APPELLATE CIVIL.

Before Mallik and Jack JJ.

1933

Dec. 4.

SURENDRANATH SEN

v.

CHAIRMAN OF THE MUNICIPAL COMMISSIONERS OF MYMENSINGH.*

Municipality—Currency of valuation of holding for water-rates—Different valuation of same holding for assessment of municipal rates, if ultra vires*—Declaratory suit without consequential relief, when maintainable—Bengal Municipal Act (Beng. III of 1884), ss. 96, 97, 280.—Specific Relief Act (I of 1877), s. 42.*

During the currency of any valuation of a holding for the assessment of water-rates thereon, under the Bengal Municipal Act of 1884, a different valuation of the same holding for the assessment of municipal rates is illegal and *ultra vires*; and, in such a case, where the municipality did not do anything towards realisation of the aforesaid illegally assessed rates, a suit for having the later valuation declared illegal and *ultra vires* without any prayer for consequential relief is maintainable.

Robert Fischer v. *Secretary of State for India in Council* (1) followed.

SECOND APPEAL by the plaintiff-appellant.

The material facts and arguments in the appeal appear from the judgment.

Charuchandra Biswas and *Haridas Gupta* for the appellant.

Sharatchandra Basak and *Ramendrachandra Ray* for the respondent.

MALLIK J. This appeal arises out of a suit for a declaration that an assessment made by the municipality of Mymensingh on the plaintiff's holding is illegal and *ultra vires*.

*Appeal from Appellate Decree, No. 3120 of 1931, against the decree of R. F. Lodge, District Judge of Mymensingh, dated May 25, 1931, reversing the decree of Sateeshchandra Chakrabarti, First Munsif of Mymensingh, dated Dec. 23, 1930.

(1) (1898) I. L. R. 22 Mad. 270; L. R. 26 I. A. 16.

The facts which are relevant for the purpose of this appeal are briefly these :—

In the municipality of Mymensingh there was, up to the year 1928, no tax on holdings, but what is known as tax on persons. The municipal commissioners decided, by a resolution, that, with effect from 1st April, 1929, there should be a change and that taxation from that date would be not on persons but on holdings and, in order to give effect to that resolution, they made an assessment on all the holdings, after making valuations of the same. The plaintiff's holding was taxed on the basis that the annual letting value of the same was Rs. 3,000. This figure, however, on the objection of the plaintiff, was reduced to Rs. 1,800. Before the commissioners decided to levy tax on holdings, they had, in the year 1928, levied a water rate on holdings within the municipality, and, for levying that water rate, there had been a valuation of the plaintiff's holding, in which the letting value of the same had been fixed at Rs. 1,260. According to the plaintiff's case, when the plaintiff filed an objection to the valuation of his holding at Rs. 3,000, the objection was heard by four out of ten commissioners, who had been appointed for the purpose before 1929, and, although the four commissioners reduced the figure Rs. 3,000 to Rs. 1,800, they followed a procedure that was not warranted by law. On these allegations, the plaintiff asked for a declaration that the assessment on his holding was illegal and *ultra vires*, on the ground that it had been made not in accordance with law, and that the commissioners, in dealing with his petition of objection, had acted in violation of the provisions of the Bengal Municipal Act.

The plaintiff's case was resisted by the defendant on the allegation that there had been nothing wrong or illegal either in the assessment or in the disposal of the petition of objection and that the plaintiff's suit was not maintainable in view of the provisions of section 42 of the Specific Relief Act, the plaintiff

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not having asked for any consequential relief, in the shape of an injunction restraining the defendant municipality from realising the tax assessed on the plaintiff's holding. The court of first instance found the points in favour of the plaintiff and gave him a decree. On appeal, this decision was reversed by the learned District Judge, who held that there had been nothing wrong or *ultra vires* in the assessment and also that section 42 of the Specific Relief Act was an insuperable bar to the plaintiff's suit. The plaintiff has appealed to this Court.

A number of points has been taken on behalf of the appellant before us. One of the main points was that the municipality had no authority to make a fresh valuation on the plaintiff's holding when there was another valuation—the valuation made in connection with the fixing of the water-rate—still subsisting, that valuation having been made in 1928...... and its currency not having expired when the new valuation was made. This contention seems to me to be well-founded. The valuation that had been made in connection with the fixing of the water-rate had been made under section 280 of the Municipal Act and that valuation, having been made when there was no previous valuation for the purpose of levying a holding tax, the provisions of section 97 were applicable to the case. Section 97 lays down that the life of such a valuation is five years. That being so, at the time when the new valuation was made in 1929, there was another and a different valuation of the same holding subsisting. This was clearly an absurd situation—to have two different valuations of the same holding standing side by side at the same time, and to act upon these two different valuations for different purposes.

Dr. Basak for the respondent attempted to meet this contention of the appellant on two grounds. In the first place, he argued that, although there are provisions in the Act for accepting the valuation previously made for the purpose of levying "holding"

tax for the purpose of levying water-rate, there is no corresponding section in the Act for accepting water-rate valuation for the purpose of valuation for "holding" tax and, secondly, he drew our attention to the provisions of section 96, which lays down that, in making assessment for holding tax, the valuation of all holdings, without any exception, must be determined.

As regards the first ground, it is true that there is no provision in the Act for using water-rate valuation for the purpose of valuation for "holding" tax. But that is no reason why the municipality should be allowed to do something that would lead to an absurd position, namely, having two different valuations of one and the same holding standing side by side.

Then, as regards the second ground, section 96 no doubt says that, in making an assessment for a "holding" tax, there must be a determination of the valuation of all the holdings without any exception. But to adopt the valuation of a holding previously made may, I am inclined to think, be taken as a determination of the valuation and an acceptance of the old valuation would, in my opinion, be a sufficient compliance with the provisions of section 96, specially when it is remembered that non-acceptance of the old valuation would lead to an absurd situation. I would, therefore, hold that the assessment of the plaintiff's holding, based as it was on a valuation which had been made in contravention of the law, was illegal and *ultra vires*. In this view of the matter, it would not be necessary to consider the other points raised by the appellant in connection with the procedure followed by the commissioners in disposing of the plaintiff's petition of objection to the assessment.

On behalf of the respondent, an argument was advanced before us that the plaintiff's suit was barred under section 42 of the Specific Relief Act, inasmuch as the plaintiff did not ask for any consequential relief in the shape of an injunction on the defendant

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municipality restraining them from realising tax from the plaintiff. But it does not appear that the defendant municipality had done any act towards such realisation. Besides if the second valuation is pronounced void, the assessment by the municipal commissioners together with the second valuation on which it was based falls to the ground and there would remain nothing but the previous valuation to go upon in making an assessment of the plaintiff's holding and no necessity for asking for any consequential relief.

In this connection see the observations of Lord Macnaghten in *Robert Fischer* v. *Secretary of State for India in Council* (1).

For the reasons recorded above, I would allow the appeal, set aside the decree of the lower appellate court and restore that of the court of first instance.

The plaintiff will have his costs throughout.

JACK J. I agree.

Appeal allowed.

A. K. D.

(1) (1898) I. L. R. 22 Mad. 270; L. R. 26 I. A. 16.