Queen-empress Vs. Allan

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Court : Chennai

Decided On : Oct-02-1900

Reported in : (1901)ILR24Mad195

Judge : Shephard and ;Benson, JJ.

Appellant : Queen-empress

Respondent : Allan

Judgement :

1. The Bench of Magistrates have in effect held that the tax imposed upon Mr. Allan's lands by the Municipal Council is an illegal one and have accordingly acquitted him of the charge laid under Section 103 (2) of Madras Act IV of 1884.

2. According to Section 63 of the Act read with Section 50, to which it refers, it is lawful for the Municipal Council with the approval of the Governor in Council to notify that a tax shall be levied on buildings or lands.

3. Sub-section (2) declares the maximum rate at which such tax shall be levied in cases other than those to which Sub-section (3) of Section 63-A may be made applicable, the maximum rate-being, according to the Sub-section, 8 1/2 per centum on the annual value of the lands.

4. In the third sub-section power is given to the Chairman subject to the approval of the Municipal Council and the sanction of the Governor in Council 'to impose a

tax on lands' at an annual rate not exceeding four annas for every 80 square yards thereof in lieu of the tax referred to in Sub-section (2). This latter provision can be applied only to lands occupied by native huts (which, notwithstanding the definition of buildings, are not regarded as buildings) and to lands not occupied by other buildings nor attached thereto for use therewith for the pasturage of animals kept for private use. Not unnaturally, having regard to the small area with reference So which the calculation is to be made and the other terms of the sub-section, the Bench have considered that it was intended to apply in exceptional oases only and have been led to the conclusion that an indiscriminate application of the section to all lands within the municipality other than those excepted in the provision itself is illegal, It certainly does seem strange that the Legislature should have authorized the Municipal Council to impose a tax upon all lands and buildings in the manner mentioned in Sub-section (2) and by way of alternative should have allowed, in the case of lands including lands occupied by native huts, the imposition of a tax on a much higher scale, nor is it easy to understand why, with regard to this alternative method, the power is in the first instance given to the Chairman, and there is practically repetition of the provision that the consent of the Municipal Council and of the Governor in Council shall be obtained. The smallness of the area, only 80 square yards, and the rate chargeable, which is nearly double what can be charged under Sub-section (2), certainly suggest that the Legislature has not said precisely what it meant to say. But the words of the two sub-sections being unambiguous we are bound to give effect to them and to hold that subject to the conditions mentioned, a tax levied under Sub-section (3) on all lands within the municipality indiscriminately is a legal tax.

5. We do not think the objections taken to the terms of the sanction is a valid one. As there are questions left undecided by the Bench, we must, while setting aside the order of acquittal, remand the case for trial.