
(1938) 11 CAL CK 0017
In the Calcutta High Court

Municipal Commissioners

APPELLANT

Vs

Anukul Chandra Maitra and Others

RESPONDENT

Date of Decision : 11-11-1938

Acts Referred:

Bengal Municipal Act, 1932 — Section 15

Citation : AIR 1939 Cal 79

Hon'ble Judges : Biswas, J

Bench : Division Bench

Judgement

Biswas, J.—This rule has been obtained by the Commissioner of the Pabna Municipality and arises out of a suit to recover rates and taxes due to the Municipality from the defendants in respect of 15 quarters namely, from the third quarter of 1933-34 to the first quarter of 1937-38 both inclusive. The rates were assessed at Rs. 5-8-3 per quarter up to the end of 1935-36 and at Rs. 6-15-9 per quarter for the remaining period. The total amount due for the period sued for at these rates was Rs. 90-1-3; including interest the total claim amounted to Rs. 100-14-3 (Rupees one hundred and annas fourteen and pies three). The suit was dismissed by the learned Subordinate Judge of Pabna exercising Small Cause Court jurisdiction.

2. The first point taken before him was that the suit was not maintainable. It was contended that u/s 15, Bengal Municipal Act, 1932, the plaintiffs should have been designated as the "Municipal Commissioners of Pabna," and not in the way stated in the plaint. It was pointed out that under the corresponding Section of the old Act, the Commissioners were entitled to sue in the name of their Chairman, by the description of "Chairman of the Municipal Commissioners of the place concerned." Such a description, the argument proceeded, would be wholly improper under the present Act. The learned Subordinate Judge gave effect to this objection. There was an application by the plaintiffs for amendment of the plaint in order to bring the cause title strictly in line with the requirements of Section 15. But, the learned Subordinate Judge rejected the application. The

same objection to the maintainability of the suit has been renewed in this Court by the defendants-opposite party. I do not think however that there is any substance in it. In the first place, the plaint shows that the plaintiffs were not described in the way suggested by the defendants-opposite party, or in the way contemplated in the old Section 29. The plaintiffs are stated to be "the Commissioners of the Pabna Municipality," but certain words are added thereafter which might as well have been struck out. These words are "represented by the Chairman Rai Bahadur Badhicanath Bose." I am of opinion that the designation of the plaintiffs in the plaint was in substantial compliance with the provisions of Section 15. Secondly, in any case, I think that if the defendants or the Court were inclined to be so meticulous, the amendment ought to have been allowed, specially as this would not have occasioned any prejudice to any body.

3. The next ground on which the suit was dismissed relates to the merits of the case. The defendants' case is that the holding, in question, for which the rates claimed were due, had been vacant throughout the period for which the demand was made, and that consequently the defendants were entitled to vacancy remission. According to the defendants, they had given notice of vacancy in writing to the Municipality. If they had, then there is no doubt that the defendants would be entitled to claim remission to the extent of f of the tax u/s 142 of the Act. The learned Subordinate Judge in dealing with the evidence on the point however, says that there is no satisfactory proof of the alleged service of the vacancy notices on the Municipality. I have read the evidence myself and I find that although the defendants state that they had given vacancy notices, the Municipal Officers who have been examined on behalf of the plaintiffs categorically denied the receipt of such notices. I must therefore accept the finding that vacancy notices had not been given. That being so, Section 142 cannot possibly come into play, notwithstanding that the holding might have remained vacant in point of fact for the period in suit. Defendant 1 says that he had approached the Chairman of the Municipality and this officer had expressly granted remission. The amounts of rates due for the whole of the period, it is said, was actually reduced by the Chairman to Rs. 20-12-3. This is admitted on behalf of the plaintiffs. Witness 1 for the plaintiffs in fact states:

It was settled that the tax of Rs. 20-12-3 would be payable by defendant 1 and acceptable to the Municipality, and he goes on to add a condition in these terms : if he paid in all Rs. 82 odd for two buildings and one carriage immediately,

and he further stated that in default of such payment the concession would be withdrawn. Assuming this to have been so, the question arises whether any such settlement if made by the Chairman would be binding upon the Commissioners. I am clearly of opinion that the answer should be in the negative. The only grounds on which remissions or reduction of rates may be allowed under the Bengal Municipal Act (1932) are set out in Sections 141 and 142. Section 141 deals with a case of excessive hardship and admittedly it has no application in the present case. Section 142 speaks of remission on the ground of vacancy, but

it is made contingent upon the party seeking remission giving notice of vacancy in writing to the Municipality. This condition as already stated was not held to have been established here. Section 142 therefore cannot be of any assistance to the defendants. So far as the powers of the Chairman to bind the Municipality are concerned, they are to be found in Section 51. This Section however merely authorizes the Chairman to exercise the powers vested in the Commissioners by the Act and will not obviously confer on him any delegated authority to act on behalf of the Commissioners in respect of matters not authorized by the Act. If therefore in this instance the Chairman had allowed the reduction or remission without acting in conformity with the provisions of the Act the Municipality cannot be bound by such act. The defendants accordingly in my opinion are not entitled to claim the benefit of the remission or reduction which the Chairman is supposed to have allowed. Nor are they entitled to any statutory reduction of the amount in claim by virtue of Section 142.

4. The learned Subordinate Judge in my opinion was therefore not justified in dismissing the suit. The judgment and decree of the learned Subordinate Judge will be set aside and there will be a decree in favour of the plaintiffs Municipality for the amount claimed with costs. The petitioners will get their costs of this rule hearing fee being assessed at one gold mohur.