

(1956) 04 MAD CK 0054
In the Madras High Court
Case No : S. A. No. 1334 of 1955

In Re: Alli Ramahan, represented by her power of attorney agent S.S. Narasimha Iyer

Date of Decision : 06-04-1956

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Contract Act, 1872 — Section 72

Citation : (1956) 04 MAD CK 0054

Hon'ble Judges : Ramaswami, J

Bench : Single Bench

Advocate : N. Sundara Ayyar, for the Appellant;

Final Decision : Dismissed

Judgement

Ramaswami, J.—This is a second appeal sought to be preferred against the decree and judgment of the learned Subordinate Judge of Coimbatore in A. S. No. 200 of 1954 confirming the decree and judgment of the learned District Munsif of Coimbatore in O.S. No. 25 of 1953. The facts are :-The plaintiff is the owner of a house bearing D. No. 4/30 in Trichy Road, Ramanathapuram, in Coimbatore. This house was originally assessed to a tax of Rs. 33-5-6 and this was the tax levied in the year 1950-1951. In March 1951 the Municipality carried on its quinquennial revision. For this purpose a Special Officer was appointed to inspect the buildings in the town and fix its annual value. The suit house was accordingly inspected by one of the Special Officers of the Municipality who found it to be tenanted and accordingly fixed its annual rental value at Rs. 1,110/-and the amount of tax at Rs. 99-14-6. The original rental annual value was Rs. 360, The Special Officer has enhanced it to Rs. 1,110/-. On account of some technical defect the Municipality could not proceed with the quinquennial revision and therefore it had to resort to its powers granted to it in Schedule IV, R. 4 of the Madras District Municipalities Act, under which it had power to direct the Executive Authority to amend the assessment register whenever it appeared to the Council that any property has been inadequately assessed or inadvertently or improperly omitted from the assessment books relating to any tax. Under the

proviso to that rule the Municipality has to afford reasonable opportunity to the person concerned when it involves an increase in the assessment to show cause to the Council why the assessment books should not be amended as proposed. The Municipal Council has delegated its powers of taxation to the Finance Committee. On 7th June 1952 the defendant Municipality issued a notice under the Proviso to R. 4 (1) of Schedule IV of the Madras District Municipalities Act to show cause to the Finance Committee why the assessment should not be amended from 1st April 1951., The reason given in the notice is " General Revision". In accordance with this notice the Finance Committee has fixed the annual rental value of the building at Rs. 888/- and fixing an half yearly tax of Rs. 82-3-9. A notice to that effect has been issued to the plaintiff on 26th August 1952. The plaintiff thereafter appealed to the Executive Authority who declined to interfere with the matter. The plaintiff thereupon filed the present suit.

2. The case for the plaintiff is that the house was occupied by her and not by a tenant, that therefore in enhancing the assessment as the Municipality has done, it has not kept in view the rules and directions given by the Government and that therefore the Municipality has acted arbitrarily and capriciously and failed to comply with the provisions of the Act and the Rules in substance and effect.

3. The case for the Municipality was that the enhancement was made under Schedule 4, Part 1. of the Taxation and Finance Rules appended to the District Municipalities Act, that this house being inadequately assessed, the revision was made, that the question whether the house was occupied by the owner or not was irrelevant that even assuming that the Government had issued instructions in respect of the houses occupied by the owners and that according to these instructions the assessment should not be ordinarily increased in the case of houses occupied by owners beyond the level of their assessment in 1939-1940, the very instructions of the Government (Ex. B-4) did not prohibit any statutory revision of assessments as well as the raising of the annual value of houses which are found to have been inadequately assessed even on the basis of rentals which prevailed during 1939-1940, that the defendant Municipality had complied with the provisions of the Act and the Rules in substance and effect and that the plaintiff's suit was barred under S. 354 of the Madras District Municipalities Act.

4. Both the lower Courts have found that the defendant Municipality has complied in substance and effect with the provisions of the Act and the Rules and dismissed the suit.

5. In regard to the point taken that the instructions of the Government contained in Exs. A-22 and B-4 viz., Government Memorandum No. 8732 /N46-6 and Government Memorandum No. 78085-N/45-4 have not been complied with, apart from the fact that the enhancement of assessment in this case was under the provisions of S. 62 of the Madras District Municipalities Act read with Schedule IV, Part I of the Taxation and Finance Rules and the very Government Orders make also clear that the instructions therein do not prohibit any statutory revision of assessment as well as the raising of the rental value of houses which

are found to have been inadequately assessed even on the basis of rentals which prevailed during 1939-1940, it has been held in *The Madurai Municipality v. Kamakshi Sundaram Chettiar* (1955) 1 M.L.J. 75 (N.R.C.). (Since reported in 68 L.W. 583), C.R.P. No. 1458 of 1952 as follows;

Though the fair rent fixed for a building under the Madras Buildings (Lease and Bent Control) Act, 1949, may and ordinarily should be taken into consideration by the Municipal Authorities in computing the annual value under S. 82 of the Madras District Municipalities Act, they are not bound to take such fair rent as necessarily the rent for which the building may reasonably be expected to be let within the meaning of that section.

The determination of fair rent under the Rent Control Act is to a certain extent artificial and hypothetical and may not represent the rent at which the premises could reasonably be expected to be let during the particular year of assessment to property tax. Nor is the contract between the landlord and tenant conclusive in construing the rental of a building.

A statutory restriction on the rent payable from a tenant of a building and the fact that a landlord cannot enforce, as against a tenant, a rent higher than the statutory standard rent in operation at that time, does not operate as a statutory restriction on the rent earning capacity of the building.

In any event, there cannot be a refund of a tax paid under an assessment which has become final and which was not illegal when it was imposed and collected. The fact that fair rent was fixed under the Madras Act XXV of 1949 for a building subsequent to the assessment of tax for a particular year and under the said Act that order of fixation of fair rent operates retrospectively between the landlord and the tenant, does not make the rental value as computed by the Municipality and its collection thereof for the year in question unlawful.

6. Would this suit be barred under S. 354 of the Madras District Municipalities Act ?

7. Generally, civil Courts have jurisdiction to entertain all suits of a civil nature, excepting suits of which their cognizance is expressed or impliedly barred. S. 9, C.P.C. The question of the jurisdiction of civil Courts has to be examined with reference to two aspects, viz., the rule of implied bar and the rule of express bar. The rule of implied bar may apply by reason of the constitution of separate Tribunals under the particular Act under consideration. Where a special Tribunal or a public body is created by or the authority of an Act of Legislature for determining questions which are the creation of the Act, the jurisdiction of that Tribunal or body is exclusive and civil Courts cannot take cognizance of such matters. Where the Tribunal has acted within its jurisdiction, the jurisdiction of the civil Courts is barred in the absence of mala fides or fraud. Where however, the Tribunal acts ultra vires or refuses to exercise its jurisdiction or acts mala fide or arbitrarily, the civil Court has power to interfere and set matters right: *Chitale and Annaji Rao's C. P. C. 2nd edn., Vol. I. P. 100.*

8. The general principle is that every right has a remedy: (1883) 3 M. H. C. R. 35 (D.B.). It is also a general principle that where two proceedings or two remedies are available under the law, one of them must not be taken as operating in derogation of the other. 27 Jhari Lal Gope and Others Vs. Ramdhikari Missir, . Thus, where a right of action exists a suit is maintainable to enforce that right independently of the special remedies provided by the laws. Chandra Sekhar Mukherjee Vs. Corporation of Calcutta and Others, , There is, however, one qualification for this rule. Where a right is created by statute and a method of enforcing the right or of redressing grievance caused in the exercise or enforcement of the right is pointed out by the statute creating such right, then the general remedy of suit will be impliedly barred. AIR 1940 105 (Privy Council) . Nataraja v. Municipal Council, Mayavaram 36 Mad. 120 at 123, The Municipal Council Vs. Singaraju Mallapparaju,

9. But even if jurisdiction is excluded, civil Courts can examine into cases whether provisions of the Act have not been complied with or whether the statutory Tribunal has acted in conformity with the fundamental principles of judicial procedure. Such actions are sustained even though a party has recourse to procedure of appeal before the special tribunal and fails. In the absence of clearest words, Courts would decline to infer an abrogation of the ordinary right of a subject to seek remedy in a civil Court. Finally mentioned in rules does not shut out civil Court's jurisdiction but refers to the proceedings of the Municipality Department etc.: Valli Ammal v. The Corporation of Madras 23 M. L. J. 531; Kamaraja Pandia Naicker v. S. of S. A. I. R. 1936 Mad. 298 at 300. See also, Venkata Narasimha v. Narasaropet Municipal Council AIR 1931 Mad. 122=33 L.W. 497; Sundaram v. Madras Municipality 1913 M. W. N. 932. Both English and Indian decisions are agreed that clear language is essential to withdraw civil Court's Jurisdiction (Jacobs v. Brett) (1875) L. R. 20 Eq. 1 quoted with approval in 1939 Cal. 435 at 446 (F. B.); Galsworthy v. Durrant (1860) 2 L. T. 788; Albon v. Pyke (1842) 11 L. J. C. P. 266; Southampton Bridge Co v. Board of Health (1858) 8 E. & B. 801; Ali Muhammad v. Hakim 1928 Lah. 121 (F. B.); following Leach v. Rex 1912 A. C. 305; Ranchod v. S. of S. ILR (1897) 22 Bom. 583; Sibta Kunwar v. Bhagoli I. L. R. (1899) 21 All. 196; William Sheriff v. Jogrnaya (1891) I. L. R. 27 Cal. 535; Raoji v. Dadaji (1875) I. L. R. 1 Bom. 523 at 529; Vaidyanatha Iyer v. Yogambal Ammal 1927 Mad. 140 at 141 = 25 L.W. 660; Arunachalam Chetty v. O. R., Ramnad 1927 Mad. 166 at 169=24 L.W. 730; Ramakrishnayya v. Venkataranga 1932 Mad. 724 at 729=36 L.W. 569; Secretary of State v. Mask and Co., 1940 P. C. 105 at 110=52 L.w. 1; Kavasji v. Rustomjee 1949 Bom. 42; A.N. Ghosh and S.C. Ghosh on the Interpretation of Indian Stances (1904) (S. K. Lahiri and Co.) P. 284 and foll; P. Narasimham, Interpretation of Indian Statute and of the Government of India Acts 1935 (M.L.J. publication) R. 164 and foll; Maxwell on the Interpretation of Statutes Tenth Edn., (1953) P. 13 and foll; Swarup-The Interpretation of Indian Statutes (1952) Edn., Ch. XVI P. 350 and foll-ousting the jurisdiction of Courts.

10. The underlying general rule regarding the ouster of jurisdiction of civil Courts

has been explained by Willes, J., in *Wolverhampton New Waterworks Co. v. Hawkesford* (1859) 6 C. B. (N.S.) 336 at 356 as follows :

There are three classes of cases in which a liability may be established founded upon a statute. One is, where there was a liability existing at common law, and that liability is affirmed by a statute which gives a special and peculiar form of remedy different from the remedy which existed at common law, there; unless the statute contains words which expressly or by necessary implication exclude the common-law remedy, and the party suing has his election to pursue either that or the statutory remedy. The second class of cases is, where the statute gives the right to sue merely, but provides no particular form of remedy; there, the party can only proceed by action at common law. But there is a third class, viz., where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it

The remedy provided by the statute must be followed, and it is not competent to the party to pursue the course applicable to cases of the second class. The form given by the statute must be adopted and adhered to.

(Cited with approval in *Craies on Statute Law*, Fifth Edition, pages 116 -117.

11. Bearing these principles in mind let us examine the provisions of S. 354 of the District Municipalities Act and the corresponding provision in S. 228 of the Madras District Boards Act.

S. 354, Cls. (1) and (2) lays down :

(1) No assessment of demand made, and no charge imposed, under the authority of this Act shall be impeached or affected by reason of any clerical error or by reason of any mistake (a) in respect of the name, residence, place of business or occupation of any person, or (b) in the description of any property or thing, or (c) in respect of the amount assessed, demanded or charged : provided that the provisions of this Act have been, in substance and effect, complied with. And no proceedings under this Act shall (merely) for defect in form, be quashed or set aside by any Court of Justice.

(2) No suit shall be brought in any Court to recover any sum of money collected under the authority of this Act or to recover damages on account of any assessment, or collection of money made under the said authority;

Provided that the provisions of this Act have been, in effect, complied with.

Section 228, Cls. (1) and (2), of the Madras District Boards Act, runs as follows :

(1) No assessment or demand, made, and no charge Imposed, under the authority of this Act shall be impeached or affected by reason of any clerical error or by reason of any mistake (a) in respect of the name, residence, place of business or occupation of any person, or (b) in the description of any property or thing, or (c) in respect of the amount assessed, demanded or charged; provided that the provisions of this Act have been in substance and effect, complied with.

And no proceedings under this Act shall (merely) for defect in form, be quashed or set aside by any Court of Justice.

(2) No suit shall be brought in any Court to recover any sum of money collected under the authority of this Act or to recover damages on account of any assessment, or collection of money made under the said authority; provided that the provisions of this Act have been in substance and effect complied with.

12. The substance of these sections is that if the provisions of the Act, rules and by-laws are in substance and effect complied with, no assessment etc., can be impeached for any clerical error, no suit can be brought either to recover the money collected or for damages. For defect in form, no proceeding under this Act can be quashed or set aside by any Court of Justice. If the provisions of the Act, rules and by-laws are in substance (not form) and effect (not show) not complied with, the acts done in the name of the Act, rules and by-laws can be deemed to be illegal and suits can be filed to set them aside and also to recover satisfaction in the shape of special damages sustained by aggrieved persons for irregularities done in the name of the Act. If the payments of taxes sought to be recovered were voluntary payments, they cannot be recovered. It is only the money that is paid under compulsion of urgent and pressing necessity of seizure, actual or threatened of his goods, he can recover it as money had and received. Threatened seizure does apply to the conventional threat contained in the ordinary notices of demand. *Rajahmundry Municipality v. Subba Rao* AIR 1937 Mad. 559=39 L.W. 660; See also *The Palghat Electric Corporation Ltd. Vs. T.N. Veeraraghava Aiyar*, .

13. A suit to recover any. sum of money paid under a mistake of fact lies as provided in S. 72 of the Indian Contract Act. A payment made under a mistake of law cannot be recovered either under S. 72 of the Contract Act or under the equitable principle. As pointed out in *Vemuri Ramjee Rao Vs. The Municipal Council*, by Horwill, J. " As the law stands at present a person who pays tax under a misapprehension of law as to his liability to do so cannot recover it in a Court of law, although one would expect a corporate body to refund voluntarily any amount which had been paid to it in error." following *Municipal Council Vs. Ralli Bros.*, and *Rajamundry Municipal Council v. Subba Rao* AIR 1937 Mad. 559=39 L.W. 660.

14. Whether the provisions of the Act are complied with or not, is a question of fact which has to be determined with reference to the particular circumstances of the case. So no Court could afford to dismiss a suit or a criminal case regarding taxes or licence fees at the outset without going into the facts and ascertaining whether the provisions of the Act, rules and by-laws had been in substance and effect complied with. [*Kamaraja v. Secretary of State* AIR 1936 Mad. 269=42 L.W. 931; *The Corporation of Madras Vs. Spencer and Co., Ltd.*, .

15. The case-law on this subject may now be briefly studied. In the first Madras leading case on the subject, *Tuticorin Municipality v. South Indian Railway I. L. R.*

13 Mad. 78 wherein Guntur Municipality (Leman) v. Damodaraya I. L. R. 1 Mad. 158 and Eamayya v. Guntur Municipality (Leman) I. L. R. 2 Mad. 37 were considered, an assessee claimed a refund of tax and he was met with the objection that the suit could not be maintained in the civil Court on the ground that it was provided in the Act that the adjudication of an appeal by the Municipal Council would be final. Muttusami Ayyar. J. disallowed the objection remarking as follows :

There can therefore be no doubt that a suit will lie when the provisions of the Act have not been complied with in substance and effect in regard to the assessment and levy of such tax, and the tax cannot be considered to have legal sanction.

The next case of importance is Bombay Co. Ltd. Vs. Municipal Council Dindigul, decided by Beasley, J. who held that if a Municipality (Local Board) levies a tax upon a person or a corporation (or a company or a house) not liable to pay that tax, it cannot be argued that what has been done, has been done in compliance either in substance or in effect with the provisions of the Act.

The next case is: Pattarani Purnachendra Mala Jumna v. The President, Taluk Board, Chieacole 113 I. C. 560 decided by Jackson, J. wherein he held that under S. 228 (2) of the Madras Local Boards Act, where the provisions requisite for the collection of the tax have been followed and there is merely a mistake of fact committed bona fide by the assessing authority, the remedy of the aggrieved party is that provided by and confined to the Statute, namely, an appeal to the Local Board itself and that a separate suit was incompetent. The learned Judge followed Municipal Chairman, Virudupatti v. Saravana Pillai 10 L.W. 592 and Municipal Council, Cocanada v. Standard Life Assurance Co. 10 M.L.J. 401, for the proposition that it would not be open to the civil Court to find whether the assessment was erroneous on facts and distinguished Municipal Council, Mangalore v. Codial Bail Press ILR 27 Mad. 547, wherein it was held that a civil Court can intervene when the Municipality has deliberately acted upon a wrong basis in contravention of the clear provisions of the Act. In that case it was not an isolated mistake but fundamental departure from the meaning of the statute.

In The Municipal Council, Kumbakonam Vs. Ralli Brothers, Curgenvan, J., observed as follows;

Had the purpose of the S. 354 (2) been to bar any suit so long as the provisions of the Act had been formally complied with, the proviso relating to substance and effect would not have been added.

The real question is whether or not "the provisions of the Act have been in substance and effect complied with." It may be that a miscalculation or even other kind or error in, arriving at the amount of assessment may not be examinable by the civil Court; but the levy of assessment on a basis not warranted by the statute cannot be assimilated to such cases.

In (Sri Sri Sri Izattasar Kandukuri) Balasuryaprasada Rao Pantulu Garu Vs. Taluk Board of Chicacole, , it has been stated that if profession tax is collected from a person who is not taxable under the Act, it would amount to a substantial disregard of the provisions of the Act and therefore S. 228 (2) will not be a bar to the institution of a suit to recover any sum of money collected from him under the authority of this Act. In this case Madhavan Nair, J., (as he then was) discussed the following six cases of which five cases have been considered to be against the above principle as follows :

In Virudupatti Municipality v. Saravana 10 L.W. 592, it is stated in the earlier part of the judgment that there is no case made that in assessing the plaintiff any of the relevant provisions of the Act was not complied with. This would show that if the provisions of this Act were not complied with, a suit would certainly not be barred under S. 228 (2). The facts mentioned in Purna Chandra v. Chicocole Taluk Board 113 I.C. 560 show that no provision of the Act was violated by the Municipality in making the assessment. But a mistake of fact was committed bona fide by the assessing authority. (This shows that a suit lies if the provisions of the Act were not substantially and effectively complied with). The decision in Krishnamachariar v. Srirangam Municipal Council AIR 1926 Mad. 448=24 L.W. 218, is clearly distinguishable on the facts and it follows a prior decision: Nellore Municipal Council v. Rangayya ILR 19 Mad. 10. This decision was a case of an unfinished house and in that provisions of the Act were not contravened. Further the section on which this decision was based was also amended and it was held and explained in the leading Madras case Cocanada Municipal Council v. Standard Life Assurance (4). In Lakshmanan v. Trichinopoly Municipal Council AIR 1923 Mad. 208 it was found that the provisions of the Act were complied with in substance and effect.

In The Commissioner, Municipal Council Vs. Srimathi Siddeswara Devi and Others, Happell, J., examining Municipal Council, Cocanada v. The Standard Life Assurance Co. ILR 24 Mad. 205, Municipal Council, Cocanada v. Royal Insurance Co., Liverpool ILR 21 Mad. 5, Municipal Council of Mangalore v. The Codial Bail Press ILR 27 Mad. 547 and Kamayya v. Leman ILR 2 Mad. 37 and Pattarani Purnachandra Mala Jamna Devi v. President, Taluk Board, Chicocole 113 I.C. 560, came to the conclusion that all these cases involve something more than a mere mistake of fact on the part of the Municipal Authorities and that where there was only a mistake of fact, as in the case before Happell, J. the remedy was by way of appeal to the Municipal Council and that the civil Court had no jurisdiction, provided the provisions of the Act have been in substance and effect complied with. In that case the dispute was that the site in question should have been held as appurtenant to the house. This was merely an error in making the assessment and the assessment was one which the Municipality had power to make and as there was no contravention of any express provisions of the Act and no mistaken view of any provision of the Act, it was not open to the civil Court to go into the question whether the assessment was correct or not.

In *The Udipi Municipal Council Vs. K. Vasudevacharya and Others*, , where the Municipal Council determined the question of fact viz., whether the site assessed was or was not used exclusively for agricultural purposes, on the evidence and materials available.

Visvanatha Sastri, J., held that the civil Court cannot assume the powers of the assessing authority and investigate the facts afresh to find out whether its conclusion on the facts is correct and that if on the facts proved, assumed or admitted by the assessing authority the assessment is found to have proceeded on an erroneous basis, the civil Court can step in and declare the invalidity of the assessment on the ground that the provisions of the Act have not been in substance and effect complied with. The learned judge referred with approval to the decisions of this Court which held that where the basis of the assessment is itself erroneous, the levy of tax on that basis is illegal and it was open to the Court to interfere and prevent the unauthorised levy or order a refund if the tax has been collected under compulsion: *Municipal Council Mangalore v. The Codial Bail Press* ILR 21 Mad. 5 R.S. *Sankaranarayana Reddiar Vs. The Taluk Board of Aruppukottai and Another*, , (Sri Sri Sri Izattasar Kandukuri) *Balasuryaprasada Rao Pantulu Garu Vs. Taluk Board of Chicacole*, and *Kamaraja Pandiya Naicker v. Secretary of State* 69 M.L.J. 695=42 L.W. 931. [For an enunciation of these propositions. See also *Ramaswami v. Sivakasi Municipality* A. I. R. 1937 Mad. 271 = (1937) I.M.L.J. 274=45 L.W. 236, *Payida Ramakrishnayya and Others Vs. Barrey Nagarazu and Another*, . The last of this aeries of decisions is *Coimbatore Municipality v. Govind ayyar* 66 L.W. 117 wherein it was held:

Where in a suit brought against a Municipality for recovery of house tar and questioning the basis of assessment on the. ground that the rental value adopted by the Municipality was capricious, unreasonable and incomplete disregard of the views of Deputy Inspector of the Municipal Council and the Collector acting under the House Rent Control Act, it was contended for the Municipality that S. 354 of the Act would be a bar to the maintainability of the suit, and that the plaintiff ought to have pursued the remedy of appeal under the Act and that the provisions of the Act have been in substance and effect complied with;

Held: the true test in respect of such cases is that laid down in *Secretary of State for India in Council v. Mask and Co.*, ILR 1940 Mad. 599=52 L.W. 1 (P.C.), Under S. 354 of the Act, in addition to the right of appeal provided for by and in Sec . IV of the Act the right of suit stands saved in all cases in which the provisions of the Act have not in substance and effect been complied with. If the provisions of the Act have not been complied with by the Municipality the suit will certainly be maintainable.

16. This completes our analysis of the examination of the case-law on the subject so far as this Court is concerned. An analogous view has been taken by the other High Courts with reference to other statutory provisions of similar scope and import; AIR 1940 377 (Lahore) *Narayan Chandra Dutt Vs. Chairman, Municipal Commrs.*, , *Karsandas v. Karachi Municipality* AIR 1936 Sind. 114,

Commissioners of Patna City Municipality Vs. Bishambhardeo Narain, , AIR 1940 293 (Nagpur) Kasandas v. Amkleshvar Municipality (1902) 26 Bom. 294. Coupled with this study of case law, this is the place also where the time-honoured cliché about strict construction and liberal construction of revenue matters deserves more than a passing mention. The proper rule of construction is that which is set out in that eminent American Jurist Cooley's Taxation, page 272, cited with approval in the standard American Treatise on "The Construction of Statutes" by E. T. Crawford, (1940) Saint Louis, Thomas Law Book Co., at page 511 :

There must surely be a just and safe medium between a view of the revenue laws which treats them as harsh enactments to be circumvented and defeated if possible, and a view under which they acquire an expansive quality in the hands of the Court, and may be made to reach out and bring within their grasp, and under the discipline of their severe provisions, subjects and cases which it is only conjectured may have been within their intent. Revenue laws are not to be construed from the standpoint of the tax-payer alone, nor of the Government alone. Construction is not to assume either that the tax-payer, who raises the question of his legal liability under the laws, is necessarily seeking to avoid a duty to the State which protects him, nor, on the other hand, that the Government, in demanding, its dues, is a tyrant which, while too powerful to be resisted, may justifiably be obstructed and defeated by any subtle device or ingenious sophism whatsoever. There is no legal presumption either that the citizen will, if possible, evade his duties, or, on the other hand, that the Government will exact unjustly or beyond its needs. All construction, therefore, which assumes either the one or the other, is likely to be mischievous and to take one sided views, not only of the laws, but the personal and official conduct.

[Stahl v. The Educational Association of the Methodist Church (Brewer J.) 54 Kans 542, Bank of Commerce v. Tennessee 161 U.S. 134 = 40 Led 645, Rankin v. Hoyt, U.S. 11 Led. 996, Cornwall v. Todd 34 Conn. 443, State v. Taylor 35 N. J. L. 184, Citizens Saving and Loan Association v. Topeka (U.S.) 22 Led. 455, referred to and discussed at pages 506 to 510 of Crawford].

Thus, Courts in construing the provisions relating to taxes ought where the language will permit, so to construe them as to give effect to the obvious intention and meaning of those provisions ensuring that no one by mere technicalities, which do not affect his substantial rights, shall escape his fair proportion and which is the pittance which each one pays for the preservation of property and the protection of rights remembering all the time that taxes are just as essential and important as Local Corporations themselves; for without them in some form Local Self-Government could not exist.

17. From an examination of the sections of law and the case-law and standard treatises the following propositions emerge.

(1) In regard to tax assessments that Legislature has clothed Municipal Corporations with large powers of a quasi-judicial character, and resort to the

civil Courts in regard to taxes fees, the propriety of which are questioned fall under the third category of cases set out in *Wolverhampton New Waterworks Co. v. Hawkesford* (1859) 6 C.B. (N. S.) 336. The ouster of the Court's jurisdiction in regard thereto is express. But this ouster is not unqualified.

(2) Civil Courts can interfere only after the aggrieved citizen has exhausted the reliefs open to him under the Act viz., appeal to the Corporation etc. And even then only when the assessment complained of is either in excess of or in contravention of the powers conferred upon the Corporation by the statute on the principle that when large powers are conferred upon local bodies on the strictest understanding that they observe the conditions of the statute to which they owe their origin, to allow them to levy taxes upon private persons without such strict compliance would be a grave scandal. In other words, Courts can interfere in all cases where the provisions of the Act are not complied with in substance and effect.

(3) Non-compliance with the provisions of the Act in substance and effect fall generally under two heads (a) with reference to the subject-matter of the grievance itself, and (b) in regard to the procedure adopted relating to the assessment and levy of the tax. In regard to (a) the simplest example is where a person who is not liable to be taxed is taxed, or the assessment is something more than a mere mistake of fact as in the case before Happell, J. above referred to and the basis of assessment was oppressive, capricious and unreasonable and the assessment ex facie exhibited mala fides, which would make it naturally fall either under the head of excess of or in contravention of the powers conferred upon the Corporation by the statute. There is no difference in principle between the exaction of a tax which has not been legally imposed and the execution of a tax from a person who is not taxable under the Act. The true test is whether there has been substantial disregard of the provisions of the law which creates the authority of the Municipality and regular its powers and duties. To put the matter in a different way, the civil Court is not called upon to try the merits of the question, but to see whether the authorities, possessed of limited jurisdiction have exceeded their bounds. The test is whether the assessment is or is not in conformity with the statutory provisions of the Act. If it is not, it does not enjoy any security from collateral attack. If the assessment is open to objection the ground of lack of jurisdiction, which, be it remembered, has to be exercised in conformity with the statute, it is open to collateral attack. Thus the civil Courts can interfere only when the assessment is ultra vires.

(4) Turning to (b) when there is a dispute with reference to the procedure, publication and other details regarding the levy of assessment a suit lies in a civil Court for a declaration that the assessment is illegal and for the recovery of the assessment if any, already collected, since there is no provision for taxing at all otherwise than by prescribing of the machinery and Courts have no power to relieve local bodies from the statutory obligations imposed upon them. The procedure laid down by the Act should be strictly followed and finality of the

decision when not in conformity with the provisions of the Act may be challenged in a Court of law.

In their approach towards these suits, Courts must steer clear of two extremes. One is that within the limits laid down Courts should ruthlessly interfere and set aright manifest non-compliance with the provisions of the Act in substance and effect. The rights of the citizens should be fearlessly protected. But at the same time when the Legislature has created autonomous elected local bodies and conferred large powers on them for the imposition and collection of taxes and the smooth and efficient functioning of this taxation machinery is sine quo non of this democratic set up in a Sovereign Republic, Courts must not be astute to discover arbitrariness, oppressiveness and capriciousness and make mountains out of molehills and confer wholly unmerited advantages on citizens seeking to evade lawful assessments on hyper-technical objections and pass on their burdens upon their unfortunate co-citizens. Therefore, it only when upon a fair reading of the entire materials available, the Courts find that there has been a substantial disregard of the provisions of the Act, they should interfere.

18. Bearing these principles in mind if we examine the facts of this case, we find that both the Courts have properly appreciated the evidence, drew correct inferences and applied the true principles of law and dismissed the suit. This Second Appeal has therefore got to be and is hereby dismissed.