

APPELLATE CIVIL.

Before Mr. Justice Chitty and Mr. Justice Carnduff.

CHAIRMAN OF CHITTAGONG MUNICIPALITY

v.

JOGESH CHANDRA RAI.*

1909
July 19.

*Bengal Municipal Act (Beng. III of 1884) ss. 46, 112, 113, 114 and 351A—
Appointment of a paid Assessor at a meeting of the Commissioners within
six months from the date of a lost amendment at a previous meeting, effect
of—Assessment by such an officer, confirmed by the Appeal Committee whether
impeachable—Rule 33 of the Model Rules under s. 351A of the Act.*

The question of appointing a paid assessor under s. 46 of the Bengal Municipal Act (Beng. III of 1884) was raised at a meeting of Municipal Commissioners, as an amendment to a substantive motion: the amendment was lost; but the same question was again raised as a substantive proposition within six months from the date of the first meeting; the proposal being carried, an assessor was appointed who revised the assessment of the plaintiff. The plaintiff applied for a review under s. 113, but the assessment was confirmed under s. 114 of the Act:—

Held, that the appointment of the paid assessor was not *ultra vires*, inasmuch as the subject of the appointment of an assessor had not been finally disposed of at the first meeting, and therefore its reconsideration was permissible; and that, whether the assessor was or was not legally qualified to make any assessment, the validity of such an assessment when once confirmed by the Appeal Committee under s. 114 of the Act, could not be impeached.

SECOND appeal by the defendant, the Chairman of the Chittagong Municipality.

This appeal arose out of an action brought by the plaintiff against the Chairman of the Chittagong Municipality to have the valuation and assessment made of his holding, declared void. The allegation of the plaintiff was that at a meeting held on the 6th May 1903, the question of revising the assessment by a paid assessor, which was raised as an amendment to a substantive motion, was rejected by the Commissioners; that on the 29th July 1903, the Commissioners voted for a

* Appeal from Appellate Decree, No. 931 of 1907, against the decree of B. K. Mallik, District Judge of Chittagong, dated March 23, 1907, affirming the decree of Pramatha Nath Chatterjee, Offg. Subordinate Judge of Chittagong, dated March 31, 1906.

paid officer, and in consequence thereof an assessor was appointed who made assessment of the plaintiff's holding ; that under the Model Rules framed under section 351A of the Bengal Municipal Act the appointment of the paid assessor was illegal and as such the assessment made by him was without jurisdiction.

The defendant pleaded, *inter alia*, that the Civil Court had no jurisdiction to try the suit ; that the appointment of the paid assessor was not illegal ; and that the assessment made by him was not without jurisdiction.

It appeared that the appointment of the paid assessor was made at a meeting held without a requisition by two-thirds or more of the Commissioners as required by the Model Rule No. 33 framed under section 351A of the Municipal Act. It further appeared that the plaintiff preferred an appeal against the assessment to the Appeal Committee which confirmed it under section 114 of the Bengal Municipal Act.

The Court of first instance having held that the appointment of the paid assessor was *ultra vires*, decreed the plaintiff's suit. On appeal to the District Judge of Chittagong, the decision of the first Court was affirmed. Against the said decision the defendant appealed to the High Court.

Babu Ram Charan Mitter (with him *Moulvi Serajul Islam*), for the appellant. The Court below was wrong in holding that the appointment of the paid assessor was without jurisdiction. The question of the appointment was not finally disposed of at the previous meeting, and that, therefore, the appointment at the subsequent meeting held, although within six months, was perfectly legal. The same view was taken in second appeal No. 2499 of 1906 by Mr. Justice Stephen and Mr. Justice Holmwood. The plaintiff could not question the assessment, inasmuch as it was upheld by the Appeal Committee. A decision of the Appeal Committee is final under section 114 of the Bengal Municipal Act.

Dr. Rashbehary Ghose (with him *Babu Dharendra Lal Khastagir*), for the respondent. In the unreported decision

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referred to by the appellant, the learned Judges were not correct in saying that the matter of the appointment of the paid assessor was not finally disposed of at the previous meeting. I submit it was. That appeal was heard *ex parte* and the learned Judges fell into an error of fact when they said that the question of appointing was not finally disposed of. Section 46 of the Bengal Municipal Act gives power to the Commissioners to appoint certain officers and servants, but the question how that power is to be exercised is laid down in the Rules. That power is to be exercised at a meeting. Then Model Rule 37 comes in. Section 46 has nothing whatever to do with the procedure which is to be followed in the meeting. The subsequent meeting in which the paid assessor was appointed, was held within six months from the previous meeting, and that the said meeting was not convened at the requisition of at least two-thirds of the Commissioners. That being so, under the Model Rules the meeting was not properly convened and so the appointment of the paid assessor was *ultra vires*. The appointment being *ultra vires*, the action of the paid assessor was also *ultra vires*. The Chairman ought to have exercised his own judgment. I had a right to the benefit of it. If the party aggrieved went to the Commissioners under section 113 of the Act and the Commissioners refused to interfere, that would not validate the assessment.

Babu Ram Charan Mitter, in reply.

Cur. adv. vult.

CHITTY AND CARNDUFF JJ. This appeal arises out of a suit brought by a rate-payer against the Chairman of the Chittagong Municipality to have the assessment of his holding, whereby higher rates were imposed upon it, declared void on the ground that it was made by an assessor appointed in contravention of law.

It appears that at a meeting of the Municipal Commissioners of Chittagong held on the 6th May, 1903, the question of appointing a paid assessor under section 46 of the Bengal Municipal Act, 1884 (Bengal Act III of 1884, as amended by

Bengal Acts-III of 1886, IV of 1894 and II of 1896), was raised by one of the Commissioners as an amendment to a substantive motion and that the amendment in favour of such an appointment was put to the meeting and lost. On the 29th July following, however, the question was again raised as a substantive proposition, and on this occasion the proposal was carried. The paid assessor, who revised the plaintiff's assessment in the manner complained of, was appointed accordingly : the assessment was presumably published under section 112 of the Act ; the plaintiff applied for a review under section 113 ; and the assessment was confirmed by the " Appeal Committee " of the Commissioners under section 114. The appointment of the paid assessor is attacked as *ultra vires* because, by Rule 33 of the Model Rules under section 351A of the Act framed by the Local Government and adopted by the Municipal Commissioners of Chittagong by resolution passed at a special meeting held on the 26th March 1895, " no subject once finally disposed of can be reconsidered within six months, unless not less than two-thirds of the Commissioners consent by signing a requisition." In this instance it is not suggested that any such requisition was made. The contention prevailed in both the Courts below, and the Chairman has now appealed to this Court.

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Precisely the same point in connection with a similar assessment by the same paid assessor came before a Division Bench of this Court in the special appeal, No. 2499 of 1906, of the *Chairman of the Chittagong Municipality v. Kamalanath Nath Sen and Others* (1) decided on the 1st April 1908, Stephen and Holmwood JJ. then held that the subject of the appointment of a paid assessor had not been " finally disposed of " on the 6th May 1903 ; that, therefore, its reconsideration on the 29th July was permissible ; and that, whether the paid assessor was or was not legally qualified in making the assessment, the validity of the determination of the Commissioners under section 114 of the Act could not be impeached, and the case of the rate-payers must fail.

(1) (1908) Unreported.

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We have arrived at the same conclusion. Dr. Ghose, who has appeared for the respondent, argues that the loss of the amendment for the appointment of a paid assessor involved the confirmation of the existing method of assessment, under which (as Dr. Ghose tells us) the matter of assessment lay in the first instance in the hands of the Chairman. The respondent was, therefore, entitled to the benefit of the Chairman's judgment, and, on the analogy of a suitor whose case is adjudicated upon by the wrong Court, he has a right to complain of having been unlawfully deprived of that benefit. Dr. Ghose further argues that, if the assessment was void *ab initio*, its confirmation, as it were, by the Commissioners under section 114 of the Act could not validate it. We cannot yield to these arguments. It seems to us that there is no analogy between this case and that of a Court adjudicating without jurisdiction. We find, too, that—apart from section 111A, with which we are not here concerned—the Act provides only incidentally for the appointment of a paid assessor and makes no provision whatever as to the method or means of assessment. It is, we think, wholly immaterial what machinery is used for arriving at the valuation; all that is required is that there should be an assessment ready for publication and open to review under sections 112 to 114. The view taken by both the the Courts below was, therefore, in our opinion, wrong, and we allow the appeal and direct that the respondent's suit be dismissed. The respondent will bear the costs throughout.

Appeal allowed.

S. C. G.