**(1942) 08 AHC CK 0004**

**Allahabad High Court**

**Case No:** Second Appeal No. 1196 of 1938

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| Mst. Prem Wati | | APPELLANT |
| | Vs | |
| Municipal Board Agra | | RESPONDENT |

**Date of Decision:** Aug. 11, 1942

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 34 Rule 4
- United Provinces Municipalities Act, 1916 - Section 151, 152

**Hon'ble Judges:** Dar, J; Bajpai, J

**Bench:** Division Bench

**Advocate:** Gopal Behari, for the Appellant; Din Dayal for Respondent, for the Respondent

**Final Decision:** Allowed

**Judgement**

Bajpai and Dar, JJ.
This is an appeal against, a judgment and decree, dated May 5, 1938, of the District Judge of Agra, by which he substantially varied a judgment and decree, dated February 2, 1938, of the Additional Munsif of Agra in a suit for recovery of house and water tax with regard to certain premises in the city of Agra.

2. The Defendant, Mst. Premwati is the owner of a house at mohalla Gokulpura in the city of Agra which has been assessed to house and water tax and bears the number 2096. From December 5, 1924, to January 28, 1927 and again from January 3, 1928, to March 23, 1931 and again from 11th September, 1936, to March 31, 1937, the said house had remained vacant and unproductive of rent and the owner of the house had several notices of vacancy and of re-occupation to the Municipal Board of Agra. One notice of vacancy was served in December 1924 and of re-occupation in January 1927 and another notice of vacancy was served in January 1 28 and of re-occupation of the house in March 1934. There was a difference of opinion in the Courts below with regard to the service of notice of vacancy on 11th September, 1936, but the finding of the lower appellate Court--which is binding on us in second

appeal--is that a notice was duly served with regard to the vacancy on September 11, 1936, also.

3. On April 12, 1937, the Municipal Board of Agra raised an action in the Court of Munsif of Agra against Mst. Premwati for recovery of sum of Rs. 319-9-3 arrears of house and water tax with regard to the said house from April 1, 1925 to March 31, 1937, for a period of 12 years. Mst. Premwati contested the claim inter alia on the ground that the Municipal Board was not entitled to claim any tax with regard to the period for which the house had remained vacant and unproductive of rent, in other words, for the periods specified above. Other contentions were also raised in defence, which it is not necessary to particularise for the purpose of this appeal. The trial Court found that the Defendant was entitled to the remission which she claimed excepting for the period beginning from 11th September, 1936, to 31st March 1937 and on this finding after making allowance for the remission it decreed the claim for a sum of Rs. 123-14-3 Against that decree the Municipal Board of Agra made an appeal to the District Judge of Agra and Mat. Premwati filed cross-objections. The learned Judge found differing from the trial Court that a notice of vacancy was given by Mst. Premwati to the Municipal Board with regard to the period beginning from 11th September, 1936 and ending with 31st March, 1937. The District Judge further found again differing from the trial Court that Mst. Premwati was not entitled to remission for the entire period for which the house had remained vacant, but for a shorter period and the view of the learned Judge was that the notice which was given by Mst. Premwati for the vacancy of the house in December I 924 and in January 1928 remained operative only for a period of 12 months and although as a matter of fact the house remained vacant for a longer period than 12 months, as Mst. Premwati did not give notice each year after the expiration of 12 months from the date of her notice she was not entitled to claim any remission for a longer period than 12 months for each notice. On this finding the learned Judge recast the account and gave a decree for a sum of Rs. 285-10-8 to the Municipal Board against Mst. Premwati.

4. Against that decree Mst. Premwati has made this second appeal and the only question which has been argued before us is a purely legal one, namely, whether under the Municipalities Act an owner who wants to claim remission for a vacant building has to give notice every year during the period the building has remained vacant or one notice of vacancy is sufficient to enable the owner to claim the remission for all the time the house is occupied again It is agreed before us that if Mst. Premwati''s contention is found correct and one notice was sufficient to enable her to claim the remission, the decree of the lower appellate court will have to be set aside and the decree of the trial court will have to be restored with this difference that a sum of Rs. 14-6-4 will hive to be disallowed from the sum decreed by the trial Court; in other words, the Municipal Board will be entitled to a decree for a sum of Rs. 109-7-11 instead of Rs. 123-14-3. The controversy in this case is about the interpretation of certain clauses of Sections 151 and 152 of the United Provinces

Municipalities Act (Act No. 11 of 1916) and these are as follows:

151. (1) In a Municipality other than one situated wholly or partly in a hilly tract, when a building or land has remained vacant and unproductive of rent for ninety or more consecutive days during any year, the board shall remit or refund so much of the tax of that year as may be proportionate to the number of days that the said building or land has remained vacant and unproductive of rent.

(3) Provided tint no remission shall be granted unless notice in writing of the fact of the building or land being vacant and unproductive of rent has been given to the Board and that no remission or refund shall take effect for any period previous to the day of the delivery of such notice.

(4) The burden of proving the facts entitling a person to relief under this section shall be upon him.

152(1) The owner of a building or land for which remission or refund of the tax has been given under the last preceding section shall give notice of the re-occupation of such building or land within fifteen days of such re-occupation.

(2) Any owner failing to give the notice required by the Sub-section (1) shall be punished upon conviction with a fine which shall not be less than twice the amount of tax payable on such building or land for the period during which it has been re-occupied without notice and which may extend to fifty rupees or to ten times the amount of the said tax, whichever sum is the greater.

5. The contention of the Municipal Board is that the house tax and water-rate are laid on the annual value of buildings or lands u/s 128(1) and (x), that the tax is an annual tax though under the rules framed by the Board for collecting tax it is payable in two equal instalments due respectively on 1st April and 1st October of each year and that under Rule 3 of the rules framed by the Municipal Board of Agra both the water rate end house tax are payable half-yearly in advance on 1st April and 1st October each year. Rule 32 of the rules framed by the Municipal Board of Agra further provides:

When any house or any portion of the house which is liable to the payment of either tax is demolished or removed otherwise than by the order of the board or falls vacant, the owner shall give notice thereof in writing to the board within 15 days of such demolition or removal or of the house falling vacant. Until such notice is given the person aforesaid shall continue liable to pay such taxes as he would have been liable in respect of such house if the same or any portion thereof had not been demolished or removed or fallen vacant. The period of exemption will begin to run from the 15th day previous to the date on which the notice is actually received by the Secretary; only provided that such day does not fall on any date previous to the actual date on which the house became vacant.

6. The Municipal Board further contends that the remission which is provided for in Section 151(1) of the U.P. Municipalities Act (Act II of 1916) is an annual remission on the basis of an annual tax and consequently it is necessary for the tax-payer, if he or she wants to claim the benefit of remission u/s 151(1) of the Act to give notice every year in case the house continues to be vacant for a longer period than 12 months; and a notice given by the owner about the vacancy of a house automatically expires at the end of 12 months and a fresh notice is necessary in a case where the house has continued vacant for a longer period than 12 months if the tax payer wants to claim the remission u/s 151 Clause (1) and for this contention reliance is placed on Purshottama v. Municipal Council of (sic) (1890) 14 Mad. 467, in which on a construction of Section 51 of the Madras Act III of 1871, which is as follows:

When any sum is due for or on account of any rate or tax leviable under Sections 41 to 47 of this Act, the Commissioners shall cause to be presented to the person liable to the payment thereof a bill for amount. Such bill shall contain a state of the period and a description of the property for which the charge is made.

7. Mr. Justice Shephard and Mr. Justice Weir observed as follows:

The next contention had reference to the notice which an owner of property may give in order to entitle himself to remission of the house tax. The tax is an annual one and the language of Section 51 of Act III of 1871 appears to us to show that an annual notice was intended.

8. Reliance is further placed on a passage in P.D. Aiyangar''s Law of Municipal Corporations in British India (Second Edition) at page 352, which is as follows:

The period in respect of which the remission is made is calculated from the date of the delivery of the notice and during every half year fresh notice will have to be given, the notices given in any particular half year having no effect thereafter. The tax is an annual one and the notice which an owner of property must give in order to entitle himself to a remission of the house-tax is an annual notice,

and for this last observation the authority of the Madras case referred to above is quoted.

9. Mst. Premwati does not dispute that the tax is an annual one and is collected six-monthly nor does she dispute the fact that in order to claim remission each year''s tax and account will have to be considered separately but the contention on her behalf is that a notice of vacancy once given by an owner of a house runs and takes effect till it is withdrawn or cancelled. She further contends that under general law if a person gives notice about a matter, the notice is treated as operative and running till it is withdrawn and unless by act of parties or by operation of statute a notice is terminated it will continue to run. She further contends that Sections 151 and 152 of the Municipalities Act nowhere lay down expressly or by necessary implication that the notice given by the owner would terminate within 12 months,

The only clause which deals with the notice is Clause (3) of Section 151 and it nowhere provides for the termination of a notice at the end of 12 months, Consequently although remissions can only be claimed on the basis of annual tax for each year u/s 151 Clause (1), it is not necessary that if remissions are claimed year after year for every year a fresh notice should be given and one notice would be sufficient under Clause (3) of Section 151 of the Municipalities Act. It is further contended that by enacting Section 152 of the Municipalities Act the legislature contemplated that the owner of a building who had given notice of vacancy would also give a notice of re-occupation and certain penalties are provided for not giving notice of re-occupation. Therefore, it is argued that the presumption is that the legislature itself recognized that the notice would continue till it was terminated by a notice of re-occupation; and for this interpretation of Section 151 reliance is placed upon an unreported decision of Mr. Justice Rachpal Singh in The Municipal Board of Agra v. Madan Mohan Gargh S.A. No. 677 of 1936, on July 26, 1939, in which the learned Judge in the course of his judgment observed as follows:

The Defendant No. 1 had given notice when the house became vacant. Learned Counsel for the Appellant argued strenuously that Respondent No. 1 should have given notice to the Municipal Board every year stating that his portion of the house was vacant. There is no such law in these provinces. The Municipality has a duty of its own and that is to keep watch and see whether notice given u/s 151 by the house owners are true or not. In the present case it appears that the Municipal Board must have been very negligent, because its relating to taxes due for the year 1922 and onward was not instituted till about 1934.

10. We have given due weight to these contentions and we have come to the conclusion that an annual notice is not imperative under the statute. It is true that the tax is an annual tax and ordinarily it is expected to be collected six-monthly. It is also true that the remission which is mentioned in Section 151 Clause (1) has to be every year on the basis of the annual tax, but it cannot also be disputed that when law requires a person to give a notice about a matter as soon as that notice is delivered it remains operative and effective unless the notice is withdrawn or its period is determined by a statement in notice, by act of parties or by operation of statute. We must also keep in mind that we are dealing with a question where the right to claim remission for a vacant building given by the statute has or has not been taken away by reason of not giving of notice, in other words, we are dealing with an enactment which takes away a valuable right of a tax-payer. It is doubtful whether a right like this can be taken away by implication or an express statute is required for it. But even assuming that a right like this could be taken away by necessary implication of a statute, the implication must be clear and inevitable. Now it is not disputed that in Clause (3) of Section 151 there are no words which say that notice provided for in that clause would come to an end on the expiration of 12 months. But the argument is that Clause (3) must be referred back to Clause (1) and the two taken together clearly imply that the notice must be annual. Now the first

difficulty which strikes us on this construction is that if it is going to be an annual notice where would the period of 12 months end. Would it end from the date of notice or would it end on the 1st of January every year or would it end on the 1st of April every year which is the financial year of the Board. The view of the learned District Judge of Agra was that it should end in 12 months from the date of the notice The view set out in Aiyangar''s Law of Municipal Corporations at one place is that it should end every half year and in the Madras case without any discussion of the subject the view was expressed that the notice should be annual without indicating the period with which 12 months of the notice would end.

11. There is (sic) warrant for the view taken by the learned District Judge that the notice would terminate at the end of 12 months from the date of notice and the word ''annual'' should have reference to the date of notice and not to the gregorian year or to the financial year. If, however, annual notice may be interpreted as ending with the gregorian year or with the financial year, then apart from the uncertainty as to which of the two is meant, this interpretation of the annual notice may cause in certain cases real inconvenience. Suppose, a house becomes vacant or unproductive of rent on 1st December of a year and the owner finds that for next six months the house would not be in a habitable condition and he gives a notice to the Board of six months vacancy on 1st December would such a notice terminate automatically on 31st December or on 31st March and the owner would be under a necessity to give fresh notice for the remaining period about which he had already given notice or should the notice given by him on 1st December be treated as sufficient, for six months. There seems to be no reason why a definite notice of six months should not be treated as sufficient notwithstanding the fact that it goes beyond 31st December or beyond 31st March of a year.

12. In a case like this we must go by the plain language of the statute and words should not be read into it which are not there. In our view, a notice served by the owner of a vacant building remains effective and in operation till a notice of re-occupation is given. The question whether a particular building has or has not remained vacant and whether the owner is or is not entitled to remission on account of vacancy are questions of facts to be determined in each case on evidence, but if, in fact, the building has remained vacant for a longer period than 12 months a notice of vacancy given about it and not terminated by a notice of re-occupation should be sufficient and it satisfies the condition of the statute.

13. We accordingly allow this appeal, set aside the decrees of both the courts below and in lieu thereof grant a decree to the Plaintiff against the Defendant for a sum of Rs. 109-7-11. This sum will carry pendente lite and future interest at the rate of 6 per cent, till realisation and a decree would be prepared under Order 34, Rule 4 of the CPC in favour of the Plaintiff giving the Defendant three months'' time for payment of the amount. The Plaintiff will have one-third of its costs in all Courts and the Defendant will bear her own costs.