

## CIVIL REVISION.

*Before Mr. Justice Madgavkar and Mr. Justice Wild.*

1929  
November 7.

AHMED SULEMAN DINANATH, APPLICANT *v.* THE MUNICIPAL COMMISSIONER FOR THE CITY OF BOMBAY, OPPONENT.\*

*City of Bombay Municipal Act (Bom. Act III of 1888) section 219—Civil Procedure Code (Act V of 1908), section 115—Taxation—Decision of the Chief Judge of the Small Causes Court at Bombay—Revision—High Court.*

The Chief Judge of the Small Causes Court, Bombay, acting under section 219 of the City of Bombay Municipal Act, 1888, is not a Court but a *persona designata* and the High Court has, therefore, no jurisdiction under section 115 of the Civil Procedure Code, 1908, to interfere with his decision.

*Navalkar v. Sarojini Naidu*<sup>(1)</sup>; *Bhaishankar v. The Municipal Corporation of Bombay*,<sup>(2)</sup> and *Balaji Sukharam v. Merwanji Nowroji*,<sup>(3)</sup> relied on.

CIVIL Revision Application for setting aside the order passed by K. M. Javeri, Chief Judge of the Court of Small Causes at Bombay.

The petitioner was the owner of the stables for buffaloes situate at Haines Road, Bombay. The petitioner realized Rs. 4 per month for each stall for stabling buffaloes. The Municipality assessed the petitioner at Rs. 7 per month for each stall for the year 1928-29 though the actual rent was Rs. 4 per month.

The petitioner, therefore, preferred an appeal to the Chief Judge of the Bombay Small Causes Court against the said assessment under section 217 of the City of Bombay Municipal Act, 1888.

The Chief Judge confirmed the assessment at Rs. 7 per month and dismissed the appeal.

The petitioner applied to the High Court.

*O'Gorman*, with Messrs. *Chitnis, Kanga and Mazagaonwalla*, for the applicant.

*Sir Jamshed Kanga*, Advocate General, with Messrs. *Crawford Bayley & Co.*, for the opponent.

\*Civil Revision, Application No. 351 of 1928 (with Civil Revision Application No. 420 of 1928).

<sup>(1)</sup> (1928) 25 Bom. L. R. 463.

<sup>(2)</sup> (1907) 31 Bom. 604 at p. 609.

<sup>(3)</sup> (1895) 21 Bom. 279.

MADGAVKAR, J. :—This is an application in revision by the petitioner Ahmed Suleman Dinanath against the order of the Chief Judge of the Small Causes Court, Bombay, under section 219 of the City of Bombay Municipal Act III of 1888 maintaining the assessment on certain buffalo stables by the Municipal assessor and disallowing Re. 1 per stable which the petitioner claimed in addition as expenditure for cleaning each stable.

A preliminary objection as to jurisdiction is raised by the learned Advocate General for the respondent, the Municipal Commissioner for the City of Bombay, on the ground that the Chief Judge is not a Court but a *persona designata* and his order under section 219, clause (3) is final. It is contended for the petitioner that whatever the case in regard to orders in election petitions under section 33, clause (3), where the Chief Judge's order is conclusive, orders under section 219 are not so; and the question is in relation to a municipal tax, that is, a debt due from the subject and the presumption should be in favour of the subject in the Civil Courts; and the word "conclusive" does not debar such remedy under section 115 of the Code of Civil Procedure.

Even in England with the remedy of the subject by way of petition of right or mandamus, much less in India, can it be assumed that the subject has a remedy in the Courts in every case of alleged excessive taxation. To take the most important heads, for instance, such as agricultural assessment or income-tax, in the former case, the remedy is absolutely barred by enactments such as the Revenue Jurisdiction Act, and in the latter case except on a reference by the Commissioner equally so. Under section 219 the Chief Judge does not function as a Court any more than he does under section 33. On the contrary the express enactment of section 2 in Act XII of 1888 enabling the Chief Judge to refer

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questions of law or usage or construction independently of such power of reference under the Small Causes Court Act, appears to show that under section 219 as in section 33 he is a *persona designata* and not a Court. And, if so, on the *ratio decidendi* of the decisions of this Court such as *Balaji Sakharam v. Merwanji Nowroji*,<sup>(1)</sup> *Bhaishankar v. The Municipal Corporation of Bombay*,<sup>(2)</sup> *Navalkar v. Sarojini Naidu*,<sup>(3)</sup> it appears to us that this Court has no jurisdiction to entertain the present application. A similar view has been taken in regard to the powers of this Court in respect of the action of a Collector under section 18 of the Land Acquisition Act in *Balkrishna Daji v. The Collector, Bombay Suburban*,<sup>(4)</sup> and of a District Registrar in Madras in *Manavala Goundan v. Kumarappa Reddy*.<sup>(5)</sup>

The main question, namely, the amount of assessment and of the reasonable rent, is essentially a question of fact. The single error pointed out is a reference by the learned Chief Judge to the evidence of Mr. Blair in the previous case. The error is obviously at the most one of procedure and not affecting jurisdiction.

For these reasons we allow the preliminary objection that this application does not lie. We dismiss both the applications with costs.

*Rule discharged.*

J. G. R.

<sup>(1)</sup> (1895) 21 Bom. 279.

<sup>(2)</sup> (1923) 25 Bom. L. R. 463.

<sup>(3)</sup> (1907) 31 Bom. 604 at p. 609.

<sup>(4)</sup> (1923) 47 Bom. 699.

<sup>(5)</sup> (1907) 30 Mad. 326.

## APPELLATE CIVIL.

*Before Sir Amberson Marten, Kt., Chief Justice, and Mr. Justice Palkar.*

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November 20.

GOVIND NARAYAN KAKADE (ORIGINAL OPPONENT No. 5), APPELLANT v. BANGNATH GOPAL RAJOPADHYE, LIQUIDATOR OF THE SHOLAPUR BANK, LIMITED (IN LIQUIDATION), (ORIGINAL APPLICANT), RESPONDENT.\*

*Indian Companies Act (VII of 1918), sections 235 and 281—Application by liquidator against directors and agents of a bank—Director—His duties and liability for breach of trust, negligence and misfeasance—Wilful act, neglect or*

\*First Appeal No. 61 of 1926 from the decision of D. D. Nanavati, District Judge of Sholapur, in Miscellaneous Application No. 87 of 1920.