

# CALCUTTA HIGH COURT

Governor-General of India

Vs

Corporation of Calcutta

(B.K. Mukherjea , J.)

04.07.1947

## JUDGMENT

### **B.K. Mukherjea, J.**

1. This appeal is on behalf of the Governor-General of India in Council, and is directed against a judgment of the Small Cause Court Judge, Sealdah dated 27th July 1944, made in an assessment appeal under Section 141, Calcutta Municipal Act. The subject-matter of assessment is premises No. 7 Gun Foundry Road, Cossipore generally known as the Cossipore Gun and Shell Factory, which comprises an area of 161 bighas 7 cottah 3 chittaks of land with various structures standing upon the same. In 1937, the premises including land and building was valued by the Calcutta Corporation, for purpose of assessment to consolidated rates, at Rs. 3, 37, 175 per year, and the assessment made on that basis was to remain effective for a period of six years commencing from the 1st quarter of the year 1937-38. The next valuation became due in 1943, but before that, two intermediate valuations were made, one in 1941 and the other in 1942, on account of substantial additions to and alterations of the Factory, and in 1942, the annual value of the premises stood at Rs. 3, 76, 695. In 1943, there was re-valuation of the entire premises and the annual value was raised to Rs. 3, 93, 797. Objection was taken to the valuation by the Governor-General of India in Council on the ground that under Section 154, Government of India Act, all buildings which were not in existence prior to 1st April 1937, when part 8, Government of India Act (1935) came into operation, and which were consequently not subjected to any assessment before April 1937 were exempted from all taxes, and could not be assessed to municipal rates. It was contended therefore that for purposes of assessment, valuation could be made of premises No. 7 Gun Foundry Road only on the basis of what the premises consisted of, on 31st March 1937, and all buildings erected since that date should be excluded altogether. This contention was not accepted by the Executive Officer of the Calcutta Corporation and the appellant thereupon preferred an appeal to the Small Cause Court Judge of Sealdah under Section 141, Calcutta Municipal Act. The learned Small Cause Court Judge upheld the order of the Executive Officer; and dismissed the appeal. Against this decision the Governor-General of India in Council has come up on appeal to this Court.

2. To appreciate the point in controversy between the parties it would be convenient to refer first of all to the provision of Section 164, Government of India Act (1935). The section runs as follows:

Property vested in His Majesty for purposes of the Government of the Federation shall, save in so far as any Federal law may otherwise provide, be exempt from all taxes imposed by, or by any authority within a Province or Federated State: Provided that until any Federal law otherwise provides, any property so vested which was immediately before the commencement of Part 3 of this Act liable, or treated as liable, to any such tax, shall so long as that tax continues, continue to be liable, or to be treated as liable thereto.

3. Section 155 which comes immediately after, makes provision for exemption of properties of Provincial Government and Federated States from Federal taxation, and the two sections can be taken as complementary to each other.

4. It may be noted here that under English law, the Crown not being bound by any statute, unless expressly named, property owned and occupied by the Crown is exempt from taxation unless rendered liable either by express words or necessary implication. (Vide, Halsbury Edn. 2, Vol. 6, p. 733). This rule of exemption of Crown property from taxation is adhered to in the Colonies, and in those Colonies where the constitution set up is of the Federal type the general practice has been to make provisions exempting the units from Federal taxation, and the Federal Government from taxation by the several units. Section 125, British North American Act 1867, lays down in very general terms that "No lands or property belonging to Canada or any Province shall be liable to taxation." Similarly Section 114, Australian Constitution Act provides that a State shall not without the consent of the Parliament of the Commonwealth... impose any tax on property of any kind belonging to the Commonwealth, nor shall the Commonwealth impose any tax on property of any kind belonging to a State.

5. In India it seems that prior to the passing of the Government of India Act of 1935 the question of exemption of Crown property from taxation was not definitely settled. *In Bell v. Commrs. for the City of Madras*<sup>1</sup> the Madras High Court laid down that under the Indian Councils Act 1861, a Provincial Council has subject to the same restrictions as those imposed by the Act on the Governor-General's Council, power to affect the prerogative of the Crown by Legislation, and the view expressed was that according to the uniform course of Indian Legislation, statutes imposing duties or taxes bind Government unless the very nature of the duty or tax is such as to be inapplicable to Government. It is a fact, however, that on the general question different views were taken in other cases: vide *Secretary of State v. Mathura Bai* ('90) 14 Bom. 213 Many properties vested in His Majesty were treated as liable to taxation, when the Constitution Act of 1935 came into force, and the proviso attached to Section 154 makes it clear that properties which were treated as so liable immediately before April 1937, when Part III of the Act was to come into operation, would not enjoy the exemption given by the main provision of the section. The Parliament deliberately used the words "liable" or "treated as liable" with a view to avoid a final solution of the question regarding the legal liability of Crown property to taxation in India prior to the coming into operation of part III of the Act.

6. Now it is not disputed on behalf of the respondent Corporation that the land and buildings comprised in premises No. 7, Gun Foundry Road, are property vested in His Majesty for purposes of the Government of the Federation within the meaning of Section 154, Government of India Act. It is also admitted that no Federal law has been passed as yet making these properties liable for taxation of any kind. Prima facie, therefore, the land and all the buildings that are situated in and form premises No. 7, Gun Foundry Road, are exempt from taxation by

the Calcutta Municipality which is an authority within the Province of Bengal. The Corporation takes its stand upon the proviso attached to the section and its contention is that as premises No. 7, Gun Foundry Road, were assessed to consolidated rates under the Calcutta Municipal Act prior to 1-4-1937, no matter how many buildings stand on the land at that time, the liability to pay rates would continue under the proviso to Section 154 and this would include liability in respect of new buildings as well which were raised after 31-3-1937.

7. The position taken up by the Governor-General in Council on the other hand is that properties which existed on 31-3-1937 and were assessed to rates or taxes on that date would certainly continue to be liable for the same, but the proviso to Section 154 cannot affect new buildings that were not in existence on 31-3-1937 and consequently were not liable or treated as liable to pay taxes on that date. In making the assessment for the subsequent period therefore, the premises is to be valued without the new buildings which must be treated as exempted under the section.

8. The whole controversy thus centres round the interpretation which should be put upon the proviso to Section 154, Government of India Act. The language of Section 154 is obviously very wide; it embraces within its scope all taxes and impositions levied by or by any authority within a Province or Federated State. The expression "property" has also been used in a perfectly general sense and would include land, building, chatties, shares, debts, and in fact every thing that has a money value in the market and comes within the purview of any taxing statute. In the case before us, the buildings that have been erected on the land subsequent to 31-3-1937 are undoubtedly property within the meaning of Section 154, Government of India Act, and if no liability for consolidated rates in respect of these buildings existed prior to April 1937, the proviso would not touch these buildings and they would be exempted from taxes under the provision of the section itself. To get round this difficulty Mr. Bose who appeared for the Calcutta Corporation, put forward his arguments as follows:

9. Mr. Bose's contention is that the word 'property' occurring in the main section as well as in the proviso, means for purposes of the Calcutta Municipal Act neither land nor building as such, but it refers to a particular premises which bears a specific number in the books of the Corporation and is counted as the unit of assessment. The premises might be vacant land, or there may be building on it but even if there is a building, the building and the land are assessed not separately but together, as one unit. Mr. Bose says that in the present case the unit is premises No. 7, Gun Foundry Road, and this premises was undoubtedly treated as liable to pay consolidated rates before April 1937. If subsequent to that date, new buildings are erected on the premises these new buildings would be assessed to rates as part of the premises itself, and this additional burden was implicit in the original liability to which the premises was subject on 31-3-1937. It is necessary that we should examine this argument carefully.

10. We do not dispute that for purposes of ascertaining the meaning of the expression 'property' in reference to a particular taxing statute it may be necessary to look to the provisions of the statute itself. So far as the Calcutta Municipal Act is concerned, the only two kinds of property that require consideration for the purposes of determining the scope of exemption under Section 154, Government of India Act, are land and building, for it is upon lands and buildings that consolidated rates are imposed by the Calcutta Municipal Act. We do not think however that the mode of assessment employed by the Calcutta Corporation is at all a relevant factor in determining the meaning of the word 'property' for purposes of Section 154, Government of

India Act. A Corporation can adopt any method of assessment which it considers convenient, and we find that one particular scheme is adopted by one Corporation, while another Corporation follows a different method altogether. Whatever is property for purposes of taxation under a particular statute and is vested in His Majesty for purposes of Federation would be exempted from taxation under Section 154, Government of India Act, unless it was liable to tax on 31-3-1937, and ex hypothesi, a property which was not in existence on 31-3-1937, cannot be said to be liable to tax on that date. If we turn to the relevant provisions of the Calcutta Municipal Act in this connection we find that under Section 124, Calcutta Municipal Act, the Corporation is empowered to impose consolidated rates on all lands and buildings in Calcutta at a rate not exceeding 23 per cent, on the annual valuation. Section 125 lays down as to how the amount of consolidated rate is to be fixed. Section 126 contains a list of properties which are exempted from consolidated rates and they include both land and building. Section 127 lays down the procedure for ascertaining the annual value of lands and buildings. The principle adopted by this section is that if the property is vacant land, it is valued on the basis of annual rental at which it could be expected to be let, less certain deductions. If any building stands upon the land and the building has been erected for letting purposes or is ordinarily let, the annual value has to be ascertained on the rental basis as provided for in Clause (a) of the section. Otherwise, the annual value is determined under Clause (b) on the basis of the costs of construction of the building and the value of the land. In either case the building is taken along with the land, and the two are assessed together as one unit. This is the scheme adopted by the Calcutta Municipal Act. There is no rule here of valuing a building separately from the land upon which it stands and for purposes of assessment the building is taken as a part of the land. This however has got no bearing on the interpretation of the clear language of Section 154, Government of India Act.

11. Under the proviso to Section 154, a property liable or treated as liable to pay tax prior to 1-4-1937 would continue to pay the tax. If there was no building on a land and the land was lying vacant on 31-3-1937, the building that is erected on the land subsequent to that date does not in our opinion come under the proviso simply because the building could not be assessed apart from the land and the land was already taxed. The liability that is continued under the proviso to Section 154 is the liability of a particular property which was subject to a tax on 31-3-1937, and which ex hypothesi was in existence at that date. The mere fact that a property which comes into existence subsequent to 31-3-1937 is, according to the method adopted by a Corporation, to be assessed as part of another property existing prior to that date does not bring the new property within the limit of the proviso, which being an exception engrafted upon a general provision has to be construed strictly. The liability for rates that exists in respect of a particular property prior to April 1937, and which is to continue according to the proviso, may certainly include any future variation resulting from alteration in the valuation of the property or the rate of assessment, but it does not include any future liability on account of any new property being added to it, no matter whether according to the method of assessment followed by the taxing authority the additional property could be separately taxed or not.

12. In our opinion the word "property" in Section 154, Government of India Act need not be the entire unit of taxation adopted by a particular taxing statute, it may be a portion of the unit and the fact that in granting exemption to the particular property the ordinary method of assessment cannot be followed is perfectly immaterial. We do not agree with Mr. Bose that any practical difficulty can arise if in making valuation the Corporation has got to exclude certain buildings standing upon a land, and value the rest of the property without those buildings. We may suppose

that a piece of land was vacant and unburdened with any building prior to April 1937. If subsequently a building is erected which is exempted under Section 154, all that the Corporation has got to do is to value the land still as vacant land and ignore the building. If there was some building standing on the land prior to April 1937 and the building and the land were assessed together, and if subsequently an additional building is raised, this additional building is to be excluded in the next valuation and treated as non-existent, and the valuation should be made on the basis of the land and building as they existed prior to April 1937. We can even conceive of a case where the Federal Government is not the owner of the land upon which it erects a building. Suppose the Government requisitions a plot of land belonging to a private person after April 1937 under an Emergency Ordinance and builds a house upon it. The ownership of the land would remain in the private individual till it is permanently acquired, but the latter would not be the owner of the building which would belong exclusively to the Federal Government. Under the ordinary rules of assessment the land and the building would: in such cases have to be valued together, and the entire tax probably would be thrown upon the owner of the land, who would have the right to recover proportionate amount from the Government. But if the building is exempted from taxation under Section 154, Government of India Act, no difficulty would arise, and the only consequence would be that the land would still continue to be assessed as vacant land belonging to the private owner and the building erected by Government would be treated as non-existent and left completely out of account. The entire tax thus assessed would be borne by the private proprietor.

13. Our conclusion therefore is that the additional buildings raised on premises No. 7, Gun Foundry Road after 31-3-1937 are exempted from payment of consolidated rates under the Calcutta Municipal Act and the present assessment is to be made on the basis of the land and buildings as they existed on 31-3-1937, excluding all additions made subsequent to that date.

14. The appeal is thus allowed and the judgment of the Small Cause Court Judge, Sealdah modified. The appellant would have costs of both Courts. Hearing fee in this Court assessed at 5 gold mohurs. Certificate for leave to appeal to the Federal Court under Section 205 (1), Government of India Act, 1935 is granted.  
Ormond, J.

15. This is an appeal from a judgment and order passed by the Small Cause Court Judge at Sealdah on 27-7-1944 on a rating dispute. The matter had come before him under Section 141, Calcutta Municipal Act from an assessment by the Executive Officer of the Calcutta Corporation. The appeal now comes before us under Section 142 of the Act.

16. The premises which are the subject of the present dispute are situated at No. 7, Gun Foundry Road. They are the well known Gun and Shell Factory of Cossipore (or a part of it) from which large quantities of arms and munitions were turned out during the war. In course of expansion new buildings were naturally erected and old buildings added to. The Corporation re-valued the premises and has increased the valuation for calculation of tax payment by including the additional value of new buildings and improvements. It has taken into consideration for such increased valuation both new separate buildings, which have been built since the last valuation on certain parts of the land not previously built on, and improvements in previously existing buildings by structural additions and alterations. Ordinarily it would be fully entitled to do this under the provisions of the Calcutta Municipal Act. The question is whether the Corporation is entitled to follow this course in this case, in view of the exemptions from taxation granted under

Section 154, Government of India Act, 1935 or enjoyed under the Crown prerogative.

17. There is no doubt that in England in the absence of special statutory provisions imposing a tax on Crown property, Crown property would be exempt by virtue of the Crown prerogative. This exemption would be available equally against taxes normally levied against owners, in cases where property was owned by the Crown, and against tax normally levied against occupiers, where the property was occupied for Crown purposes. It is equally well established that both in England and in India, liability for taxation may be imposed against Crown property by apt statutory provisions. It is unnecessary for the purposes of the present case to consider in detail questions concerning the nature and extent of the Crown prerogative in the absence of statutory provisions. It seems worth mentioning the legal position which would exist in the absence of statutory provisions, however, in order to understand the full implications of the two Sections 154 and 155, in the Government of India Act, 1935. I am merely mentioning here some of the English decided cases which show that in the absence of statutory provision premises such as those in suit would be free from taxation. The general principle is to be found stated in Halsbury, vol. 6, Article 990, in respect of taxation of property owned by the Crown and in Article 991 in respect of property occupied for Crown purposes. As long ago as 1788 in *Lord Amherst v. Lord Sommers*<sup>2</sup> in the Court of Appeal in England, at p. 375, it was held that certain premises used as stables for the Regiment of Horse Guards were not liable to taxation. In 1857 (see *R. V. Stewart*<sup>3</sup> and *R. V. Foster*<sup>4</sup>) a case came before the Courts very similar to this present case. The question there was liability to rates for occupation in respect of the Old Gun Wharf at Portsmouth. The premises were held to be exempt from the tax. In *Coomber v. Justices of Berks* (1883) 9 A.C. 61 it was held that a building used for the County Police Station was free from liability to the poor rate. At p. 76 it was observed by Lord Watson as follows: The exemption of the Crown from the incidence of rating statutes is a general privilege, and is nowise dependent upon the local or imperial character of the rate. It takes effect in all cases when the Crown is not named in the statute, or, I should prefer to say, in all cases where the enactments do not take away the privilege, either in express terms or by plain and necessary implication. There is not, in my opinion, one kind of Crown exemption from the Statute of Elizabeth, and another kind of Crown exemption from the Income-tax Acts. In other words, it appears to me that the existence of the same kind and degree of interest, on the part of the Crown, which is deemed in law sufficient to protect an occupier from liability to the poor rate, must also be held sufficient to shield the owner of the bare legal estate against any demand for payment of income-tax.

18. In *Hornsey Urban District Council v. Hennell*<sup>5</sup> it was decided that premises purchased by the Commanding Officer of a Battalion of the Middlesex Rifle Volunteers and used for the purposes of the Volunteer Battalion were free from liability. In *Wixon v. Thomas*<sup>6</sup> it was decided that houses taken for the occupation of Sergeants in the Regular Army, who were attached as instructors to the Territorial Force, were exempt from liability to tax in view of the purpose for which their occupation was being had. And in 1935, in *Derbyshire Territorial Army Association v. South East Derbyshire Assessment Committee*<sup>7</sup> the case was one where a question arose as to the liability to occupiers' tax in respect of a drill hall erected by a County Territorial Army Assessment Committee for the use of a local company. The argument put forward was that because the hall was used in winter for dances in which members of the company and their relations and friends took part this fact made the hall liable to tax. It was held, nevertheless, that there was no liability. As to the extent of the application of the principle of exemption from taxation arising from the Crown prerogative in India, the matter has not been discussed before us and in view of the terms of the section it is not necessary to go into this in any detail for the

purpose of the present case. In *Bell v. Commrs. for the City of Madras* ('02) 25 Mad. 457(Supra) there are observations which would go to suggest that by reason of the course of legislation in India, mere silence in an Indian Act may not have the same full effect as it might have in an English Act. The existence of the general right of exemption arising from the prerogative seems, however, to have been assumed in the judgments even in that case. In *Secretary of State v. Mathura Bai*<sup>8</sup> the Court held on the other hand a contrary view, that the position was the same in India as in England. In so far as the observations tending to diminish the extent of the prerogative in India expressed in the judgment of *Bell v. Commrs. for the City of Madras* ('02) 25 Mad. 457(Supra) rely on the view that in India it has become customary, where it is intended that the Crown should be exempted, to insert a provision to this effect in the relative Act, I would content, myself with saying that this suggestion has been adverted to in certain of the English cases some of which I have already mentioned; and it has been expressly held that the mere fact, that out of abundance of caution in particular instances a provision might be inserted exempting the Crown, is not to be taken to create a changed legal position, or any implication that the prerogative does not exist or has been diminished. As at present advised, I can see no reason why any different considerations should prevail in India.

19. In the Government of India Act in 1935, when Provincial Autonomy was set up, mutual exemptions from taxation in favour of the Central Government as against Provincial Taxes and in favour of a Provincial Government as against Central Taxes were expressly provided in Sections 154 and 155. This was no doubt a reasonable course to adopt with a view to facilitate the transition process for setting up autonomous Provinces. It would in any event cut out a great deal of fruitless labour in assessment and calculation and cross accounting of taxes between the Governments.

20. For the present case, we are concerned only with Section 154. The scheme of the section is that in the first part (the main body of it) there is an exemption from taxation in general terms. Then in the second part of the section (the proviso in it) there is an exception from that exemption. The result is that any property covered by the exception will be liable to tax in spite of the exemption in the first part. Were it not for the exception in the second part, it is clear and undisputed that the whole of the lands and buildings of the Gun and Shell Factory, as they exist today, would undoubtedly fall within the first part of the section; and be totally exempt from liability to Corporation tax.

21. The proviso is worded in a manner which lays down a positive liability to tax in the case of the particular class of Crown property described in it. This makes it for this case unnecessary to consider any question as to how far exemption from taxation might otherwise have been claimed for Crown property by reason of the prerogative. The first result of the proviso is that any property covered by the exception in the proviso will be liable to tax, in spite of any exemption in the earlier part of the section within the section itself. The further result is also, that any property covered by the exception will be liable to tax, in spite of any general exemption outside the section, such as might have been based on the general Crown prerogative.

22. It will be convenient to make here certain introductory comments concerning the wording of the section. The phrase "treated as liable" used as an alternative to "liable" has evidently been used with the purpose of imposing for the future, after the passing of the Government of India Act, 1935, an unambiguous liability to taxation against the Crown on Central Government

property to the extent to which tax had been in fact collected before 1st April 1937. This liability was evidently imposed intentionally, and having in mind the fact that it might have been open for the Crown to have contended that such taxes as had in fact been collected before then were not in truth legally enforceable. At the same time care was also taken not to say anything in the Act which might afterwards be sought to be relied on by opponents as a handle for any argument, that the Crown was giving up its rights in respect of its prerogative in India.

23. The lands and buildings at the Gun and Shell Factory are Central Government property. They undoubtedly come within the description of "property vested in His Majesty for the purpose of the Government of the Federation." The words "so vested", appearing in the proviso, simply relate back to this phrase; and merely have the effect as if the whole phrase had been repeated in full in the proviso as well as in the earlier part of the section. The time at which it is necessary to find the property vested in order to bring it within the proviso, so as to be within the words "so vested", is nothing more than the time when the taxing authority is claiming that the liability to pay tax exists. The phrase "so vested" is simply descriptive of the nature of the ownership of the property. It means for the purposes of the present case nothing more than in common parlance "Central Government property". It is common case that the property in this appeal is Army property and accordingly Central Government property. This is tantamount to saying that it is within the category covered by the words "so vested." Therefore, for the present purpose, these two words can be left wholly out of account.

24. The phrase "commencement of part III of this Act" is simply equivalent to 1st April 1937," since this was, in fact, the date when part III was brought into operation.

25. The phrase "until any Federal Law otherwise provides" certainly gave power to the Central Legislature to cut down the exception made by the proviso, which itself cut into the exemption given by the earlier part of the section: In other words to pass legislation relieving the Central Government from liability to pay taxes which is imposed on it as a result of the latter part of the section in the proviso. Since there has been no such legislation affecting the present case, that phrase also can for our purposes be ignored.

26. The earlier part of the section speaks of "taxes imposed by, or by any authority within, a Province," (we are not concerned with a Federated State). The words "such tax" in the latter part of the section in the proviso have the effect simply of repeating the phrase. It is common case that the property tax levied by the Calcutta Corporation on lands and buildings at a consolidated rate payable equally by the owner and by the occupier, which is the tax concerned in this appeal, is a tax to which the section relates. No question, therefore, arises in regard to the words "such tax" and "that tax". It is conceded that the Gun and Shell Factory was in fact paying property tax as levied by the Corporation during the period before 1st April 1937 on the lands and building at the Gun and Shell Factory. Undoubtedly, Section 154 imposes or continues a liability on the Crown to pay tax in the future after 1st April 1937 on that much of its property at the Gun and Shell Factory on which tax had been levied before 1st April 1937. It seems also clear that even if the rate of tax was raised thereafter there would be a liability under the section to pay at the enhanced rate. It has not been argued, and I think cannot properly be contended, that the section intended to fix a dead level maximum sum payable for all future time. This is made clear by the words "shall so long as that tax continues, continue to be liable, or to be treated as liable, thereto." All that the Corporation would need to show is that the tax now sought to be levied is the same tax as the tax for which collections were made before 1st April 1937. There would be

no liability at all in the case of a new tax. Nice questions might arise in certain circumstances whether a tax had retained its identity or not. In the present case, no such question arises. It is common case that the tax now sought to be levied is the same tax as that, which was collected from the lands and buildings at the Gun and Shell Factory before 1-4-1937. For this case, the proviso may be read as if it simply contained the words "the tax E;" meaning the tax levied on owners and occupiers at the consolidated rate.

27. The operative part of the proviso in Section 154, in so far as it imposed on the Crown liability to pay tax, may thus for the purpose of this case be stated in simplified words as follows: "Provided that,... any property...which was immediately before 1-4-1937 liable or treated as liable to the tax shall so long as the tax continues, continue to be liable or to be treated as liable thereto."

28. The sole question in this appeal is the narrow one whether, firstly, new buildings on the same land and secondly, alterations, additions and improvements made in a building which existed before 1-4-1937, are properties which were "immediately before 1-4-1937 liable or treated as liable to the tax." Now for property to have been liable to the tax before 1-4-1937, it is self-evident that that property must have been in existence before 1-4-1937. Equally, I think, this must be so for property "treated as liable" to the tax. There could have been no liability attached to a non-existent thing; nor could there have been any treatment of a non-existent thing. It is outside the power of comprehension to conceive of any property which could have been "treated as liable to tax" if that property was not in a state of physical existence at the time.

29. This being so, it follows that the only taxable property brought within the exception contained in the proviso is property which was in physical existence before 1-4-1937. The four conditions which it would be necessary for the Corporation to establish to bring the property within the proviso would be:(1) Physical existence of the property before 1-4-1937, (2) Liability of that property to the tax then, (3) Physical existence of the same property now, that is to say, for the current period for which tax is sought to be levied and (4) Liability of the property (if it were not Crown property) to the tax now. The contention relied upon on behalf of the Corporation, if analysed must come to this, that though a thing in itself was not in existence before 1-4-1937, yet if it is now in existence in a situation resting on, or attached to, or forming part of, some particular area of land or building, which formed the taxable unit before 1-4-1937, then that thing is itself taxable. It is said that what is being taxed is the unit of property and that that unit of property can now be taxed in its new form; that is to say, inclusive of the new thing on it, which did not previously exist: for the reason that the same unit of property had existed before 1-4-1937 in an old form without that new thing.

30. One fallacy in this argument seems to me to be this. If the Corporation are entitled to make a new assessment, this can only be because of the new thing on the unit of property which adds to the value of the whole unit. This seems to me to involve this that the new thing is itself taxable. If so, this can only be because the new thing is in itself taxable property. Then if the new thing is itself property, it was certainly not itself in existence before 1-4-1937. So it was not property in existence before 1-4-1937, and it was not "property liable to the tax" or which was "treated as liable to the tax" before 1-4-1937. It follows from this: there is no power given by the statute in the proviso to tax it. Moreover, being property, it is expressly made exempt from taxation by the main body of Section 154.

31. The word "property" is used in Section 154, in my view, in its ordinary normal sense. I can see no justification for reading it as if it meant "a unit of property as used by the taxing authority for purposes of calculation of tax".

32. Another aspect of the matter is this: The word "property" must have the same meaning in both parts of Section 154. Its meaning for the main body of the section must, I think, be such as it would have if read without the superimposition of the proviso. A new house, even without the land on which it is built, must surely be "property." If so, the new house must be exempt from tax in the main body of the section. Having held it to be "property" for the main body of the section, the new house itself must equally be held to be "property" under the proviso. But then, if the proviso is read, the new house does not fulfil the conditions laid down for the particular class of property which is alone covered by the exception. The result must be that the new house is exempted without being excepted.

33. There can be no reason that I can see to suggest, or to hold, that the new house is not "property" within the ordinary meaning of the word, simply because it is a part only and not the whole of a unit of property which happens to have been conveniently taken as a unit for the purpose of taxation.

34. In the same way, it seems to me, capital improvements, alterations and additions made to an existing building must also in themselves fall within the description of "property" as used in Section 154. The learned Judge below has indeed held this to be so. I accept his view on this point as correct. Then, it follows, these also in themselves must be exempted property without being excepted from the exemption.

35. There is also this further consideration. If the main body of the section stood without the proviso, it is clear that whole of the lands and buildings at the Gun and Shell Factory, as they stand at the present day, would be totally exempt. That includes the land and as many buildings as there are in fact on the land today including of course all new buildings and new additions. The property to be taxed has to be identified sufficiently to be carved out of the whole property that would otherwise be exempted. The Corporation say the whole of the existing property can be carved out of the exempted property as coming within the exception. Why? They look at a numeral which is the lot number in the Corporation records and say "See, the whole of this lot was taxed before 1-4-1937. All the property in this lot number is, therefore, excepted property" But the fact is that that number as a symbol represented a different aggregate of property in 1937 to what it does today. To work on the symbol only is utterly to ignore all the new buildings. It does not appear to me an accurate mental process to say that all these properties, i.e., as many houses as now exist, were in existence and taxed in 1937 simply because this symbol (the lot number in the Corporation Records) happens, fortuitously or otherwise, to have remained the same.

36. The main argument for the Corporation was sought to be founded on the provisions of the Calcutta Municipal Act itself. The Act contains provisions for splitting up a lot and for assessment of new buildings as new lots. Now supposing there had been land with one house on it, entered as Lot No. 200, and then since 1937 a second house had been built on that land. Then supposing, under the powers given under the Municipal Act, that second house had been given a

new lot-number, and treated as a new unit for assessment and taxation. Supposing it had been entered in the records as Lot No. 201. If the symbol of the lot-number is to be the guiding factor, it would not be possible to say in that case that the new Lot No. 201 was a unit of property which existed before 1-4-1937. In that case, this Lot No. 201 would be free from taxation. In certain circumstances, it is left to the discretion or fancy or convenience of the Corporation whether a new lot is to be created with a new number. If in that illustration they had chosen to retain the same original lot-number, then on the basis of this argument the result would be quite different. It would in that event be open to the Corporation to say, as here, that the property was excepted property (therefore taxable) because tax had been levied on the same lot-number before April 1937 as today. It would seem anomalous, if the section were to be given a meaning, the result of which would be that the imposition of the tax or freedom from the tax was made to depend on a fortuitous constancy of the symbol under which the lot-number is noted in the Corporation records, which in its turn might in certain cases depend on the mere will of the taxing authority itself. Yet that would appear to be the effect of reading the word "property" as a "unit of property for taxation purposes" in the sense of the lot-number.

37. Finally it has to be considered whether the position in relation to this argument is any different where an extension or alteration by way of capital improvement is made only on an existing building, The provision of the Calcutta Municipal Act also provide for fresh assessment when additions and improvement have been made in an existing building. Here in no case is it contemplated that any new number for class of lot-number will be allotted. For this class of cases, it might be contended on the arguments put forward, that the Corporation is on stronger ground, there being then no room for exercise of discretion in re-numbering; and the lot-number being immutable. This circumstance does not, I think, affect the position. I have already stated that in my view it appears correct to me to hold that capital additions to existing buildings are themselves property. If the Government of India Act is clear, as it appears to me to be clear, on its own wording as it stands, I do not think it will be right to cut down, restrict or alter the meaning of the term "property" as used in the Government of India Act by importing into it a meaning adduced by inference from the procedure laid down for the making of an assessment under the Calcutta Municipal Act.

38. I therefore, agree that this appeal should be allowed and with the order directed to be made by my learned brother.

#### Cases Referred.

- 1('02) 25 Mad. 457
- 2(1788) 2 T.R. 372
- 3(1857) 8 El. and Bl. 360
- 4(1857) 8 El. and Bl. 380
- 5(1902) 2 K.B. 73
- 6(1912) 1 K.B. 690
- 7(1935) 2 K.B. 373
- 8('90) 14 Bom. 213