
(1945) 11 CAL CK 0003
In the Calcutta High Court
Case No : Appeals Nos. 768 and 769 of 1941

Suri Municipality

APPELLANT

Vs

Charu Shashi Ghosh

RESPONDENT

Date of Decision : 30-11-1945

Acts Referred:

Citation : (1945) 11 CAL CK 0003

Final Decision : Dismissed

Judgement

Mitter, J.—The defendant respondent's predecessor-in-interest Saudamini Dassi, who was the original defendant, was the owner of two plots of land, Dags Nos. 1237 and 2471 of Khatian No. 814 of mauza Suri. The said two plots are at some distance from each other. Those plots of land are within the Suri Municipality. The Commissioners of the said Municipality treated those two plots of land as one holding, No. 670, and assessed the same to municipal rates. According to the definition of a "holding" as given in the Bengal Municipal Act, 15 [XV] of 1932 (hereafter called the Act), under which the assessment was made each of those two plots would constitute a separate holding, as each of them had separate sets of boundaries. The Commissioners in making the assessment fixed the percentage on the valuation of holdings, at which the rates on the annual value of holdings was to be levied, before the valuation list had been prepared under S. 133 of the Act. Notice of the assessment was duly served on the defendant. On her failure to pay the rates the Municipality filed the suit in which this appeal arises. The substantial defence was that the assessment was ultra vires the powers of the Commissioners and so the amount cannot in law be recovered. On this question the Courts below have differed. The lower appellate Court has given effect to this defence and has dismissed the suit. Two reasons have been given by the lower appellate Court, namely, (i) that as the said two plots of land do not constitute one holding the assessment is illegal, and (ii) that the fixation of the percentage before the preparation of the valuation list is an irregularity which went to the root of the assessment and so invalidated the assessment. To support this conclusion, the lower appellate Court has relied upon the judgment

of a Division Bench in 44 C.W.N. 277 *Municipal Commissioners Vs. Gangamani Chaudhurani*, . We are of opinion that the first reason is a sound one but as at present advised not the second. It is conceded before us by the learned advocate appearing for the Municipality, and quite properly in view of the definition of a holding as given in S. 3 (21) of the Act, that the said two plots of land do not constitute one holding. They are in law two separate holdings. The question is whether the assessment made by the Commissioners by treating them as one holding is legal. The power conferred on the Commissioners to impose rates, taxes, etc., is defined in S.123 of the Act. They have the power to impose rates on holdings situate within the Municipality, and also water-rates, lighting rates and conservancy rates. The amounts of all those rates are to be certain proportions of the annual value of the respective holdings. The provisions of the Act make it clear, for instance Ss. 132 and 136, that the subject or unit of assessment is to be one single holding, a holding being taken to be what is defined in S. 3 (21). It would prima facie appear that the Commissioners have no power to impose a rate or tax on what would be regarded as part of a holding or what would be regarded as constituting more than one holding in view of that definition. The Commissioners of a municipality constitute a corporation created by statute. Whatever powers they have, they have under the statute. This principle is well settled by a series of cases most of which have been reviewed in 35 Cal. 859 *Chairman of the Giridih Municipality v. Srish Chandra Mozumdar* ("08) 35 Cal. 859. In delivering his judgment Mookerjee J. observed thus:

A Corporation which is invested with the authority to assess taxes is really invested with a quasi judicial power, and although its action when taken in conformity with the provisions of the law, which created the authority, may not be liable to challenge in the Civil Courts, it does not enjoy a similar immunity, when that action can be challenged on the ground that it has been taken either in excess of or in contravention of the powers conferred upon it by the statute. The true test is, whether there has been a substantial disregard of the provisions of the law which creates the authority of the municipality and regulates its powers and duties.

2. In 17 C.W. N. 812 *Shah Hamid Hossain v. Patna Municipality* ("13) 17 C.W.N. 812 :15 I.C. 548, the second ground on which the assessment was challenged as bad was that the Municipal Commissioners had arbitrarily created holdings on which they had imposed taxes. The assessment was under the Bengal Municipal Act, 3 [III] of 1884. Section 85 (b) thereof had conferred the power on the Commissioners to impose a rate on the annual value of holdings within the Municipality. The term "holding" was defined in S. 6 (3) of the Act in exactly the same terms as in S. 3 (21) of the Act of 1932. In upholding that objection Mookerjee J. observed that:

Under the statute as interpreted by us it is the duty of the municipality to ascertain whether a particular parcel of land is held by an occupier under one title and whether it is comprised within one set of boundaries.

The reference to the occupier was made, because he held that the term "holding" as defined in the Act meant a piece of land held by an occupier under one title or agreement and surrounded by one set of boundaries.

3. The relevant sections dealing with the assessment of rates on holdings in both the Acts are substantially the same and are couched in almost the same language. There are the same provisions in both the Acts for valuation, for the determination by the Commissioners of the percentage on the annual value, for the preparation of the rating and the details to be mentioned in the rating list are the same. The subject or unit of assessment under S. 85 (b) of the old Act is to be also one single holding as defined therein. The material difference is that there was no provision in the Act of 1884 corresponding to Ss. 129 and 131 of the Act of 1932. We may leave out S. 131, for the municipality has not in the case before us pleaded a case of amalgamation of holdings. The question is, does S. 129 make any difference. We are of opinion that it does not. Clause (b) thereof gives the Commissioners the power, which was not expressly conferred on them by the Act of 1884, namely, to determine at a meeting what shall be accepted as the test for determining whether lands are held under one title or agreement for the purpose of satisfying the definition of a holding. In 17 C. W. N. 812 *Shah Hamid Hossain v. Patna Municipality* ("13) 17 C.W.N. 812 :15 I.C. 548 it was held that occupation was the only test. Under the Act of 1932, the Commissioners can at a meeting adopt any other test they consider suitable. That power, however, does not enable them to call a parcel of land a holding which does not come within the definition as given in S. 3 (21). The opening words of the section, namely, the phrase "for the purpose of, and subject to, clause (21) of Section 3" make the position clear. That phrase qualifies clause (a) also. The meaning of that clause is clear, as also the object behind it.

4. The annual value of a holding, on which depends the amount of the municipal rates, is intimately connected with the extent thereof and all that S. 129 (a) does is to give the Commissioners power to determine the extent of a holding. As the question of the extent of a holding depends upon either or both the questions as to whether a particular parcel of land is included in the same set of boundaries as another or is held under the same title, the Commissioners can decide those questions. That section does not empower the Commissioners to create an imaginary holding by either treating a part of a parcel of land which is held under the same title and surrounded by one set of boundaries as one holding or by treating two or more parcels of land separated from each other and so surrounded by different sets of boundaries (the case not falling within the explanation to S. 3 (21)) or held under different titles as one single holding. It is essential that the unit or subject of assessment must be a holding as defined in Act. The right of the assessee would be seriously affected in the matter of his right of remission for vacancies and in the matter of his liability (at least to its extent) to water rates, lighting rates and conservancy rates, if two parcels of land separated from each other, and which according to the definition ought to be treated as two holdings, are lumped together by the Commissioners and treated

as one single holding for the purpose of assessing rates. An assessment on that basis would, in our judgment, be ultra vires, and so illegal, being made by a substantial disregard of the provisions of the Act.

5. In this view of the matter, it is not necessary to critically examine the second reason given by the Court of Appeal below, but we may state that the learned Judge has misread the decision in 44 C. W. N. 277 Municipal Commissioners Vs. Gangamani Chaudhurani, . There the conservancy rate, a new tax created by the Act of 1932-quite different from any tax which could be imposed under the Act of 1884-was determined on the basis of the valuation of a holding made not under the Act of 1932 but under the Act of 1884. It was pointed out that could not be done as the old valuation did not continue to be in force in view of the provisions of S. 2 of the Act of 1932. It was not a case where the assessment of a holding rate was held to be illegal simply because the percentage had been determined by the Commissioners before the valuation list had been prepared. The view expressed in 30 C. W. N. 405 Bhuban Mohan v. Dacca Municipality ("26) 13 A. I. R. 1926 Cal. 607 : 53 Cal. 453 : 94 I. C. 231 : 30 C. W. N. 405, that the provisions of Ss. 102 and 103 of the Act of 1884, which correspond to Ss. 135 and 136 of the Act of 1932, are directory and not mandatory seem to us, as at present advised, to be the sounder view. In the case before us the Commissioners at a meeting held before the preparation of the valuation list reduced the percentage which had been adopted at the next preceding assessment. The reduction was from 20 per cent to 16 per cent. The Provincial Government refused to sanction the reduction, as it was of opinion that the amount of the municipal fund was not sufficient to meet the liabilities of the Municipality with the result that the old percentage, namely, twenty continued. This judgment governs second Appeal No. 769 of 1941, the facts of which are of the same type. The result is that both the appeals are dismissed but in the circumstances without costs.

Nasim Ali, J.

6. I agree.