
(1936) 06 CAL CK 0032
In the Calcutta High Court

Sylhet Municipal Board

APPELLANT

Vs

Firm Harish Chandra-Ram Kanai Bhuiya

RESPONDENT

Date of Decision : 16-06-1936

Acts Referred:

Citation : AIR 1937 Cal 750

Hon'ble Judges : M.C. Ghose, J

Bench : Division Bench

Judgement

M.C. Ghose, J.—This is an appeal by the Sylhet Municipal Board in a case brought against them by the plaintiff for a declaration that the action of the Municipality in levying a tax of Rs. 23 odd per quarter upon municipal holding No. 190 was with, out jurisdiction. The trial Court dismissed the suit. In appeal, the decree was reversed. The facts of the case appear to be as follows: The plaintiff firm have their main business at Kazirbazar in the town of Sylhet. In 1930 they opened a branch shop at Zindabazar for the sale of petrol, motor oil, etc. The branch shop was managed by Khetra Mohan Saha. The Municipal Board levied a tax on Khetra Mohan Saha for the branch shop in the belief that he was the owner of the shop. They numbered the shop holding as No. 86 and levied tax as follows: inhabitant tax 6 annas, latrine tax 13 annas 6 pies, water tax Re. 1-20 totalling Rs. 2-5-6 per quarter. This continued till January 1933, when the Municipal Officers came to know that the shop did not belong to Khetra who was merely the manager, but belonged to the plaintiff firm. They thereupon assessed the shop as the property of the plaintiffs giving it a new number, 190, and with effect from the year 1933-34 imposed separate taxes for inhabitant tax, latrine tax and water tax total, ling in all to Rs. 23-6-6 per quarter. Meantime the old tax imposed on Khetra Mohan Saha continued. Khetra, there, upon made a petition of objection to the Municipal Board who remitted the latrine rate and the water tax on the holding No. 86, but retained the inhabitant tax, 6 annas per quarter, to be paid by Khetra as personal tax.

2. On these facts the trial Court found that the action of the Municipal Board was

not without jurisdiction. The learned Subordinate Judge has found that the Municipal Board created a confusion by introducing a new number, 190, thereby making it appear that they were assessing the same holding twice over under two numbers, that if they wanted to give a new number to the branch shop, they should have completely deleted the old tax imposed on Khetra but as they did not remit the inhabitant tax on Khetra, it is to be held as ultra vires. As to the new tax imposed on holding No. 190, the Court of appeal below held that the proper course of the Board would have been to put the name of the plaintiff in place of Khetra by way of mutation and then to have proceeded to enhance the amount assessed on the ground of improvement, that in acting otherwise they acted ultra vires, that the defect is one of substance and not merely formal and that the assessment was not in conformity with the provisions of the law.

3. Upon hearing the arguments of the learned advocates on both sides, it appears that the action of the Municipal Board was irregular in the extreme, but it does not appear to have been without jurisdiction. As the learned Subordinate Judge pointed out, the fair course would have been to retain the number 86 for the branch shop, but to put the name of the plaintiff firm in place of Khetra and enhance the assessment on the ground of improvement of the places as they were entitled to do u/s 76 under which the Board may, at any time, after the publication of the notice required by Section 87, value and assess any holding which was omitted from the valuation list, or which has become liable to valuation after assessment or publication thereof, and enhance the valuation and assessment of any holding which may appear to have been insufficiently valued or assessed through mistake. They acted irregularly in putting a new number 190, and calling it a new assessment. It was really an enhanced valuation on the shop on account of improvement. But it cannot be said that in acting as they did, they acted without jurisdiction.

4. Section 84 provides no assessment of tax on property and no charge or demand of any tax made under authority of this Act (Assam Municipal Act) shall be invalid for error or defect of form and it shall be enough in any valuation or assessment for the purpose of making such tax if the property so valued or assessed is so described as to be generally known, and it shall not be necessary to name the owner or occupier thereof. As to the contention that the two numbers left the plaintiff's in doubt as to whether both numbers applied to the branch shop, the reply is that the number 190 applied to the branch shop and the old No. 86 was relegated to the inhabitant tax 6 annas per quarter, payable by Khetra. Since, in holding No. 86 there was no latrine tax or water tax, the plaintiffs could not possibly be in any doubt that their branch shop was taxed as No. 190.

5. It cannot be said that the plaintiffs have no grievance. They certainly could object to a sudden enhancement from Rs. 2 odd to Rs. 23 odd per quarter. But they were ill advised in running to the Civil Court. u/s 91 no objection can be taken to any assessment or valuation in any other manner than is provided in

the Act. The Act provides for a petition of objection by the assessee, and when such an objection is made, the Board is bound to appoint a committee to hear the objection on the merits. If they had done so they might have obtained some relief. But the civil Court cannot interfere except on the ground of lack of jurisdiction. In this case the Municipal Board had jurisdiction u/s 76, though they acted irregularly in the exercise of their jurisdiction. The case in *Navadip Chandra Pal v. Purnananda Saha* (1899) B C W N 73 was cited in support of the proposition that the assessment in the present case was ultra vires. But the case cited above was decided under the Bengal Municipal Act in 1898. Apparently under that Act once an assessment had been made, no fresh assessment could be made for a period of three years. In that case a fresh assessment had been made in 1893, but a year later in 1894 the Municipality acted in a manner that was considered to be a fresh assessment and the High Court held that such action was ultra vires. In the present case as stated above, the action was not ultra vires, though in some respects it was irregular. In the result, the appeal is allowed and the plaintiffs' suit is dismissed. But having regard to the circumstances, the parties will bear their own costs in all the Courts. Leave to appeal under Clause 15 of the Letters Patent is refused.