

(1941) 06 CAL CK 0033

In the Calcutta High Court

Case No : Appeal from Appellate Decree No.688 of 1939

Hari Bhusan De

APPELLANT

Vs

The Municipal Commissioners of Kamarhati

RESPONDENT

Date of Decision : 23-06-1941

Acts Referred:

Citation : (1941) 06 CAL CK 0033

Final Decision : Dismissed

Judgement

Biswas, J.—The Appellant in this case cannot complain that he has suffered by reason of any lack of insistence in the presentation of his case either in this Court or in the Court below. He is the shebait of an idol, and as such, he is the owner of a large tract of land, mostly low-lying, within the limits of the Defendant municipality. This land had not been brought under assessment at any time prior to the 1st of April, 1935. Whether this was because the lands were not comprised within the limits of the municipality, or they had escaped assessment, it is not necessary to consider. The present assessment purported to be made under the provisions of the Bengal Municipal Act of 1932 (Bengal Act XV of 1932), and the purpose of the suit is to obtain a refund of the taxes which were recovered by the municipality for the first two quarters of 1935 and 1936 by virtue of the new assessment. * The ground put forward is that the assessment was illegal, ultra vires and arbitrary. Both the Courts below have held against the Plaintiff and hence this appeal. The learned Subordinate Judge, in concurrence with the learned Munsif, came to the conclusion that the proceedings taken by the municipality were in substantial compliance with the statute, and in that view held that the Civil Court had no jurisdiction to interfere with the assessment made by the municipality. The learned Judge, however, expressed the hope that the Commissioners of the municipality might grant the Plaintiff some relief in the shape of a reduction of the assessment, as it appeared to him, from the materials which had been brought to his notice, that the assessment might be regarded as somewhat excessive. On behalf of the Respondent municipality, the offer of a reduction was repeated in this Court, but it was not accepted by the

Appellant, and that makes it necessary for me to dispose of the appeal on the merits. Having heard the learned Advocate for the Appellant and given the fullest consideration to the arguments advanced by him, I am unable to hold that the learned Subordinate Judge was wrong in the conclusion he had arrived at. Quite a large number of objections were taken, calling in question the validity of the assessment, and these were repeated more or less in the same form before me. In view, however, of the fact that the matter has been dealt with very fully by the Court below, I do not propose to cover the same ground by a lengthy judgment of my own. It may be useful perhaps to indicate some of the relevant provisions of the Bengal Municipal Act, 1932, which will be all found in Chapter V thereof.

2. The power to impose rates and taxes is conferred upon the Commissioners of a municipality by sec. 123, which contemplates, among other impositions, a rate on holdings assessed on their annual value. The annual value is defined in sec. 128, which says that it shall be deemed to be the gross annual rental at which the holding may reasonably be expected to let. By sec. 133 it is provided that when the Commissioners have decided to impose any rate to be assessed on the annual value of holdings, the Assessor, after making such enquiries as may be necessary, shall determine the annual value of all holdings within the municipality in the manner provided in the Chapter. For this purpose the Assessor is empowered under sec. 134 to call upon owners or occupiers of all holdings to furnish him with returns of the rent or annual value of the holdings and other particulars. Sec. 135 lays down that it is for the Commissioners to determine a percentage on the annual value of holdings on which the rates are to be assessed. After this has been done, the Commissioners are required by sec. 136 to cause an assessment list to be prepared which is to contain, among other particulars, the annual value of the holdings and the amount of rates payable for the year. Sec. 137 provides that subject to any alteration or amendment made under sec. 138 and to the result of any application under sec. 148, every valuation and assessment entered in such list shall be valid for five years. Sec. 138 authorises the Commissioners at a meeting to direct intermediate amendments in the assessment list. Sec. 141 also enables the Commissioners at a meeting to reduce the rates or taxes in cases of excessive hardship. Sec. 148 contains a specific provision under which any person who is dissatisfied with an assessment or valuation may apply to the Commissioners to review the same within the time specified therein. A special procedure is laid down in sec. 149 for the disposal of such applications. They are required to be heard and determined by a Special Committee which is to consist of the Chairman and some Commissioners as specified in the section. Sub-sec. (4) of this section expressly states that the decision of the Committee or of a majority of the members present shall be final, and sec. 150 further provides that no objection shall be taken to any assessment or valuation in any other manner than is provided in the Act.

3. It is conceded that if the assessment or valuation is made in accordance with the provisions of the Act, the Civil Court has no jurisdiction to interfere, however

hard or excessive the assessment or valuation may be. The contention on behalf of the Appellant, however, is that the assessment here was in contravention of the statute. The grounds taken by him in fact constitute a challenge to the proceedings taken in this behalf all along the line, commencing with the appointment of the Assessor, which is questioned as wholly illegal. The Appellant assails also the procedure followed by the Assessor in making the assessment, and further, impugned the constitution of the Review Committee which heard his appeal and the proceedings before such Committee.

4. As I have said before, I do not feel called upon to do more than refer to some of the objections raised which may appear on the face of them to be of some substance.

5. As regards the appointment of the Assessor, the complaint is that the provisions of sec. 145 were not complied with. Sub-sec. (1) of this section provides that the Local Government shall prepare a list of persons qualified in its opinion to be appointed as Municipal Assessors, and sub-sec. (2) requires the Commissioners to appoint a person as an Assessor out of this panel. This was not done in the present case. It will be seen, however, that sub-sec. (3) expressly authorises the Commissioners to appoint any person approved by the Local Government, though he may not be included in the panel referred to in sub-sec. (1). The only point made by the Appellant is that the approval of the Local Government here was obtained after the appointment, and not before it, but in my opinion, this makes no difference.

6. The next ground taken with reference to the appointment of the officer is based on Rule 1 of the Rules framed by the Local Government under sec. 215 (a) of the Act. This Rule provides that the Assessor shall commence work in sufficient time as may be fixed by the Commissioners at a meeting, so as to finish his work at least three months before the date on which the new assessment is to take effect. The assessment here was to take effect from the 1st of April, 1935, and it is accordingly argued that the appointment should have been made at the latest by the end of December, 1934, so as to allow the necessary interval of three months to the Assessor to complete his work. The appointment was actually made towards the end of January, 1935. I consider that this was no more than a mere irregularity. There is no evidence that the shortness of time in any way affected the work of the Assessor, or that it resulted in any prejudice or injustice to any party concerned. In my opinion, this objection also fails.

7. As regards the procedure which was followed by the Assessor, this is questioned mainly on the ground that Rules 4, 9 and 10 were not observed. Rule 4 provides for the issue of notices under sec. 134 by the Assessor, calling for returns from owners and occupiers which are required to be submitted in prescribed forms. The form of the notice Form A, as well as of the return, Form B, is attached to the Rules. It will be seen that Form B contains 16 columns, the first 14 of which are to be filled up by the owner or occupier, and the last two by

the Assessor himself. In the last column the Assessor is in fact required to show the annual value determined by him and the basis of determination thereof. Rule 9 lays down that when the annual value has been determined, the Assessor shall fill up the last two columns of Form B and prepare an assessment list in the manner prescribed in sec. 136. It further provides that when the assessment list is ready, the Assessor shall endorse on it a certificate over his signature as to the correctness of the entries therein, and shall then make it over to the Chairman. Rule 10 then provides that the assessment list prepared by the Assessor shall be submitted with a brief report to the Commissioners, showing the basis on which he has prepared the list. It is further laid down that each actual assessment shall be accompanied by a note showing how he has arrived at it, comparing the property in question with other similar property and explaining why the assessment differs, if it does.

8. The first point made is that no notice under sec. 134 was at all issued in this case. But it will be seen that neither under sec. 134 nor under Rule 4 is it obligatory on the Assessor to issue a notice; he may do so, whenever he thinks fit. In this case there is evidence to show that the Assessor did have otherwise all necessary information before him regarding the holding, and he also actually inspected it. Failure to issue notice under sec. 134 could not, therefore, be regarded as an illegality.

9. It is next urged that the Assessor had not filled up the last two columns of Form B, as required by Rule 9, and that therefore the assessment list was invalid. But as we have seen, there was no notice under sec. 134 in this case, and therefore, no return submitted by the Plaintiff in Form B. Necessarily, for this reason, there was and could be no question of the Assessor filling up the last two columns of this form. In my opinion, the learned Subordinate Judge took the right view in this matter.

10. It is contended, however, that in any case it was incumbent on the Assessor to endorse a certificate on the assessment list under the latter part of Rule 9. The Defendant municipality's case was that such a certificate had been actually given, but though they took time for the purpose, they were unable to produce the original assessment list which would have shown the certificate, if it had been actually appended to the document. Assuming, however, that the certificate was wanting, I am not prepared to say that this by itself would render the assessment list invalid in law. It will be seen that the Act does not require a certificate, but provision is made for it in the Rules. The object evidently is to ensure the authenticity of the assessment list as submitted by the Assessor to the Chairman. It is not disputed that the assessment list, as published under sec. 147, did bear the signature of the Chairman: there is in fact positive evidence to this effect on the side of the Defendant municipality. In my opinion this ought to be a complete guarantee of the genuineness of the assessment list. It certainly shows that the Chairman was satisfied that the entries in the assessment list which the Assessor submitted to him had been made by the Assessor

11. It is finally contended on this part of the case that there should have been in any event a note by the Assessor under Rule 10, showing the basis on which the annual valuation had been determined. The note contemplated in Rule 10 seems to correspond very much to what the Assessor is required to show in the last column of Form B, and it is not quite clear whether in the absence of a return submitted by the party in Form B, the note should be otherwise supplied. In any case, however, it does not appear that such a note is required to be incorporated in the assessment list itself as an integral part thereof. Sec. 136 specifically mentions certain particulars which must be included in an assessment list, and these do not include any such item as is contemplated in the note referred to in Rule 10 or in the last column of Form B. Sec. 136 no doubt says that the Commissioners may direct the inclusion of other particulars in the assessment list than those categorically specified therein, but there is nothing to show that the Commissioners in this case had given any direction to include a statement regarding the basis of the assessment. I can quite appreciate the objection that unless this information is supplied, a party may be seriously prejudiced in the matter of preferring an objection to the assessment under sec. 148. But it is one thing to say that such information should be supplied in order to enable the owner or occupier concerned to prefer his objection, and it is another thing to say that if the assessment list does not contain any statement on the point, it will be rendered void and of no effect. I should suppose that if the particulars furnished in the assessment list are not sufficient in any case for the purpose of making an application for review under sec. 148, the party can always apply to the municipality for further particulars regarding the holding, and there is no reason to hold that this should necessarily invalidate the assessment list itself.

12. This disposes of all the main objections regarding the appointment of the Assessor and the procedure followed by him. The next grounds of attack have reference to the constitution of the Review Committee and the proceedings taken before that committee. As pointed out before, the relevant section is sec. 149, as it stood before its recent amendment in 1936 by Bengal Act XI of 1936. By sub-sec. (1), it provided that--

every application presented under sec. 148 shall be heard and determined by a Committee consisting of a Chairman, and two Commissioners who shall be appointed by the Commissioners at a meeting and shall not, in case of a Municipality which is divided into wards under sec. 20, be Commissioners of the ward from which the application is made.

13. It is not disputed that the committee which actually sat to hear the objection in the present case was composed of three members, and that the members other than the Chairman were persons who had been appointed for this purpose by the Commissioners at a meeting. The first objection taken, however, is that the resolution passed by the Commissioners by which the Review Committee was constituted mentioned three instead of two Ward Commissioners besides the Chairman. That is so, but I do not think this vitiated the constitution of the

committee. The object of nominating an extra member apparently was to get rid of the difficulty which might be occasioned by reason of the provision in the latter part of sec. 149 which seeks to exclude the Ward Commissioner of the Ward to which the case relates from functioning as a member of the Review Committee. It was not intended that more than three members should attend at any sittings of the committee, and in point of fact no sittings were attended by more than three.

14. The next point urged is that the Chairman of the Municipality did not actually sit on the committee to hear this case, but that his place was taken by the Vice-Chairman of the Municipality, and it also happened that the Vice-Chairman was a Commissioner of the particular ward from which the case arose. If the Vice-Chairman was entitled *ex officio* to act in the place of the Chairman, the learned Advocate for the Appellant conceded that no objection could be taken merely because he happened to be the Ward Commissioner. His main point was that the Vice-Chairman was not competent to act for the Chairman in the Review Committee by virtue of any delegation of authority under sec. 52, which provides that the Chairman may delegate to the Vice-Chairman "all or any of the duties or powers of a Chairman as defined in this Act." The argument was that sec. 149 refers to the Chairman as a *persona designata*, and that the power or duty to act as a member of the Review Committee does not come within "the duties or powers of a Chairman as defined in this Act." Admittedly, in this case there was a valid delegation of authority in favour of the Vice-Chairman under sec. 52, but it was contended that this was not wide enough to include the authority to function as a member of the Review Committee. It was pointed out that the duties or powers of a Chairman referred to in sec. 52 were only those which are laid down in sec. 51, that is to say, the powers vested by the Act in Commissioners. I am not at all satisfied that there is any reason for putting such a narrow construction on the terms of sec. 52. It will be seen that for the transaction of the business of the Municipality, large powers are vested in the Commissioners and sec. 51 merely provides that subject to the limitations therein prescribed, the Chairman may exercise such powers as if they were vested in him. This does not, however, exhaust all the powers which the Chairman is competent to exercise under the Act. There are indeed certain powers which the Act confers in terms on the Chairman alone, such as those referred to in Chapter V itself. It would be wrong, therefore, to limit the operation of sec. 52 only to the powers referred to in sec. 51. Sec. 52 speaks of the powers of a Chairman as defined in the Act, and sec. 149 is undoubtedly a part of the Act, the hearing of an objection to assessment being in fact a part of the procedure which the Act contemplates in relation to a very vital part of the administration of a municipality. In my judgment, there is no justification for holding that the functions of a Chairman under sec. 149 are excluded from the scope of the delegation contemplated by sec. 52. This objection taken by the Appellant consequently fails.

15. The next ground urged is that there was no notice given by the Review Committee to the Assessor as required by sub-sec. (3) of sec. 148, which

subsection, it may be added, has since been repealed. The reason for not giving such notice appears to be that at the time the objection was heard, the Assessor had ceased to be in the service of the Municipality. I do not think that failure to comply with the terms of sub-sec. (3) in the circumstances was anything more than a mere irregularity.

16. It is next said that the procedure laid down in Rules 11, 12, 13 and 14 were not followed. I entirely agree with the learned Subordinate Judge that the so-called infraction of these rules did not go to the root of the matter at all, and could not, therefore, be held to vitiate the proceedings.

17. On all these grounds, I hold in concurrence with the Court below that the assessment was made in substantial compliance with the provisions of the law, and cannot, therefore, be Impeached in a Civil Court.

18. The result is that the appeal fails, and is dismissed with costs. Nothing in this judgment will prevent the Municipality from giving the Appellant such relief as they may consider proper.