

ALLAHABAD HIGH COURT

District Board of Dehra Dun

Vs

Damodar Datt

(Sinha, J)

20.04.1944

JUDGMENT

Sinha, J.

1. The District Board of Dehra Dun brought a suit for recovery of Rs. 99-7-0 on account of circumstances and property tax, against the defendants for the years 1935-36, 1936-37, 1937-38 and 1938-39, on the ground that the defendant's father resided within its jurisdiction, that is, within the rural area of the District Board of Dehra Dun. The defence was a denial of the plaintiff's case about the residence of Kishen Dutt within the rural area. Certain other defences were taken, which it is not necessary to set forth here.
2. The learned Judge of the Court below did not believe the plaintiff's case, but accepted the defendant's version of the story that Kishen Dutt did not reside within the rural area and the plaintiff, therefore, had no right to lay any claim against the defendants, who were his sons.
3. The learned Counsel for the applicant has taken his stand upon Sections 128 and 131, U.P. District Boards Act (Local Act 10 of 1922). Section 128 provides that an appeal against an assessment, or any alteration of an assessment, of a tax on circumstances and property may be made to the District Magistrate or to such other officers as may be empowered by the Local Government in this behalf.
4. Section 131 shuts out the right to take exception to a valuation or assessment, except in the manner provided by the Act itself.
5. The answer to this contention is that all this presupposes that the District Board had jurisdiction to impose the tax. Where the very foundation of the claim of the board, that is its very jurisdiction, is challenged, no provision of the Act can come into operation. We have, therefore, come to the conclusion that the learned Small Cause Court Judge was right in holding that once it is established that Kishen Dutt did not reside within the jurisdiction of the District [Board of Dehra Dun, the latter had no right to impose any tax, and we accordingly dismiss this

application in revision with costs.

