

(1942) 06 CAL CK 0016
In the Calcutta High Court

Bhupendra Nath Mukherjee

APPELLANT

Vs

Commissioner of Utterpara Municipality and Others

RESPONDENT

Date of Decision : 15-06-1942

Acts Referred:

Citation : AIR 1943 Cal 254

Judgement

1. In this case the plaintiff sued for a declaration that he was the owner of holding No. 84, being an upper floor of the building in which is situated the Uttarpara Library and that for the purpose of the Municipal Act, 1932, he would be entitled to have his name substituted in the place of the abovementioned Abani Nath Mukherjee, who is a pro forma defendant in the suit. He also prays for refund of taxes paid by him under the provisions of the proviso to Section 156 of the Municipal Act and further for damages for trespass. He holds the property on a lease from a relative of his by name Abani Nath Mukherjee, granted on special terms to the effect that there would be a nominal selami of Rs. 25,000, which was not to be paid, that the lessee would spend money on repairs of the building in lieu of the payment of the rent and that the lease would be for a term of 15 years. The matter appears to be one of a family squabble to some extent, the present Chairman of the Municipality being also a relative of the plaintiff. However that may be, it is quite clear that the plaintiff has no cause of action for the present suit. The trial Court held that the plaintiff came within the definition of "owner" in Section 3(38) of the Act and that he was entitled to have his name substituted in the books of the municipality in the place of Abani Nath Mukherjee, and gave a decree accordingly. The claim for refund of taxes and damages was dismissed.

2. On appeal to the learned District Judge, Hooghly, the municipality filed a cross-objection and was successful, the learned Judge holding that the matter as to whether the plaintiff was the owner or not and was entitled to be registered as such in the assessment list was one for decision by the Commissioners. It appears that at some stage of the proceedings, there was an application by Abani Nath Mukherjee himself to the effect that the plaintiff should be recorded

as the owner in the assessment list; but this prayer was rejected by the Commissioners. We think that the learned District Judge is correct in his interpretation of the definition of "owner" in Section 3(38) of the Act in holding that it is wide enough to cover both the person in whom the title lies, namely, Abani Nath Mukherjee, and the present plaintiff as lessee who, if he wished, might sub-let the premises on rent. It has, however, been found by the learned Judge that it is for the municipality to decide, u/s 539 of the Act, on whom the duty of payment will be laid and who will be recorded in their list as the owner.

3. In the present case, the matter is of no substance whatever, for the actual liability to pay is settled as between the lessee and the lessor by the terms of the lease. The only grievance that the plaintiff has in fact is that he is to pay the taxes on a bill which bears the name of his relative as owner and he insists that his own name should appear on the bill. What actually happened in the case was that Abani Nath Mukerjee refused to pay and thereupon distress was taken to the premises at holding No. 84 and after protest the plaintiff paid the amount due. The plaintiff is liable under the terms of his lease.

4. The entry in the assessment list u/s 139 of the Act shall be conclusive proof for any purpose connected with the rate or rates to which it refers, of the amount leviable in respect of the holding. The only way in which the list can be altered is by the procedure u/s 148 of the Act, or by moving the Commissioners to take action u/s 138 of the Act, as was apparently done in the present case. The decision in the matter rests entirely with the committee appointed by the procedure laid down in the Act and the decision of the committee is final and no objection can be taken to the assessment or valuation in any other way than as laid down by the Act : (vide Sections 149(4) and 150). It is, therefore, futile for the civil Court to make any declaration setting forth its own views on the rights or wrongs of the matter, or what correction in the assessment list of the municipality ought to be made on the Court's interpretation of the word "owner" in the Act. There is no suggestion here that the municipality have in any way acted ultra vires or mala fide and the finding is that their action as a matter of procedure was in all respects proper. The trial Court appears to have toyed with the notion that in fact what the Commissioners had done amounted "to a refusal to substitute the plaintiff's name as the owner or an indefinite postponement of performance of the statutory duty" and that in this respect it might be in some circumstances within the power of the Court to compel the Commissioners to perform their duty; in fact what the Court really means is that the Commissioners failed to do their duty because they did not do it in the way in which the Court thinks the duty should have been done. It is quite clear however that in any view the trial Court had no power directly to compel the Commissioners to perform their duty and the Court was wrong in attempting to compel them to take action by making what amounts to no more than a pious declaration of its own view. It has been necessary to mention the line taken by the trial Court, for this would appear to be the only line by which the learned advocate on behalf of the appellant had any means of attempting to show that

his appeal should be successful. Once it is found that the Court has no power to interfere in the matter of the entry in the assessment list, all the other claims of the plaintiff are disposed of and this is conceded by the learned advocate appearing on behalf of the appellant. The result, therefore, is that this appeal is dismissed with costs.