(1925) 12 CAL CK 0022

Calcutta High Court

Case No: None

Bhuban Mohan Basak and Others		APPELLANT
	Vs	
The Chairman of the Municipal Commissioners of the Dacca Municipality		RESPONDENT

Date of Decision: Dec. 14, 1925

Acts Referred:

- Bengal Municipal Act, 1932 - Section 102

Citation: 94 Ind. Cas. 231

Hon'ble Judges: Cuming, J; B.B. Ghose, J

Bench: Division Bench

Judgement

Cuming, J.

This appeal arises out of a suit brought by one Bhuban Mohan Basak on his own behalf and on behalf of the rate-payers of Dacca against the Chairman of the Municipal Commissioners of Dacca for a declaration that the last assessment made by the Dacca Municipality is null and void, illegal and ultra vires and that there is no Municipal tax payable for the years 1923-24. He also prayed for a permanent injunction to restrain the Municipality from realising the taxes.

2. His case was briefly as follows:

On the 28th June 1922 the Commissioners passed a resolution that the general revision of the assessment of holdings be undertaken without delay as it was overdue. In pursuance of this resolution an Assessor was appointed to value the holdings and also an Assistant Assessor. Valuation was duly made and accepted and the new assessment was made. There was no change in the percentage charged on the valuation, which remained as it was before. This assessment was brought into force for the years 1923-24. The plaintiff complained that the assessment was illegal

for the following reasons:

(1) That the resolution of 28th June was illegally passed, the objection, if I understand it rightly, being that an amendment and substantive motion were put at the same time.

(2) That no percentage was fixed before the assessment and that under the resolution the Commissioners cannot assess any tax without first fixing the percentage.

(3) That Government and Railway buildings have not been properly assessed and many holdings have not been assessed at all.

(4) The Assistant Assessor had not power to assess any buildings.

(5) The privy and water tax being payable by the occupiers, assessment of the owners to pay it is illegal.

(6) That assessment of privy and water tax of houses let when the occupier was living elsewhere was illegal.

(7) That the assessment made being on a different basis is illegal.

(8) That as the money realised by the assessment exceeded the expenditure by Rs. 1,04,000, it was illegal.

3. A number of issues were framed.

4. The Trial Court for reasons which it is unnecessary to specify found against the plaintiff and dismissed his suit.

5. The plaintiff appealed to the District Court where he was equally unsuccessful. He now appeals to this Court.

6. His grounds of appeal number some 20 but the following points only have been urged:

(1) The meeting of the 22nd June 1922 resolved that there should be a new assessment and this means that there should be both valuation and fixing of the actual percentage.

(2) The percentage at which taxes are to be levied must be fixed before the valuation or rating list is prepared and that whenever there is a fresh valuation there must be a fresh fixing of percentage.

(3) That it is illegal to assess the water and privy tax on owners.

(1) The whole of the argument here centered round what did the Commissioners mean when in their resolution they resolved that there should be a fresh assessment. Did they mean both valuation and fixing of the percentage or did they mean only a valuation of holdings?

Sir Benode Mitter for the appellants contends they meant both valuation and percentage and that as they have not fixed the percentage the assessment is illegal. The learned Advocate-General contends that "assessment" was used loosely by the Commissioners to mean "valuation." It seems quite clear to me that what the Commissioners resolved to do at their meeting and what they meant in their resolution by the expression "assessment" is a question of fact. The lower Court of Appeal has found that by the expression " assessment" they meant a valuation of the holdings. In second appeal we cannot go behind this finding of fact unless it can be argued that it is based on no evidence. There is, however, no suggestion in any of the 20 grounds of appeal that this finding of fact was come to without any evidence and in these circumstances the appellant cannot be allowed to argue that it was not. It cannot be said that the determination of the point depends on the construction of any document. The document on the construction of which it is contended that the point depends is merely the record of (he proceedings of the Commissioners and what we are concerned with is what the Commissioners mean by their resolution. It is not suggested that the record of the proceedings is inaccurate or that it does not represent what the Commissioners resolved. This disposes of the appellant''s first contention.

(2) The decision on the second point requires the consideration of certain sections of the Municipal Act, viz., Section 96, Section 97, 97-A, Section 102 and Section 103. Sir Benode Mitter contends that the Commissioners have not complied with Section 103 of the Act and hence their action is illegal.

Section 103 runs as follows:

As soon as possible after the percentage at which the rate is to be levied for the next year shall have been determined under the last preceding section, the Commissioners shall cause to be prepared a valuation and rating list, which shall contain the following particulars:

(f) amount of rate payable for the year;

(g) amount of quarterly instalment.

Section 102 which is referred to in this section provides that at a meeting to be held before the close of the year next preceding the year to which the rate will apply the Commissioners shall determine the percentage on the valuation of holdings at which the rate shall be levied and the percentage so fixed shall remain in force until the order of the Commissioners determining such percentage shall be rescinded and until the Commissioners at a meeting shall determine some other percentage. Sir Benode Mitter argues that if Section 102 and Section 103 are read together it is clear that the valuation and rating list can only be prepared shortly after a meeting has been held to fix the percentage and that as no such meeting was held after the valuation was made the assessment was illegal. I do not think that this is necessarily the interpretation to be placed on these sections. Section 102 provides that once a

percentage has been fixed it shall remain in force until rescinded or until the Commissioners at a meeting determine some other percentage at which the rate will be levied from the next year. The reasonable interpretation to be put on this section then is that the rate fixed continues unchanged and is to be considered as the rate for the year until altered. It might be said that by implication the rate is to be considered as fixed each year at the same rate until changed and is although there is no formal meeting to do so. The Commissioners by holding no meeting to change it by implication fixed the rate at the old rate. There is no provision in the Act which provides that every time there is a fresh valuation there must be a formal meeting to fix the percentage even though the Commissioners intend the same percentage to continue.

It no doubt might be argued that the Commissioners should after they have made a valuation take into consideration the percentage rate and consider how much money they require and, therefore, what the rate should be No doubt if the Municipality was properly managed, as a business concern should be, this would be done, but the fact that it has not been done does not, I think, render the assessment invalid. I do not think reading the Act as a whole that it is required that whenever a fresh valuation is made the Commissioners must hold a meeting to fix the percentage. I think it is open to them by not holding any meeting to levey the rate at the old rate of percentage on the new valuation.

(3) The last point to be dealt with is the privy and water tax.

7. It seems to be the case of the appellant that the privy and water tax is payable by the occupier and it is illegal to assess owners to privy and water tax. Section 279 (3) provides that the water rate shall be paid by the occupier and Section 281 provides that such occupier may recover 1/4 share from the owner.

8. Section 282 provides that when the house is unoccupied the owner will pay 1/4 rate. Section 312 provides that if the house is occupied by more than one tenant severally it shall be lawful for the Commissioners to recover the rate from the owner. With regard to privy tax the provisions are more or less similar. It is thus clear that in some circumstances the owner and in other circumstances the occupier is liable. There is, therefore, nothing illegal in assessing an owner to pay privy and water tax. It may be, however, that the owner is wrongly assessed in some cases while in other circumstances the assessment is legal, for it cannot be said that in no circumstances is the owner liable. The Municipality may owing to ignorance of the facts assess the owner where they ought to assess the occupier and vice versa. The aggrieved person has his remedy u/s 113 which provides that a person who disputes his liability to be assessed may apply to the Commissioners u/s 113. Clearly this was the remedy open to the plaintiff of which he did not avail himself.

9. Until the aggrieved person has exhausted the remedies which the Act provides he cannot invoke the assistance of the Civil Courts. This point is also decided against

the appellants.

10. The result is that the appeal fails and is dismissed with costs.

B.B. Ghose, J.

11. I agree. The first point argued in the appeal that the resolution of 28th June 1922 of the Commissioners was not given effect to is based on the ground that there has not been revision of " assessment" of holdings but only a valuation. This depends upon the meaning of the word " assessment" as used in the resolution. The Court of Appeal below has held that the word is not necessarily of wider import than the word " valuation." It is argued that this is a question of construction and may be raised in second appeal. The expression " construction" as applied to a document includes two things : first, the meaning of the words; and secondly, the effect which is to be given to them. It is well-settled chat the meaning of words is a question of fact in all cases. The effect of the words is a question of law. This distinction between the meaning and the legal effect of expressions used must be always borne in mind. This question cannot, therefore, be raised in second appeal. Moreover as the learned District Judge points out the word "assessor" and " assessment" have been rather loosely used in the Municipal Act itself.

12. The second and most important question is whether the valuation and rating list prepared u/s 103 is null and void, as the procedure prescribed in Section 102 of the Bengal Municipal Act has not been followed. Section 102 provides that the Commissioners at a meeting, before the close of the next preceding year to which the rate will apply, shall determine the percentage on the valuation of the holdings at which the rate shall be levied, and the percentage so fixed shall remain in force until that order is rescinded or some other percentage is determined. This seems to imply that when once the percentage is determined that will continue in force for each succeeding year so long as it is not altered in the manner provided in the section. It follows that if there is no intention to rescind or alter the percentage which has been once fixed it is not necessary that the Commissioners should at a meeting determine that the same percentage on the valuation should remain in force. Stress, however, is laid upon the opening words of Section 103 by Sir Benode which runs as follows: "As soon as possible after the percentage at which the rate is to be levied for the next year shall have been determined under the last preceding section..." and it is contended that this provision shows that a valuation and rating list cannot be prepared unless the percentage is determined u/s 102 after a new valuation and Sir Benode further argues that it is necessary that this should be done'' in order to ascertain the gross amount of taxes to be levied after a re-valuation. It appears to be quite reasonable and proper that the percentage should be determined after a new valuation. But the question is whether the omission to do so renders the preparation of the valuation and rating list null and void. It seems to me upon a consideration of the relevant sections in the Act that the passage relied on is only for the purpose of instruction and guidance of the

Commissioners in order to enable them to give notice in due time of the rates to be levied for the next year, or in other words, as directory only. No time is fixed for doing the act, and no imperative language is used that there should be a fresh determination of the percentage on a re-valuation, and there is the provision that if there is no fresh determination the percentage previously fixed shall remain in force. The omission to fix a percentage after the revaluation did not operate to the prejudice of any person, as the old rate continues. Under these circumstances, in my opinion, the omission to hold a meeting does not carry with it the consequence of nullification of the preparation of the list u/s 103.

13. With regard to the third point relating to the water and latrine tax, the plaintiffs are not, in my opinion, entitled to maintain the suit. It has been found that these plaintiffs are liable to pay the rates. They are not persons in the same interest, as provided in Order I, Rule 8 of the C.P.C., with persons who might have been illegally rated, if there are any such. If the rating on the plaintiffs is excessive that is not a matter for the Civil Court to revise. The appeal should, therefore, be dismissed with costs.