Municipal Commissioners Vs. Gangamani Chaudhurani W/O Akshoy Kumar Basak

LegalCrystal Citation : legalcrystal.com/857005

Court : Kolkata

Decided On : Dec-18-1939

Reported in : AIR1940Cal153

Appellant : Municipal Commissioners

Respondent : Gangamani Chaudhurani W/O Akshoy Kumar Basak

Judgement :

Narsing Rau, J.

1. This is an appeal under Clause 15, Letters Patent, from a decision of Jack J., and arises out of a suit for a declaration that the conservancy rates imposed by the Commissioners of the Dacca Municipality upon certain holdings described in Schedules A, B and C to the plaint are ultra vires and illegal and for an injunction restraining the Commissioners from realizing the rates. The suit was instituted before the Munsif of the Third Court of Dacca who dismissed it. There was an appeal to the District Judge of Dacca who also dismissed the suit. Then there was an appeal to the High Court heard by Jack, J. who allowed the appeal and decreed the suit and this is now an appeal from his decision.

2. The Dacca Municipality appears to have been originally constituted as a Municipality under the Bengal Municipal Act of 1884, hereinafter referred to as the old Act. This Act was repealed in 1932 by the Bengal Municipal Act of 1932, hereinafter referred to as the new Act, which came into force on 1st December 1932. The proviso to Section 2 of the new Act states, among other things, that all Municipalities constituted under the old Act shall be deemed to be constituted under the new Act, so that the Dacca Municipality is now to be deemed a Municipality constituted under the new Act. Under Section 13 of the old Act there were; to be Commissioners for each Municipality and Section 29 provided that the Commissioners shall in the name of their Chairman, by the description of 'the Chairman of the Municipal Commissioners of...' be a body corporate and in such name shall sue or be sued. The position under the new Act is slightly different. For each Municipality constituted under the new Act there is, as before, to be a body of Commissioners and these Commissioners are a body corporate, but they have now to be sued in their own name and not as before in the name of their Chairman: see Section 15 of the new Act.

3. The first point raised in this appeal arises out of this provision. It arises in this way. 'When the suit was first brought, that is to say on 2nd December 1933, it was brought against the Chairman of the Municipal Commissioners of the Dacca Municipality. It will be noticed that the suit was brought after the commencement of the new Act but

the plaintiff, presumably through ignorance of the change made by the new Act, brought the suit against the Chairman of the Commissioners instead of against the Commissioners themselves. The mistake appears to have been discovered subsequently and the plaint was amended on 5th June 1934, so as to implead the Municipal Commissioners themselves as required by the new Act. The point now taken before us on behalf of the appellant is that the suit in its amended form must be regarded as a new suit, brought on the date on which the amendment was made, that is to say on 5th June 1934. If this view is accepted, the suit was barred by limitation by virtue of the provisions of Section 535 of the new Act, which requires that the suit shall be brought within six months of the accrual of the cause of action. According to the plaintiff, the cause of action in this case accrued on 31st July 1933; but, if we hold that it accrued on the date on which bills for the rates in question were presented to the plaintiff for payment the date of accrual would be 2nd June 1933. In either case, the suit would have become barred by limitation several months before the date on which it was actually brought, if the appellant's contention is accepted. In my opinion, the appellant's contention cannot be accepted. It is true that the Chairman of the Municipal Commissioners is a different person from the Municipal Commissioners considered as a Corporation. But there can be no doubt that from its very inception the present suit was intended to be against the Corporation rather than the Chairman. This is clear from the nature of the allegations made in the plaint and from the nature of the relief prayed for. The plaint challenges the validity of various resolutions and proceedings of the Municipal Commissioners and asks for a declaration that the assessment purporting to have been made by them is ultra vires and illegal. Consequential relief in the shape of an injunction is also prayed for, but even if this be regarded as being against the Chairman it is obvious that the main relief sought was against the corporation. Prom the very beginning therefore the main claim was against the corporation memories of the old Act were doubtless responsible for the naming of the Chairman as the defendant. This was therefore a case where a misdescription was corrected and not a case where a new party was impleaded by the amendment. Such was the view taken by Jack J., and it is a view supported by the decisions in Gopiram Behariram v. E.I. Ry. & O. & R. Ry. (1926) 13 A.I.R. Cal. 612, Anukul Chandra v. Dacca District Board : AIR1928Cal485 , Jogendranath Benerji v. Tollygunj Municipality : AIR1939Cal178 , Municipal Commissioners of Pabna Town v. Ankul Chandra Maitra (1989) 26 A.I.R. Cal. 79, Saraspur . v. B.B. & C.I. Ry. (1923) 10 A.I.R. Bom. 452, Nanak Chand v. E.I. Ry. (1925) 12 A.I.R. Lah. 441 and Manni Kasundhan v. Crooke (1878) 2 All. 296. Against that view we have been referred only to two cases B.N. Ry. V. Behari Lal : AIR1925Cal716 and E.I. Ry. v. Ram Lakhan Ram (1925) 12 A.I.R. Pat. 37. But both those cases are distinguishable, because in both the relief sought was some kind of personal relief against the defendant originally impleaded, so that it could not be said that the plaintiff really intended to sue the Railway Company and merely misdescribed the party. Indeed in the fates case Das, J. himself put the ground for Ma decision thus:

But in my opinion there is all the difference in the world between misdescribing a party intended to be sued and suing a wrong party. It was strongly contended before us that the plaintiff intended to sue the Railway Company and, in substance, sued the Railway Company. But the plaint speaks for itself and it is quite impossible for us to have recourse to extrinsic evidence. A personal decree was sought against the Agent, East Indian Railway, and there is no suggestion in the plaint that it was sought to bind the Railway Company by any decree that the plaintiff might obtain1 against the defendant.

4. In the case before us the plaint makes it perfectly plain that the plaintiff sought to: bind the Corporation by the decree which he prayed for. We are not aware of any; case exactly in point decided by the Privy Council, but the decision in Geakwar Baroda State Railway v. Hafiz Habib-ul-Haq is of some assistance. In that case it appears to have been held that the suit was in reality one against the Gaekwar of Baroda in spite of the name actually mentioned in1 the plaint. It may be observed that under Section 87, Civil P.C., a Sovereign Prince or a Ruling Chief (such as the Gaekwar of Baroda) can only be sued in the name of his State; the suit in question was not in terms against the State of Baroda, but against the Gaekawar Baroda State Railway through the Manager and Engineer-in-chief. Nevertheless, it was held that the suit was really one against the Gaekwar of Baroda himself, and as such incompetent without a certificate under Section 86 of the Code. It is clear therefore that the name is not always the true criterion for determining the party really sued. We have to consider the nature of the allegations in the plaint and the nature of the relief sought. There can be no doubt that in the case before us the suit was from its very inception a suit against the Municipal Corporation. Therefore the effect of the amendment was not to substitute or add a new party or to convert the suit into a new suit. In these circumstances it must be held that the amendment related back to the date of the suit as originally filed. On this view it was within the six months' limit and therefore not time-barred.

5. On the merits the question which arises in this appeal is whether the impugned assessment is ultra vires. To decide this question it is necessary to consider in some detail the various provisions relating to assessment under the new Act. The conservancy rate is a consolidated conservancy, latrine and drainage rate on the annual value of holdings levied under Section 123(1)(d) of the new Act. Briefly the procedure for assessment is in five stages: (1) The decision to impose the rate. This is a matter for the Commissioners at a meeting under Section 123(1), (2) The preparation of the valuation list. In this list are entered all the holdings in the Municipality together with the annual value of each. The work is to be done by the assessor of the Municipality as provided in Section 133. (3) The determination of the percentage on the valuation at which the rate is to be levied. This is to be done by the Commissioners at a meeting under Section 135. (4) The preparation or an assessment list by applying the percentage fixed to the annual value of each holding. This is to be done by the Commissioners under Section 136. (5) Publication and review. This is to be done as provided in Sections 147 and 149. Such in brief outline is the scheme of assessment under the new Act. Now it is certain that if the Municipal Corporation were making an assessment for the first time in respect of any rate based upon the annual value of holdings, it would have to go through all the five stages mentioned above. It is also certain that in the present case all those stages were not gone through. To mention only two omissions, there was no valuation list prepared nor were the notices required under Section 147 given. As regards the first of these two omissions, it has been argued that there was a valuation list prepared in 1923-24 under the old Act and that this list, being saved by the proviso to Section 2 of the new Act, made the preparation of a fresh list unnecessary. This argument requires a little examination. At the outset it may be observed that the new Act makes a careful distinction between valuation and assessment. Thus, the assessment list mentioned in Section 136 of the new Act is a distinct document from the valuation list mentioned in Section 133. Again, Section 137(2) refers separately to valuation and assessment in laying down the period for which each is valid. So, too, does Section 148(1) in making provision for review applications. So, too Sections 150 and 151 for their respective purposes. There was a similar distinction under the old Act and indeed the two things

are different, although the process of assessment necessarily involves an antecedent valuation. Now, the proviso to Section 2 of the new Act though comprehensively drawn and though purporting to save almost everything done under the old Act omits to mention valuation. The proviso runs thus:

Provided that all Municipalities constituted limits defined, regulations, measurements and divisions made, licenses and notices issued, taxes, tolls, rates, and fees imposed or assessed, budgets passed, assessments made, plans approved, permissions or sanctions granted under the Bengal Municipal Act 1884, shall so far as they are in force at the commencement of this Act, be deemed to have been respectively constituted, defined, issued, imposed, assessed, passed, made, approved or granted under this Act, and shall (unless previously altered, modified, cancelled, suspended, surrendered or withdrawn, as the case may be, under this Act) remain in force for the period (if any) for which they were so constituted, defined, issued, imposed, assessed, passed, made, approved or granted.

6. This may be contrasted with Section 2 of the old Act, which after repealing various previous enactments went on to provide that assessments, valuations, measurements, divisions, and appointments made, powers conferred and notifications published under any such enactment, and all other rules (if any) now in force and relating to the matters hereinafter dealt with, shall (so far as they are consistent with this Act) be deemed to have been respectively made, conferred and published hereunder.

7. It will be noticed that whereas there was a specific saving of valuations in the proviso in the old Act there is no such saving in the proviso in the new Act. Therefore, even if we assume that there was a valid valuation list under the old Act in force immediately before the commencement of the new Act it will not count as a valuation list made under the new Act. It is however contended on behalf of the Municipal Corporation that even if the valuation cannot be held to survive, the proviso to Section 2 of the new Act operates to keep alive the assessment itself. To see whether this contention is sound we have to examine the scheme of taxation under the new Act and compare it with that under the old Act. Under the old Act there was no such thing as a conservancy rate, but a Municipal Corporation was empowered to levy a fee for the cleansing of latrines under Section 86(f). Section 321 of the old. Act provided that the fees so levied should be fixed with reference to, but not necessarily as a percentage of, the annual value of holdings containing dwelling houses with, in the limits of the Municipality. Thus, a. holding containing no dwelling houses was exempt. There were other exemptions also: e.g. the proviso to Section 322 directed that no such fees shall be levied in respect of any shop or place of business which did not contain any privy or cesspool. The result was that the holdings in Schedule B and C to the plaint in the present suit were exempt, in the one case because they were shops containing no privies or cesspools and in the other case because the holding was a Thakurbari containing no dwelling house. In the new Act the fee and the exemptions have been swept away. Instead, the Corporation is empowered under Section 123(1)(d) to levy a consolidated conservancy, latrine and drainage rate known as the conservancy rate. This rate is levied on a percentage basis on the annual value of all holdings within the Municipality.

8. There is thus no precise correspondence between the old fee and the new rate: the name is different and the incidence is different; and it is therefore not possible to apply to them the language of the proviso to Section 2 of the new Act. Where the old and the new imposts correspond, the proviso obviously applies, but it is not possible

to apply it in cases where there is no correspondence. We cannot say that an assessment of one kind under the old Act must, by virtue of the proviso, be deemed to be an assessment of a rather different and more comprehensive kind under the new Act. Indeed, so far as the holdings in Schedule B and C are concerned, there was nothing of any kind under the old Act to correspond to the new conservancy rate: they were formerly wholly exempt from the latrine fee. It follows therefore that we have here a case where property is for the first time sought to be assessed to the conservancy rate and since this has been done without a valid valuation list, the resulting assessment is ultra vires. It is unnecessary to examine the effect of the omission to give notice as required by Section 147. The appeal must therefore be dismissed with costs.

B.K. Mukherjea, J.

9. I agree.