

(1935) 01 CAL CK 0001

In the Calcutta High Court

Case No : Appeal from Appellate Decree No. 1491 of 1932

The Municipal Board of Tezpur, Assam

APPELLANT

Vs

Abdul Hamid

RESPONDENT

Date of Decision : 24-01-1935

Acts Referred:

Citation : (1935) 01 CAL CK 0001

Final Decision : Dismissed

Judgement

R.C. Mitter, J.—This is an appeal on behalf of the Municipal Board of Tezpur, Assam, the Defendant in a suit instituted by the Plaintiff for a declaration that an assessment made on his holding at the instance of the then Chairman of the Board on the 23rd July, 1929, is ultra vires and for damages for illegal attachments. Both the Courts below have held that the assessment in question was ultra vires and that there was an illegal distress. In this view of the matter, a decree has been passed in favour of the Plaintiff, declaring the assessment to be ultra vires and decreeing to him a sum of Rs. 100 as damages. The sum of Rs. 187 which was realized by the illegal distress has also been ordered to be refunded to the Plaintiff. It appears that the subject-matter of the assessment is a piece of land with buildings in an incomplete state at the date of the assessment, abutting on the Sonaripatti Road. This land was, before the Plaintiff's purchase, a part of a larger parcel of land, constituting a Municipal Holding having two frontages, one on the Bazar Road on the west and the other on the Sonaripatti Road on the east. The Plaintiff purchased the eastern half of this old holding which was then in a vacant state. On the 27th October, 1927, after his purchase, he applied for sanction to construct a building upon the lands purchased by him. The sanction was given by the Municipal Authority on the 5th November, 1927. On the 23rd July, 1929, the premises were assessed to a tax of Rs. 75, the annual value of the land and the building which, according to the finding of the learned Subordinate Judge, was then, in an incomplete state, being assessed at Rs. 1500. I will have to say something about the procedure which was adopted by the Municipal Authority at the instance of the then Chairman of

the Municipal Board later on. But I will just now complete the history of the case. On the 6th August, 1929, the tax bill was presented to the Plaintiff. On the 8th August, 1929, he wrote a letter to the Chairman of the Municipality, entering his protest against the assessment. The assessment was made on the 23rd July, 1929. The bill that was presented was for the second quarter of 1929, that is to say, the tax was demanded as payable from the 1st July, 1929 onwards. This is a clear violation of the provisions of sec. 76 of the Assam Municipal Act. But, however, that is a very small point. In the letter, the Plaintiff stated that his building had not yet been completed and the assessment was an arbitrary one. Four months were taken by the Municipal Authorities to dispose of his objection and ultimately on the 29th January, 1930, the tax was reduced to Rs. 60. But inasmuch as the Plaintiff was challenging the validity of the imposition, he was not satisfied with this small reduction and entered his protest again by a letter dated the 12th February, 1930. His complaint was summarily rejected and a distress warrant was issued which was taken to the Plaintiff's house on the 30th March, 1930, when a ceremony was going on in his house. It may be parenthetically remarked that the then Chairman of the Municipal Board was not pulling on well with the Plaintiff who was one of the Commissioners of the Municipality and had his house adjoining this house. However, the Plaintiff to avoid the insult on such an occasion, paid the money under protest and has instituted the present suit. The evidence which has been believed by the trial Court discloses a remarkable state of affairs. The Chairman had a private grudge, according to the findings of the learned Subordinate Judge, against the present Plaintiff, founded on the fact that the Plaintiff took a fancy to raise a house near the Chairman's house which was taller than the Chairman's house. The Chairman felt that he would be inconvenienced as the privacy of his house would be to a certain extent diminished and therefore he took it into his head to put in motion the powers given to him under the Municipal law and rules to act in an arbitrary fashion in respect of the assessment of the Plaintiff's house. This is the finding which the learned Subordinate Judge has arrived at at page 22 of the Paper Book.

2. I refer to a few more findings of the learned Subordinate Judge. The Chairman instructed the Municipal Overseer to see if the building was complete. The Municipal Overseer walks in front of the building, never cares to enter it although the scaffolding was there, indicating that the building was not yet complete. He reports that the building is complete. Later on, it had to be admitted, because there were documents of an unimpeachable character on the record that at the date of his report the house had no privy, had no kitchen and even there was no culvert over the ditch which was to form the approach to the house. On the report being submitted, the assessment is made, the valuation of the building is arrived at without entering the house and making any inspection. The learned Subordinate Judge makes the following findings at page 13 of the Paper-Book, with regard to the manner in which the assessment was made. Referring to the evidence of the tax Daroga, witness No. 4, on behalf of the Defendant, he says

thus: " This witness in his cross-examination stated that he was there to make valuation as per Ex. 1 (b) for only 8 or 10 minutes, that he saw when he went to the place many masons, carpenters and labourers in the compound as they were engaged in work in other parts of the compound, and that he did not consult anybody to make his valuation." The learned Judge also remarked that this tax Daroga, according to the evidence, did not enter the house. After referring to other evidence the learned Subordinate Judge says as, follows: " The Daroga refers to Chairman and the Chairman refers to Daroga and the Vice-Chairman is refer-red to by both and they sit up in office to make a valuation of the holding, without even caring to go to the spot to make a formal local investigation or enquiry and even the building was not seen or even entered into to ascertain how many rooms it had, how far work proceeded and to what extent it became ready for occupation." This is the manner in which the annual value of Rs. 1500 was arrived at.

3. Against the judgment and decree of the learned Subordinate Judge, the Defendant Municipality preferred an appeal which was heard by the learned Additional District Judge, Assam Valley Districts. The judgment is a very short judgment but the learned Additional District Judge, in my judgment, accepts the findings of the Subordinate Judge which I have indicated above. The judgment, no doubt, is short but it contains a decision on all the essential matters in controversy in the case. In one part; of the judgment the learned Additional District Judge says: " The lower Court has fully discussed all relevant points. It has shown how carelessly and without any sense of responsibility the Municipal Authorities have assessed the Plaintiff's holding. I hold that this point was rightly decided by the lower Court." The findings that have been arrived at by the Courts below, therefore, amount to this that on the colour of authority the Chairman and his staff made an arbitrary assessment, there being malice in fact and in, law, as the learned Subordinate Judge has held, stamped on every act of the Chairman in regard to this assessment. An assessment made under these circumstances would, according to the fundamental principles, be an assessment which can be challenged in a Civil Court and can be declared to be ultra vires. The Courts below have so held and I do agree with the judgments and decrees passed by the Courts below.

4. In the above view of the matter, it is not necessary to examine in detail the relevant sections of the Assam Municipal Act which are noticed and discussed in the judgments of both the Courts below. I base my decision on the ground that there has been an arbitrary exercise of the powers by the late Chairman and as such the assessment cannot stand. In the result the appeal is dismissed with costs.