

1898.

YAMAJI
v.
ANTAJI.

The only time allowed by law to be excluded is that from the 14th to the 24th January. The non-signing of the decree is no cause for, and no explanation of, the delay between the 18th December and the 14th January and between the 24th January and the 21th February. We dismiss the appeal with costs.

Appeal dismissed.

CRIMINAL REFERENCE.

Before Mr. Justice Parsons and Mr. Justice Ranade.

1898.

September 5.

THE MUNICIPALITY OF WA'I v. KRISHINAJI GANGADHAR.*

Municipality—House tax—House valuation—Valuation made by Municipality—Magistrate's power to revise the valuation—Bombay District Municipal Act (Bom. Act VI of 1873), Sec. 81, as amended by Bombay Act II of 1884.

Under the rules passed under the Bombay District Municipal Act (Bom. Act VI of 1873) as amended by Bombay Act II of 1884 the Municipality of Wai estimated the annual letting value of a house belonging to the accused at Rs. 50 and levied a house tax of Rs. 2-8. A, a tax-payer, applied to the managing committee for a reduction of the tax, but his application was dismissed. Default having been made in payment of the tax, A was prosecuted under section 84 of the Act before a Second Class Magistrate. He contended that the estimate made by the Municipality was too high, and that his house would not let for more than 10 or 12 Rs. a year. The Magistrate took evidence on the point and found that the annual rental of the house would not exceed Rs. 12, and he ordered payment of 12 annas only on account of the tax.

Held, that the Magistrate had no power to go behind the estimate of value framed by the managing committee under the powers given to it by the rules. He ought to have accepted as conclusive the amount found by the managing committee to be the letting value of the house, and held the legal liability of the accused to pay the tax based on this amount to be proved.

The remedy of the accused, if he considered his house assessed too highly, was to apply to the managing committee, and no other mode of redress was open to him.

Municipality of Ahmedabad v. Jumna Punja⁽¹⁾ and *Imperatrix v. Nathu Hirachand*⁽²⁾ distinguished.

REFERENCE under section 438 of the Code of Criminal Procedure (Act X of 1882) by C. G. Dodgson, District Magistrate of Sātāra.

*Criminal Reference, No. 67 of 1898.

⁽¹⁾ (1891) 17 Bom., 731.

⁽²⁾ Cr. Rul. No. 35 of 1891.

1898.

MUNICIPALITY OF
WAI
v.
KRISHNAJI
GANGADHAR.

The Municipality of Wai applied to a Second Class Magistrate, under section 84 of the Bombay District Municipal Act (Bom. Act VI of 1873) as amended by Bombay Act II of 1884, to recover Rs. 2-8, being the amount of a house tax imposed on a house belonging to the accused Krishnaji Gangadhar Raste.

Krishnaji contended that the assessment fixed by the Municipality was too high, that the annual rental of his house on which the assessment was fixed was Rs. 10 or 12 and not Rs. 50 as estimated by the Municipality, and that he was not liable to pay the amount claimed by the Municipality.

The Magistrate took evidence upon the point and found that the annual rental of the house did not exceed Rs. 12. He, therefore, ordered Krishnaji to pay 12 annas only on account of the tax, instead of Rs. 2-8 as claimed.

The District Magistrate was of opinion that the trying Magistrate had no power to revise the assessment fixed by the Municipality and reduce the tax from Rs. 2-8 to 12 annas. He, therefore, referred the case to the High Court.

The reference was as follows:—

“The Magistrate has declined in this case to order the levy of the house tax on the ground that the tax has not been properly assessed. The municipal bye-law requires the house tax to be fixed on the rental value of the house. The Magistrate considers that the basis of the assessment has in reality been the value of the house itself, and he has, therefore, decided that the tax is not recoverable.

“In my opinion, the Second Class Magistrate is wrong. He has set himself up as an appellate Court for hearing decisions against the house tax assessments of the municipal committee. As I understand the law, the right procedure is for the tax to be assessed by the managing committee of the Municipality on behalf of the general committee, the right of appeal lying to the general committee. In case a taxpayer is dissatisfied with the decision of assessment imposed by the general committee he should either apply to the Collector to take action under section 37 or 39 or to Government under section 41 of Bombay Act II of 1884. A Magistrate proceeding under section 84 of Bombay Act VI of 1873 should, in my opinion, only consider whether the order contravened is a legal one or not. He is not concerned with the administrative reasoning or argument which may have led the municipal committee to pass the order in question.

“The rules of the Wai Municipality regarding the levy of house tax were sanctioned by Government in Government Resolution No. 1876, dated 21st May 1894.”

1898.

MUNICIPALITY OF
WAI
v.
KRISHNAJI
GANGADHAR.

The reference came on for hearing before a Division Bench (Parsons and Ranade, JJ.).

S. R. Bakhle for the Municipality.

M. V. Bhat for the accused.

PARSONS, J.:—By the rules framed under the Bombay District Municipal Acts, the Municipality is empowered to levy house tax on a certain scale according to the annual letting value of the house. The “letting value” is defined to mean the annual rent for which the house might be reasonably expected to let from year to year if the tenants were liable for all repairs; and Rule 3 provides that an estimate of the annual letting value of each house shall be made by the managing committee and published not later than the 15th March in each year (the tax being payable on the 31st May) and that applications for the reduction of the estimates by persons made liable may be presented to, and shall be disposed of by, the managing committee. It is proved that the estimate made by the managing committee of the annual letting value of the house of the accused was Rs. 50; and his application for a reduction was dismissed by the managing committee. When prosecuted for the amount of the tax he contended before the Magistrate that the estimate was too high and that the house would not let for more than Rs. 10 or 12 a year. The Magistrate took evidence on this point and found that the annual rental would be Rs. 12 only, and he ordered payment of 12 annas on account of tax instead of the Rs. 2½ claimed. In our opinion, the Magistrate had no power to go behind the estimate of value framed by the managing committee under powers given to it by the rules. The remedy of the accused, if he considered his house assessed too highly, was to apply to the managing committee, and no other mode of redress seems open to him under the rules. In the case of the *Municipality of Ahmedabad v. Jumna Punja* ⁽¹⁾, where the legal liability depended upon the possession of a *khálkundi* and a tub, and there was no provision for the determination of this point by the Municipality, we held that the Magistrate should himself determine the point. This is doubtless good law. In criminal references Nos. 119 and 120 of

(1) (1891) 17 Bom., 731.

1891 ⁽¹⁾ the legality of the assessment depended upon the amount of the earnings of the family and its possessing *khálkuwas* or *kháلكundis*. In our judgments we say "Neither in the Municipal Acts nor in the rules framed thereunder was there any machinery provided by which the amount of the earnings of the family or the question of its possession of *khálkuwas* or *kháلكundis* could be determined by the municipal authorities. Nor is there any mode provided by which a person assessed to pay the cess in question at a certain rate can contest that assessment before a municipal or other civil authority." It was obvious, therefore, that the Magistrate had to determine the point before he could hold legal liability proved. In the present case also the question of legal liability for a certain amount of tax has to be determined by the Magistrate and he has to determine it upon the value of the premises of the accused. The determination, however, of this value is not placed in his hands. The rules provide for this value being estimated by the managing committee, and a mode of redress against over-valuation is provided by application to the managing committee. In such a case the Magistrate ought to have accepted as conclusive the amount found by the managing committee to be the letting value of the house and held the legal liability of the accused to pay the tax based on this amount to be proved. He had no power to review the decision of the managing committee, and reverse it on fresh evidence taken before himself.

We must, therefore, in this and the two other similar cases direct the Magistrate to order the recovery of the full amount claimed by the Municipality in each case.

(3) Cr. Rul. No. 35 of 1891.

1898.

MUNICIPALITY OF
WAI
v.
KRISHNAJI
GANGADHAR,