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April 5.

Special Appeal No. 347 *of* 1869.

SAKHA'RA'M SHRI'DHAR GADKARI .....*Appellant.*

THE CHAIRMAN OF THE MUNICIPALITY OF KALYA'N *et al.* .....*Defendants.*

Municipal Commissioner—Illegal Order—Rules framed by Government—Act XXVI. of 1850.

Where a party is injured by an order of Municipal Commissioners under Act XXVI. of 1850, issued in respect of a subject within their jurisdiction, he is debarred from bringing a suit in the Civil Courts to annul such order until he has exhausted the remedies afforded to him by the rules framed by Government in accordance with the provisions of the Act.

THIS was a special appeal from the decision of A. Bosanquet, Acting Judge of the Thá*ṇ*á district, in Appeal Suit No. 434 of 1868, confirming the decree of A. Lyon, the Assistant Judge.

This suit was brought by the plaintiff to cause two notices, issued by the defendants upon him for the removal of his house and *oṭá*, to be annulled, on the ground that the notices were illegal, and beyond the authority of the defendants to issue; and to establish the plaintiff's proprietary right to his said house and *oṭá*.

The defendants answered that the notices were authorised by clauses 2 and 3 of Sec. 5 of the rules of the municipality; and that the land belonged to the municipality, and not to the plaintiff.

The Assistant Judge gave judgment for the defendants, holding that the plaintiff was debarred from bringing a suit in the Civil Court by reason of his not having availed himself of the remedy provided by the rules of the municipality.

Both the notices complained of were issued on the 13th of January 1868, requiring the plaintiff to remove an *oṭá* and a part of a new building which encroached upon the public road, being beyond the line and level of the road. On the 15th of January 1868 the plaintiff appealed against the notices to the Collector, who, on the 17th of January 1868, called for the papers, and stayed execution of the notices pending the decision of the case. Before any final order was passed

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by the Collector, the plaintiff, on the 22nd of January 1868 filed his plaint in the present suit.

By Sec. 6 of the rules framed by Government for the guidance of municipalities under Act XXVI. of 1850, it is provided (cl. 1) that "All complaints against the municipality shall be addressed in the first instance to the municipal commissioners."

Cl. 2. "Persons dissatisfied with the final decision of the commissioners may prefer an appeal to the Collector and Magistrate, or Assistant Collector and Magistrate in charge, of the táluká, who may dismiss the appeal if he considers it groundless; but if he considers the appeal well grounded it will be his duty, without authoritatively interfering with the proceedings of the commissioners, to endeavour, in communication with them, to cause redress to be afforded to the complainant."

Cl. 3. "If he considers that the municipality has exceeded the powers with which it is vested by law, he shall pass such orders in the matter of the appeal as will afford redress to the complainant without unnecessarily degrading the authority of the municipal commissioners."

Cl. 4. "If he entertains a doubt as to the correctness or otherwise of the proceedings which form the subject of appeal; in that case, the matter shall be referred by him for the decision of the Police Commissioner, whose decision shall be final."

The Assistant Judge said that these rules had the force of law, and that their effect was to bar the cognisance of suits against the municipality until the provisions of these sections were complied with; that the Collector's order on the plaintiff's petition was not a final order; and that the plaint was brought in so short a time after the date of the petition that no time was allowed to the Collector to make a final order. He held, accordingly, that, as the plaintiff had not resorted to the special remedy afforded by the rules, the cognisance of the suit was barred within the meaning of Sec. 1 of the Civil Procedure Code. He found, on the other issue, that

the land belonged to the plaintiff, but that the *oṭá* was an encroachment, and that with regard to it the commissioners were authorised to issue the notices. He gave judgment for the defendants.

The plaintiff appealed to A. Bosanquet, Acting Judge of the District Court, who confirmed the Assistant Judge's decree with costs, holding that the plaintiff was debarred from bringing a civil suit against the municipality until he had adopted the means of redress provided for by the rules.

The plaintiff appealed from this decision of the District Court. The appeal was heard by COUCH, C.J., and LLOYD, J., on the 5th of October 1869.

Shántárám Náráyaṇ, for the appellant:—If the reasoning of the lower court is correct, the plaintiff is virtually debarred from ever seeking the assistance of the Civil Courts, as cl. 4 of Sec. VI. makes the orders of the Police Commissioner final. These provisions can only be meant to point out a departmental mode of redress. The jurisdiction of the regular courts is not taken away by express words, and if this is not done the mere provision of another special remedy does not suffice to exclude their jurisdiction. If the plaintiff waits till his case is finally disposed of, his cause of action may become time-barred. The section, I submit, provides a concurrent remedy only, of which the plaintiff is not bound to avail himself.

Dhirajlál Mathurádás, for the respondents, cited *The Collector of Patna* v. *Romanath Tagore* (*a*), and Regular Appeal No. 11 of 1865, *Chimá* v. *The Magistrate of Khándesh*.

Cur. adv. vult.

5th April 1870. COUCH, C.J.:—The question is whether the plaintiff could institute this action in the Civil Court. The rules framed under the Municipal Act provide that all complaints against the municipality must be first made to

(*a*) 7 Calc. W. Rep., Civ. R. 191.

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the municipal commissioners, from whose orders an appeal is allowed to the Collector, and in cases of doubt the Collector may refer to the Police Commissioner for orders, and the orders of the Police Commissioner are declared to be final. The object of these rules seems to be a very proper one—to provide a mode of special redress in questions which must arise in the exercise by the municipal commissioners of the powers conferred upon them by the Act, which would be sufficient for the purposes of justice in the great majority of cases, and would avoid all unnecessary degradation of the authority of the commissioners. Whatever, however, be their object, we must consider what is the law, and we must follow that and decide accordingly. The plaintiff may have a rightful claim, but he cannot at present enforce it by civil suit, as the rules apply in this case. We have now not to consider whether the municipality had power to issue the notices, and whether they issued them in the *bonâ fide* belief that there was an encroachment, for the lower courts have found that there was an encroachment; and there is nothing to show want of *bona fides* or irregularity in issuing the notices, as the notices there were properly issued: and as the plaintiff had not followed the course prescribed by the rules to obtain redress it was not competent to him to bring this suit. It does not follow that if the plaintiff does not get redress in the way prescribed by the rules he will not succeed in an action which he will then institute. We are, however, bound by the authority of the rules, and must satisfy ourselves that the procedure prescribed by the rules fails to give the proper redress before allowing an action to be brought. This is consistent with the judgment of *Tucker*, J., in *Chimá* v. *The Magistrate of Khándesh*. We, accordingly, confirm the decision of the lower court.

Decree affirmed with costs.