

APPELLATE CIVIL.

Before Guha J.

JESRAJ JAICHANDLAL BAID

v.

CHAIRMAN OF THE COMMISSIONERS OF
THE MUNICIPALITY OF NATORE.*

Jurisdiction—Civil courts—Municipality—License fee—Assessment, mode of—Illegal assessment—Ultra vires—Bengal Municipal Act (Beng. III of 1884), s. 261.

The civil courts have jurisdiction to entertain a suit brought by an assessee for a declaration that the sum assessed by a municipality as license fee for "a yard or depot for trade in jute" was not legally recoverable, where the action of the commissioners of the municipality, acting through their chairman, exceeded their statutory powers, and as such the levy of a license fee of Rs. 326 was *ultra vires* because the entire area in respect of which the license fee was levied by the municipality, purporting to act under section 261 of the Bengal Municipal Act, was not a "yard or depot for trade in jute."

SECOND APPEAL by the plaintiff.

The facts of the case, out of which this appeal arose, appear fully in the judgment.

Sachindradas Ghosh and *Bibhutibhushan Lahiri* for the appellant.

Debendranarayan Bhattacharya and *Phanindramohan Sanyal* for the respondent.

Cur. adv. vult.

GUHA J. The question involved in this appeal is whether the civil court has jurisdiction to try the suit, in which the appeal had arisen. The suit, as laid, was for declaration that a sum of Rs. 326 was not legally recoverable from the plaintiff as license fee. The allegation made in the plaint was that "the Chairman of the defendant municipality while illegally measuring the jute godown of the plaintiff,

*Appeal from Appellate Decree, No. 1631 of 1930, against the decree of Beharilal Sarkar, District Judge of Rajshahi, dated April 10, 1930, affirming the decree of N. B. Banerjee, Munsif of Natore, dated Jan. 17, 1929.

“had wilfully measured all the places outside the “godown, where no jute business was effected, and “could not be effected; and inside the godown also “(measured) places, where on account of press, *etc.*, “being located, no jute was stacked and could not be “stacked, and had not given allowances for all these “places.” The defendant’s case, as made in the written statement, filed in court, was that “the “defendant municipality measured the plaintiff’s “godown, and all the places for stacking jute in “presence of properly authorised agent on behalf of “the plaintiff.” The defendant further pleaded that the plaintiff’s suit was not maintainable.

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The courts below have dismissed the plaintiff’s suit on the ground that the amount of license fee assessed by the municipality was in question, and that the case was not one in which the municipality had acted illegally or one in which the action of the municipality could be said to be *ultra vires*. There can be no doubt that the municipality purported to act under section 261 of the Bengal Municipal Act, in the matter of levying of the license fee in question; and the position cannot be disputed that the plaintiff, the licensee, could not challenge the action of the municipality, unless it was found that such action was illegal or *ultra vires* of the statutory provision as contained in the Bengal Municipal Act. The courts below have proceeded upon the footing that only the amount of assessment of the license fee was in question in the suit. The question before the court in the present case was whether, on the facts stated in the plaint, and upon those stated in the written statement in the suit, it could be said that the entire area, in respect of which license fee was levied by the municipality, purporting to act under section 261 of the Bengal Municipal Act, was “a yard or depot for trade in “jute.” The action of the commissioners of the municipality, acting through their Chairman, complained of, was that they had exceeded their statutory powers, and as such the levy of license fee of Rs. 326, by the municipality, was *ultra vires*. The

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suit as laid was not merely for the purpose of reducing the amount of the assessment. The question of the principle of assessment was disputed; the basis of assessment was questioned by the plaintiff in the suit, on allegations of fact made in the plaint.

In the above view of the case, it was incumbent upon the courts below to determine, on evidence, the question of fact whether the entire area in respect of which the license fee of Rs. 326 has been levied, was or not used as "a yard or depot for trade in jute." If in point of fact, the entire area was so used, the principle of assessment and the basis, on which the license fee has been levied, would be correct; if, on the other hand, the entire area was not used as a yard or depot for trade in jute, the levy of license fee, as made of the municipality, in the present case, would be *ultra vires* of the statutory provision referred to above, and the civil court would have jurisdiction to entertain the plaintiff's suit and give the plaintiff the relief he has prayed for in the suit.

The decisions of the courts below are set aside, and the case is remanded to the court of first instance for a fresh trial in the light of the observations made in this judgment. The parties will be at liberty to adduce evidence in support of their respective cases, as stated in their pleadings in the suit. Costs in the litigation up to the present stage, including the costs of the appeal to this Court, will abide the result.

The records of the case are to be sent down as soon as possible.

Appeal allowed; suit remanded.