

LETTERS PATENT APPEAL.

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Before Jenkins C. J., and Mookerjee J.

DEB NARAIN DUTT

v.

CHAIRMAN, BARUIPORE MUNICIPALITY.*

1918

June 26.

*Municipality—Assessment, principle of—“Circumstances,” meaning of—
Onus of proving value of ‘circumstances and property’—Bengal Municipal
Act (Beng, III of 1884). ss. 85, 116—Evidence Act (I of 1872), s. 106.*

The word “circumstances” in section 85 of the Bengal Municipal Act is equivalent to *means*.

Assessment, according to that section, must be made according to the means and property within the municipality.

The burden of proving the value of “the circumstances and property within the municipality” is on the municipality.

Chairman of the Giridih Municipality v. Srish Chandra Mozumdar (1), referred to.

LETTERS Patent Appeal by Deb Narain Dutt, the plaintiff, from the judgment of Doss J.

This case came before the High Court once before. The facts appear in I. L. R. 39 Calc. 141. The case was remanded to the District Judge for a finding on certain facts. The District Judge held, on the evidence of the plaintiff and the Chairman of the municipality, the annual value of the house of the plaintiff to be Rs. 700 and of the lands Rs. 100. No evidence was given by any party as to the value of any other property within the municipality. The learned Judge further found that :—

“As to the valuation of his circumstances, it is in evidence that he has about Rs. 225 a month, or say Rs. 2,700 to spend, Rs. 100 only of which he derives from within the municipal area from his landed property. It is

* Letters Patent Appeal No. 45 of 1910,

(1) (1908) I. L. R. 35 Calc. 859.

clear that the assessor took as his circumstances even a larger sum than he yearly spends or deals with within the town.

“It appears to me that the rent the municipal authorities can claim to be his assessable circumstances and property within the municipality, is Rs. 3,400.”

With these findings, the District Judge re-submitted the record to the High Court.

Babu Shib Chandra Palit, for the appellant, repeated the arguments he made when the case came before the High Court in 1911 : see I. L. R. 39 Calc. pp. 142, 143.

Babu Mahendra Nath Roy (with him *Babu Baranasheebashee Mukherji*), for the respondents. This is a question of valuation pure and simple and the municipality has absolute jurisdiction in the matter. On the second question sent down to the lower Court, the Civil Court has no jurisdiction.

[MOOKERJEE J. But can you now go behind the remand order ?]

The whole case is before your Lordships, and I can raise any question that can properly arise.

There is a clear finding that the municipality assessed only the *circumstances* and *property* of the defendant within the municipality. What those words mean was decided by this Court in *Chairman of Giridih Municipality v. Srish Chandra Mozumdar* (1).

Appearing for a public body, I ought to fight on a question of principle irrespective of the results of this particular case. You cannot make any declaration as regards what the valuation ought to be.

JENKINS C.J. This is a suit brought to question the legality of a tax imposed upon the plaintiff under section 85 of the Bengal Municipal Act. That section provides that “The Commissioners may, from time to

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time, at a meeting convened expressly for the purpose, of which due notice shall have been given, and with the sanction of the Local Government, impose within the limits of the municipality one or other," or "both of the following taxes:—(a) a tax upon persons occupying holdings within the municipality according to their circumstances and property within the municipality: provided that the amount assessed upon any person in respect of the occupation of any holding shall not be more than eighty-four rupees per annum; or (b) a rate on the annual value of holdings situated within the municipality." The tax here has been imposed upon an assessment which values the plaintiff's circumstances and property at Rs. 6,000. It is to this that the plaintiff demurs. The value of his property within the municipality is comparatively trifling, about Rs. 800, so that the rest of the assessment must be upon that very vague and unfortunate word "circumstances." It is to be regretted that in a taxing Act such a loose expression should have been used. However, we have the advantage of guidance from the case of *Chairman of Giridih Municipality v. Srish Chandra Mozumdar* (1) where the expression was carefully considered. My learned brother, who is now sitting with me, came to the conclusion, which seems to me to be a sound one, that "circumstances" must be taken to be equivalent to "means", so that the taxation would be according to the means and property of the plaintiff within the municipality.

The Munsif thought that the action of the Commissioners in this case was illegal, and he passed a decree to this effect. He declared that the plaintiff's revised assessment of 1906-07, which came into operation on the 1st of April 1906, was illegal and not binding on the plaintiff: but he determined that the plaintiff

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must pay taxes at the old rate. The meaning of that is that according to the old assessment the property and circumstances were valued at Rs. 4,066 which now it is Rs. 6,000. This old assessment the Munsif purported to affirm, and the new assessment he said was illegal.

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From that decree there was an appeal to the District Judge preferred by the municipality. That appeal was successful and the suit was dismissed with costs. Then there was an appeal to the High Court which came in the first instance before Mr. Justice Lal Mohan Doss, and, later, before a Bench of two Judges, by whom it was thought that the learned District Judge had not come to any conclusion on the material point, that is to say, whether the assessment had been "according to the circumstances and property of the plaintiff within the municipality": and so an issue was formulated in these terms:—'What were the circumstances and property within the municipality according to which tax was imposed upon the plaintiff? There was a further issue, 'what was the value of such several circumstances and property'? I may say at once that this second issue cannot be taken as a determination that it is open to the Courts to assess the value for the purpose of section 85. That must be done by the machinery for which the Act itself makes provision. This is made clear by section 116 of the Act. But it may be that the second issue which, so far as it goes, is in favour of the municipality, was formulated in view of the finding of the Munsif and the light that might be thrown on the question involved in the first issue. But it is needless to speculate on that which has passed out of the recollection of every body concerned. What we have now to consider is what is the result of the finding on those issues as returned to us by the District Judge. The just result of that finding is that it is impossible

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to reconcile the facts as found by the District Judge with the theory that only the circumstances and property within the municipality have been taken into consideration for the purpose of section 85, and so a *prima facie* case is made against the municipality. What the facts were which the municipality or their officers or representatives regarded as justifying their conclusion is a matter of which they alone are aware, but they have not seen fit to disclose those facts and we, therefore, are left in this position that though the municipality or its officers must have the knowledge which would have made this point perfectly clear, they have not given us that information; while, on the other hand, we have the facts as found by the District Judge, which raise at any rate a *prima facie* case that elements other than "the circumstances and property within the municipality" were taken into consideration. This seems to me to bring into play the very reasonable presumption which is embodied in section 106 of the Evidence Act wherein it is provided that "when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him." In these circumstances, it seems to me that the plaintiff has made out his case and that he is entitled to our finding that the assessment has not been according to his circumstances and property within the municipality. We must, therefore, set aside the judgment of Mr. Justice Doss and the decree of the lower Appellate Court and restore so much of the Munsif as declares that the revised assessment of 1896-97 which came into operation on the 18th April, 1906, is illegal.

The municipality must pay the costs of the plaintiff throughout.

MOOKERJEE J. I agree.

S. M.