

BA TOWNSHIP BOARD

v.

CHIMANBHAI APPABHAI PATEL AND ANOTHER

B [SUPREME COURT, 1968 (Moti Tikaram Ag. P.J.), 29th July, 27th August]

Appellate Jurisdiction

C *Local government—rating—township—notice that entries in rate-book completed and rate-book open for inspection—required on each occasion rate struck—non-compliance fundamental irregularity—requirement additional to notice of particulars of rate—Townships Ordinance (Cap. 79—1955) ss.10(5) (6), 11, 12(1) (2) (4) (5) (6), 13—Townships (Amendment) Ordinance 1965—Townships Ordinance (Cap. 107—1967).*

Interpretation—Ordinance—rating—requirements as to notice—subject matter and object of legislation—Townships Ordinance (Cap. 79—1955) ss.10(5) (6), 11, 12(1) (2) (4) (5) (6), 13—Townships (Amendment) Ordinance 1965—Townships Ordinance (Cap. 107—1967).

D The notice required to be exhibited and published by subsection (4) of section 12 of the Townships Ordinance (Cap. 79-1955, as amended) (a) that the entries in the rate-book have been completed (b) that the rate-book is open for inspection and (c) (by subsection (5)) declaring a date before which appeals may be brought against the valuation, must be given on each occasion after a rate is struck and the entries in the rate-book have been completed. The notice is in addition to the notice required by section 10 of the Ordinance stating the particulars of the rate and the period in respect of which it is made.

E Non-compliance with the requirements of exhibition and publication of the notice as provided by section 12 is a fundamental irregularity going to the root of the matter and defeating the appellant Board's claim for rates.

F Appeal from a judgment of the Magistrate's Court dismissing an action by the appellant Board on a claim for rates and interest. The facts are set out in the agreed issues quoted in the judgment.

G K. P. Mishra for the appellant Board.

K. A. Stuart for the respondents.

MOTI TIKARAM J.: [27th August, 1968]—

H This is an Appeal from the decision of a first class Magistrate sitting at Ba. In concerns the interpretation to be placed on the wording of Section 12(4) of the Townships Ordinance, Cap. 79. The law relevant to the Writ of Summons in this case was at all material times contained in Cap. 79 as amended by Ordinance No. 33 of 1965. In the 1967 Revised Edition of the Laws of Fiji, Cap. 79 has become Cap. 107 and Section 12(4) is contained in Section 15(4).

In July 1967 the Ba Township Board sued the Defendants for the sum of £214.9.2., the particulars of claim being as follows :-

				A
To : Rate on C.T. 7821 pt. and L.47970 from 1/1/66 to 31/12/66	124.16. 0			
Garbage fees	38. 0. 0			
Interest at 7%	8. 8. 0	171. 4. 0		
To : Rate on C.T. 7821 pt. and L.47970 from 1/1/67 to 31/3/67	34.13. 4			B
Garbage fees	8. 0. 0			
Interest at 7%	11.10	43. 5. 2		
		£214. 9. 2		C

The Defendants denied liability in so far as the claim related to rates of interest thereon contending that the rate was not duly published or levied on the grounds that Section 10(5) and 12(4) of Cap. 79 had not been complied with.

The issues which were settled and agreed to between the parties before hearing commenced were as follows :-

"1. IT is agreed that notice of the making of the Ba Township rate for 1966 was published in The Fiji Times newspaper on Friday the 10th day of December, 1965 Saturday the 11th day of December, 1965 and Monday the 13th day of December, 1965. The question for the Court is whether this publication complied with Section 10(6b) of Cap. 79.

2. IT is agreed that the last valuation for Ba Township was made in 1963 and a notice was duly published in 1964 in pursuance of such valuation and it is conceded by the plaintiff that no further publication under Section 12(4) of Cap. 79 was made in connection with the striking of rates for 1965, 1966 and 1967 in respect of the properties mentioned in the particulars of claim in this action. The question for the Court is whether publication of a notice under Section 12 is necessary for each time a rate is struck or whether a notice published after each new valuation is sufficient."

The learned trial Magistrate in a long reserved judgment in which he dealt with the history of the relevant legislation and the submissions made by the opposing Counsel arrived at the following conclusion :-

"

In conclusion I only wish to observe that if the legislature had intended that a right of appeal against a valuation only accrued directly after each new valuation it could very simply have said so. In my view it clearly has not.

For the reasons I have given I find that both the issues put to this Court for trial must be answered in the affirmative and it is not sufficient to publish a notice under Section 12 after each new valuation."

A As the parties had agreed that the issues submitted were to supersede the pleadings, the effect of the trial Magistrate's judgment was that the Ba Township Board was not able to recover the rates and the interest they had claimed thereon. Consequently the Plaintiff obtained judgment for £46.9.0 only, the said sum being for garbage fee.

The Ba Township Board being dissatisfied with the learned trial Magistrate's interpretation of the law has now appealed on the following grounds :-

B "1. The learned trial Magistrate erred in holding that the publication under Section 10(6b) of Cap. 79 has to be repeated each year under Section 12(4) of Cap. 79. It is submitted that they are complementary.

C 2. The Section 11(3) as amended by 33 of 1965 provides for valuation to be made at least once in six years. If the learned trial Magistrate's decision is correct then a rate payer is deemed to possess every year a right of appeal against the valuation which is to be made once in six years only, even though he has indicated his acceptance each year by duly paying his rates.

D 3. That in any event, the Defendants did not discharge the burden of proof that such irregularity goes to the root of the matter and defeats the claim of Appellant Board for rates."

E It will be observed that this appeal concerns the answer given by the learned trial Magistrate to the second question posed in the settled issues, namely whether publication of the notice under Section 12 is necessary for each time a rate is struck or whether a notice published after each new valuation is sufficient. It will serve a useful purpose if I reproduce here the relevant provisions of Section 10 and the whole of Section 12 of Cap. 79 as amended by Ordinance No. 33 of 1965. Subsections 5 and 6 of Section 10 read as follows :-

F "(5) Every rate made by a board shall, unless otherwise prescribed in the notice required to be given under this section, be made for the period of one year commencing on the first day of January next succeeding the date on which the rate is approved by resolution of the board.

(6) As soon as may be after the making of a rate the board shall —

(a) exhibit at the offices of the township board a notice stating the particulars of the rate and the period in respect of which it is made; and

G (b) publish the notice once in each week for two successive weeks in a newspaper circulating in the township."

Section 12 provides :-

H "(1) All valuations made under the provisions of this Ordinance shall be entered in a rate-book to be kept for the purpose together with such particulars of the rateable property as the board may determine or as may be prescribed.

(2) Subject to the provisions of section 13 a valuation when entered in the rate book shall be the value of the property upon

which all rates made by the board shall be assessed, and shall remain in force until a new valuation is made; all rates so assessed shall be entered in the rate-book.

(3) The rate-book shall be open to the inspection of the public at all reasonable times and the owner or occupier of rateable property or his agent may take copies of the entries relating to such property without fee.

(4) Notice that the entries in the rate-book have been completed and that the rate-book is open for inspection shall be exhibited at the offices of the township board and shall be published in a newspaper circulating in the township once in each week for two successive weeks :

(5) Where a notice is exhibited and published in pursuance of subsection (4) of this section the board shall in such notice declare a date, being not less than two months after the last of such publications, before which appeals may be brought against the valuation.

(6) If it appears at any time to the board that any property has not been valued, or has not been valued in accordance with the provisions of this Ordinance, or ought to have been entered in the rate-book and has been omitted therefrom, or that the name of any person has been inserted therein as the owner, occupier, or registered lessee of any property in respect of which some other person ought to have been rated, or that any other matter purely of error needs rectification, the board may cause such property to be duly valued or a description of the property so omitted and the name of the owner, occupier, or registered lessee to be inserted in the rate-book together with the unimproved value at which such property is assessed, and may also substitute for the name of the person erroneously inserted in such rate-book as the owner or occupier of any property rated the name of the true owner, occupier or registered lessee thereof, and correct any such other error in the said rate-book as is requisite.

(7) The board may at any time cause a valuation to be made of any rateable land where the unimproved value of such land has increased since the most recent general valuation by reason of —

(a) the existence of any street, road or drain which has since the time of such valuation been accepted and taken over for maintenance purposes by the board: or

(b) the certification of any final survey plan of a subdivision in accordance with section 15 of the Subdivision of Land Ordinance; or

(c) the sale or letting since the time of such valuation of any land on which work has been done to bring such land into a condition suitable for building purposes.

(8) Whenever the name of any owner liable to be rated under this Ordinance is not known to the board it shall be sufficient to rate such owner in the rate-book by the designation of "the owner" without stating the name.

Dealing with the history of the Townships Ordinance from its inception, the learned trial Magistrate continued as follows :-

A “ In 1965 the position was changed again by Ordinance 33 of 1965. Changes, relevant to these proceedings, were in two ways. The need for notices under subsection 10(6) was unaltered but the form of publication was changed to bring it into conformity with subsection 12(4). That is publication had to be once in each week for two successive weeks.

B Subsection 12(4) was altered in that, while the form of publication remained unchanged, the substance of the notices was to be different. Instead of the assessment and rate having to be published, notices were required when entries in the rate-book had been completed and the rate-book was open for inspection.

C In the 1967 revision the substance of these requirements was unaltered but the old subsections 10(6) and 12(4) became the new 12(5) and 15(4) respectively. Cap. 79 became Cap. 107.

The plaintiffs contention here is that sections 10 and 12 of Cap. 79 deal with two quite distinct matters. Section 10 deals with the amount of the rate and section 12 with the valuation upon which it is assessed. Mr. Mishra, for the plaintiffs, asked the Court to look at the object of the legislation as a whole and submitted that the legislature could not have intended the words “and rate” after “assessment” in subsection 12(4) to put a town to the necessity of publishing the rate in two different forms of publication each time a rate was struck. He suggested that subsection 12(4) was ambiguous and he asked the Court to infer from the 1965 amending ordinance that separate forms of notices had never been intended. In support of this he asked the Court to consider the objects and reasons published with the bill in which the Attorney-General stated that subsection 12(4) was ambiguous.

D Mr. Stuart, for the defendants, submitted that “and rate” means precisely what it said. While he agreed that it was permissible to deduce from an amending ordinance the correct interpretation of ambiguous passages in an original ordinance he did not concede that this was ambiguous and he did not concede that it was permissible to look behind the wording of the amending ordinance to its proclaimed objects or parliamentary history in order to determine whether an ambiguity had existed.

E I am satisfied that the correct way to approach this problem of construction is, as Mr. Mishra has suggested, to look at the objects of the legislation as a whole. This the Court must do however by looking at the ordinances themselves and not surrounding explanations.

F Section 10 deals specifically with the striking of a rate. Its last subsection, subsection (6), provides that, as soon as a rate has been made public, notice of its details shall be given. This notice requires that the particulars of the rate and the period in respect of which it is made shall be stated.

“Section 12 deals with the making up of a rate-book. Subsection (1) provides that the value of property upon which rates are to be assessed must be entered in the rate-book. Subsection (2) provides that all rates when they have been assessed shall also be entered in the rate-book. Subsections (4) and (5) make provision for a basis upon which appeals against valuation can be made.

A

The requirements for a notice under subsection 12(4) are very differently worded from the requirements under subsection 10(6). Perhaps subsection 12(4) is not very clearly worded and, by itself, it could be taken to mean two different things. It could mean that notice of every individual assessment and rate has to be given. On the other hand it could mean that whenever the rate-book has been made up to show the assessments and rates required by subsections (1) and (2) a general notice must be given that these formalities had been completed.

B

If the former of these constructions was correct there would be little sense in the requirement of two separate notices, differently published, setting out substantially the same information. On the other hand if the second construction is correct subsection (4) is linked with subsection (5) and provides a time basis from which the two months in which an appeal against valuation must be made can be calculated.

C

Even if there had been no amending legislation in 1965 this second possible interpretation makes sense of the general objects of the ordinance and for that reason should be preferred.

D

In 1965 an amendment was made making it clear that what subsection (4) required was notice that the rate-book had been completed and was ready for inspection. On the face of it that amendment is not something which makes any change to the ordinance. All it does is to make it clear that one of the possible interpretations of the old subsection, which was in any event preferable, is now confirmed”

E

In my view the primary objects of subsections 4 and 5 of Section 12 (Cap. 79) are, clearly, to provide an opportunity to the rate-payer to bring appeals against valuations within a specified time after a notice has been exhibited and published to the effect —

F

- (a) that the entries in the rate-book have been completed, and
- (b) that the rate-book is open for inspection.

It is significant to note that the only means whereby a ratepayer may have his valuation reduced or varied is by recourse to Court by way of appeal. On the other hand, the Board which enjoys rights similar to those conferred on the ratepayer as regards appeal against valuation has the additional advantage of having a particular property valued or revalued in between two general valuations by having recourse to either sub-section 6 of Section 12, if it appears to the Board inter alia that a particular property has not been valued in accordance with the Ordinance, or to sub-section 7 of Section 12 if it considers that the unimproved value of any rateable land has increased since the most recent valuation by reason of any of the grounds specified therein.

G

H

A If sub-section 4 were to be compiled with only after each general valuation, and it must be borne in mind that the period between two general valuations could be as long as six years, then it would logically follow that a ratepayer would have no right of appeal if the Board had occasion to resort to either sub-section 6 or sub-section 7 to have the rateable value of the property revalued or increased. Surely the legislature could not have intended to make such a one sided provision? It is also significant to note that a right of appeal as prescribed by Section 13 (Cap. 79) only arises after the Board has complied with the provisions of sub-sections 4 and 5 of Section 12 and that too within a specified time. It is equally interesting to note that Section 13 which confers the right of appeal follows immediately after the provisions relating to the requirement that all valuations are to be entered in a ratebook and that general notice is to be given when all entries are complete. Read in conjunction with Section 10 of Cap. 79, I am satisfied that this general notice under Section 12 must be given on each occasion after the rate is struck and the entries in the rate book have been completed in addition to the notice required under Section 10. A notice under Section 10 is distinct from the notice under Section 12 in the following respects :-

- (i) No reference to valuation is required to be made.
- D (ii) No intimation is required that all entries in the rate book are complete.
- (iii) No intimation is required that the rate book is open for inspection.
- (iv) No reference to time within which appeal against valuation may be lodged is necessary.

E The learned counsel for the Appellant has submitted that the conclusion reached by the learned trial Magistrate would lead to inconvenience, absurdity and unreasonableness, and that it would confer on the ratepayer an annual right of appeal. However, the learned counsel has based his argument on the assumption as is clear from ground 2 of the appeal that giving of notice under Section 10 following making of rate is an annual exercise and that there can be only one valuation in every six years. With respect he appears to have overlooked the fact that a rate is made for one year " unless otherwise prescribed in the notice." Similarly whilst the Board is enjoined by Section 11 of Cap. 79 to cause valuation to be made at least once in every six years, it is not, however, precluded from causing valuation to be made oftener than that. Whilst I am inclined to agree that certain inconvenience may be caused, I cannot agree that the interpretation placed on sub-section 4 of Section 12 is unreasonable or that it would lead to any absurdity. On the other hand, the construction urged by the learned counsel for the Appellant, if accepted, may lead to the deprivation of the right of appeal of a dissatisfied ratepayer in between two general valuations in the following circumstances :-

- H (a) where his property has been valued or revalued under sub-section 6 of Section 12,
- (b) where valuation of his property has been increased under the provisions of sub-section 7 of Section 12,

- (c) where value of his property has appreciably decreased soon after the time for appealing after the most recent general valuation has expired.

Having regard to the subject matter and the object of the Ordinance and having examined the provisions of Section 12 in the light of the provisions of Section 10 and bearing in mind the context in which Section 12 appears in the Ordinance, I am satisfied that the learned trial Magistrate's approach, reasoning and conclusion was a correct one.

Noncompliance with the requirements of exhibition and publication of notice as provided by Section 12 of Cap. 79 (as amended) was a fundamental irregularity which goes to the root of the matter.

I therefore dismiss this appeal with costs.

Appeal dismissed.