

We dismiss the appeal of the plaintiff with costs, and modify the decree of the Court below to this extent that we decree costs to each of the two defendants in this case.

1876

LALLAH
RAMESSHUR
DOYAL SINGH
v.

Appeal dismissed.

LALLAH
BISSEN DOYAL.

Before Sir Richard Garth, Kt., Chief Justice, and Mr. Justice Mitter.

MANESSUR DASS AND ANOTHER (PLAINTIFFS) v. THE COLLECTOR AND MUNICIPAL COMMISSIONERS OF CHAPRA (DEFENDANTS).*

1876

June 28.

Beng. Act III of 1864, s. 33—Municipal Commissioners—Appeal against Assessment—Jurisdiction of Civil Court.

A suit to set aside an order made on an appeal under s. 33 of Bengal Act III of 1864 to the Municipal Commissioners against a rate assessment, and to reduce the tax levied by them under that Act, on the ground that they have tried the appeal in an improper way, and have exceeded their powers and acted contrary to the provisions of the Act, cannot be maintained in the Civil Courts. The decision of the Commissioners in such an appeal is absolutely final.

THIS suit was brought to reduce the chowkidari tax levied under Beng. Act III of 1864 on certain houses belonging to the plaintiffs, situated in Mohulla Doulutgunj, No. 27, in Perguna Manghi, which had been, in 1871, assessed at Rs. 144 a year, and had so continued until 1873, in which year the tax was raised to Rs. 216. The value of the houses had not, in the interval, increased, nor had any change of form been made. The plaintiffs preferred an appeal to the Municipal Commissioners against the enhancement, which was rejected by them on the 7th of July 1873, whereupon the plaintiffs brought this suit for the reduction of the tax, praying that necessary enquiries should be instituted, the state and value of the houses enquired into, and a decree passed in their favor by setting aside the orders of the Municipal Commissioners.

The contention of the defendant was, that the Civil Courts had not the power to set aside the orders of the Municipal

* Special Appeal, No. 360 of 1865, against a decree of the Judge of Zilla Sarun, dated the 6th January 1875, reversing the decree of the Munsif of Chapra, dated the 5th January 1874.

1876
 MANESSUR
 DASS
 v.
 THE
 COLLECTOR
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 MUNICIPAL
 COMMISSIONERS OF
 CHAPRA.

Commissioners regarding assessment of taxes under Beng. Act III of 1864; that the adjudication by the Municipal Commissioners upon the appeal made to them by the plaintiff was final; that the Municipal Commissioners being legally competent to modify or raise taxes, the action on their part in raising the tax on the plaintiffs' houses after consideration of the state and value of the houses and the means of the owners was right and legal.

The Munsif decided that ss. 25 and 26, Beng. Act III of 1864, furnishing a rule that assessments were to be made upon an estimated amount of annual rent at the rate of 7-8 per cent. per annum, and no other rule being given, the Municipal Commissioners, in having taken into consideration the means of the owners of the houses in fixing the rate, had acted contrary to and beyond the powers vested in them by that Act; and on the authority of *Brindabun Chunder Roy v. The Municipal Commissioners of Serampore* (1) held, that the Court had jurisdiction to entertain this suit, and ordered a reduction of Rs. 72 which had been imposed in the year 1873 and made without it being shown that any improvement or change of form in the houses had taken place or any special cause for enhancement existed. The Judge, on appeal, held, that, under s. 33, Beng. Act III of 1864, the Civil Court had not the power to entertain the suit, and reversed the decree of the Munsif.

From this decision of the Judge the plaintiffs appealed to the High Court.

Mr. *G. Gregory* for the appellants.

Mr. *Ingram* (with him *The Senior Government Pleader Baboo Unoda Persud Banerjee*) for the respondents.

The judgment of the Court was delivered, without calling on the respondents, by

GARTH, C.J.—We think there is no ground for this appeal, and speaking for myself I should be very sorry to think that there existed any doubt whatever about this question.

By the 26th section of Beng. Act III of 1864, the Municipal

Commissioners are empowered to impose certain rates on houses, buildings and lands, which rates are to be paid by the owners, and by the 27th section those rates are to be assessed according to what may be considered the fair annual value of the property.

When the valuation is completed, lists are to be made, showing the rates at which each property is assessed; and when the assessment is made for the first time or increased, a special notice is to be given to the owner and occupier, of the amount at which the property is assessed, and an appeal is then given against the assessment, which, by the terms of s. 33, is to be heard before not less than three of the Municipal Commissioners. If an appeal is not made against the assessment, the assessment itself is final. If an appeal is made against the assessment, the adjudication of the Commissioners upon that appeal is also final, and in order more effectually to secure the finality of the adjudication, there is a special provision in the same section, that no person shall contest any assessment in any other manner than by appeal as hereinbefore provided.

Now, in this case, the plaintiff is attempting, by means of a civil suit, to re-open the question of the assessment of his house, which has been heard on appeal, and decided by the Municipal Commissioners. It is said that the Commissioners have tried the appeal in an improper way, and that they have exceeded their powers and acted contrary to the provisions of the Act. But even supposing that they had, the Civil Court has no right to interfere. Some actions may, no doubt, be brought against the Commissioners for a great variety of acts which they may do under color of their statutory powers and under a mistaken view of their duties, but not an action of this kind. Their decision upon an appeal against a rate assessment is absolutely final. The appeal is dismissed with costs.

Appeal dismissed.

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