

(1940) 11 BOM CK 0002

In the Bombay High Court

Case No : Civil Revision Application No. 63 of 1940

The Vita Municipality

APPELLANT

Vs

Gangaram Tatyaji Jadhav

RESPONDENT

Date of Decision : 11-11-1940

Acts Referred:

Bombay District Municipal Act, 1901 — Section 86
Civil Procedure Code, 1908 (CPC) — Section 115

Citation : AIR 1941 Bom 184 : (1941) 43 BOMLR 333

Hon'ble Judges : N.J. Wadia, J

Bench : Single Bench

Judgement

N.J. Wadia, J.—This is an application in revision against an order made by the Second Class Magistrate, Khanapur, u/s 86 of the Bombay District Municipal Act (Bom. III of 1901). The petitioner, the Vita Municipality, issued a notice of demand against the opponent in respect of a Municipal claim for house-tax and water-tax u/s 82 of the Bombay District Municipal Act. The opponent appealed to the Second Class Magistrate, Khanapur, against the notice of demand u/s 86 and the learned Magistrate reduced the tax from Rs. 12 to Rs. 10. Against that order the Municipality has applied in revision.

2. A preliminary objection is raised by Mr. Kane for the opponent that no revision application lies. His contention is that u/s 86 of the Act the Magistrate to whom the appeal was made was a persona designata, and against his decision no appeal or revision application would lie to this Court. The section provides that appeals against any notice of demand issued under Sub-section (3) of Section 82 may be made to any Magistrate or Bench of Magistrates by whom under the directions of the Provincial Government, or of the District Magistrate, such class of cases is to be tried. The section lays down certain conditions which must be satisfied before such an appeal can be heard and determined, but we are not concerned here with those conditions. It has been held in *In re Dalsukh Ram* (1907) 9 Bom. L.R. 1347, that u/s 86 of the Bombay District Municipal Act, 1901, a Magistrate hearing an appeal of the kind mentioned in the section is

merely an appellate authority having jurisdiction given by the Act to deal with the question of a civil liability and he is therefore not an inferior criminal Court, to which alone the revisional jurisdiction of the High Court u/s 435 of the Criminal Procedure Code applies. The case did not deal with the question whether a revision application against a Magistrate's order would lie to the High Court on the civil side.

3. The power given to a Magistrate or Bench of Magistrates u/s 86 is analogous to the power which is given to the District Judge u/s 22 of the Act to determine disputes about the validity of elections. That section provides that if the validity of an election is brought in question by any person, such person may, subject to certain conditions, apply to the District Judge of the District within which the election has been or should have been held, and an inquiry into the matter shall be held by a Judge, not below the grade of an Assistant Judge, appointed by the Provincial Government either specially for the case or for such cases generally. The section provides that the decision or order of the Judge shall be conclusive. It is now well-settled that the Judge referred to in Section 22 is a *persona designata* against whose decision no appeal or revision application lies to this Court. Provisions exactly similar to those of Section 86 of the Bombay District Municipal Act are to be found in Section 110 of the Bombay Municipal Boroughs Act, Bom. XVIII of 1925, and Sub-section 217 and 219 of the City of Bombay Municipal Act, Bom. III of 1888. In the case of the latter Act, Section 219 provides that the decision of the Chief Judge of the Small Cause Court, to whom u/s 217 appeals against any rateable value or tax fixed or charged under the Act lie, shall be final. In *Ahmed Sulleman v. Municipal Commissioner of Bombay* (1929) 32 Bom. L.R. 178, it was held by a division bench of this Court that the decision of the Chief Judge of the Bombay Small Cause Court u/s 219 of the City of Bombay Municipal Act is as a *persona designata*, and no revision application lies to the High Court against the decision. The provisions of Section 110 of the Bombay Municipal Boroughs Act, 1925, are identical with the provisions of Section 86 of the Bombay District Municipal Act, but there is one important difference. Whereas the District Municipal Act contains no provision for any revision of the order made by the Magistrate or Bench of Magistrates, the Municipal Boroughs Act contains an express provision in Section 111 that every entry in the assessment list made under the provisions of the Act against which no objection is made as therein provided, and the amount of every sum claimed from any person under the Act on account of any tax, if no appeal therefrom is made as thereinbefore provided, and the decision of the Magistrate or Bench of Magistrates upon any appeal, shall, at the instance of either party, be subject to revision by the Court to which appeals against his or their decisions ordinarily lie. The question whether the High Court can entertain a revision application u/s 115 of the CPC against an order made by the Sessions Judge in revision u/s 111 of the Bombay Municipal Boroughs Act came before this Court in *Surat Municipality v. Hamiduddin* (1937) 40 Bom. L.R. 387, and it was held by Mr. Justice Norman sitting singly that the High Court could entertain such an application. The

question was again considered by a bench of this Court in *The Lokmanya Mills Ltd. Vs. The Municipal Borough of Barsi*, in which it was held, agreeing with the decision of Mr. Justice Norman in *Surat Municipality v. Hamiduddin*, that an application lay to this Court against an order made by a Sessions Judge u/s 111 of the Bombay Municipal Boroughs Act. It is argued by Mr. Gajendragadkar for the applicant Municipality that the provisions of Section 110 of the Municipal Boroughs Act are exactly similar to the provisions of the Bombay District Municipal Act, and that therefore the decision in *Lokmanya Mills Ltd. v. Municipal Borough, Barsi*, must by analogy be held applicable. But although the provisions of the two sections are similar, the Legislature has deliberately made a distinction as to the effect which appeals under them would have. It would have been perfectly easy for the Legislature which had inserted Section 111 in the Municipal Boroughs Act of 1925 to insert a corresponding provision in the District Municipal Act. But it did not do so, and the only inference that can be drawn is that it thought that a provision for some revising authority was necessary in the case of the more important Municipalities to which the Act of 1925 was intended to apply, but that such a provision was not necessary in the case of the less important Municipalities governed by the District Municipal Act of 1901. The view taken by this Court in *Lokmanya Mills Ltd. v. Municipal Borough, Barsi*, was a necessary consequence of the distinction so made. Once the Legislature provided a remedy by way of an application in revision against an order of the Magistrate or Bench of Magistrates u/s 110 of the Boroughs Act to the Court to which appeals against the decision of the Magistrate would ordinarily lie, it impliedly made the decision of the Magistrate u/s 110 not a decision of a *persona designata*, but the decision of a Court, subject to revision by the Court to which appeals against the Magistrate's decision would ordinarily lie. There is therefore no reason for applying the decision in *Lokmanya Mills Ltd. v. Municipal Borough, Barsi*, by analogy to a decision of a Magistrate u/s 86 of the Bombay District Municipal Act. The Legislature has deliberately made a distinction between the appeals provided by the two sections, and the appeal to the Magistrate u/s 86 of the Bombay District Municipal Act must therefore be governed by the provisions of that section alone. The mere fact that Section 86 of the Bombay District Municipal Act contains no express provision that the decision of the Magistrate or Bench of Magistrates under that section is to be final does not mean that an appeal or application in revision lies against that decision. The view taken of the provisions of that section in *In re Dalsukhram* was that the Magistrate or Bench of Magistrates hearing appeals of the kind mentioned in Section 86 was merely an appellate authority having jurisdiction given by the Act to deal with the question of a civil liability, in other words that the Magistrate or Bench of Magistrates was a *persona designata*, and on that view no application in revision would lie to this Court against the decision of the Magistrate. The rule must therefore be discharged with costs.