

(1933) 12 CAL CK 0019
In the Calcutta High Court

Surendranath Sen

APPELLANT

Vs

Municipal Commissioners, Mymensingh

RESPONDENT

Date of Decision : 04-12-1933

Acts Referred:

Specific Relief Act, 1877 — Section 42

Citation : AIR 1934 Cal 673

Hon'ble Judges : Mallik, J; Jack, J

Bench : Full Bench

Judgement

Mallik, J.—This appeal arises out of a suit for a declaration that an assessment made by the Municipality of Mymensingh on the plaintiff's holding is illegal and ultra vires. The facts which are relevant for the purpose of this appeal are briefly these: In the Municipality of Mymensingh there was up to the year 1928 no tax on holdings but what is known as tax on persons. The Municipal Commissioners decided by a resolution that with effect from 1st April 1929 there should be a charge and that taxation from that date would be not on persons but on holdings, and in order to give effect to that resolution they made an assessment on all the holdings after making Valuations of the same. The plaintiff's holding was taxed on the basis that the annual letting value of the same was Rs. 3,000. This figure, however, on the objection of the plaintiff, was reduced to Rs. 1,800. Before the Commissioners decided to levy tax on holdings they had, in the year 1928 levied a water-rate on holdings within the Municipality, and for levying that water rate there had been a valuation of the plaintiff's holding in which the letting value of the same had been fixed at Rs. 1,260. According to the plaintiff's case when the plaintiff filed an objection to the valuation of his holding at Rs. 3,000 the objection was heard by four out of ten Commissioners who had been appointed for the purpose before 1929, and although the four Commissioners reduced the figure Rs. 3,000 to Rs. 1,800 they followed a procedure not warranted by law. On these allegations the plaintiff asked for a declaration that the assessment on his holding was illegal and ultra vires on the ground that it had been made not in accordance with law, and that the Commissioners in

dealing with his petition of objection had acted in violation of the provisions of the Bengal Municipal Act.

2. The plaintiff's case was resisted by the defendant on the allegation that there had been nothing wrong or illegal either in the assessment or in the disposal of the petition of objection and that the plaintiff's suit was not maintainable in view of the provisions of Section 42, Specific Relief Act, the plaintiff not having asked for any consequential relief in the shape of an injunction restraining the defendant Municipality from realising the tax assessed on the plaintiff's holding. The Court of First Instance found the points in favour of the plaintiff and gave him a decree. On appeal this decision was reversed by the learned District Judge who held that there had been nothing wrong or ultra vires in the assessment and also that Section 42, Specific Relief Act, was an insuperable bar to the plaintiff's suit. The plaintiff has appealed to this Court. A number of points have been taken on behalf of the appellant before us. One of the main points was that the Municipality had no authority to take a fresh valuation on the plaintiff's holding when there was another valuation, the valuation made in connexion with the fixing of the water-rate still subsisting that valuation having been made in 1928 and its currency not having expired when the new valuation was made. This contention seems to me to be well founded. The valuation that had been made in connexion with the fixing on the water-rate had been made u/s 280, Municipal Act, and that valuation having been made when there was no previous valuation for the purpose of levying a holding tax, the provisions of Section 97 were applicable to the case. Section 97 lays down that the life of such a valuation is five years. That being so, at the time when the new valuation was made in 1929 there was another and a different valuation of the same holding subsisting. This was clearly an absurd situation to have two different valuations of the same holding, standing side by side at the same time and to act upon these two different valuations for different purposes.

3. Dr. Basak for the respondent attempted to meet this contention of the appellant on two grounds. In the first place, he argued that although there are provisions in the Act for accepting the valuation previously made for the purpose of levying "holding" tax for the purpose of levying water-rate there is no corresponding section in the Act for accepting water-rate valuation for the purposes of valuation for "holding" tax; and secondly, he drew our attention to the provisions of Section 96 which lays down that in making assessment for holding tax the valuation of all holdings without any exception must be determined. As regards the first ground it is true that there is no provision in the Act for using water-rate valuation for the purpose of valuation for "holding" tax. But that is no reason why the Municipality should be allowed to do something that would lead to an absurd position, namely, having two different valuations of one and the same holding standing side by side. Then as regards the second ground Section 96 no doubt says that in making an assessment for a "holding" tax there must be a determination of the valuation of all the holdings without any exception. But to adopt the valuation of a holding previously made may, I am

inclined to think, be taken as a determination of the valuation and an acceptance of the old valuation would, in my opinion, be a sufficient compliance with the provisions of Section 96, specially when it is remembered that non-acceptance of the old valuation would lead to an absurd situation. I would therefore hold that the assessment of the plaintiff's holding based as it was on a valuation which had been made in contravention of the law was illegal and ultra vires. In this view of the matter it would not be necessary to consider the other points raised by the appellant in connexion with the procedure followed by the Commissioners in disposing of the plaintiff's petition of objection to the assessment.

4. On behalf of the respondent an argument was advanced before us that the plaintiff's suit was barred u/s 42 Specific Relief Act, inasmuch as the plaintiff did not ask for any consequential relief in the shape of an injunction on the defendant Municipality restraining them from realising tax from the plaintiff. But it does not appear that the defendant Municipality had done any act towards such realisation. Besides, if the second valuation is pronounced void the assessment by the Municipal Commissioners together with the second valuation on which it was based falls to the ground and there would remain nothing but the previous valuation to go upon in making an assessment of the plaintiff's holding and no necessity for asking for any consequential relief: in this connexion see the observations of Lord Macnaghten in 22 Mad 270 *Fischer v. Secretary of State* (1899) Mad 270. For the reasons recorded above I would allow the appeal, set aside the decree of the lower appellate Court and restore that of the Court of first instance. The plaintiff will have his costs throughout.

Jack, J.

5. I agree.