ALLAHABAD HIGH COURT

Lala Nawal Kishore

Vs

Municipal Board

(Braund, J.)

22.10.1942

ORDER

Braund, J.

1. This is a second appeal raising a question of some little importance. I understand that upon the ultimate decision of this case depends the result of a considerable number of other cases in which Municipal Boards are seeking to enforce statutory charges against land and houses in the hands of purchasers. The facts are very simple. In April 1936 the defendant, Lala Newal Kishore, purchased the property in question at an execution sale held by the Court. It does not matter what sort of an execution it was. It is sufficient that the defendant was an auction purchaser at a court sale. He was given the usual certificate of sale. On 12th April 1937 this suit was started against him by the Municipal Board of Agra claiming a sum of money representing arrears of house and water tax on the property for a period beginning with 1st April 1925 and ending with 31st March 1937 that is to say for a period of 12 years. The ground upon which the Municipal Board made this claim against the defendant was that they had a charge on the property in his hands under Section 177, Municipalities Act, 1916. That section says:All sums due on account of a tax imposed on the annual value of building or lands or of both shall subject to the prior payment of the land revenue (if any) due to His Majesty thereupon, be a first charge upon such buildings or lands.

2. It was that charge which the municipality sought in this suit to enforce against the property in the hands of the defendant. The defendant's defence was that this was a case to which the proviso to Section 100, T.P. Act, 1882, applied and, accordingly, that the charge was one which could not be enforced against the property in his hands, inasmuch as it had been transferred to him for consideration and without notice of the charge. The actual words of the proviso, so far as they are material to this matter, are these:and, save as otherwise expressly provided by any law for the time being in force, no charge shall be enforced against any property in the hands of a person to whom such property has been transferred for consideration and without notice of the charge.

3. There were, accordingly, two questions involved in this suit. The first was whether the proviso to Section 100, T. P. Act, applied to this property or not? If it did, then the charge could not be enforced against the property. The contention of the Municipal Board of Agra was that the proviso did not apply to this property, because the defendant was the purchaser of it at a court

auction sale. The Board said that it did not apply to a court auction purchaser and, accordingly, that the property so purchased was just as much subject to the mischief of Section 100 of the Act as any other property. That was issue 1 in the suit. The other one was whether, assuming that Section 100, T. P. Act, applied to the property, whether even then, in the circumstances, a purchaser, who having made no enquiries as to its existence, found himself confronted with a statutory-charge under Section 177, Municipalities Act, could represent himself as a purchaser without notice of the charge. No body pretends in this case that he had actual notice, but the question was whether he ought, or ought not, to be deemed to have constructive notice of the statutory charge under Section 177, Municipalities Act. Both these questions present difficulties. On the first of them there is a direct conflict of authority in our own Court. A Bench of two Judges, consisting of Sir Edward Bennet and my learned brother Verma J. took the view in Indra Narain v. Mohammad Ismail ('39) 26 A. I. R. 1939 All. 687, that it was "clear that Section 100 as amended did not refer to auction sales or auction purchasers." Those learned Judges held that the saving clause at the end of Section 100 did not apply to auction purchasers and, accordingly, that the statutory charge created by the earlier part of the section was capable of enforcement against property in the hands of a purchaser at a court auction sale. That was one view of the matter.

4. A diametrically opposite view seems to have been taken by another Bench, consisting of the late Chief Justice and my learned brother Ganga Nath J. in Municipal Board, Cawnpore v. Roop Chand Jain 1940 ('40) 27 A. I. R. 1940 All. 456. In that case the earlier decision of Bennet and Verma JJ. was before them and was not, as far as I can see, in any way distinguished. This Bench held that the saving proviso at the end of Section 100, T. P. Act, applied to property in the hands of a purchaser of that property at a court auction sale, and, accordingly, that such property was not taken out of the operation of Section 100 of the Act, provided, of course, that the transfer took place without notice of the charge. In view of this obvious collision between two Benches of this Court, I think I have no alternative but to refrain from expressing a view of my own and. to ask the learned Acting Chief Justice to refer the disputed question to a Pull Bench.

5. That does not quite exhaust the matter, because, if it should be held that there is no distinction between an ordinary purchaser and a purchaser at a court auction sale for the purpose of the saving clause in Section 100, T. P. Act, it will still remain to be considered whether, in the circumstances of the present case, the defendant can be held to have been a transferee "without notice of the charge." This, to my mind, raises by far the more interesting question of the two. It raises in an interesting form the whole question of the doctrine of constructive notice as applied to the conditions obtaining in these provinces. As I have observed before, no one has suggested in this case that the defendant had any actual notice either of the arrears of taxes or of the charge which resulted from them. But what has been said -- and said with great force -- is that every purchaser of a property so situated as to be liable to attract taxes must be taken to know that unpaid taxes are under Section 177, Municipalities Act, liable to become charges on the property in favour of the municipal board. Such purchasers must be deemed to know the law, and, accordingly, it is said that when a purchaser purchases such a house, he ought, as a matter of ordinary prudence, to make a simple inquiry from the municipal board itself whether there are any outstanding taxes and whether the board claims any charge in respect of them. Had that been done in this case, there is no reason to suppose that an affirmative answer would not have been forthcoming. It is, therefore, contended on behalf of the board that a purchaser who neglects to take that precaution has constructive notice of any charge that may subsist and cannot escape upon the plea that he is a purchaser for value without notice.

6. Under English conveyancing practice, I have not a shadow of doubt but that a duty rests upon a purchaser to make enquiries from his vendor as to the possible existence of statutory charges of this kind; but I am also well aware that the art of conveyancing is not so highly developed in India as it has been in England, and that it would be misleading to apply the same tests to the consideration of a case in India as would be applicable in England. Moreover, we have in India a statutory definition of what "constructive notice" is. Actually it does little more than to summarize the classic passage of Vice-chancellor Wigram in *Jones v. Smith*[1]Hare 43 a passage which has been approved by Stirling L. J. and *Lindlay Bailey v. Barnes*[2] at pp. 31 and 35. The definition of "notice" contained in Section 3, T. P. Act, is:A person is said to have notice of a fact when he actually knows that fact, or when, but for wilful abstention from an inquiry or search which he ought to have made, or gross negligence, he would have known it.

7. What, therefore, has to be considered is whether the circumstance that a purchaser makes no inquiry of any sort or kind as to the possible existence of a statutory charge under Section 177, Municipalities Act, amounts to such neglect or carelessness as, according to the meaning of constructive notice in this country, to deprive him of the right of saying that he was not aware of that which by inquiry he might have found out. I should, I think, have been capable of deciding this question for myself, had I not met with some further difficulty in the authorities as between this Court and the Oudh Chief Court. In Municipal Board, *Cawnpore v. Roop Chand Jain* [3]this question was considered in this Court in circumstances which are difficult to distinguish from the present circumstances. The learned Judges held that notice could not be imputed by construction to the purchaser. If I understand the judgment, they based that upon two grounds. First they said that an intending purchaser was not bound to presume that taxes on the property had not been paid. And, secondly, they said that, because the municipality itself had, or might have been, negligent in not enforcing payment of the arrears, that was a circumstance precluding the application of the doctrine of constructive notice. I confess, with the greatest respect, that I find some difficulty myself in following this reasoning. The learned Judges say:No intending purchaser is bound to presume that the taxes upon the property which he contemplates purchasing have not been paid in the ordinary course in the absence of any special intimation by the Municipality. If there has been negligence in the present instance it has been on the part of the Corporation of Cawnpore. They should have taken steps long ago to recover the arrears of taxes from defendant 1 and; they certainly should have taken steps to intimate and proclaim at the auction sale to intending purchasers that they held a charge over the property in respect of these arrears.

8. It would perhaps be improper for me, sitting as a Single Judge, to make any further comment upon that. I find however that in a still more recent case, Municipal Board, *Lucknow v. Ramji Lal*[4] two learned Judges of the Oudh Chief Court have felt constrained to say that, with the greatest respect, they are unable to accept the view expressed in this Court. They say:In our opinion the question is not whether an intending purchaser is bound to presume that the taxes have not been paid but whether he is entitled to presume that they have been paid. We do not think that he is....

9. I feel that, in referring this case upon the first of the two questions I have mentioned to a Fall Bench, I ought at the same time draw attention to the possibility that, in view of the conflict between this Court and the Oudh Chief Court on the other point as well, it might be desirable that

that point should be considered also. It would be improper of me to express any view of my own.

10. The two outstanding questions, therefore, which seem to me to call for an authoritative decision by a Full Bench are these : (1) Whether Section 100, T. P. Act, applies in the case of a charge against property in the hands of a purchaser who has bought the same at a court auction sale and to whom such property in pursuance of his said purchase has been transferred for consideration and without notice of the charge. (2) Whether in a case in which a statutory charge under Section 177, Municipalities Act, 1916, exists in favour of a municipality, a purchaser who has no actual notice of the existence of the charge but who omits or neglects to make any inquiries from the municipality or from any other source, has prima facie been guilty of negligence and, if so, whether such negligence is in any way mitigated or lessened by the circumstance that the taxes ultimately found to be outstanding have been outstanding for a long period.

11. Though I have set out in general terms the two questions which appear to arise, I propose to refer the whole case generally to the Acting Chief Justice of the Court with a request that he will constitute a Full Bench to deal with it. The matter as I have said, is one of some difficulty and of considerable importance in view of the many other cases which I am told depend upon its decision. At present the authorities on these questions appear to me conflicting and unsatisfactory.

JUDGMENT Dar, J.

12. This is an appeal against a judgment and decree, dated 8th March 1938, of the District Judge of Agra by which he reversed a judgment and decree, dated 29th October 1937, of the Civil Judge of Agra in a suit for recovery of house-tax and water-rate. In execution of a decree which Nawal Kishore had obtained against two Hindu brothers Sujan Singh and Surendra Singh certain premises owned by the said two brothers and situated in mohalla Pulchanga Chaudhari bearing municipal Nos. 1235 and 1285/1-3 were sold by public auction and were purchased by the decree holder, Nawal Kishore, who obtained formal possession of the same on 21st April 1936. At the time when the sale took place the house-tax and water-rate of these premises were in arrear for about ten years, but the purchaser was not aware of and was not informed of its existence. Some time after his purchase on 12th April 1937, the Municipal Board of Agra commenced an action against him for recovery of a sum of rupees 68-13-10 as house tax and water-rate due for the premises for the period commencing from 1st April 1925, and ending with 31st March 1937. The trial Court decreed the claim for a sum of Rs. 9-4-8, the amount due for the house-tax and water-rate for the period of one year from 1st April 1936 to 31st March 1937. On appeal the District Judge decreed the claim in full and for the entire period of twelve years from 1925 to 1937. Against this decree the defendant has made this appeal and two questions arise for our consideration first, whether the claim for house-tax and water-rate which fall due prior to the purchase made by the defendant could be enforced against him and secondly, whether the defendant could be deemed to have constructive notice of the arrears which were in existence at the time when he purchased the property.

13. Under Section 128(1) Clauses (i) and (x), U.P. Municipalities Act (2 of 1916), the Board is empowered to levy a house-tax and water-rate and under Section 138 of the Act it has power to consolidate the taxes and under Section 149 of the Act the liability for the payment of the tax is laid among other persons on the owner of the property, and there are other provisions in the

statute which authorise the Board to make rules for collection of taxes and to levy distraints in order to recover them and alternatively to raise an action for their recovery, and finally Section 177 of the Act provides as follows:All sums due on account of a tax imposed on the annual value of building or lands or of both shall, subject to the prior payment of the land revenue (if any) due to His Majesty thereupon, be a first charge upon such buildings or lands.

14. It is not disputed that acting under the powers conferred by the statute a consolidated house-tax and water-rate was imposed by the Board on the premises owned by the two Hindu brothers Sujan Singh and Surendra Singh and for the period 1925 to 1936 while the ownership of this property had remained vested in these brothers, the house-tax and water rate imposed on the said premises fell duo and was not paid and was in arrear on the date when the auction-sale in favour of Nawal Kishore, the defendant, took place. By virtue of Section 177 of the Act the tax as it fell due each year and remained unpaid and the entire arrears became and continued to be a first charge on the premises. By reason of the fact that the statute makes the amount of the tax as the first charge on the premises subject to the payment of the land revenue and it is admitted that the premises are not liable to payment of Government revenue, it follows that any other interest which arises in the premises by the act of parties or by operation of law or by succession or by transfer must be subject to the prior charge in regard to the tax, and on the plain language of the statute this prior charge can be recovered from the premises irrespective of the fact whether the property is in the hands of the original owner or in the hands of an heir, successor or transferee. And in order to give effect to the intention of the statute that the tax should be treated as a first charge on the premises after the payment of Government revenue, it is necessary that prior and subsequent interests which arise in the property by act of parties or by operation of law should yield to the charge, and the equitable doctrine that charges cannot be enforced against transferees for consideration without notice has no application to a paramount charge of this nature created by the statute. Section 100, T.P. Act, which enacts the law in regard to charges and provides the equitable rule that charges cannot be enforced against transferees for consideration without notice itself saves from the operation of that rule those charges which by any law are made enforcible against transferees. The material words in Section 100 are as follows:and save as otherwise expressly provided by any law for the time being in force, no charge shall be enforced against any property in the hands of a person to whom such property has been transferred for consideration and without notice of the charge.

15. It is obvious that the saving clause, viz., (save as otherwise expressly provided by any law for the time being) is not limited to those cases only in which the law expressly states in so many words that the charge shall not take effect against transferees for consideration without notice but it also applies to those cases in which the law provides in effect that the charge shall not take effect against transferees and this should follow from any words used by the statute, the effect of which is to show that the charge was intended to take effect against transferees. Now, when the statute creates a paramount or a first charge, what does it mean? Does it not mean that all interest arising in the property prior or subsequent to it, must yield to it and the charge should take precedence over them and when the charge thus gets priority over them, then does it not follow that it can |also be enforced against them ? It seems to us that a statutory first charge comes within [the saving clause of para. 2, T.P. Act, and would remain unaffected by the equitable rule which follows the saving clauses in that section. The municipal tax would cease to be a first charge on the property if any title arising by survivorship or by succession or by inheritance or by transfer could defeat it and to give effect to the plain meaning of the statute the charge should be

enforced against the premises irrespective of the question who owns the premises at the moment.

16. But assuming that the charge cannot be enforced against a transferee for consideration without notice, the question arises whether a purchase in execution of a decree in a court sale can be regarded as a transfer for consideration within the meaning of Section 100, T. P. Act (4 of 1882). In sales by private party there is a warranty of title and there is a further warranty that the property sold is free from encumbrances and charges; in execution sales there is no warranty of title nor there is any warranty that the property sold is free from encumbrances and charge. In England the equitable rule that the charges which create no interest in land cannot be enforced against a purchase for consideration has not been applied to execution creditors. In *Wickham v. The New Brunswick and Canada Railway Co*[5]. Lord Chelmsford in delivering the judgment of the Board observed as follows:There is no doubt upon principle, as well as on the authority of the oases cited in the argument at the Bar, that the right of a judgment creditor under an execution is to take the precise interest, and no more, which the debtor possesses in the property seized, and consequently that such property must be sold by the Sheriff with all the charges and encumbrances, legal and equitable, to which it was subject in the hands of the debtor. In other words, what the debtor has power to give is the exact measure of that which the execution creditor has the right to take.

17. *And in Madell v. Thomas & Co*[6]*. observed* as follows :

A trustee in bankruptcy or execution creditor is in privity with the bankrupt or execution debtor. He takes under the bankrupt or execution debtor not like a purchase for valuable consideration, and it has been decided over and over again that he only takes what was vested in the bankrupt or execution debtor. Where property is subject to any rights by which it would be bound in the hands of the bankrupt or execution debtor nothing can be more clear as a general proposition than that it would be subject to such rights as against the trustee in bankruptcy or execution creditor.

18. And in Halsbury's Laws of England, vol. 13, Hailsham edition, para. 87, the law on this subject is stated in these words :

Ordinarily, an assignee takes subject to all equities to which the assignor was subject; and this is the case where the assignee is a volunteer, and also where he is a purchaser for value if he has notice of the circumstances which raise the equity. But if he is a, purchaser for value without notice, the equity cannot be asserted against him. Trustees in bankruptcy and judgment or execution creditors take only what was vested to the bankrupt or debtor; hence they do not rank as purchasers but take subject to prior equities.

19. Prior to the amendment of the Transfer of Property Act, 1929, the law in this country in this matter was not settled, but there was some authority in favour of the view that the equitable rule that a charge cannot be enforced against a transferee for consideration without notice did not apply to an auction purchaser : see *Fateh Ali v. Govardhan Prasad*[7]. The change however made in para. 2 of Section 100 by the Transfer of Property (Amendment) Act of 1929 has now created a fresh difficulty in the matter. The words used in Section 100 are no charge shall be enforced against any property in the hands of a person to whom such property has been transferred for consideration and the words "transferred for consideration" are wide enough to include an auction sale in execution of a decree. No doubt, the Preamble of the Transfer of Property Act

states that the Act is meant to define and amend laws relating to the transfer of property by act of parties and Section 5, T. P. Act, which defines the expression "transfer of property" contemplates also a transfer by act of parties and the language used in Section 100 as "property transferred for consideration" also suggests that the basis of the transaction is a contract of which consideration is the essential element, but Section 2 (d), T.P. Act, lays down :
But nothing herein contained shall be deemed to affect. . . (d) save as provided by Section 57 and Chap. 4 of this Act any transfer by operation of law or by, or in execution of, a decree or order of a Court of competent jurisdiction.

20. And chapter 4 deals with mortgages and charges and Section 100 which specifically provides for charges is included in it. Section 2, therefore, provides that the Transfer of Property Act may affect a transfer by operation of law or by, or in execution of, a decree or order of a Court in matters relating to Section 57 and chap. 4 of the Act, and it is a legitimate argument that in chap. 4 and also in Section 100 which is included in chap. 4, the expression "transferred" is used in a wider sense and includes both a transfer by act of parties and a transfer by operation of law or by or in execution of a decree. There are at present two views of this matter. One which is more strongly and widely held is that the expression "transferred for consideration" in Section 100 is used in a narrower sense in the sense of a transfer by act of parties and does not include an auction sale and in support of this view main reliance is placed upon the English law on the subject and upon the law as it was interpreted prior to the amendment of 1929 in this country and upon the wording of Section 5, T. P. Act, and. upon the language of Section 100 itself which seems to be more appropriate for a transaction the basis of which is a contract and a material element of which is the passing of consideration and which language does not seem to be so appropriate for a transaction the basis of which is a right arising under execution and by orders of a Court: see *L. A. Creet v. Ganga Raj Gool Raj*[8] at p. 217, 13 Luck. 746 Har *Narain v. Bank of Upper India* [9]*Indra Narain v. Mohammad Ismail*[10] and. *Surayya v. Venkataramanamma*[11] The other view is that the expression 'transferred for consideration' is used in a wider sense in Section 100, T. P. Act, and it includes a court sale and an auction purchaser in execution of a decree and for this view main reliance is placed upon the saving Clause (d) in Section 2, T. P. Act: see Municipal Board, *Cawnpore v. Roop Chand Jain*[12]

21. The position of an auction purchaser of real property in this country is not exactly identical with the position of a judgment or execution creditor in England, who takes property of a debtor, subject to charges enforcible against the debtor. It may be that an execution creditor when he gets the property of the debtor in a Sheriff's sale, gets the property by a process of execution and he may not be regarded as a purchaser for value under English law, but these considerations do not apply in this country where real property is sold by Court in a public auction and is purchased very often by strangers who pay full value for the property. Property may be sold in this country under Section 57, T. P. Act, free from encumbrances or it may be sold by Court in enforcement of a simple or anomalous mortgage or it may be, foreclosed by a decree in a mortgage on conditional sale and the purchaser or the person in whose favour the property is foreclosed may be the mortgagee. It cannot be denied that prior to the court sale the mortgagee was a transferee for consideration who would not be affected with charges of which he had no notice and there seems to be no reason why he should be any the less a transferee for consideration simply because he has purchased the property in a court sale in enforcement of the mortgage. It is true that in a court sale there is no warranty of title or of the property being sold free from charges or encumbrances as it is in a sale by private treaty. But both as a matter of law and as a matter of

practice a search is made in the Registry prior to the court sale and every effort is made to notify the charges and encumbrances and very often the property fetches full price. On principle also, we can see no reason why a purchaser in court sale should be less favoured in the matter of enforcement of charges than a purchaser by private treaty and why should not one as much the other be regarded as a purchaser for value and therefore a transferee for consideration. It cannot be denied that the words 'transferee for consideration' used in para. 2 of Section 100, T. P. Act, unless restricted by other provisions of Act,' are wide enough to include an auction purchaser who has purchased the property for a price in a court sale.

22. There remains the argument put forward, by Sir Edward Bennet in *Indra Narain v. Mohammad Ismail ('39) 26 A.I.R. 1939 All. 68(Supra)7* that the saving Clause (d) in Section 2, T. P. Act, does not refer to para. 2 of Section 100, T. P. Act, which deals with charges and the interpretation of the words 'transfer for consideration'; used in para. 2 of Section 100 is restricted by the definition of the transfer as given in Section 5 of the Act. The difficulty in accepting this argument is that the plain language of the saving Clause (d) of Section 2 provides that the law contained in Section 57 and in whole of chap. 4, T.P. Act, may affect "a transfer by operation of law or by an execution of decree or order of Court" and Section 100 is one of the sections contained in chap. 4. It follows, therefore, that a transfer for consideration mentioned in para. 2 of Section 100, T. P. Act, may be a transfer by operation of law or by or in execution of a decree or an order of a Court. It is true that when the saving clause was first introduced in Section 2, T. P. Act, (4 of 1882), there stood in chap, 4 of the Act Sections 85 to 90 which were repealed from the Act in 1908 by the enactment of the Civil Procedure Code and Section 100, T. P. Act, as it originally stood did not contain the amendments which were introduced by the Amending Act of 1929. It may be, as observed by Sir Edward Bennet in Indra Narain v. Mohammad Ismail ('39) 26 A. I. R. 1939 All. 687 that the saving clause in Section 2 as originally enacted in 1882 in its application to chapter 4, T. P. Act, con. templated a reference to Sections 85 to 90 and not to Section 100. But the Legislature by the Amending Act of 1929 has amended Section 100 which occurs in chap. 4 of the Act so as to include in it transfers for consideration and has not amended the saving clause in Section 2 so as to restrict the contents of chap. 4 in any way, notwithstanding that Sections 85 to 90 of the Act had long ceased to be part of the Act at the time when the amendment was made. And, in the face of the plain language of the statute, as it stands today, it is difficult to see how Section 100 can be excluded from the operation of the saving Clause (d) of Section 2, and, how the saving clause can be restricted to the repealed Sections 85 to 90 of the Act. We have, therefore, come to the conclusion that the authority of Municipal Board, *Cawnpore v. Roop Chand Jain ('40) 27 A. I. R. 1940 All. 456(Supra)* should be followed in preference to *Indra Narain v. Mohammad Ismail ('39) 26 A. I. R. 1939 All. 687* (Supra)and the expression 'transfer for consideration' used in para. 2 of Section 100, T. P. Act, should be taken to include an auction purchaser in a court sale.

23. But there still, remains the question whether the defendant can be regarded as a transferee without notice. That lands and premises at Agra are subject to a house-tax and water-rate is both a matter of statutory enactment and of common knowledge at Agra. It is also a matter of common knowledge that municipal taxes are not always paid regularly and more often than not they get into arrears. The defendant does not deny that he was not aware of the existence of the tax or of its being a first charge on the property, and even if he were to deny it would not matter because the tax and the charge had been imposed by a statute and he must know the law. The defendant does not dispute his liability for the current tax or his liability for the tax of the year in

which he purchased the property, but what he contends is that he had no reason to think that the Municipal Board had not collected its taxes duly and promptly and allowed taxes for ten years to accumulate. If once it is established that the defendant had knowledge of the existence of the tax and of its being a charge' and if once it is farther established that the defendant had the knowledge that some tax might be due for the period in which he purchased the house and it is immaterial whether had an actual knowledge of these facts or only a constructive knowledge--then, in our opinion, it was the duty of the defendant not to stop at that knowledge but to make further enquiries and to find out the amount of tax which was actually due, and if he willfully abstained from making enquiries, then constructive notice within the meaning of Section 3, T. P. Act, should be imputed to him. In an English case, Jones v. Williams (1857) 24 Beav. 47 Sir John Romilly, M. R., had made the following observation on p. 58 :I concur in the argument of the plaintiffs' counsel, that the rule with respect to the consequence of abstaining from making enquiries by purchasers does not depend exclusively on a fraudulent motive for such abstinence; and that though it be true, that a purchaser will be fixed with the knowledge of such facts as would have been contained in answers, which he would have got if he had put questions, which he refrained from asking solely from the fear of the consequences, still in my opinion, the rule goes beyond this, and that whenever, from the circumstances of the case, the purchaser is put on inquiry, he must be fixed with the knowledge which that inquiry would have produced, although the omission to put the question did not proceed from any fraudulent motive; and this is the rule as expressed by the *Lord Chancellor in Ware v. Lord Egmont (1854) 4 D. M. & G. 460(Supra).* I think that the knowledge that there were "charges" affecting the property of the Rollesons put the Messrs. Williams on inquiry what they were, and that they must be treated with having had the knowledge which would have resulted from such inquiries, if made.

24. In our opinion, the case of a transferee of property in a municipal area in these provinces which is subject to a statutory tax and a statutory charge in the circumstances mentioned above comes within the principles laid down by Sir John Romilly in Jones v. Williams (1857) 24 Beav. 47 and the constructive notice should be imputed to him. There is some conflict of authority on the question whether notice of arrears of municipal taxes should or should not be imputed to a transferee for consideration who purchases property without knowledge or without express notice of the arrears. In *Akhoy Kumar Banerjeo v. Corporation of Calcutta ('15) 2 A.I.R 1915 Cal. 478(Supra),* the purchaser was held to be subject to a constructive notice of arrears of taxes. In *Ramji Lal v. Municipal Board, Lucknow ('37) 24 A.I.R. 1937 Oudh. 31(supra),* Ziaul Hasan J. held that constructive notice should not be imputed to a transferee for arrears of taxes. But his judgment was reversed in appeal by Bennett and Ghulam Hasan JJ. in *Municipal Board, Lucknow v. Ramji Lal ('41) 28 A.I.R. 1941 Oudh 305(supra).* In Municipal Board, Cawnpore v. Roop Chand Jain ('40) 27 A. I. R. 1940 All. 456(suupra), it was held by Thorn C. J. and Ganga Nath J. that constructive notice could not be imputed with regard to arrears of taxes. But this view was dissented from by Bennett and Ghulam Hasan JJ. in Municipal Board, Lucknow v. Ramji Lal ('41) 28 A.I.R. 1941 Oudh 305(Supra) mentioned above.

25. The question of constructive notice is a question of fact which falls to be determined on the evidence and circumstances of each case and in so far as this matter can rest upon any principle, the principle is this that intending purchasers of the property in municipal areas where the property is subject to a municipal tax which has been made a first charge on the property by statute have a constructive knowledge of the tax and of the possibility of some arrear being due and it, therefore, becomes their duty before acquiring the property to make enquiries as to the

amount of tax which is due or which may be due and if they fail to make this enquiry, this failure amounts to a wilful abstention or gross negligence within the meaning of Section 3, T. P. Act, and notice must be imputed to them. It follows that Municipal Board, Cawnpore v. Roop Chand Jain ('40) 27 A. I. R. 1940 All. 456 contains some observations which are inconsistent with what we have said above on the question of notice then to that extent they cannot be regarded as good law and the case should not be followed. The Municipal Board of Agra was thus within its legal rights in demanding the arrears for 12 years and this appeal is without substance and must fail on merits, but as it was the clear duty of the Municipal Board to recover its taxes promptly and its allowing taxes to accumulate for 12 years is nothing short of a scandal, we have come to the conclusion that no costs should be allowed to it. The result is that the appeal fails and is hereby dismissed, but there will be no order for costs either in favour of the appellant or in favour of the respondent in this Court.

Cases Referred.

1 (1841-43) 1
2(1894) 1 Ch. 25
3('40) 27 A. I. R. 1940 All. 456
4('41) 28 A.I.R. 1941 Oudh 305
5(1866) L. R. 1 P.C. 64
6(1891) 1 Q.B. 230
7('29) 16 A.I.R. 1929 Oudh 316
8('37) 24 A.I.R. 1937 Cal. 129
9('38) 25 A.I.R. 1938 Oudh 84
10('39) 26 A. I. R. 1939 All. 687
11('40) 27 A.I.R. 1940 Mad. 701
12('40) 27 A. I. R. 1940 All. 456