suit was barred under section 231 of the Municipalities Act. No doubt a pleading was made under that section but the municipality did not verify the further particulars and the Munsif struck off the plea and no point can be raised now. The remaining ground was that because the injunction was refused, damages should not have been awarded. This point has no bearing. We dismiss the cross-objection with costs.

Before Sir John Thom, Chief Justice and Mr. Justice Ganga Nath

MUNICIPAL BOARD, BENARES (DEFENDANT) *v.* JOKHUN (PLAINTIFF)*

1938 *December*, 13

Municipalities Act (Local Act II of 1916), section 164(1)—"Assessment" means one in accordance with the procedure prescribed by the Act—Civil suit in respect of a so-called assessment—Maintainability—Municipalities Act, sections 143, 144, 160—Assessment to water tax—Objections not heard and decided under section 143(3)—Assessee thereby deprived of remedy by appeal—Only possible remedy by suit—Municipalities Act, section 165—Applies only to formal defects and irregularities in assessment—Does not apply where assessment made by ignoring prescribed procedure—Damages for wrongful attachment—Attachment for two sums, only one of which is legally due—Civil Procedure Code, section 9—"Civil suit" includes suits between a subject and the Government or a branch of Local Self-Government.

The plaintiff was assessed to water tax in respect of his house, although under the law the house was exempt as it was beyond the prescribed radius of the nearest standpipe and had no water connection. The plaintiff filed an objection to that effect under section 143 of the Municipalities Act, but it was not considered or decided by the Municipal Board and the plaintiff's name was included in the final assessment list. Subsequently the plaintiff's house was attached for non-payment of arrears of house tax and water tax, whereupon the plaintiff paid both the amounts, the latter under protest, and then filed a suit against the Municipal Board for refund of the alleged water tax and for damages for illegal attachment:

Held, that the suit was not barred by section 164(1) of the Municipalities Act. The word "assessment" in that section

*Appeal No. 92 of 1937, under section 10 of the Letters Patent.

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means an assessment in accordance with the provisions of sections 142, 143 and 144 of the Act. The plaintiff was never "assessed" at all inasmuch as the procedure prescribed by the mandatory provisions of section 143 was not followed and the plaintiff's objection was never considered and decided by the Municipal Board as required by that section. No order was passed under section 143(3), and the result was that by the conduct of the Municipal Board the plaintiff was deprived of the only remedy against arbitrary action of the Board that was open to him under the provisions of the Act, namely an appeal under section 160 from an order under section 143(3). Section 164 cannot be so interpreted as to deprive the plaintiff of all remedy whatsoever against the arbitrary, illegal and so-called "assessment".

Assessment roll prepared in accordance with the provisions of sections 142, 143 and 144 of the Act can properly be regarded as conclusive proof of the liability of the persons whose names appear on the roll; but no such sanctity can attach to a document which has been prepared in utter disregard of those provisions.

There is provision for formal defects and irregularities in assessments in section 165 of the Act; but the flagrant disregard by the Board of the mandatory provisions of section 143 is no mere irregularity in assessment but the effect is that there is no "assessment" at all.

As the attachment of the plaintiff's house was made in respect of a claim for two items, one of which namely the alleged water tax was not legally due, the attachment did the plaintiff a wrong, for which he was entitled to damages.

A suit between a subject and the Government or a branch of Local Self-Government in respect of civil rights is a civil suit within the meaning of section 9 of the Civil Procedure Code. It is not the status of the parties to the suit but the subject-matter of the suit which determines whether or not the suit is one of a civil nature.

Messrs. *A. M. Khwaja* and *R. K. S. Toshniwal*, for the appellant.

Mr. *B. Malik*, for the respondent.

THOM, C.J., and GANGA NATH, J.:—This is a defendant's appeal arising out of a suit in which the plaintiff claimed a declaration that a certain house in the municipality of Benares was not liable to be assessed

to water tax amounting to Rs.151-3-6 and that the plaintiff was entitled to an order for the refund of this amount which had been deposited by him and further Rs.200 in name of damages on account of the illegal attachment of the plaintiff's property.

The plaintiff averred that the municipality attached his property and that he had to pay the sum of Rs.151-3-6 in name of water tax in order to have the property released. That a certain amount was due by the plaintiff to the defendant is not disputed. The attachment was in respect not only of water tax but in respect of house tax.

It is a matter of admission that the plaintiff was not liable to be assessed in respect of water tax. It was contended, however, for the Municipal Board that the plaintiff had in fact been assessed for water tax and that in view of the provisions of section 164 of the Municipalities Act he was not entitled to sue in the civil court for a refund of the amount deposited by him.

The trial court decreed the suit. The lower appellate court recalled the order of the learned Munsif and dismissed the suit. The plaintiff appealed and the learned Judge before whom the matter came in second appeal in this Court has set aside the order of the lower appellate court and restored the order of the trial court.

The main question for consideration in the appeal is whether the plaintiff is entitled to maintain a suit in the civil court in view of the provisions of the Municipalities Act.

Section 164(1) of the Act is in the following terms: "No objection shall be taken to a valuation or assessment, nor shall the liability of a person to be assessed or taxed be questioned in any other manner or by any other authority than is provided in this Act." Subsection 2 is as follows: "The order of the appellate

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authority confirming, setting aside or modifying an order in respect of valuation or assessment or liability to assessment or taxation shall be final; provided that it shall be lawful for the appellate authority, upon application or on his own motion, to review any order passed by him in appeal by a further order passed within three months from the date of his original order."

Now the facts of the present case are that the plaintiff's house "is not within a radius of 600 feet from the nearest standpipe nor has it got any water-pipe connection"; in other words the municipality supplies no water at all to the plaintiff. Nevertheless he received a notice in which it is alleged he was "assessed" in respect of water tax. It appears from the judgment of the learned single Judge who disposed of the second appeal that upon receipt of this notice the plaintiff filed an objection under section 143 of the Municipalities Act claiming exemption upon the ground that his house was beyond the prescribed radius. It appears that the Municipal Board passed no orders upon this objection. The plaintiff's name was however included in the final assessment list and accordingly the Municipal Board held him liable to pay the water tax.

Section 143 of the Municipalities Act makes provision for the consideration of objections by parties who have had notice of assessment. Sub-section (2) of section 143 enjoins that "All objections to valuations and assessments shall be made to the Board, before the date fixed in the notice, by application in writing stating the grounds on which the valuation and assessment are disputed, and all applications so made shall be registered in a book to be kept by the Board for the purpose." The section goes on to provide for the investigation by the Board of objections. Section 144 provides: "When all objections made under section 143 have been disposed of, and all amendments

required by sub-section (3) of that section have been made in the assessment list, the said list shall be authenticated by the signature of the Chairman, or, in the case of delegation under section 143 to a committee or to an officer of Government or of the Board, by the signatures of not less than two members of such committee or by the signature of the officer aforesaid; and the person or persons so authenticating the list shall certify the consideration of all objections duly made and the amendment of the list so far as required by the decisions on such objections." The section further provides that "The list so authenticated shall be deposited in the municipal office, and shall, thereupon, be declared by public notice to be open for inspection."

Section 160 of the Municipalities Act provides for appeals against taxation. The section is in the following terms: "(1) In the case of a tax assessed upon the annual value of buildings or lands or both an appeal against an order passed under sub-section (3) of section 143 or under sub-section (3) of section 147, and, in the case of any other tax, an appeal against an assessment, or any alteration of an assessment, may be made to the District Magistrate or to such other officer as may be empowered by the Local Government in this behalf."

It will be observed that the right of appeal given in respect of assessment upon the annual value on buildings or lands is an appeal to the District Magistrate against an order passed by the municipality under sub-section (3) of section 143. In so far as the plaintiff's property is concerned no order was passed under section 143(3). In the result the plaintiff by the conduct of the Municipal Board was deprived of the only remedy against arbitrary action of the Board that was open to him under the provisions of the Act.

Learned counsel for the Board contended that although it might well be that the plaintiff had been deprived of his only remedy the terms of section 164

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were clear and unqualified and that it was not open to the civil court to give the plaintiff any relief whatever. In other words, learned counsel contended, once a party's name appeared upon an assessment list, no matter how it got there, he was liable to pay the amount entered against his name and he had no remedy whatever.

Under section 164 "no objection shall be taken to a valuation or assessment." In the present case we are concerned with an alleged assessment. No question of personal liability arises. In the case of liability of a person to be assessed an appeal is provided by section 160 against the assessment itself, but in respect of assessment of property "upon the annual value of buildings or lands", the appeal is against the order passed upon the objections of the person assessed under section 143(3).

Now in our judgment so far as the plaintiff was concerned he was never "assessed" at all inasmuch as the procedure prescribed by mandatory provisions of section 143 of the Municipalities Act was not followed. Learned counsel for the appellant contended that it was well established law that a mere irregularity in procedure by the Municipal Board or a public authority would not confer jurisdiction upon the civil courts. In the present case, however, we are not concerned with a mere irregularity. There is provision for irregularities and for the formal defects in assessments and demands in section 165 of the Act. But the flagrant disregard by the Board of the provisions of section 143 of the Act was no mere irregularity. No doubt such irregularities and errors as are referred to in section 165 would not have the effect of conferring jurisdiction upon the civil court in respect of a dispute between a Municipal Board and the party assessed. Here, however, we are concerned with something far more serious than a mere irregularity. In our judgment the procedure prescribed by the Act having been entirely

ignored by the Municipal Board there was no assessment within the meaning of section 164. We would observe in this connection that the provisions relating to assessments and to the fixing of the liability of owners of property are mandatory. Learned counsel for the appellants contended that the appellants in the ordinary course of their administrative duties had prepared an assessment roll which included the plaintiff's name, and that as that roll was conclusive it could not be challenged. An assessment roll properly prepared in conformity with the provisions of the Act is made conclusive and for the very good reason that those provisions afford ample protection to the tax-payer. Under section 143 any party who wishes to object to his being assessed or to the amount of his assessment may prefer an objection. If he is dissatisfied with the decision of the Board upon his objection he has a right of appeal to the District Magistrate and the District Magistrate's decision is final. A roll prepared in accordance with the provisions of sections 142, 143 and 144 can be reasonably regarded as conclusive proof of the liability of the persons whose names appear on the roll. No such sanctity however attaches to a document which has been prepared in utter disregard of the provisions of the aforementioned sections. If the argument for the Municipal Board is sound then it is open to the Board to include the name of any person in the roll whether he has been given an opportunity of objecting to his assessment or not, or even where the District Magistrate has upheld his objection to the assessment, and he has no remedy by way of suit in the civil courts—that is he has no legal remedy at all. We are unable to hold that the legislature so intended. In our judgment the intention of the legislature is plain. The word "assessment" in section 164 of the Act means, in our view, assessment in accordance with the provisions of sections 142, 143 and 144 of the Act. Upon general principle, even if

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two interpretations are possible we would without hesitation reject that interpretation of the Act which would have the effect of depriving the citizen of his only remedy in respect of arbitrary and illegal acts of the municipality

If the municipality by its conduct deprives the citizen of the only remedy which is open to him under the Act then in our judgment the citizen has his remedy under section 9 of the Code of Civil Procedure By section 9 the civil courts have jurisdiction to try "all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred." It was contended for the appellants that even under the provisions of section 9 of the Civil Procedure Code the plaintiff was not entitled to maintain the present suit. This contention was based upon an observation by a learned Judge of this Court in the course of the judgment in the case of *Sheo Narain* v. *Town Area Panchayat, Chhabramau* (1). It was observed in the judgment that a suit between a subject and a branch of Local Self-Government is not a suit which deals with civil rights. Civil suits were defined by the learned Judge as "suits between subject and subject dealing with civil rights." With respect we are unable to accept this definition as exhaustive or satisfactory. There are many suits which a subject may maintain against a Local Government and against the State which cannot be regarded as anything else but civil suits within the meaning of section 9 of the Civil Procedure Code. In our view it is not the status of the parties to the suit but the subject-matter of the suit which determines whether or not the suit is one of a civil nature, and we hold that under the provisions of section 9 the plaintiff was entitled to prosecute the present suit for the recovery of money which had been in fact illegally extorted from him by the Municipal Board of Benares. In the suit he does not seek to

(1) [1936] A.L.J. 33.

question any "assessment" within the meaning of the provisions of the Municipalities Act. He seeks to recover money which by an illegal device the Municipal Board of Benares forced him to pay without having "assessed" his property at all. We hold therefore that the suit is not barred by the provisions of section 164 of the Municipalities Act or of section 9 of the Civil Procedure Code.

The plaintiff has been awarded Rs.200 in name of damages. Learned counsel for the appellants contended that inasmuch as the attachment was not only in respect of water tax but also in respect of house tax the liability in respect of which he has not denied the plaintiff was not entitled to damages. There is no force in this argument. The attachment was in respect of the total amount claimed by the Municipal Board, including Rs.151-3-6. The Board were not entitled to recover this sum. Therefore the Board in attaching the property in respect of it did the plaintiff a wrong and the plaintiff in law is entitled to damages. We see no reason to interfere with the decree for damages which has been passed.

We are satisfied upon the whole matter that there is no force in this appeal. The appeal is accordingly dismissed with costs.

Under the provisions of the Civil Procedure Code it is not open to us to award special costs against the appellants. If it had been open to us we certainly would have awarded special costs. We desire to take this opportunity of stating that the conduct of the Municipal Board in reference to the plaintiff's claim has been in our opinion characterised by a disgraceful lack of sense of responsibility. It is a matter of admission that in fact the plaintiff was not liable to pay water tax. The municipality supplied him with no water and his house is not within a radius of 600 feet of the nearest standpipe. If the Municipal Board had acted honestly

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and consistently with their position and responsibility as an authority representing the public interest they would immediately have returned the amount of Rs.151-3-6 which they wrongfully extorted from the plaintiff when his property was freed from attachment. Even if the defence preferred by the Board were technically sound from a legal standpoint it is not one on which any responsible public authority should have insisted. The conduct of the Board in the matter in our view has been highly discreditable.

Before Mr. Justice Bennet and Mr. Justice Verma

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December, 14

BANSRAJ PANDEY (PLAINTIFF) *v.* RAM LAL PANDEY AND ANOTHER (DEFENDANTS)*

Civil Procedure Code, order XXI, rule 58—*Attachment in execution—Private sale before attachment but after order for attachment—Time from which order for attachment takes effect—Civil Procedure Code, order XXI, rule* 54(3)—*Objection by the purchaser to the attachment—Purchase alleged to be in good faith—Whether section* 47 *or order XXI, rule* 58 *applies to the objection—Whether appeal lies, or a regular suit, against decision of objection.*

In execution of a simple money decree an order for attachment of certain property belonging to the judgment-debtor was passed on the 20th of June, 1931. The property was attached on the 22nd of June, but, a few hours before the attachment was made, a sale deed of the property was executed by the judgment-debtor in favour of a certain person. The purchaser filed an objection under order XXI, rule 58 of the Civil Procedure Code, claiming that he was a purchaser in good faith for value and had become the owner of the property at the time when it was attached. The decree-holder contested the claim and alleged that the purchase was not in good faith but was collusive. The execution court decided in favour of the purchaser, allowed his objection and ordered the property to be released. The decree-holder filed a suit under order XXI, rule 63, for a declaration that the property was liable to attachment and sale in execution of his decree. In this suit it was

*Second Appeal No. 1756 of 1935, from a decree of Niyaz Ahmad, Second Additional Civil Judge of Gorakhpur, dated the 7th of March, 1935, reversing a decree of Kailash Prasad Mathur, City Munsif of Gorakhpur, dated the 8th of May, 1933.