**BOMBAY HIGH COURT**

Hiranand Khushiram Kirpalani

Vs

The Secretary of State

(John Beaumont, Kt., C.J. Rangnekar, J.)

12.03.1934

**JUDGMENT**

**John Beaumont, Kt., C.J.**

1. This is an appeal from the judgment of the Chief Judge of the Small Cause Court at Bombay, given on a matter referred to him under Section 503 of the City of Bombay Municipal Act, 1888.

2. The facts are not in dispute. The Secretary of State for India is the owner of certain land fronting, adjoining or abutting on a private street; off Colaba Road, Bombay, and a notice was served upon him requiring: him to do certain work in connection with the levelling, metalling, draining and lighting of the private street. That work was not done by the respondent, but was carried out by the appellant, the Municipal Commissioner of Bombay; and in these proceedings the Commissioner seeks to recover the proportionate costs of that work from the respondent as the owner of premises situate in the private street. The respondent's contention is that the City of Bombay Municipal Act, 1888, does not bind him as representing the Crown, and that contention was upheld by the learned Chief Judge of the Small Cause Court.

3. The relevant provisions of the Act giving rise to the claim are as follows:Under Section 305 it is provided that if any private street be not levelled, metalled or paved, sewered, drained, channelled and lighted to the satisfaction of the Commissioner, he may require the owners of the several premises fronting or adjoining the said street or abutting thereon to do the work. Then Section 489 provides that if the work is not done in accordance with the requisition, the Commissioner may do the work himself or cause it to be done, and the expenses are to be paid by the person to whom the requisition was addressed. Then Section 491 deals with the method of recovering those expenses; they are to be paid on demand, and if not so paid, they can be recovered by distress and sale of the goods and chattels of the defaulter. The question which arises on this appeal is a pure question of law, namely, whether the Crown is bound by those sections of the City of Bombay Municipal Act, 1888.

4. Now, the general rule established by many English cases is that the Crown is not bound by an Act of Parliament unless named therein expressly or by necessary implication. That rule, it has been held, does not apply where the Act is made for the public good, the advancement of religion and justice, the prevention of fraud, or the suppression of injury and wrong; and it is suggested by Mr. Kemp on behalf of the applicant that this statute, so far as the improvement of private streets is concerned, is an Act made for the public good, and therefore within the exception. But I am unable to accept that view. The question which arises is not whether the Municipal Commissioner can do the requisite work, but who is to pay for it, and at the most, so far as the public is concerned, it is a question whether the expenses are to be borne by the public of Bombay or by the wider public represented by the Secretary of State for India. It seems to me that the question cannot be said to be a matter affecting the public good.

5. Mr. Kemp's next point is that the Crown is by necessary implication named in this Act, Now, it is no doubt clear that some of the provisions of the Act do bind the Crown. The provisions relating to municipal taxes included in chapter VIII, in my opinion, bind the Crown, where not expressly excepted. That, I think, is the general effect of the sections in that chapter. But the fact that the Crown is bound by provisions contained in the chapter relating to municipal taxation does not lead to any inference that it was intended that the Crown should be bound by provisions in another chapter dealing with the regulation of streets. If any inference is to be drawn from the fact that the Crown is mentioned in one set of sections and is not mentioned in another set of sections, it would be that the Crown is not intended to be bound by the latter set of sections. Compare the English case of *Perry v. Eames*[1] where it was held that Section 2 of the Prescription Act (2 & 3 Will. IV, c. 71), which deals with easements other than the easement of light, does bind the Crown because the Crown is mentioned therein, but that Section 3 which deals with the easement of light does not bind the Crown which is not mentioned therein. It is no doubt also true that in one section of the City of Bombay Municipal Act, viz., Section 299, which deals with the acquisition of vacant land and is included in the same chapter as Section 305, the Crown is referred to in Sub-section (2), and is expressly exempted from the general operation of the power given by Sub-section (1). But, I think, that exemption was inserted ex majore cautela because it applies not only to the Crown, but to certain corporations as well. It seems to me that reading the relevant sections of the Act, namely, Sections 305, 489 and 491, and reading them in the light of the general rule that the Crown is not bound unless specially named, full effect can be given to all the provisions included in those sections, and that it is impossible to say that some of those provisions can have no effect given to them unless it be held that the Crown is bound. If that proposition is true, I fail to see how it can be said that the Crown is bound by necessary implication, and it is certainly not bound expressly.

6. We have been referred to a good many cases. It is clear from the decision of this Court in *The Secretary of State for India v. Mathurdbha*[2] that the general rule to which I have referred, namely, that the Crown is not bound by a statute unless specially named in it, applies to India. Mr. Kemp has relied on a decision of the *Madras High Court in Bell v. The Municipal Commissioners for*

*the City of Madras*[3] The learned Judges in that case accept the general rule as applying to India and admit that they are constrained so to do by decisions of the Privy Council, but they then embark upon a discussion of various Acts of the Indian legislature apparently with a view to showing that it is the practice in the case of Indian legislation to treat the Crown as bound unless it is specially exempted, a conclusion which seems to me difficult to reconcile with the acceptance of the general rule. We are bound, in my opinion, by the decision of our own Court, and also by the decisions of the Privy Council to which the Madras High Court refer, to hold that the rule does apply in India. The case nearest to the present case is the English case of *Hornsey Urban Council v. Hennell*[4] on which the learned Chief Judge relied. In that case it was held that Section 150 of the English Public Health Act (38 & 39 Vic. c. 55), which is in much the same terms as Section 305 of the City of Bombay Municipal Act, 1888, did not bind the Crown although there was in the English Public Health Act one section, viz., Section 327, which contained a limited exemption in respect of the interest of the Crown. It is true that in the English Public Health Act there are no provisions similar to those in the Bombay Act relating to municipal taxes, but, for the reasons already
given, I think that no inference against the Crown can be drawn from ' these sections.

7. In my opinion, therefore, the learned Chief Judge came to the right conclusion, and the appeal must be dismissed with costs. In the view I take as to the construction of the Act, it is not necessary to deal with the further question raised by the Advocate General as to whether in the year 1888, the local legislature had power to affect prejudicially the prerogative of the Crown.

**Rangnekar, J.**

8. The short question raised by this appeal is, whether, under the City of Bombay Municipal Act, 1888, the respondents as representing the Crown are liable to pay the share of expenses which were apportioned upon them in respect of certain premises situate in Bombay. The first respondent was at all material times the owner of premises bearing A Ward No. 185 (3) and (4) and fronting, adjoining and abutting on a private street off Colaba Road. By a notice dated May 31, 1930, the Municipal Commissioner called upon the respondents, under Section 305 of the Act, to level, metal, drain and light the street. The respondents failed to carry out the work, and it was ultimately carried out by the Municipal Commissioner. Section 489 of the Act empowers the Municipal Commissioner to execute the work in the event of default committed by the person served with a notice under Section 305, and also provides that the expense of such work will be paid by the person or any one of the persons to whom the notices were addressed. Section 491 provides that the expenses of the work executed by the Municipal Commissioner-are payable by any person upon whom a requisition was made under Section 305, and shall be paid on demand. Sub-section (2) provides that if they are not paid, they shall be recoverable by distress and sale of the goods and chattels of the defaulter. Under Section 503, when the claim of the Commissioner is disputed by the person concerned, the Commissioner has to refer the case for determination to the Chief Judge of the Small Cause Court at Bombay. Accordingly, in this case, as the

respondents representing the Crown disputed the claim of the Municipal Commissioner to recover the portion of the expenses incurred by him in executing the work specified in the notice, the Municipal Commissioner made a reference under Section 503 to the Chief Judge. The learned Chief Judge came to the conclusion that the Crown was exempted from liability to pay the expenses demanded by the Municipal Commissioner. The Municipal Commissioner appeals, and the question is whether the view taken by the Chief Judge is correct.

9. Now, it is a universal rule of construction that the Crown is not bound by an Act of Parliament unless named therein expressly or by necessary implication. This principle was recognised by this Court in as early as 1865 and since then has been followed in several decisions of this Court, to which it is not necessary to refer. As observed in *Ganpat Putaya v. The Collector of Kanara*[5] it is a universal rule that the prerogative and the advantages it affords cannot be taken away except by the consent of the Crown embodied in a statute, and that this rule applies to the Acts of Indian legislatures. It is true that in *Motilal v. The Collector of Ahmedabad*[6] Justice Beaman doubted the correctness of this principle, and seemed to be of opinion that there is a distinction between the position of the Secretary of State in India and the Crown in England. On a reference by the divisional bench the case came before a full bench, and this question was expressly left open. As far as the decisions go, therefore, the principle to which I have referred has been consistently followed by this Court and also recognized in. many Privy Council decisions to which the learned Advocate General has referred us. A contrary view, it is. said, was taken by the *Madras High Court in Belt v. The Municipal Commissioners for the City of Madras*[7] Apart from the fact that we are bound to follow Our own decisions, with all respect to the learned Judges who decided that case, I am unable to accept their conclusion. The main principle that the Crown and its prerogatives, rights, interests, etc., cannot be affected by any statute unless there are express words to that effect, or unless there is clear evidence of intention in the statute that they are to be affected by such statute, does not seem to have been disputed. But the learned Judges then entered upon a historical survey of various Acts of the Indian legislature and held that it was the practice of the Indian legislature to treat the Crown as bound unless it was specially exempted by a statute. With all respect it is difficult to accept the view taken by the learned Judges and to reconcile it with the recognized principle, as it means that the onus of proving that the Crown was exempted by necessary implication is on the Crown and not on the party who sets up that case.

10. Mr. Kemp says that the rule, that the Crown is not bound by a statute unless named therein expressly or by necessary implication, does not apply as the statute was enacted for public good. It is true that the rule does not apply if a statute is passed for public good, advancement of religion and justice, or prevention of fraud, etc. But I am unable to hold that on this particular question any question arises regarding public good. The question is who is to pay for the expenses of the work done by the Municipal Commissioner, whether the public of Bombay as a whole or the wider public of the country as a whole.

11. Now it is obvious that in the particular sections to which I have referred the Crown is not

expressly named. But it is said that looking at the Act as a whole the Crown is named in these sections by necessary implication. What exactly is the meaning of the expression "necessary implication"? With regard to this I cannot do better than refer to an observation of Mr. Justice Day in *Gorton Local Board of Health v. Prison Commissioners*[8] namely, "There are many eases in which such implication does necessarily arise, because otherwise the legislation would be unmeaning. This is what I understand by 'necessary implication'." Applying this test, I am unable to hold that these particular sections would be unmeaning or cannot be given effect to unless it is held that the Crown is named in these sections and is bound thereby by necessary implication.

12. The next argument of the learned Counsel on behalf of the appellant is that if you look at many other sections of the Act you would find sufficient evidence of the intention of the statute to bind the Crown. For this purpose he has referred us to many sections. In my view it is not a sound principle of construction that where words of exemption are inserted in a statute they exclude the presumption of any other exemption so far as other sections are concerned. The distinction is pointed out by Lord Alverstone C.J. in *Hornsey Urban Council v. Hennell*[9]. The principle is clear, and it is that the intention that the Crown should be bound or had agreed to be bound must clearly appear from the language used and from the nature of the enactments. This point came before this Court in *The Secretary of State for India v. Mathurabhai*[10] and there it was observed that the mere mention of the Crown in an Act has not the effect of making all its provisions applicable to the Crown. Now, almost all of those sections occur in chapter VIII of the Act, the heading of which is " Municipal Taxation," and deal with the question of taxation. This chapter has nothing to do with the matter with which we are concerned. It is clear from those sections that with regard to taxations the Crown, expressly agreed to waive its prerogative and to be bound in a particular manner. But this, in my opinion, cannot mean that because the Crown agreed to be bound in a particular matter, therefore it must be assumed that in regard to other matters dealt with in other parts of the Act the Crown also intended to give up its prerogative. Mr. Kemp then referred to Section 299 which undoubtedly occurs in the same chapter with which we are now dealing. But, it seems to me, that the proviso in that section is clearly intended to be inserted ex majore cautela, and that appears from the fact that it is not the Crown alone but several other corporations were also intended to be exempted, and it was considered by the legislature advisable to make a special mention of the Crown. The language of Sections 489 and 491 is against the contention of the appellant. Section 489 provides that the expenses of the work executed by the Municipal Commissioner on failure of the person to whom a requisition was addressed under Section 305 "shall be paid by the person." Under the General Clauses Act, 1897, the Governor General in Council is not a person. Then Section 491 speaks of a defaulter and provides that the expenses shall be recoverable by the Commissioner by distress and sale of the goods and chattels of the defaulter. It can hardly be contended that this remedy is applicable to the Secretary of State for India in Council.

13. The view I am taking is supported by Hornsey Urban Council v. Hennell, which seems to me to be practically on all fours with the present case. In that case the question arose whether the

Crown was bound by Section 150 of the Public Health Act of 1875. The section is in the same terms as those of Section 305 of the City of Bombay Municipal Act, and it was held that the Crown was not bound by it, although Section 327 of the Public Health Act expressly exempted the Crown in some other respects.

14. In this view it is not necessary to express any opinion on the larger question which has incidentally been discussed, and that is, whether it was open to the local legislature to pass an enactment affecting the prerogative of the Crown. But, it seems to me, there is considerable force in the argument of the learned Advocate General that having regard to the various statutes which have been enacted from time to time for the government of this country and until we come to the Government of India Act of 1915, the local legislature would have no such power.

15. For these reasons I agree that the decision of the learned Chief Judge is correct, and the appeal must be dismissed with costs.

Cases Referred.

1[1891] 1 Ch. 658
2(1889) I.L.R 14 Bom. 213
3(1902) I.L.R 25 Mad. 457
4[1902] 2 K.B. 73
5(1875) I.L.R 1 Bom. 7
6(1906) I.L.R 31 Bom. 86 : 8 Bom. L.R. 904 F.B
7(1902) I.L.R 25 Mad. 457
8[1904] 2 K.B. 165n 167n
9[1902] 2 K.B. 73 80
10(1889) I.L.R 14 Bom. 213