CIVIL RULE.

Before Mr. Justice Stephen and Mr. Justice Mookerjee.

CHAIRMAN OF GIRIDIH MUNICIPALITY

v.

SRISH CHANDRA MOZUMDAR.*

1908
April 7.

Bengal Municipal Act (Bengal Act III of 1884), ss. 85 cl. (a), 87 cl. (d), 113, 114 and 116—Jurisdiction of the Civil Court to question assessment—"Circumstances and property within the Municipality," meaning of.

Section 116 of the Bengal Municipal Act (III of 1884) does not take away the jurisdiction of Civil Courts in a case in which it is alleged and established that the assessment, the propriety of which is in controversy, is open to objection on the ground that it is *ultra vires*.

Navadip Chandra Pal v. *Purnananda Saha* (1), and *Kameshwar Pershad* v. *The Chairman of the Bhabua Municipality* (2) referred to.

A rate-payer, who occupied a holding within the Municipal limits, was assessed with an annual tax with reference to the salary earned by him within the Municipality.

He took exception to the assessment under s. 113 of the Bengal Municipal Act (III of 1884), but his application was rejected by the Municipal authorities without recourse to the procedure laid down in s. 114 of the Act and he declined to pay the sum assessed. The Municipality brought a suit against him for recovery of arrears of tax.

Upon an objection taken by the defendant that the assessment was *ultra vires*, and that it was not made according to his "circumstances and property within the Municipality":—

Held, that the assessment was rightly made, and that "the circumstances and property" meant the whole amount he earned, and not what he spent, within the Municipality.

RULE granted to the petitioner, the Chairman of the Giridih Municipality, under section 25 of the Provincial Small Cause Courts Act.

The defendant, Srish Chandra Mozumdar, was a Land Acquisition Deputy Collector at Giridih, and was drawing a pay of Rs. 300 a month. Two holdings were in his possession; one was wholly used as his office, and the other as his residence, and

* Civil Rule, No. 3053 of 1907, against the decision of Bipin Chunder Roy, Munsif of Giridih, exercising the powers of a Small Cause Court Judge, dated Aug. 7, 1907.

(1) (1898) 3 C. W. N. 73. (2) (1900) I. L. R. 27 Calc. 849.

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as a rate-payer he was under section 85, clause (*a*) of the Bengal Municipal Act, assessed with an annual tax of Rs. 36 payable in four equal instalments. This assessment was made on the basis of the defendant's salary. The defendant took exception to the assessment under section 113 of the Act; but his application was dismissed by the Municipal authorities without recourse to the procedure laid down in section 114 of the Act. He declined, however, to pay the sum assessed, and the Municipality brought a suit for recovery of arrears of taxes due in respect of the first two quarters of the year 1905-06.

Defendant objected *inter alia*, that the assessment was *ultra vires*, that the Municipality had no jurisdiction to assess the tax with respect to the salary earned by him, and that the proper basis of assessment was the sums spent by him within the Municipality.

The learned Munsif, exercising the powers of a Small Cause Court Judge, gave effect to the pleas raised by the defendant, and gave to the plaintiff a partial decree.

Against this order the plaintiff, the Chairman of the Giridih Municipality, moved the High Court, and obtained this rule.

Babu Hara Prasad Chatterjee, for the petitioner.

Babu Baikanta Nath Dass, for the opposite party.

Cur. adv. vult.

STEPHEN J. This is a curious and important case turning on the proper construction of section 85 of the Bengal Municipal Act. The case was tried by the Small Cause Court Judge of Giridih. The plaintiff was the Chairman of the Giridih Municipality, the defendant a Deputy Magistrate engaged on Land Acquisition work and having his head quarters and living at Giridih. His salary was Rs. 300 a month, of which he spent 150 on the maintenance of his family and like expenses, including the payment of premiums on a life policy, outside the boundaries of the Municipality. He occupied one house as an office and another chiefly as a residence. An assessment was

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made on the owner of the houses leased on their rental. This was withdrawn on objection being made. But the defendant was assessed on his full income of Rs. 300 a month at 1 per cent., or Rs. 9 a quarter. His contention was that the assessment on him personally ought to be on Rs. 150 only, the amount which he may be taken to have spent in the Municipality. The Judge agreed with this view and gave judgment accordingly. A rule has been granted to show cause, why the decree should not be set aside and the plaintiff's claim allowed in full.

It has been suggested before us on behalf of the petitioner that the present question is merely the amount of assessment that has been made, and that under section 116 this is not a matter that can be dealt with by a Civil Court. It is hardly necessary to discuss the contention in view of the decisions in *Navadip Chandra Pal* v. *Purnananda Saha* (1), and *Kameshwar Pershad* v. *The Chairman of the Bhabua Municipality* (2), where it is laid down that a remedy may be sought in a Civil Court against an action of a Municipality that is *ultra vires*, and that the taxation of a man in respect of property and circumstances outside the jurisdiction of the Municipality is *ultra vires*. The principle is well recognised in English Law, c.f. *Nundo Lal Bose* v. *Corporation of Calcutta* (3), and a derogation from it by the legislature is not to be lightly inferred. I am, therefore, of opinion that the Munsif had jurisdiction to deal with this case in which the jurisdiction of the Corporation of Giridih to tax the plaintiff in respect of certain property was called in question, and therefore of course we can exercise our revisionary jurisdiction over his decision.

On the merits then what we have to decide is the meaning of section 85(*a*) of the Municipal Act. The section empowers the Commissioners to impose "(*a*) a tax upon persons occupying holdings within the Municipality according to their circumstances and property within the Municipality," and the question argued before us turns on the meaning to be attached to the words "circumstances and property." Is it the case that as far as the plaintiff's income is used as a test of his circumstances and

(1) (1898) 3 C. W. N. 73. (2) (1900) I. L. R. 27 Calc. 849.
(3) (1885) I. L. R. 11 Calc. 275.

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a measure of his property, only that part of his income is to be considered which he spends in the Municipality? Shortly, is he to be taxed on what he gets or on what he spends in the Municipality? The question seems to be one of first impression as no authorities have been quoted before us nor are we aware of any. The case of *Kameshwar Pershad* v. *The Chairman of the Bhabua Municipality* (1) was decided on this section; but the decision does not touch the present point. It has been suggested that section 87(*d*) may throw light on the subject, where it is enacted that a list is to be drawn up showing an assessed's holding, property and profession or business, and this may show that his holding and profession or business are his circumstances, but this brings us no nearer to the solution of the present question, as the question is how much of his circumstances connected with his business is within the Municipality.

On the words themselves his "property" seems to mean moveable and immoveable property in the widest sense and to include certainly any salary that he receives in the Municipality, without any deductions on account of his manner of spending it. Does the word "circumstances," coupled as it is with property, cut down this meaning or extend it? For it must do one or the other, otherwise the phrase would be a mere pleonasm. If the word "circumstances" is to be taken as limiting the scope of the word "property", we must attach to it the meaning that it has in such a phrase as "easy circumstances" meaning the whole of his position in life from an economical point of view. It then becomes necessary to consider all his expenses and liabilities and allowance must be made for debts and possibly for improvident habits. This may lead us a good deal beyond the bounds of the Municipality, and I find it impossible to suppose that it can have been intended that matters such as these should form a basis of taxation. On the other hand, it may very well be that "property" does not include all a man's wealth and that it is at nothing less than his total wealth that this section is aimed. Are voluntary offerings to a priest property? I should imagine not. But their regular receipt would surely be included in a man's circumstances, although they may not for that reason only

(1) (1900) I. L. R. 27 Calc. 849.

be a proper subject for a tax. Other states of fact may easily be supposed, where a man's resources extend beyond his property and the word circumstances is apt for describing them. Taking the word in this sense it offers in conjunction with "property" a fairly definite basis for taxation. It has been argued that it cannot have been intended by this Act to impose a second income tax. I do not think this has been done, as from the point of view I suggest the tax provided by section 85 (*a*) is not only an income tax, but something else besides. I have at least no doubt that the defendant in the case now before us is liable to pay a tax on all the salary he receives in Giridih however virtuously, or otherwise, he may see fit to spend it.

The rule is therefore made absolute, but without costs.

MOOKERJEE J. The circumstances of the present case, in which we are invited to exercise our revisional powers in favour of the plaintiff under section 25 of the Provincial Small Cause Courts Act, raise a question of some novelty and importance. The plaintiff is the Chairman of the Giridih Municipality, which was established on the 1st January 1902, and the powers of which are regulated by the Bengal Municipal Act (III of 1884). The defendant is a Deputy Magistrate employed by Government in Land Acquisition work. He occupies a holding within the Municipal limits and, as a rate-payer, was under section 85 clause (*a*) of the Bengal Municipal Act, assessed with an annual tax of Rs. 36 payable in four equal quarterly instalments. The defendant took exception to the assessment under section 113, but his application was summarily dismissed by the Municipal authorities without recourse to the procedure laid down in section 114. He declined, however, to pay the sum assessed, and the present action was commenced on behalf of the Municipality for the recovery of the taxes due in respect of the first two quarters of the year 1905-6. The claim was resisted substantially on the ground that the assessment was *ultra vires*, that the Municipality had no jurisdiction to assess the tax with reference to the salary earned by the defendant, viz. Rs. 300 a month, and that the proper basis of assessment was the sum

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spent by the defendant within the limits of the Municipality which, he alleged, amounted to Rs. 150 a month. In reply it was contended on behalf of the Municipality that as an application for review presented by the defendant had been rejected under section 114, the assessment had become final under section 116, that its legality could not be questioned either directly or collaterally before the Civil Court and that consequently the plaintiff was entitled to a decree for the entire sum claimed. The Small Cause Court Judge overruled the preliminary objection taken on behalf of the plaintiff, and upon the merits decided in favour of the defendant. The rule now under consideration was thereupon issued by this Court at the instance of the plaintiff, and the learned Vakil, who appears in support of it, has called in question the propriety of the order of the Court below on two grounds, viz. first, that it was not competent to the Court below and is consequently not competent to this Court to question the legality of the assessment, and, secondly, that upon the merits the assessment ought to be treated as made in conformity with the provisions of section 85 of the Bengal Municipal Act.

As regards the first of these objections, reliance is placed by the learned Vakil for the petitioner upon section 116 of the Bengal Municipal Act, which provides that no objection shall be taken to any assessment or rate in any other manner than in this Act is provided. It is contended that a remedy by recourse to a regular suit in the Civil Court for cancellation of the assessment or by way of a proper defence to an action by the Municipality in the Civil Court for recovery of assessed taxes, is not expressly mentioned as a possible mode of objection in any portion of the Act, nor is such a remedy, it is asserted, contemplated by the Legislature. In my opinion, this contention is not well founded upon principle, and is not supported by any authority. The effect of the provisions of section 116 was considered by this Court in the cases of *Navadip Chandra Pal* v. *Purnananda Saha*(1), and *Kameshwar Pershad* v. *The Chairman of the Bhabua Municipality*(2). In these cases it was pointed out that section 116 does not take away the jurisdiction of the Civil Courts in a case, in which it is alleged and established that the

(1) (1898) 3 C. W. N. 73. (2) (1900) I. L. R. 27 Calc. 849.

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assessment, the propriety of which is in controversy, is open to objection on the ground that it is *ultra vires*; in other words, it is only when the action of the Municipality has been exercised in conformity with the powers conferred upon it by the Act, that the Civil Court has no authority to interfere. The distinction is obviously well-founded on principle. A corporation, which is invested with authority to assess taxes, is really invested with a *quasi*-judicial power, and, although its action when taken in conformity with the provisions of the law, which created the authority, may not be liable to challenge in the Civil Courts, it does not enjoy a similar immunity, when that action can be challenged on the ground that it has been taken either in excess of or in contravention of the powers conferred upon it by the Statute. An analogous view has been taken by the other Indian High Courts with reference to other statutory provisions of similar scope and import. Reference may usefully be made to the decision of the Madras High Court in *Municipal Council of Cocanada* v. *The Standard Life Assurance Company* (1), where the previous decisions were reviewed, as also to decisions of the Bombay High Court in *Municipality of Wai* v. *Krishnaji* (2), *Morar* v. *Borsad* (3) and *Kasandas* v. *Ankleshvar Municipality* (4). The true test is, whether there has been a substantial disregard of the provisions of the law which creates the authority of the Municipality and regulates its powers and duties. As my learned brother has already pointed out, a similar view had been taken by this Court in *Nundo Lal Bose* v. *Corporation of Calcutta* (5), in which Sir Richard Garth, C. J., relied, in support of this position, upon the principle deducible from the cases of *Rex* v. *Moreley* (6) and *Rex* v. *Plowright* (7), which shew that the distinction recognised between a case, in which the Corporation has acted within its powers, but probably exercised an erroneous discretion, and another in which the Corporation has acted in contravention of its powers, is analogous to the distinction between an error of

(1) (1900) I. L. R. 24 Mad. 205.
(2) (1898) I. L. R. 23 Bom. 446.
(3) (1900) I. L. R. 24 Bom. 607.
(4) (1901) I. L. R. 26 Bom. 294.
(5) (1885) I. L. R. 11 Calc. 275.
(6) (1760) 2 Bur. 1041.
(7) (1685) 3 Mod. Rep. 95.

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fact and an error of law. To put the matter in a different way, the Civil Court is not called upon to try the merits of the question, but to see whether the authorities possessed of limited jurisdiction have exceeded their bounds. A similar view has been taken in the English Courts in more recent cases: *Ex-Bradlaugh* (1) and *Reg* v. *Bradley* (2), and the provisions of section 220 of the Municipal Corporation Act of 1882 (45 and 46 Victoria Chap. 50) have been similarily interpreted. The principle applicable to cases of this description was elaborately examined by their Lordships of the Judicial Committee in *Colonial Bank of Australasia* v. *Willan* (3), where it was pointed out by Sir James Colvile that the Court would have jurisdiction to interfere and quash the order of the quasi-judicial authority upon the ground either of a manifest defect of jurisdiction in the tribunal that made the order or of manifest fraud in the party procuring it. It was also ruled that objection on the ground of defect of jurisdiction may be founded on the character and constitution of the Court or on the nature of the subject matter of enquiry, or on the absence of some preliminary proceeding, which was necessary to give the jurisdiction to that tribunal. But the objection of defect of jurisdiction cannot be entertained, if it rests solely on the ground that the tribunal has erroneously found a fact, which was essential to the validity of the order and which it was competent to try. That the distinction, which the learned Vakil for the petitioner invites us to ignore, is well established on principle is further obvious from the fact that it is recognised not only in our system of law but in other systems of jurisprudence, for instance, it is universally recognised in American Courts. It has been repeatedly ruled that errors in assessment, which constitute irregularities merely and do not go to the ground work of the tax and render the assessment void, can be corrected only in the manner provided by the Statute, which creates the authority, and the remedy so provided must be treated as exclusive. On the other hand, where the defects in assessment are jurisdictional, rendering them void, the persons aggrieved thereby are entitled to invoke the ordinary judicial remedies, and

(1) (1878) 3 Q. B. D. 509. (2) (1893) 17 Cox. C. C. 739.
(3) (1874) L. R. 5 P. C. 417.

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all clear violations of law give rise to jurisdictional questions. In other words, while mere erroneous exercise of judgment is not reviewable by the Civil Court, any excess of jurisdiction makes the act liable to challenge in such Court, *State* v. *Williams*(1), *Hacker* v. *Howe*(2), *Douglas* v. *Stone*(3), *Stanley* v. *Albaney*(4). It was argued, however, by the learned Vakil for the petitioner, as had been argued on behalf of the plaintiff in the Court below, that, even if we assume that it was open to the defendant to obtain a declaration in a suit properly framed that the assessment was illegal, it is not open to him to raise the question by way of defence to an action for recovery of the tax. No authority was shown in support of this position and I am unable to hold that it is based upon any intelligible principle. The test is, as I have pointed out, whether the assessment is or is not in conformity with the statutory provisions. If it is not, it does not enjoy any security from collateral attack. If the assessment is open to objection on the ground of lack of jurisdiction, which, be it remembered, has to be exercised in conformity with the Statute, it is open to collateral attack: *Muir* v. *Bardstown*(5). The essence of the matter is that the action of the Municipality is in its nature *quasi*-judicial, and is not subject to collateral attack, except upon the ground of fraud, actual or constructive, or on the ground of exercise of a power not conferred by the Statute. If errors or irregularities are committed, they must be corrected in the mode appointed by the Statute, and, if not so corrected, they become conclusive, for Courts have not the power to control the *quasi*-judicial authority in a matter of discretion. But when the assessment proceeding is in clear violation of the provisions of the Statute, the Court has jurisdiction to afford relief. It follows consequently that the first ground, upon which the decision of the Court below is challenged on behalf of the plaintiff, cannot be sustained.

The second ground, upon which the decisions of the Small Cause Court Judge is impugned, raises an important question as to the true scope and meaning of section 85 of the Bengal Municipal Act.

(1) (1904) 123 Wis. 61; 100 N. W. 1048.
(2) (1904) 101 N. W. 255.
(3) (1903) 191 U. S. 557.
(4) (1886) 121 U. S. 535.
(5) (1905) 87 S. W. 1096.

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That section authorizes the Commissioners of a Municipality to impose within its territorial limits taxes upon persons occupying holdings within the Municipality "according to their circumstances and property within the Municipality." The question raised is as to the precise effect of the phrase "circumstances and property," which is not defined in the Act. So far as we can make out, the question is one of first impression, and our attention has not been invited to any decided cases, which have any direct bearing upon the matter now in controversy. As I have already stated, the defendant earns a salary of Rs. 300 a month within the limits of the Municipality. But he urges that he spends within the jurisdiction of the Municipality only half of that sum and the other half he spends outside the Municipality for the maintenance of his family, for payment of premiums for life insurance and expenses of a like character. It is contended on his behalf that his circumstances and property within the Municipality are indicated and measured by the amount which he spends within its territorial limits. After careful consideration of the arguments addressed to us on both sides, I am unable to treat this contention as well founded. The term "property" designated as a subject of taxation without any qualification obviously includes both real and personal property or estate and intangible as well as tangible rights of value, *Carrol* v. *Perry* (1). No doubt the word "property" in any particular case must receive a construction in accordance with the context. There can be no question, I think, that, if section 85 mentioned property within the Municipality and nothing else, the whole of the income earned by the defendant would be assessable under the law. The question, therefore, resolves itself into this, viz., whether reference to the circumstances of the rate-payer within the Municipality does in effect restrict and narrow down what is indicated by property within the Municipality. I am unable to see that it has any such alleged effect. If any such effect was intended by the Legislature, the phraseology might have been appropriately made different, and one would expect that, if the test intended was not what is earned, but what is spent, the Statute would have expressly so provided. In the same way, if it was intended that

(1) (1845) 4 McLean U. S. 25.

a deduction should be made, either for the expenses of the rate-payer or for his indebtedness or for possible insolvency, the exemption would probably have appeared on the face of the Statute. On the other hand, if we look to section 92 of the Bengal Municipal Act, we find that "circumstances" is used as equivalent to "means", which indeed is given in the Oxford Dictionary, Vol. 2, page 435, as one of the ordinary significations of the term, "circumstances" which is defined as "condition or state as to material welfare, or means." I am unable to hold, therefore, that the word "circumstances" was introduced in section 85 to restrict the term "property." The intention, on the other hand, seems to have been to widen the scope of the section so as to make taxable what might perhaps be not properly comprised under the term "property" and at the same time ought not to escape assessment. I feel no doubt in this particular case, that the property of the defendant, which was taxable under the law, was unquestionably worth Rs. 300 a month, and that the fact that he spent only half of it within the Municipality does not make his circumstances and property within the Municipality worth only that sum of money. It follows consequently that the assessment made by the Commissioners was in conformity with the law and that it cannot be successfully challenged on the ground that it was in excess of their powers or had been based upon a principle contrary to that recognised by the Statute. The view taken by the learned Small Cause Court Judge is clearly erroneous, and I agree with my learned brother that this rule must be made absolute and the decree of the Court below modified.

Under the circumstances no order need be made for costs.

Rule made absolute.

S. C. G.