

The Orthodox Patriarchate of Jerusalem - - - *Appellant*

v.

The Municipal Corporation of Jerusalem - - - *Respondent*

FROM

THE SUPREME COURT OF PALESTINE.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 19TH OCTOBER, 1943

Present at the Hearing:

LORD ATKIN

LORD THANKERTON

LORD PORTER

LORD CLAUSON

SIR GEORGE RANKIN

[*Delivered by* LORD THANKERTON]

This is an appeal from a judgment dated the 31st July, 1940, of the Supreme Court of Palestine, sitting as a Court of Appeal, which unanimously affirmed a judgment of the District Court of Jerusalem dated the 3rd June, 1940, by which the appellant's petition claiming exemption from payment of any rates to the respondent Corporation was dismissed.

The appellant's petition was presented under section 15 (b) of the Rates and Taxes (Exemption) Ordinance, 1938, which provides as follows:—

“ 15. (b) Any State, religious community or body, charitable organization or educational institution to which this Ordinance applies claiming by virtue of any treaty or firman or any other ground whatsoever any exemption from taxation other than the exemptions for which provision is made in this Ordinance, may within one year from the commencement of this Ordinance petition the District Court in accordance with the provisions of the Crown Actions Ordinance and notwithstanding anything contained in that Ordinance the provisions thereof shall apply to such claims as though they were claims which could be brought against the Government under the provisions of that Ordinance.”

The main question under this section is whether municipal rates are included under the word “ taxation ”, so as to render the procedure authorised by the section available to the appellant. Both Courts have decided this point in favour of the appellant. There was a minor contention as to the absence of the Attorney General, who was originally made a party to the proceedings, but who was dismissed from the case at the first hearing, as no claim was made against him by the appellant. Both Courts decided against the respondent on this contention, and the contention was not revived before the Board.

On the merits, the appellant's claim to exemption was based on certain Edicts and Firmans the earliest being dated in 625 A.D. and the latest circa 1897 A.D. Both Courts below held that the exemptions granted in these Edicts and Firmans did not relate to or include municipal rates, and

the trial Judge further held that, even if they did so apply, any such exemption came to an end on the enactment of the Municipal Corporations Ordinance, 1934, which contained no saving clause relative thereto.

Their Lordships agree with the Courts below that the arbitration award dated the 21st October, 1935, in arbitration proceedings between the present appellant and the Government of Palestine is of no assistance in the present proceedings, as the award was not concerned with municipal rates and the present respondent was not a party to the arbitration proceedings.

The first question is whether the word "taxation" in section 15 (b) of the Rates and Taxes (Exemption) Ordinance, 1938, includes municipal rates, so as to render the present proceedings competent. Their Lordships are unable to agree with the view expressed by the lower Courts. The word may be used in either the more limited meaning or the wider meaning, which would include rates, and the question as to which meaning is intended must fall to be decided on the terms of the Ordinance in question. So regarded, it appears clear to their Lordships that throughout the Ordinance a distinction is preserved between taxes and rates. The title prescribed by section 1 names both, and while Part I relates to "Exemption from Municipal Rates", Parts II and III relate respectively to exemptions from "The Rural Property Tax" and "The Urban Property Tax". Part I provides for exemptions from municipal property rates, municipal general rates and municipal education rates, and section 102 of the Municipal Corporations Ordinance, 1934, is referred to for their meaning. In the opinion of their Lordships it is not to be assumed that the narrower meaning of "taxes" used in Parts II and III, in contrast with the use of "rates" in Part I, is superseded by the use of the wider meaning of "taxation" in Part IV; on the contrary, it is to be assumed that the narrower meaning was advisedly preserved in Part IV. It follows that the present proceedings, which claim exemption from municipal rates, are not authorised by section 15 (b) of the Ordinance.

This view supersedes consideration of the appellant's contention that exemption from municipal rates is granted by the Edicts and Firmans founded on, but their Lordships desire to make two observations. In the first place, their Lordships are of opinion that the evidence in this case is unsatisfactory, and would be insufficient to enable a proper decision to be arrived at, if such decision was necessary. Such matters as the historical setting of these documents, and the nature of certain taxes or imposts referred to, might well be more adequately ascertained and explained. In the second place, however, their Lordships desire to express their concurrence in the view of the trial Judge, that, even if exemption from municipal rates had been granted by these Edicts and Firmans, such exemption could not remain available against rates levied under the Municipal Corporations Ordinance, 1934, which, by section 102, confers the power to levy rates in such terms as to leave no room for any implication of exemptions, and which contains no saving clause to cover the appellant's claim.

It follows that the appeal fails, and should be dismissed with costs. Their Lordships will humbly advise His Majesty accordingly.

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THE ORTHODOX PATRIARCHATE OF
JERUSALEM

2.

THE MUNICIPAL CORPORATION OF
JERUSALEM

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