

THE INDIAN LAW REPORTS

PUNJAB SERIES

CIVIL MISCELLANEOUS

Before Bhandari, C. J. and Dulat, J.

THE RESIDENTS OF JHAJJAR, ETC.,—*Petitioners.*

versus

THE MUNICIPAL COMMITTEE OF JHAJJAR,—
Respondent

Civil Miscellaneous No. 250/C of 1953

Constitution of India—Article 133—Code of Civil Procedure (V of 1908)—Section 110—Letters Patent—Clause 15—A single Judge of High Court, whether a court “immediately below” the Letters Patent Bench hearing appeal from his decision.

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Held, that a single judge of the High Court, whether he is trying an original cause or hearing an appeal from the judgment of a subordinate court, is merely presiding over a court competent to decide those matters and, if an appeal lies against his decision, his court is immediately below the court to which the appeal lies, and it is of no consequence that the appeal lies to a larger bench of the High Court itself.

Petition under Articles 133 and 132 of the Constitution of India, and sections 109 and 110 of Civil Procedure Code, praying that leave to file an appeal to the Supreme Court of India in case L.P.A. 13 of 1953, may kindly be granted.

SHAMAIR CHAND, for Petitioners.

D. N. AGGARWAL, for Respondent.

ORDER

Dulat, J. DULAT, J. On 22nd of February, 1947 the Municipal Committee of Jhajjar adopted a resolution imposing professional tax and a notification to that effect was issued on 7th April, 1948. On 11th October, 1949, a representative suit on behalf of the residents of Jhajjar was filed against the Municipal Committee for a declaration that the imposition of professional tax was illegal being beyond the powers of the Municipal Committee and for an injunction to restrain the Committee from realizing the tax. The trial Court dismissed the suit, but on appeal the learned Senior Subordinate Judge decreed it. There was a second appeal to this Court and Kapur, J., allowed the appeal, set aside the decree and dismissed the plaintiffs' suit. A Letters Patent Appeal was then filed and this appeal was dismissed by us on 2nd September, 1953, upholding the decision of Kapur, J. An application has now been filed under Articles 132 and 133 of the Constitution for leave to appeal to the Supreme Court on behalf of the unsuccessful plaintiffs.

Mr. Shamair Chand for the petitioners contends that he is entitled to appeal to the Supreme Court as of right as the subject-matter of the dispute is worth more than Rs. 20,000 and the judgment and decree of the High Court sought to be appealed from do not affirm the decision of the Court immediately below, the argument being that for purposes of discovering whether the judgment of the Letters Patent Bench does or does not affirm the decision of the Court below the judgment of the learned Single Judge of this Court must be ignored, that Court, according to learned counsel, being not the Court below but merely the High Court. To put it in another manner the contention is that the judgment of the Senior Subordinate Judge was in the final result reversed by the High Court and that was the judgment of the

Court immediately below the High Court and it is of no consequence that the judgment, sought to be appealed against, affirmed the decision of the learned Single Judge. For the whole of this argument Mr. Shamair Chand relies on Full Bench decision of the Lahore High Court, *Sheikh Haji-Wahid-ud-Din v. Lala Makhan Lal and another*, (1), where out of a Bench of three Judges two, Din Mohammed and Abdur Rehman JJ., took the view that for the purposes of section 110, Civil Procedure Code, a Judge sitting singly, not on the original side but on the appellate side of the High Court, is not a Court immediately below the Letters Patent Bench which hears an appeal from his decision. Blacker, J., in that case however took the opposite view being unable to see any distinction between the status of a High Court Judge trying an original case and the same Judge hearing an appeal and held that in either capacity a Single Judge was a Court immediately below the Court which hears an appeal against his decision. The view taken by Blacker, J., finds support from an earlier decision of the Lahore High Court, *Gopal Lal v. Bal Kishan and others* (2), which followed a still earlier decision *Minna Heatherly and others v. B. C. Sen and others* (3), and to both these decisions Shadi Lal, C. J., was a party. As far as the Lahore High Court is concerned, therefore, it would appear that there is the opinion of four learned Judges against the view of the majority in the Full Bench case relied upon by Mr. Shamair Chand. Mr. Shamair Chand also referred to a decision of this Court, *Mohindra Supply Company, Delhi v. Governor-General in Council* (4), but that case was concerned with a wholly different matter, namely whether section 39 of the Arbitration Act barring a second appeal had the effect of taking away the right of appeal provided in

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(1) A.I.R. 1944 Lah. 458
(2) A.I.R. 1932 Lah. 121
(3) A.I.R. 1928 Lah. 537
(4) (1954) 56 P.L.R. 199

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clause 10 of the Letters Patent, and is of no assistance here. Reliance was also placed on a Calcutta decision, *Dabendra Nath Das v. Bibudhendra Man Singh*, (1), which decision however proceeded on the ground that a Single Judge of the High Court was not a Court subordinate to the High Court. This was considered in *Minna Heatherly and others v. B. C. Sen and others*, (2) and Zafar Ali, J., pointed out that section 110, Civil Procedure Code, like Article 133 of the Constitution, does not speak of a Court subordinate to the High Court but a Court immediately below the Court whose decision is to be appealed from, and also to the effect that this Calcutta decision was in disregard of the Privy Council decision in *Tulsi Persad Bhakt v. Benayek Misser* (3). It is agreed before us that we are not bound by the view expressed by the Full Bench in *Sheikh Haji Wahid-ud-Din v. Lala Makhan Lal and another* (4), and in the present case there are, I find, sound reasons for not doing so. Article 133 of the Constitution uses the same language as section 110 of the Code of Civil Procedure and says:—

“* * * where the judgment, decree or final order appealed from affirms the decision of the Court immediately below * * * *”

The judgment appealed from is of course, in this case, the judgment of the Letters Patent Bench. That judgment affirmed the decision of the learned Single Judge which had reversed the judgment of the learned Senior Subordinate Judge and the question we are called upon to consider is whether the Letters Patent Bench affirmed or reversed the decision of the Court immediately below. It is, I

(1) I.L.R. 43 Cal. 90
(2) A.I.R. 1928 Lah. 537
(3) I.L.R. 23 Cal. 918
(4) A.I.R. 1944 Lah. 458

find, difficult to say that the decision of the Court immediately below was not in this case the decision of the learned Single Judge. The argument employed in the Lahore Full Bench case was this : when an appeal comes to the High Court, it may be disposed of by a Single Judge or by two Judges and in either case the decision is the decision of the High Court and if the appeal is disposed of by a Single Judge and there is a further appeal under the Letters Patent, then the final judgment of the High Court is the decision of the Letters Patent Bench and not the decision of the Single Judge. The decision of the Single Judge and the decision of the Letters Patent Bench on appeal are one and the same thing and it is of no consequence whether the decision of the Single Judge is affirmed or reversed, for both are the decisions of the High Court. It is the later part of the argument with which, with all respect to the learned Judges of the Lahore High Court, I find it difficult to agree. The decision of the Court referred to in Article 133 of the Constitution as well as section 110, Civil Procedure Code, is the decision of a tribunal competent to decide a matter and if in any case it be that the tribunal competent to decide such a matter is a Single Judge of a High Court and under the law there be an appeal, as there is under the Letters Patent, then quite plainly there are in law two tribunals distinct from each other and both competent to deal with the matter at different stages. There is the tribunal presided over by the Single Judge competent to dispose of the matter and there is another tribunal to sit on appeal on that decision and I see no convenience in saying that those two tribunals are one and the same. The majority in the Full Bench case were to some extent conscious of this difficulty, particularly in view of the observations of the Privy Council in *Tulsi Parsad Bhakt v. Benayak*

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Misser. (1), and therefore drew a distinction between a Single Judge of the High Court trying an original cause and a Single Judge exercising appellate functions but that distinction seems to me, with all respect, to be founded on no firm ground and I have very much the same difficulty as Blacker, J., had in accepting such a distinction. What appears to me, on the other hand, is that Single Judge of the High Court whether he is trying an original cause or hearing an appeal from the judgment of subordinate Court is merely presiding over a Court competent to decide those matters and if and when an appeal lies against his decision his Court is immediately below the Court to which the appeal lies and it can be of no consequence, in my opinion, that the appeal lies to the High Court itself. If this view is correct, then it follows that when the Letters Patent Bench in the present case decided the matter before it and dismissed the appeal the Bench affirmed the decision of the Court immediately below and that being so, the petitioners are not entitled to appeal to the Supreme Court under Article 133 of the Constitution unless they can show that a substantial question of law arises in the case.

Mr. Shamair Chand sought to contend that there was a substantial question of law arising in the present case, but here again, I am unable to agree. The sole ground on which the tax imposed by the Municipal Committee was impugned was that the Municipal Committee as constituted was not competent to impose such tax and the ground taken was that for the imposition of such tax the Committee should have consisted of members three-fourths of whom were elected. It has been

(1) I.L.R. 23 Cal. 918

found in the present case that in this particular Committee there were eight elected and two nominated members and the requirement was therefore fulfilled. It was argued before the Bench at the time of the appeal that the date, with reference to which the constitution of the Committee must be viewed, is the date of the notification imposing the tax, but even if so, it was found that the elected members did form three-fourths of the total number of members on that date. Both these are in reality findings of fact and no substantial question of law seems to arise. It was not even suggested that this is otherwise a fit case for appeal. In my opinion, therefore, it is not possible to grant leave to the petitioners to appeal to the Supreme Court and this petition must accordingly be dismissed. I would not, however, in the circumstances, burden the petitioners with costs.

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BHANDARI, C. J. I agree.

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APPELLATE CIVIL.

Before Kapur and Dulat, JJ.

SAROOP SINGH, ETC.—Appellants.

versus

BHAGWAN DAS,—Respondent.

Execution Second Appeal No. 565 of 1952:

Administration of Evacuee Property Act (XXXI of 1950) as amended by Administration of Evacuee Property (Amendment) Act (XI of 1953)—Sections 2(f) and 17—Mortgagee rights vesting in non-evacuee in lands belonging to an evacuee—Whether exempt from attachment and sale in execution of decree—Practice—Second Appeal—Change of law at the time of the hearing of the appeal—Court, whether can take notice thereof.

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D. H. attached mortgagee rights in certain land. The non-evacuee J. D. objected that the land belongs to Muslims who had gone away to Pakistan and, therefore, being evacuee property was exempt from attachment and sale in the execution of the decree.