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as a whole and that undue weight should not be given to metaphorical expressions, has come to the opinion that the speech does transgress the limits laid down by the law, and his opinion is entitled to and must receive the greatest deference and respect. I do not think, therefore, that I should formally differ on this narrow question so as to have the case sent before a third Judge and be argued over again for another couple of days specially in view of the fact that we propose to reduce the sentence to one of fine only in the present case. I, therefore, agree in the order proposed.

*Conviction altered and
sentence reduced.*

B. G. R.

APPELLATE CIVIL.

Before Mr. Justice Murphy and Mr. Justice Nanavati.

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October 5

PRITHVIRAJ CHOTHMAL MARWADI AND ANOTHER (ORIGINAL PLAINTIFFS NOS. 1 AND 4), APPELLANTS v. THE LONAVLA CITY MUNICIPALITY THROUGH ITS CHIEF OFFICER AND ANOTHER (ORIGINAL DEFENDANTS NOS. 1 AND 2), RESPONDENTS.*

Bombay City Municipalities Act (XVIII of 1925), sections 46, 58 (b), 81—Objection to assessment—Delegation of powers of Standing Committee—Rule authorizing President to hear objections to revised assessment ultra vires.

A Municipality is not competent under a rule purporting to have been made under section 58 (b) read with section 46 of the Bombay City Municipalities Act to delegate the functions of the Standing Committee to its President.

The President has therefore no right to hear objections to the revised assessment under section 81 (2) of the Bombay City Municipalities Act when no Standing Committee is appointed by the Municipality under the Act.

SECOND APPEAL No. 363 of 1930 against the decision of N. J. Wadia, District Judge of Poona, in Appeal No. 286 of 1929.

Suit for a permanent injunction.

The Lonavla Municipality is a major Municipality governed by the Bombay City Municipalities Act XVIII of 1925. On

*Second Appeal No. 363 of 1930.

February 20, 1928, the Chief Officer of the Municipality prepared a revised assessment list and published it. By this list the previous assessments were enhanced. At the time when the list was published no Standing Committee had been appointed by the Municipality because the rules for the appointment of a Standing Committee under section 58 (a) of the Act had not then been sanctioned. The Municipality authorised its President to hear objections to the revised assessment under a rule which purports to have been made under section 58 (b) read with section 46 of the Act. This rule was sanctioned by Government on January 17, 1928. Acting under this delegation the President disposed of the objections to the revised assessment of 170 persons including the plaintiffs between March and July 1928. Thereupon on July 2, 1928, a notice was given by the plaintiffs to the Municipality protesting against the action of the Municipality and its President as illegal and asking them not to recover the revised assessment from the plaintiffs and others and informing them that if they recovered the revised assessment, steps would be taken against them in the Civil Court. To this the President replied on the July 11, 1928, that every thing had been legally and properly done. The plaintiffs thereupon filed the present suit against the Municipality and its President for a permanent injunction restraining the Municipality from collecting taxes on the basis of the new list. The original suit No. 762 of 1928 was decided by the Subordinate Judge at Vadgaon who dismissed it with costs; the decree of the trial Court was confirmed in appeal by the District Judge of Poona.

Plaintiffs appealed to the High Court.

P. V. Kane, for the appellants.

E. B. Ghaswala, with *G. S. Mulgaonkar*, for respondent No. 1.

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NANAVATI J. This is a second appeal arising out of a suit in the Court of the Second Class Subordinate Judge at Vadgaon filed by five plaintiffs of whom the present appellants are Nos. 1 and 4. The suit was filed against the Lonavla City Municipality as defendant No. 1, and the President of the City Municipality as defendant No. 2. The relief asked for was a permanent injunction against the City Municipality not to collect the taxes on the basis of the new list, on the ground that their objections had not been heard and disposed of by a Standing Committee as required under section 81, and that defendant No. 2 disposed of those objections without any authority. The procedure, therefore, was alleged to be illegal, and not such as could authorise the recovery of the taxes.

Various issues were raised as to the maintainability of the suit, five of which were disposed of as preliminary issues, which I will refer to later.

The main issues, which were Nos. 7 and 8, viz., "Whether the President was legally empowered by Government Resolution to revise the proposed list," and "Whether the plaintiffs proved that the Resolution empowering the President to revise the list was *ultra vires* of Government if the point is open to the plaintiffs in this case," were decided by the trial Court in favour of the defendants and the suit was dismissed.

On appeal the District Judge of Poona differed from the learned trial Judge on some of the preliminary points, his view being in favour of the Municipality, and on the main issue he agreed with the trial Court holding that the delegation in question was *intra vires*, and he accordingly dismissed the appeal.

[His Lordship then dealt with the preliminary points and continued :—]

The only substantial point that now remains to be considered is the question whether the procedure followed by the Municipality in providing for the disposal of the objections to the revised assessments by the President, was valid. On this point the judgment of the learned District Judge sets out the relevant sections of Act XVIII of 1925, with which we are concerned, and I therefore need not set them out again in full. Section 81(2) provides for the objections to the valuation and assessment of any property to be made to the Standing Committee within a certain time after the publication of the assessment list, and for the disposal of the same by that Committee. It is stated in a proviso—

“ that powers and duties of the standing committee under this sub-section may be transferred to any other committee appointed by the municipality or with the permission of the Commissioner, to any officer or pensioner of Government.

Admittedly, the President does not come within the terms of this proviso.

Section 37 provides for the constitution of the Standing Committee, and sub-section (2) thereof provides—

“ The standing committee shall exercise the functions allotted to it under this Act and subject to any limitations prescribed by the municipality especially in this behalf or generally by rules made under clause (a) of section 58, and to the provisions of sections 34 and 38, shall exercise all the powers of the municipality.”

These provisions are mandatory, and it does not appear that the Act contemplates the exercise of the functions of the Standing Committee by any other body, or their delegation to any one else otherwise than as mentioned in the proviso under section 81, already referred to.

It is admitted that the Lonavla Municipality had not appointed any Standing Committee for some years after it came into existence under the Act of 1925 on June 8, 1926. When they felt the difficulty of revising the assessments, after some correspondence with the Government they passed a rule which was subsequently sanctioned by

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Government Resolution, General Department, No. 7113 of January 17, 1928. This purports to have been made under section 58 (b) read with section 46 of the Bombay City Municipalities Act, 1925, and runs as follows :—

“ All powers or duties or executive functions to be exercised or performed on behalf of the Municipality except those which are reserved to the Municipality itself, by the provisions of the Bombay City Municipalities Act, 1925 (Bombay Act XVIII of 1925), or which are conferred thereunder on the Chief Officer, are delegated to the President until rules under section 58 (a) of the Act are sanctioned.”

Purporting to act under this delegation the President appears to have disposed of the objections of all the 170 odd persons including the two appellants sometime between March and July 1928. Thereupon, in July a notice was given by the plaintiffs protesting that this was illegal, to which they received a reply from the President contending that everything had been legally and properly done.

The learned District Judge argued on this point as follows :—

“ But it could scarcely have been the intention of the Legislature that the Municipality should not be able to function till the Standing Committee had been appointed. As such a committee could not be appointed till rules regulating its appointment and constitution had been framed, and as this process must necessarily take some time since the new Act has recently come into operation, it must, I think, be presumed that the Legislature intended that in the commencement other agencies than the Standing Committee would be able to carry on the administration of the Municipality.”

I do not agree with this view. In the earlier sections of the Act provision is made for the continuance of rules and by-laws made under the former Act so far as they were not inconsistent with the new Act, section 5. The Municipalities concerned must have been aware that the new Act was likely to be enacted, under which they would have to function and they probably had ample notice to make preparations for bringing the necessary machinery into existence, before the Act was actually applied to them. In any case, I think, it cannot be assumed that the Legislature intended to leave all powers to be exercised as it suited the

Municipality for some indefinite period after the Act came into force. If the Legislature thought it necessary to make any provisions for the transition period, it would have made some arrangement and introduced provisions of a transitory character as is done in various Acts. The learned District Judge further considered that as no Standing Committee had been constituted, its powers and duties must be considered as remaining with the Municipality itself. This also does not appear to be a valid argument. If it were to be accepted, it would follow that it would be open to any Municipality to neglect the provisions of the Act to constitute the various statutory bodies required under it. The learned District Judge admits that if a Standing Committee had been constituted its powers clearly could not be delegated to the President. It would seem to stand on even stronger ground that if the Standing Committee has not been constituted at all the Municipality could not delegate its powers as such delegation is clearly inconsistent with the provisions of the Act. As I have already pointed out, those powers are defined by statute, and the statute is mandatory in its terms.

Section 58 of the Act, which has been invoked to justify the delegation in the present case, does not seem to confer the requisite powers. Under that section the Municipality can make rules not inconsistent with the Act for regulating the conduct of its business and the delegation of any of its powers or duties, etc. But, as I have already pointed out, the delegation to the President of the powers reserved to the Standing Committee under section 81 could not be consistent with the Act. Sub-clause (b) of that section refers to the making of rules not inconsistent with the Act determining the executive functions to be performed by the President, etc. The term "executive functions" is nowhere defined, but I doubt very much whether it could be extended to include a function of this character, in which a Committee is empowered to consider objections and dispose of them on

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general principles. Such a duty has the character more of a judicial than of an executive function.

As regards section 46, which has also been referred to, it is clear that the latter part of that section prevents any delegation of the powers conferred on the Standing Committee under section 37. A delegation to the President of the powers of the Standing Committee under section 81 would clearly be to the prejudice of the powers and functions of the Standing Committee.

I, therefore, think that the resolution passed by the Municipality making a rule delegating the powers of the Standing Committee to the President was *ultra vires*, and did not authorise the President to dispose of the objections to the assessments as he has done. That being so, I am of opinion that the two appellants are entitled to an injunction against defendant No. 1, the Lonavla Municipality, preventing the said defendant from collecting the taxes on the basis of the new list from the said appellants until and so long as their objections to the assessments have not been heard and disposed of in accordance with section 81.

MURPHY J. The point is a very short one. The Bombay City Municipalities Act came into force at Lonavla on June 8, 1926. One of its provisions is, that with the sanction of Government the Municipality should frame rules for the constitution and powers, and set up a Standing Committee. Another proviso is, that appeals against the general assessment list shall be disposed of by the Standing Committee. By March 1928 no rules for the constitution and functions of a Standing Committee had been framed, but a new assessment list had been prepared and objections made to the assessments it contained had been received. The question, therefore, was what person or body should hear the objections. The Municipality framed a rule empowering the President to hear them, and he did so.

The suit brought by appellants Nos. 1 and 2, wrongly in the form of a representative suit, challenged the legality of the President's proceedings. I think it is clear they were illegal. There is admittedly no specific provision justifying the procedure adopted. The learned District Judge's view was that, had there been a Standing Committee, the powers could clearly not have been delegated to the President, since in such a case the alternatives indicated are, another committee, or a Government officer or pensioner; but that since there was none, the delegation of powers can be made by the Municipality, under section 46, to the President, notwithstanding the last paragraph of the section, which states that it must be without prejudice to the powers conferred by sections 37 and 38 on any Committee, the powers of these sections being concerned with the Standing Committee, because this provision only comes into force when there is a Standing Committee. But this is not a fair reading of section 46, which I think does what it purports to—empower delegation to the extent only of powers not reserved under sections 37 and 38—"for committees". In fact, as already pointed out by my learned brother, there were alternatives, in section 5 read with section 37, and even in section 81 itself, sub-section (3).

I agree that the lower Court's decree must be set aside and one given to the appellants in the terms proposed by my learned brother.

We allow costs to the appellants throughout on a valuation of Rs. 205 for all purposes. If the appellants want to recover any excess they may have paid, they must make an application to that effect to the Court concerned.

Decree reversed.

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