Sales Tax Tribunal under s. 23 of the Bombay Sales Tax Act, 1946.

*Civil Reference No. 19 of 1955.

Corresponding to s. 2 (c) is s. 2 (6) of the Bombay Sales Tax Act, 1953.

Application dated June 17, 1952 for a declaration under s. 19 (a) that the Ahmedabad Education Society was not a 'dealer' within the meaning of s. 2 (c) of the Bombay Sales Tax Act 1946.

The Tribunal referred the following questions:—

1. Whether by reason of selling or supplying bricks and lime to its building contractors Messrs. Gannon Dunkerley & Co., Ltd., the Ahmedabad Education Society can be said to have carried on the business of selling or supplying bricks and lime within the meaning of s. 2 (c) of the Bombay Sales Tax Act, 1946.

2. Whether by reason of selling bricks and lime to other institutions and individuals, as mentioned in the Judgment, the said Ahmedabad Education Society can be said to have carried on the business of selling or supplying bricks and lime within the meaning of s. 2 (c) of the Bombay Sales Tax Act, 1946.

3. Whether by reason of selling its surplus stock of mild steel bars, as directed by the Controller of Iron and Steel, the said Ahmedabad Education Society can be said to have carried on the business of selling or supplying steel bars within the meaning of s. 2 (c) of the Bombay Sales Tax Act, 1946.

4. Whether the said Ahmedabad Education Society is a dealer within the meaning of s. 2 (c) of the Bombay Sales Tax Act, 1946.

The material facts are stated in the Judgment.

M. P. Amin, Advocate General, instructed by *Little & Co.* for the State of Bombay.

N. P. Engineer, instructed by *Manilal Kher and Ambalal* for the Opponent.

Chagla C. J.—This is a reference made to us under s. 23 of the Bombay Sales Tax Act and it raises a rather interesting question as to what exactly is the connotation of the expression "business of selling or supplying goods" used in s. 2 (c) of the Act.

The facts necessary for the determination of that question have been submitted to us in the statement of the case as required by the section. The facts are brief and simple. The Ahmedabad Education Society has as its objects the spread of education, the making of education accessible to all sections of the people, starting and taking over Art Colleges, and other similar objects, and in furtherance of these objects the Society wanted to put up buildings for colleges and residential quarters for the staff and hostels for students. They gave a contract for the construction of these buildings to M/s. Gannon Dunkerley & Co. Ltd. The Society then realised that it would be cheaper and more economical to have a brick factory of their own for the purpose of preparing bricks which could be used for the construction of the buildings and therefore they set up a brick factory in 1946, and also for a similar purpose they set up lime kilns in 1948. They found that the price of bricks was Rs. 48 per thousand in the market and by reason of setting up this brick factory and lime kilns the cost of bricks to them was only Rs. 38 per thousand. They supplied these bricks to their contractor M/s. Gannon Dunkerley & Co. They manufactured more bricks than were actually necessary for their own construction work and there was a surplus, and it is found as a fact that there was

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a danger of these bricks deteriorating and therefore they had to be disposed of, and they were disposed of from time to time either to sister educational institutions and in some cases also to individuals. But they were disposed of at cost price and no profit whatever was made by the Society. The Society also obtained a permit from Government to import steel, again for the purpose of their buildings, and after the steel had arrived the Government gave them a permit to buy steel locally, with the result that the Society did not require the steel which had been imported and the Controller of Steel directed them to sell the steel which they had imported to other persons requiring steel. Here again, this particular activity did not result in any profit to the Society. The Society, in view of the fact that it was asked to submit accounts under s. 15 of the Sales-tax Act, made an application under s. 19 for the determination of the question as to whether the Society was a dealer. The Assistant Collector held that the Society was a dealer, that decision was confirmed in appeal by the Collector of Sales Tax, but in revision the Sales Tax Tribunal came to the contrary conclusion. Thereupon the State of Bombay asked for a reference to this Court under s. 23 of the Act and the reference has now come before us.

The two relevant provisions of the Act which we have to consider are the definitions of "dealer" and "sale". The definition of "dealer" is to be found in s. 2 (c):

"Dealer means any person who carries on the business of selling or supplying goods in the State of Bombay, whether for commission, remuneration or otherwise and includes a State Government which carries on such business and any society, club or association which sells or supplies goods to its members."

And "sale" is defined in s. 2 (g) as meaning:

"Sale with all its grammatical variations and cognate expressions means any transfer of property in goods for cash or deferred payment or other valuable consideration but does not include a mortgage, hypothecation, charge or pledge."

It is clear from the definition of a dealer that it is not merely the act of selling as defined in the Act which constitutes a person a dealer. The activity which the person must indulge in is not merely the activity of selling in the sense of transferring property in goods, but it must be the activity of carrying on the business of selling or supplying goods. What the Legislature has emphasised is not the act or activity of selling but the act or activity of carrying on the business. Every taxing statute must be construed strictly in favour of the subject and it is necessary that the Court must look at the provisions of a taxing statute in order to determine upon whom and under what circumstances the incidence of tax should fall, and when we look at the various provisions of the Sales Tax Act it is clear that substantially and broadly speaking the Legislature wanted to tax business people who did the business of selling various commodities which were made liable to tax. For instance, s. 8 prevents a person from carrying on business, who would be a dealer

within the meaning of the definition, unless he got himself registered as such and the consequence of a dealer carrying on business without registration is serious because he renders himself liable to penal consequences as provided in s. 24. Therefore, the expression "carrying on business" must be given a restricted meaning. The Advocate General drew our attention to the definition in Webster's dictionary and in Murray's Oxford dictionary and he asked us to construe the expression in its plain natural English meaning, and according to him all that was required in order to carry on the business of selling or supplying was for a person continuously to sell or supply goods, and according to him the only distinction between an activity which was a business activity and an activity which was not a business activity was that whereas the latter was undertaken for pleasure or as a past time, the former was a serious activity. Therefore the Advocate General contends that if in this case we find that the Society sold or supplied goods, then unless that activity was the result of pleasure or pastime we must come to the conclusion that they are dealers within the meaning of s. 2 (c). He also referred to the Income Tax Act and the definition of "business" in that Act and drew our attention to the decisions under that Act which lay down that a profit motive was not necessary in order to constitute an activity a business.

Now, in the first place, it is never safe to rely on decisions under one statute for construing the language used in another statute. The Income Tax Act has as its object, as is well known and sometimes painfully known, the taxing of all incomes, it spreads its net wide, and whatever the activity if that activity results in income then it becomes liable to tax. The Bombay Sales Tax Act has a much narrower ambit and scope. Its object is not to tax income or to tax profits. Its object, which is a very narrow object, is to tax sales effected by persons carrying on the business of selling or supplying. Let us again emphasise that its object is not to tax sales; its object is to tax only those sales which are effected by persons who carry on the business of selling or supplying goods. In our opinion, if we construe the expression "carrying on the business of selling or supplying goods" in a commercial sense, then it is clear that the object of the person who carries on that business must be to sell or to supply. A person may either produce goods or purchase goods with the object ultimately of selling them. Unless that object is present and unless that intention is clear, the mere activity of selling or supplying would not constitute the carrying on of business of selling or supplying. If the Advocate General's contention were to be accepted, any continuous activity or any repeated activity seriously undertaken which results in the supply or sale of goods would attract the sales tax. But what the Advocate General overlooks in putting forward that contention is that the activity, although it may be serious, although it may be continuous, unless it assumes the characteristics of a business it is not an

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activity which can come within the ambit of s. 2 (c). If the intention of the Legislature was simply to tax every sale and every supply, then it was unnecessary to state that the person must carry on the business of selling or supplying goods. A further indication is given as to the nature of the activity by the Legislature including in this definition any society, club or association which sells or supplies goods to its members. The Legislature realised that a club or society does not carry on the business of supplying goods to its members, its business is to give amenities, to provide a place where people can spend their leisure hours, and realising that a society, club or association would not come within the definition, the Legislature had to extend the definition of a dealer and include in that definition a society, club or association.

If that be the proper construction of the expression "carrying on the business of selling or supplying goods" used in this Act, let us see whether the activity of the Society satisfies that definition. Shorn of its technicalities the position really is very simple. The Society wishes to put up building, it employs a contractor, the buildings cannot be put up without bricks, and bricks have to be purchased for the construction of the buildings. The Society realises that if the contractor were to go into the market and buy the bricks it would cost him and ultimately them Rs. 48 per thousand. To economise on the construction of the buildings they decide to set up a brick factory and a lime kiln. Therefore, the object and the clear object of setting up the brick factory and the lime kiln was not to sell these bricks after they were manufactured, but the object was to use these bricks for the purpose of their own buildings in order to make the cost of the buildings less than it would have been if the bricks had been purchased in the market. It is difficult to understand how this activity can possibly be characterised as carrying on business of selling or supplying bricks to anybody. The Advocate General says that the statement of the case makes it clear that bills were furnished to M/s. Gannon Dunkerley & Co., they were debited with the amount of the bricks supplied to them, and this, says the Advocate General, clearly shows that the transaction was a transaction of sale and that the Society was carrying on the business of selling. Now, in all these taxing matters we must not look to the form but to the substance of the transaction. Inasmuch as the contractor had to purchase bricks and that would have formed part of the bill which the contractor would have ultimately submitted to the Society for the purpose of book-keeping, the Society adopted a particular form of accounts, but that form does not in any way affect the real nature of the transaction and the real nature of the transaction is what we have already indicated. It is absurd to suggest that on these facts the Society was selling bricks to their contractor, M/s. Gannon Dunkerley & Co. Even the Advocate General could not really press this part of the case.

But the Advocate General was more eloquent with regard to the other aspect of the matter and that is the sale of the surplus bricks to sister societies and other individuals, and according to him there could be no doubt that as far as that activity was concerned it was a business activity of selling bricks. Here again, what we have to consider is what was the object of starting this brick factory and this lime kiln. If the object was to prepare bricks which would be used in the construction of the buildings of the Society and to produce more bricks and sell them, then undoubtedly when the Society ultimately sold the bricks it would be carrying on business of selling. But again the finding of fact is clear that the sole object of the Society was to make bricks for their own buildings and for various reasons a larger quantity was produced, that quantity was liable to deteriorate, and therefore they had to be disposed of, and the important fact which cannot be overlooked is that these bricks were disposed of without the Society making any profit whatsoever. We will presently deal with the profit motive, and we are not looking at the absence of the profit motive from the point of view of the definition, but it is an important circumstance which can be taken into consideration in determining what the object of the Society was in manufacturing these bricks. If the object was to sell, then it is impossible to understand why they were sold at cost price when the market price was Rs. 48 per thousand and they could easily have made a profit. The same is the position with regard to the steel and there the position is even stronger than in the case of the bricks, because the steel was ordered from Belgium for the needs of the Society and it had to be disposed of at the direction of the Controller of Steel. When the steel was ordered, nothing was further from the mind of the Society than any idea of selling it to any one whatsoever. Therefore, in our opinion, even though it might be said that the bricks and steel were sold or supplied by the Society, inasmuch as they did not carry on the business of selling or supplying these goods they do not come within the ambit of the definition of "dealer" contained in s. 2 (c). In our opinion, on the facts of this case it is clear that the Society never carried on the business of selling or supplying any goods.

An interesting question was considered by the Tribunal and was also debated here as to whether a profit making motive is an essential ingredient in order that an activity should constitute a business. The Tribunal has taken the view following certain English and Indian decisions that in the absence of a profit motive an activity cannot be looked upon as a business. The question is a very important and a difficult one, but in our opinion on the facts of the present case we can come to a conclusion in favour of the Society without deciding that the absence of the profit motive alone does not constitute its activity a business. As we said before, there is a clear finding here that there was a complete absence of the profit motive in the activity

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carried on by the Society. But that is not the only circumstance which has led us to the conclusion to which we have arrived. As we have already pointed out the reason for our decision is not the absence of the profit motive but the absence of any intention on the part of the Society to sell the goods at the time when the bricks were manufactured or the steel was imported. The question which the Tribunal has considered with regard to the profit motive would only fall to be determined when we have a case where the assessee either buys or manufactures goods with the intention of selling them and sells them without making profit. Then it will be time to consider whether such an activity would constitute business within the meaning of the Sales Tax Act.

The result is that we must uphold the view taken by the Tribunal that the Ahmedabad Education Society cannot be declared to be a dealer within the meaning of s. 2(c) of the Sales Tax Act. We answer all the questions in the negative. Applicant to pay the costs.

Answers accordingly.

G. N. V.

APPELLATE CIVIL

Before Mr. Justice Gajendragadkar and Mr. Justice Gokhale.

DHANJIBHAI KHIYASHIBHAI GUJRATHI, APPELLANT (ORIGINAL DECREE-HOLDER) v. DOULATBEE MARD NAJAKALI AND OTHERS RESPONDENTS (ORIGINAL JUDGMENT-DEBTORS),*

1956

Mar. 8

Bombay Tenancy and Agricultural Lands Act (Bom. LXVII of 1948), ss. 63, 89—Execution of Decree dated October 10, 1947 confirmed in appeal on June 6, 1949,—Decree for specific performance of an agreement to lease for 99 years in favour of a non-agriculturist—Darkhast Application dated September 28, 1950 praying for execution of the lease through Court—Power of Executing Court to question the validity of the decree—Whether s. 63 bars the Execution of the decree—Right to claim execution of the lease under the decree whether saved under s. 89.

On the question whether execution of a decree for specific performance of an agreement to lease at the instance of a non-agriculturist decree-holder was barred by s. 63 of the Bombay Tenancy and Agricultural Lands Act, 1948, although the suit for specific performance was filed and decree passed before the coming into force of the Act,

Held, that the decretal rights were not affected by the provisions of s. 63 as they were saved by s. 89 of the Act; the decree could therefore be executed as if the Act had not been passed.

Dhondi Tukaram v. Dadoo Piraji,⁽¹⁾ *Bai Suraj v. Haribhai Motabhai,*⁽²⁾ *Appa Ganpat v. K. B. Wassoodev,*⁽³⁾ *Bhima Balu v. Basangouda,*⁽⁴⁾ referred to.

*Second Appeal No. 877 of 1954.

1. (1953) 55 Bom. L. R. 663.
2. (1942) 44 Bom. L. R. 907.

3. (1954) 56 Bom. L. R. 517.
4. (1954) 56 Bom. L. R. 520, F. B.