

(1946) 07 CAL CK 0014
In the Calcutta High Court

Commissioners of Pabna Municipality	Vs	APPELLANT
Naba Gobinda Choudhury		RESPONDENT

Date of Decision : 11-07-1946

Acts Referred:

Bengal Municipal Act, 1932 — Section 138

Citation : AIR 1947 Cal 245

Hon'ble Judges : Sharpe, J;B.K. Mukherjea, J

Bench : Full Bench

Judgement

Sharpe, J.—The appellants are the Municipal Commissioners of Pabna and the appeal arises out of a suit by the plaintiff for a declaration that the assessment of rates in respect of holdings 408 and 409 of the Pabna Municipality is illegal and ultra vires, for recovery of a sum of us. 307, the amount, with interest, realised on the basis of the disputed assessment, and for a permanent injunction restraining the Municipality from realising any further amounts on that basis, The trial Court gave the plaintiff a decree for the first two reliefs but refused his prayer for a permanent injunction. His decision was affirmed on appeal by the Subordinate Judge of Pabna.

2. The facts are not disputed and are as follows. There was an assessment by the Pabna Municipality in 1935 which came into force in the year 1936-1937. The assessment list then prepared showed the annual Evaluation of the holdings 408 and 409 as Rs. 1320 and Rs. 720 respectively but that these valuations had been altered to Rs. 1200 and Rs. 600 by the Chairman of the Municipality without any apparent authority of the Commissioners in a meeting following the procedure prescribed by Section 138, Bengal Municipal Act. The present plaintiff challenged the legality of this assessment in O.C. Suit No. 68 of 1938 and was successful in obtaining a declaration from the trial Court that that assessment was illegal and ultra vires. The Municipal Commissioners appealed to the District Court but their appeal was unsuccessful. During the pendency of that appeal however, they issued a notice on the plaintiff under the provisions of Sub-section (2) of Section

138, Bengal Municipal Act, intimating that at a meeting to be held on 26-11-1938 the Commissioners proposed to annul the assessment list by altering the annual valuations of holdings 408 and 409 to Rs. 1200 and Rs. 600 respectively. The plaintiff filed an objection before the Commissioners, his main contentions being that the annual valuation for the two holdings could not exceed Rs. 375 which was the rent of a permanent lease granted by the pattanidar, the plaintiff's father, for holdings 408 and 409 which comprise the fish and vegetable markets of Pabna Town, and also that the annual valuation of these holdings for the purpose of assessment could not be settled during the pendency of the appeal against the decision that the assessment was illegal and ultra vires. Those objections were overruled and in a meeting held on 19th December 1938, the Commissioners decided that the holdings 408 and 409 should be assessed on annual values of Rs. 1200 and Rs. 600 respectively. Thereafter a sum of Rs. 298 was realised from the plaintiff on 21-3-1940 on the basis of this altered assessment and on 29-5-1940 the plaintiff filed a suit to obtain the reliefs mentioned at the outset

3. The suit was contested by the municipality, and a number of objections were taken and issues framed. The most material issue was No. 6 which was in the following terms:

Was the assessment by the defendants on holdings 408 and 409 properly made and legal. Is it liable to be set aside?

The trial Court answered the first part of the issue in the negative and the second part in the affirmative, holding that the assessment in dispute was in fact a new assessment and that the provisions of Section 138, Bengal Municipal Act, under which the Commissioners purported to act had no application and could confer no jurisdiction for making the assessment. He held further that the splitting up of the markets into two holdings was illegal and ultra vires since, in his view, they constituted one holding according to the definition of "holding" in Section 3(21) of the Act. Consequently, he set aside the assessment and directed that the plaintiff should recover the sum which had been realised from him on that basis. The learned lower appellate Court confirmed this decision. He agreed with the view of the trial Court that the assessment was illegal and ultra vires because the provisions of Section 138, Bengal Municipal Act, had no application to the present case and conferred no jurisdiction on the Commissioners to make the assessment in dispute, but he did not express any opinion on the question whether the holdings had been wrongly split up in contravention of Section 3(21) of the Act.

4. The Commissioners have now appealed and at th? time of the hearing we were informed by Mr. Roy for the appellants that after the decision of the lower appellate Court a second appeal was decided by this Court relating to the first suit brought by the plaintiff. That decision has been reported in Pabna Municipality v. Naba Gobinda 46 C.W.N. 830 and by it the plaintiff's first suit has been dismissed and the legality established of the assessment which was then

disputed. Consequently, it has been contended that the assessment which is now disputed and which has in effect merely con-firmed the assessment disputed in the first case should be treated as redundant and ignored. Mr. Maitra for the respondent has, however, argued that irrespective of the question whether his client is liable to pay rates now for the subsequent period on the basis of the original assessment, he will be entitled to a refund of the amount realised for that period, if such realisation was based on an illegal assessment. He has supported the decisions of the lower Courts and has contended that the procedure adopted by the municipality was improper and illegal and also that there was a clear contravention of the provisions of Section 3(21) of the Act.

5. In view of the decision of this Court referred to above, we think there can be no dispute that the Commissioners are entitled to claim rates from the plaintiff according to the original assessment, but we do not think that for that reason alone the plaintiff would not be entitled to any relief in the present suit. Mr. Roy has, however, maintained that the grounds on which the decisions of the lower Court are based are erroneous and inadequate and we agree with this contentions. We do not think there was anything improper in the municipality seeking too rectify the defect, which had been held by the trial Court in the first suit to invalidate the assessment, by confirming the alteration made by the Chairman after following the procedure laid down in Section 138, Bengal Municipal Act. It seems to us clear that if the matter be viewed in the light of the earlier events, there was in fact no new assessment made by the Commissioners; they accepted merely the assessments as they stood originally in the list at the annual valuations of Rs. 1320 and Rs. 720 for holdings 408 and 409 respectively and proceeded to alter those assessments at a meeting held for that purpose and after issuing the notice required to be given by Sub-section (2) of Section 188. No special form of notice is prescribed and whilst it is true that the notice in this case did not mention specifically what the original valuations were or that it was proposed to alter or amend the original assessment. We have no doubt that was the intention and we think this was a reasonable inference from the terms of the notice, having regard to the background afforded by the previous events and the litigation between the parties. We do not think therefore that the assessment to which objection has been taken in the present case was illegal or improper or ultra vires.

6. As regards the objection that the Municipal Commissioners should have treated the two holdings as one holding, it has been contended by Mr. Roy that since this question was raised in the previous suit it cannot be agitated again in view of the fact that that suit was dismissed by this Court. No opinion was however expressed by this Court on this question and we do not think it necessary to dispose of it now on this ground, since we are of opinion that the decision of the trial Court cannot in any event be supported. We find in the judgment of this Court in Pabna Municipality v. Naba Gobinda 46 C.W.N. 830 a clear indication that the holdings 408 and 409 were not split up at the time of the assessment in 1935, but rather that they had existed as separate holdings

prior to that assessment. It is clear moreover that the holdings are used for two different and distinct markets one for the sale of fish and the other for the sale of vegetables and even if they would be considered to be "adjoining holdings" as contemplated by Section 3(21) of the Act we doubt if they can be said to form part and parcel of the place of trade or Jausiueess indicated in the definition. Apart from that however, we think the learned trial Court has erred in the view that the holdings should be considered to be "adjoining" within the meaning of the explanation to Section 3(21) and this error appears to be due to a wrong construction of the words "separated by a street or other means of communication" contained therein. These words, it seems to us imply that the holdings should be divided, the one from the other, by a street or other means of communication. We can however find no indication that they are so divided in the present case. The evidence of the plaintiff himself is to the following effect:

C.S. Plot 400 is the fish market and C.S. Plot 424 is the vegetable market. There is a road 15-20 cubit long leading from the fish market, to the vegetable market. The read is flanked on both sides by vegetable stalls.

The other evidence is more or less to the same effect, the only difference being in the estimate of the length of the road leading from one market to the other. From, this it would appear that this is a case, in which the holdings are joined and not separated by a street or other means of communication. In our opinion, therefore, the explanation to Section 3(21), Bengal Municipal Act has no application and the objection that the Municipality acted illegally in treating the holdings as separate holdings cannot be sustained.

7. The result is that this appeal is allowed. The judgments and decrees of the lower Courts are set aside and the plaintiff's suit will be dismissed with costs of all Courts.

B.K. Mukherjea, J.

I agree.