

The Chairman and Commissioners of the Asansol Municipality Vs Mannalal Marwari

Court: Calcutta High Court

Date of Decision: May 16, 1980

Acts Referred: Civil Procedure Code, 1908 (CPC) â€” Section 80

Hon'ble Judges: B.N. Maitra, J

Bench: Single Bench

Advocate: Sudhis Das Gupta and Samaresh Kumar Nandi, for the Appellant; Amiya Narayan Mukherjee, for the Respondent

Final Decision: Allowed

Judgement

B.N. Maitra, J.

The plaintiff has alleged that the disputed holding belongs to him. During the last general assessment defendant, (Asansol

Municipality), fixed the valuation of the holding and the municipal tax at Rs. 275/- per annum. But during the new general assessment made in

1964-65, the defendant revalued the holding without serving proper notices on him. So he had no opportunity to know about the valuation. The

new assessment was arbitrarily fixed at Rs. 187.50 P. per quarter. That assessment is illegal, ultra vires and without jurisdiction. The suit is for a

declaration that such assessment is illegal and not binding on the plaintiff and also for an injunction to restrain the defendants from realizing the tax

from him on the footing of such assessment.

2. The defendants contested the suit by filing a written statement. It has been alleged inter alia that the suit is not maintainable and it is barred by

time. No notice under S. 80 of the CPC was served. The Court has no jurisdiction. The revaluation was properly made. The plaintiff was aware of

the assessment and hence no relief can be granted to him.

3. The learned Munsif accepted the plaintiff's version and decreed the suit.

4. The defendant preferred an appeal. The learned Subordinate Judge stated that the assessment was made perfunctorily and the rules and law

were not followed in making such assessment. On that finding the appeal was dismissed. Hence this second appeal by the defendant Municipality.

5. Mr. Sudhis Dasgupta, appearing on behalf of the appellant, has contended that the suit is not maintainable because no notice under S. 80 of the

CPC was served. He has referred to the decision of G. N. Das, J. in the case of Charu Chandra Vs. Snigdhendu Prosad and Others, . The case

of Bata Shoe Co. Ltd. Vs. City of Jabalpur Corporation, has been cited. It has been stated that in that suit filed by Bata Shoe Company the

assessment was challenged according to the provisions of C.P. and Berar Municipal Act regarding assessment or levy of octroi. The suit was

decreed. But the Supreme Court allowed the appeal on a finding that the jurisdiction of civil court was barred. Hence it is a case of only irregular

exercise of jurisdiction because the allegation is that there was an infraction of the rules. It is not a case where the assessment can be challenged on

the ground of want of jurisdiction or of violation of any constitutional provisions. The question of limitation has been abandoned.

6. The learned Advocate appearing on behalf of the plaintiff Respondent has contended that no notice under S. 80 of the Code is necessary in

view of the Bench decision of Gowardhandas Rathi Vs. Corporation of Calcutta and Another, . There is no bar of limitation. The final court of fact

has stated that the rules were infringed and hence the civil court was empowered to deal with the matter. Reference has been made to the case of

Navadip Chandra Pal, Chairman of the Kumarkhali Municipality Vs. Purnananda Saha , Chairman of the Rajpur Municipality v. Nagendra Nath in

23 CWN 475 and Commissioners of Konnagar Municipality v. Calcutta Electric Supply Corporation Limited in ILR (1974) 1 Cal. 12. All those

cases show that the civil court has jurisdiction to decide the legality or validity of assessment. Moreover, S 151 A which was inserted by an

amendment in 1966 with retrospective effect, shows by implication that the civil court has jurisdiction to decide the matter, though that section does

not expressly say so. Sub-section (1) thereof gives such an indication because it says that when an assessment or valuation is set aside or declared

to be void by an order of the court, the rates shall, notwithstanding anything contained in sub-s. (2) of S. 137, be paid on the previous assessment

or revaluation is made under clause (cc) of sub-s. (1) of S. 138. Unless the civil court has power in the matter, it would not have been

incorporated in sub-s. (1) of S. 151A that the civil court can set aside or declare an assessment to be void.

7. The first question arises whether a notice under S. 80 of the CPC is necessary. An administrator was appointed by the State Government for

the Asansol Municipality. Section 554 deals with consequences of supersession of the body of Commissioners. The relevant portion of sub-s. (1)

(i)(bb) shows that when an order of supersession has been passed under the S 553, then with effect from the date of the order all powers and

duties under the provisions of the Act or any other Act or any Ordinance or any Regulation shall be exercised and performed by such person or

persons as the State Government may direct. Clause (cc) shows that all property vested in the Commissioner shall vest in the State Government.

The proviso of clause (bb) *ibid* shows that the State Government shall fix the remuneration of such person or persons and may direct that such

remuneration shall, in each case, be paid from the municipal fund.

8. In the case of *Revati Mohan v. Dhuliyani Municipality* in 38 CWN 517 PC the Privy Council has pointed out that a notice under S. 80 C.P.C. is

necessary if that act is done by a public officer in his official capacity.

9. Section 2(17) of the Code defines "public officer". Clauses (g) and (h) indicate that every officer whose duty is to take, receive, keep or expend

any property is a public officer and every officer in the service or pay of the Government or remunerated by fees is a public officer. The

Administrator appointed for Asansol Municipality was a public officer. Relying on the decision of Edgley, J, in the case of *Gokul Chandra v.*

Manager of the Baniachong Mazumdari Wards Estates, 43 CWN 1212, Mr. Justice G. N. Das has stated in the case of *Charu Chandra Vs.*

Snigdhendru Prosad and Others, that a suit against a public officer requires a notice under S. 80 of CPC only in respect of the prayer which relates

to an act purported to have been done by him in his official capacity.

10. The plaintiff filed an objection against the assessment made by the assessor. The Administrator himself heard the matter and reduced the rate of

the assessment. The act was done by him in his official capacity. The case of *Gowardhandas Rathi Vs. Corporation of Calcutta and Another*,

relates to a case against the Commissioner of the Corporation of Calcutta. The Bench of our Court has started that the Commissioner is not a

government servant and so no notice to him under S. 80 of the Code is necessary. That case is clearly distinguishable. Since the Administrator is a

public officer within the meaning of S 2(17) of the Civil Procedure Code, it must be held that a notice under S. 80 of the Code is necessary.

11. The next question arises whether the Court has jurisdiction and if the suit is maintainable. The learned Advocate appearing on behalf of the

Respondent also relied on the case of *Bata Shoe Co. Ltd. Vs. City of Jabalpur Corporation*, . It has been started that in view of that decision this

Court should consider whether the remedy provided for in the Bengal Municipal Act to challenge an arbitrary assessment is adequate. This Court

will have no hesitation in holding that the remedy envisaged by the provisions of the Act is not at all sufficient and hence the suit is maintainable.

12. In the case of Commissioners of the The Commissioners of The Krishnagar Municipality Vs. Kalidhan Chatterjee, this question was raised and

decided. In that case there was an enhancement of the assessment of the holding under S. 138(1)(d) of the Bengal Municipal Act, An objection

was filed and it was overruled by that Municipality. A suit was filed challenging the assessment in the civil court. It has been held by Mr. Justice

Renupada Mookerjee that according to the provisions of S. 150 of the Bengal Municipal Act no such suit would lie against the Municipality

because the action of the Municipality was not ultra vires.

13. The cases of Navadip Chandra Pal, Chairman of the Kumarkhali Municipality Vs. Purnananda Saha and Rajpur Municipality v. Nagen in 23

CWN 475 were decided before the provisions of S. 150 of the Bengal Municipal Act were amended. That section was subsequently amended as

follows :

No objection shall be taken to any assessment or valuation in any other manner than in this Act is provided and no valuation or assessment made

under this Act and no order passed under sub-s. (4) or sub-s (6) of S. 149 or sub-s (2) of S. 149A shall be called in question in any Court.

14. The jurisdiction of the civil court regarding irregular assessment is thus expressly barred. It is not a case where there was want of jurisdiction of

the assessor in making the assessment or there was any violation of any law or of constitutional provisions. The plaintiff has not stated in this Court

that such assessment was a nullity. On the contrary the submission is that there was an irregular assessment. The case of Konnagar Municipality v.

Calcutta Electric Supply in ILR (1974) 1 Cal. 12 does not help the Respondent because it has been stated therein that in view of the scheme of the

Bengal Municipal Act relating to assessment or valuation and in view of the provisions in Ss. 149(4) and 150, the jurisdiction of civil courts to

question any assessment or valuation made under the Bengal Municipal Act has, by necessary intendment, been excluded. Of course, it has been

subsequently stated in that case that although under S. 150 of the Act no objection can be taken in a civil court to any assessment or valuation, that

section does not debar a person from alleging that the land, building or thing is not a holding and his assessment or valuation is a nullity.

15. The amended S. 151A of the Act is of no avail to the Respondent because that section does not expressly or by implication say that the civil

court has jurisdiction to set aside or declare to be void and irregular assessment made by the Municipality.

16. Now about the case of Bata Shoe Company, (supra). Regarding the articles which had been imported by the retail shops at Jabalpur between

the 1st April, 1943, and 31st March, 1946, the plaintiffs paid to the Municipal Committee Rs. 16528 odd as octroi duty. In 1946-47 the

Municipal Committee decided to reopen and revise the assessment by charging the octroi duty on an amount, which was only 6.1/4% less than the

retail price of the goods. The Municipal Committee further decided to levy double the duty by way of penalty. The plaintiffs preferred an appeal to

the Sub divisional Officer, Jabalpur. The latter up-held the assessment in part and modified the decision of the Municipal Committee by permitting

them to change the octroi duty of an amount which was less by 12.1/2% than the retail price of the goods. Thereafter the suit in question was

instituted. The relevant portion of sub-s. (3) of S. 84 of C.P. and Berar Municipal Act shows that no objection shall be taken to any valuation,

assessment or levy nor shall the liability of any person to be assessed or taxed be questioned, in any other manner or by any other authority than is

provided in the Act. After following the decision in Dhulabhai and Others Vs. The State of Madhya Pradesh and Another, , it has been stated that

applying the test in Kamala Mills Ltd. Vs. State of Bombay, , while exercising its jurisdiction and powers under the relevant provisions of Act, if

the appropriate authority holds erroneously that an assessment already made can be corrected or that an assessee is liable to pay double duty, it

cannot be said that the decision of the authority is without jurisdiction. The question of correctness of the assessment apart from its constitutionality

cannot be questioned in civil court if the order of those authority are given finality. As stated before, there is no constitutional prohibition to the

assessment which has been impeached in that case. Applying that test what I find is that the plaintiff is coming up with an allegation of mere

infraction of the rules and not of an assessment made without jurisdiction. Since it is a case of irregular exercise of jurisdiction, I hold that the suit is

not maintainable and the civil court has no jurisdiction to try the suit. The submission made on behalf of the Respondent cannot be accepted.

17. The appeal is allowed. The judgment and decree appealed against be hereby set aside and the suit dismissed.

The defendant-appellant will get costs throughout.