

Privy Council Appeal No. 123 of 1927.
Bengal Appeal No. 7 of 1926.

Bhuban Mohan Basak - - - - - *Appellant*

v.

**The Chairman of the Municipal Commissioners of the Dacca
Municipality and others** - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 7TH MAY, 1929.

Present at the Hearing :

LORD SHAW.
LORD CARSON.
SIR LANCELOT SANDERSON.

[*Delivered by* LORD CARSON.]

This action was brought to challenge the validity of a tax or rate which the first defendant was seeking to enforce on the ratepayers of Dacca. On the 28th June, 1922, the Municipal Commissioners of the Dacca Municipality passed a resolution as follows:—"That the general revision of assessment of holdings be undertaken without delay, as it was overdue." This resolution was passed in pursuance of Section 96 of the Municipal Act. In accordance with the terms of the resolution, the valuation duly took place and the assessment list was published on the 28th March, 1923, for the year 1923-24. The action of the plaintiff has already been heard before three different courts, each of which decided against the plaintiff and in favour of the validity of the rate, and as their Lordships are in agreement with

the decree appealed from, it will be only necessary to state the facts very briefly.

In the first place, the plaintiff contended that the rate was based on a new valuation and assessment which the Municipal Commissioners had not authorized, founding his objection to the manner in which the said resolution had been passed. It appears that at the meeting of the Commissioners on the 28th June, 1922, two resolutions were moved and seconded. The first resolution was "That the question of a general revision of assessment be postponed for a year in view of the economic distress prevailing in the country, and that all new and improved buildings which had escaped notice be assessed first, and the Vice-Chairman be requested to undertake the work." The second resolution was in the terms already set forth as having been passed. The complaint of the appellant is that under the bye-laws of the Municipality (Rule 16) the Chairman was bound to put these resolutions separately, whereas what he appears to have done was to put them as alternatives and ascertain the numbers in favour of each respectively. The Additional Munsiff of Dacca, who tried the case, pointed out that the course adopted did not prejudice the plaintiffs or other ratepayers, and that they rather got the advantage of the two resolutions being fully considered together. He considered this irregularity as a mere defect of form under Section 358 of the Municipal Act, which did not invalidate the assessment. On appeal to the District Judge, he was of opinion that the procedure adopted was irregular, but that such irregularity was not sufficient to render null and void all action taken on the basis of the resolution. When the case came on appeal before the High Court of Judicature in Bengal this point, if not expressly abandoned, was not urged before the appellate court, and therefore no view was expressed upon it. Having regard to this fact, their Lordships do not think it necessary to examine the proceedings objected to in any detail or the effect of the subsequent actions taken from time to time for the purpose of giving effect to the resolution, and upon this point, which appears to be without any real substance, they are of opinion that the appeal fails.

The second contention of the appellant was that the rate was invalid because the Commissioners, before the result of the re-valuation had been ascertained and become known to them, sanctioned a budget framed on the basis of the old valuation and of the percentage at which rates had been for some years levied on that valuation, *i.e.* 10 per cent., being the highest percentage which the Municipal Act allowed. It is, however, in evidence that the re-valuation list was subsequently signed by the Chairman and deposited in the office on the 28th March, 1923, and notice was published on the same day. The Additional Munsiff of Dacca pointed out that Section 102 of the Act provides that the percentage fixed shall remain in force until the order of the Commissioners determining such percentage shall be

rescinded and until the Commissioners at a meeting shall determine some other percentage on the valuation of the holdings at which the rate will be levied from the beginning of the next year, and he held there was no illegality on this ground, and the District Judge and the High Court, in fully considered judgments, affirmed the view of the Additional Munsiff.

Their Lordships think it unnecessary to further examine the arguments on which these judgments on this point are based, as they can find no reason for dissenting from the conclusions or the basis of the conclusions arrived at by these several courts.

Their Lordships will accordingly humbly advise His Majesty that this appeal should be dismissed with costs.

In the Privy Council.

BHUBAN MOHAN BASAK

v.

THE CHAIRMAN OF THE MUNICIPAL COM-
MISSIONERS OF THE DACCA MUNICIPALITY
AND OTHERS.

DELIVERED BY LORD CARSON.

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