APPELLATE CIVIL.

Before Cuming and B. B Ghose JJ.

BHUBAN MOHAN BASAK

v.

CHAIRMAN, DACCA MUNICIPALITY.*

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Dec. 14.

Municipality—Valuation—Percentage at which taxes are to be levied, if must be fixed afresh at each fresh valuation—Assessment of water and privy-tax on owners—Jurisdiction of Civil Court to consider assessment of water and privy-tax—Bengal Municipal Act (Beng. III, of 1884), ss. 96, 97, 97-A, 102, 103, 113, 279 (3), 281, 282—Civil Procedure Code (Act V of 1908), O. I., r. 8.

There is no provision in the Bengal Municipal Act of 1884 which provides that every time there is fresh valuation there must be a formal meeting to fix the percentage even though the Commissioners intend the same percentage to continue. It is open to the Commissioners, by not holding any meeting, to levy the rate at the old rate of percentage on the new valuation.

In some circumstances the owner and in other circumstances, the occupier is liable to pay privy and water-tax.

Where the municipality, owing to ignorance of facts, assess the owner with privy or water-tax, where they ought to assess the occupier and *vice versa*, the aggrieved person has his remedy under section 113 of the Bengal Municipal Act. Until the aggrieved person has exhausted the remedies which the said Act provides, he cannot invoke the assistance of Civil Courts.

Per B. B. Ghose J. Where certain rate-payers are liable to pay rates under certain heads, they are not competent to maintain a suit to question the validity of the imposition of rates on those heads on other persons who are alleged to have been illegally rated, under O. I, r. 8 of the Code of Civil Procedure on behalf of those persons, as they are not persons having the same interest.

* Appeal from Appellate Decree, No. 264 of 1925, against the decree of R. F. Lodge, District Judge of Dacca, dated Nov. 24 1924, affirming the decree of Rebati Ranjan Mukherjee, Munsif of that place, dated May 26, 1924.

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SECOND APPEAL BY Bhuban Mohan Basak and three others, the plaintiffs.

This was an appeal against the decision of the District Judge of Dacca dismissing the plaintiffs' suit for a permanent injunction for restraining the municipal authorities of Dacca from realising rates and taxes.

The case for the plaintiffs, who were rate-payers in a representative capacity, was briefly as follows. On the 28th June, 1922, the commissioners of the Dacca Municipality passed a resolution to the effect that the general revision of assessment of holdings be undertaken without delay, as it was overdue. On the 18th of the following August, the municipal commissioners passed resolutions to the effect that the work of revaluation and reassessment must be finished by the 31st March, 1923, and that the salary of the assessor be fixed at Rs. 300 *plus* a special conveyance allowance. Subsequently an assistant assessor was appointed. The assessor and his assistant made a revaluation of the holdings in the Dacca Municipality. The budget for the year 1923-24 was prepared in February, 1923. There was no meeting of the municipal commissioners under section 102 of the Bengal Municipal Act to determine the rate of tax on holdings. In the budget, provision was made for levying a tax on holdings according to the old valuation, at the rate of 10 per cent. on the valuation, which rate had been left unchanged for several years previously. An assessment list, according to the new valuation of the assessors, was published on the 28th March, 1923. The assessor submitted his final report on the 4th July, 1923. The municipal commissioners attempted to collect the tax on holdings at the rate of 10 per cent. on the new valuation for the year 1923-24. The plaintiffs

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accordingly sued for a declaration that the assessment was null, void, illegal and *ultra vires*, for a declaration that no municipal tax was payable for the year 1923-24 and for a permanent injunction restraining the municipality from collecting such tax.

Four such suits were instituted. The Munsiff dismissed the suits without costs. The plaintiffs appealed in three suits. The District Judge agreed with the primary Court and dismissed the appeals with costs.

The plaintiffs thereupon appealed in one of these cases before the High Court.

Sir B. C. Mitter (with him *Babu Bhupendra Chandra Ghose*), for the appellants. "Assessment" means valuation of holdings *plus* fixing of percentage. Interpretation of the resolution and of the word "assessments" is a question of law. When the municipality passed a resolution for a revaluation of the holdings within it, it was bound to determine the percentage of rate or tax to be levied upon such new valuation. It is compulsory to enter into the question of percentage after each revaluation, if not yearly. Under section 102 of the Bengal Municipal Act, the commissioners are bound to call a meeting "as soon as possible" after the revaluation to fix the percentage of tax and prepare an assessment list. If no such meeting be held, then the assessment list, prepared without deliberation at a meeting, is invalid. See Bengal Municipal Act, sections 85 and 97 and *Leman* v. *Damodaraya* (1). Taxing statutes must be strictly construed: *Joshi Kalidas Sevakram* v. *The Dakor Town Municipality* (2), *Kasandas*

(1) (1876) I. L. R. 1 Mad. 158, 162. (2) (1883) I. L. R. 7 Bom. 399.

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Raghunathdas v *The Ankleshvar Municipality* (1), *The Municipal Council, Tanjore* v. *Umamba Boi Saheb* (2), *Chairman of Giridih Municipality* v. *Srish Chandra Mozumdar* (3). Even if the same percentage that prevailed before be fixed for the fresh assessment, it is necessary to say so at a meeting of the commissioners. The water and privy-tax cannot be assessed on the owners. See sections 279 and 322 of the Bengal Municipal Act.

The Advocate-General (Mr. B. L. Mitter), with him *Babu Prakash Chandra Pakrashi*, for the respondent municipality. The interpretation of the resolution, specially the intention of the commissioners in using the word "assessment" in their resolution is a question of fact. This Court cannot disturb that finding. The Legislature also used the word loosely in the Act. Assessment means valuation. See marginal note to section 97. The short point is whether section 102 of the Bengal Municipal Act was complied with or not, and, if not, whether non-compliance was a material defect, or whether such defect had been cured. The defect, if any, has been cured by section 351. Section 102 itself provides for it by saying that the old rate of percentage is to continue "until rescinded." Therefore, no meeting was absolutely necessary. Non-compliance with section 102 is not material. It is a matter of formality and non-compliance with it does not affect any principle of natural justice or any statutory right of the rate-payer. The determination of the percentage can be made at a meeting or automatically. When it comes in automatically, there is no scope for a meeting. See sections 103, 279, 281, 282, 312, 322, 323 and

(1) (1901) I. L. R. 26 Bom. 294, 297. (2) (1899) I. L. R. 23 Mad. 523.
(3) (1908) I. L. R. 35 Calc. 859, 865.

324 of the Bengal Municipal Act. The present appellants are as a matter of fact either owners in occupation of the holding or it is occupied by more than one tenant holding severally. The remedy of the plaintiffs is provided for in section 113 of the Act.

Sir B. C. Mitter, in reply. It is a representative suit and leave was obtained by the plaintiffs to sue for and on behalf of themselves and all the ratepayers under O. I. rule 8 of the Code: *Vaman Tatyaji* v. *The Municipality of Sholapur* (1), *Duke of Bedford* v. *Ellis* (2).

Marginal notes cannot be considered in interpreting a section.

Section 113 will have no application, if tax is illegal. When there is a new valuation, there may be a necessity for a change in the tax and, therefore, a meeting must necessarily be held for fixing the rate of percentage according to appreciation or depreciation in the value of the holdings. Once it is held that a meeting under section 102 is imperative, the municipality cannot get away from the consequence of not holding the meeting by saying that it is a useless formality. It is not enough to comply with the provisions of a taxing statute substantially. It must be done strictly. See *D'Arcy* v. *The Tamar, Kit Hill, and Callington Railway Company* (3), *In re Mercantile and Exchange Bank* (4) and *Khandarao Vithora Kore* v. *Municipal Corporation of Bombay* (5).

The Advocate-General again in reply. It cannot be a representative suit as the grievance of all the rate-payers is not the same.

Cur. adv. vult.

(1) (1897) I. L. R. 22 Bom. 646.
(2) [1901] A. C. 1.
(3) (1867) L. R. 2 Exch. 158.
(4) (1871) L. R. 12 Eq. 268, 276.
(5) (1923) L. R. 51 I. A. 14.

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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, void, illegal and *ultra vires* and that there is no municipal tax payable for the year 1923-24. He also prayed for a permanent injunction to restrain the municipality from realising the taxes.

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 :—

(*i*) 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.

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

(*iii*) That Government and railway buildings have not been properly assessed and many holdings have not been assessed at all.

(*iv*) That assistant assessor had no power to assess any buildings.

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

(*vi*) That assessment of privy and water-tax of houses let, when the occupier was living elsewhere, was illegal.

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

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

A number of issues were framed.

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

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

His grounds of appeal numbers 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 the 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 centred 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 Binode Mitter for the appellant contends they meant both valuation and percentage and that as they

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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 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. 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 the 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 appellants' first contention.

(2) The decision of the second point requires the consideration of certain sections of the Municipal Act, *viz.*, section 96, section 97, section 97-A, section 102 and section 103. Sir Binode 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 Binode 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 this 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

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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 levy 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.

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 ¼th share from the owner.

Section 282 provides that when the house is unoccupied the owner will pay ¼th 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, 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 under section 113, which provides that a person who disputes his liability to be assessed may apply to the commissioners under section 113. Clearly this was the remedy open to the plaintiff of which he did not avail himself.

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 appellant.

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

GHOSE J. I agree. The first point argued in the appeal that the resolution of June 28th, 1922, of the commissioners was not given effect to is based on the ground that there has not been a 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 that 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 which relates to the meaning of the word

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cannot, therefore, be raised in second appeal. Moreover, as the learned District Judge points out, the words "assessor" and "assessment" have been rather loosely used in the Municipal Act itself.

The second and most important question is whether the valuation and rating list prepared under section 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 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 Binode, 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 under section 102 after a new valuation, and Sir Binode 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 revaluation. 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 revaluation, 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 under section 103.

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 Civil Procedure Code, 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.

S. M.

Appeal dismissed.