(1959) 05 KL CK 0005

High Court Of Kerala

Case No: A.S. No. 177 of 1956 (T)

Municipal Commissioner, Attingal		APPELLANT
	Vs	
Sekharan		RESPONDENT

Date of Decision: May 25, 1959

Citation: (1959) KLJ 641

Hon'ble Judges: K. Sankaran, C.J; Anna Chandy, J

Bench: Division Bench

Advocate: S. Neelakanta Iyer, for the Appellant; G. Viswanatha Iyer, for the Respondent

Final Decision: Dismissed

Judgement

Anna Chandy, J.

This appeal by special leave is from the judgment of Justice T.K. Joseph in S.A. No. 618/53. The facts may briefly be stated thus: The respondent bid in auction from the Municipal Council of Attingal the right to collect fees at the Attingal market for the year 1102. This suit was filed in 1120 by the Municipality for the recovery of a sum of money due from the respondent under the above contract. The trial court decreed the suit in terms of the plaint, repelling the contentions of the respondent that he had discharged his dues and that the suit was barred by limitation. On appeal the plea of limitation was upheld and the suit was dismissed. The matter came up in Second Appeal to this Court and Justice T.K. Joseph confirming the lower appellate court''s finding on limitation dismissed the appeal.

2. Now the only question before us is that of limitation. The contract between the Municipality and the respondent was made in 1102 when the Travancore Municipal Act (Act 5 of 1095) was in force. Section 98, clause 1 of the above Act reads thus:

all monies other than fines and penalties recoverable under this Regulation shall be treated as arrears of Public Revenue within the meaning of Regulation, 1 of 1068 and be recovered as such.

This Act was superseded by the Travancore District Municipalities Act, XXIII of 1116 which was in force when the suit was filed in 1120. Section 391 of that Act provides as follows:

all arrears of taxes or other payments by way of compensation or otherwise due to a Municipal Council at the time this Act comes into force may be recovered as though they had accrued under this Act.

It is the appellant''s contention that the amount due from the respondent comes under the category of "payments otherwise due to Municipality" as contemplated in the above Section, and as such the suit is saved from limitation. On the other hand the respondent holds that the money due from him being a debt under a contractual obligation does not come under the category of "money recoverable under the Regulation" as contemplated in Section 98 of Act 5 of 1095. As such a suit for the recovery of the debt became barred three years after the cause of action arose, that is by the year 1106, long before the later Act came into force, and the claim extinguished in 1106 cannot be revived under the new Act in 1116.

3. Therefore the question to be decided is whether the money due under a contract between the Municipality and the respondent can be considered as "money recoverable under the Regulation". Both the lower appellate court and Justice T.K. Joseph accepted the respondent''s contention that it cannot be so considered and we find no reason to disagree with them. The cases reported in Abdul Azeez Sahib v. Cuddapah Municipality (I.L.R. 26 Madras 475), Mayadas v. Municipal Committee, Chiniot (A.I.R. 1927 Lahore 161) and Ahamad Hydrose v. Alwaye Municipality (1950 KLT 345) have been cited in support of this position. The Madras case related to money due under a contract entered into with the Municipality for the right to collect toll in consideration of a money payment. Repelling the Municipality''s contention that the money due under the contract should be considered as "rent" or "toll", Sir Arnold White, Chief Justice held that "the fact that the accused has had assigned to him the right to collect the tolls, in consideration of a money payment made by him to the Municipality does not make the money payable by the accused to the Municipality under his contract a "toll" within the meaning of the Section". Similarly, in the Lahore case where the Municipal Committee sought to recover money due to them from the person to whom they had given the right to collect the toll on "turn turns" within the Municipal limits, it was held that "under Section 83 of the Punjab Municipal Act, 3 of 1911 it is open to a Municipal Committee to farm out the collection of any octroi, toll or terminal tax for a period not exceeding one year. However the amount due by the farmer is not amount due under the Act. It is an amount due under a simple lease or contract and only recoverable by law suit". The T.C. case is very much to the point. In that case as in the present one, the amount was due to the Municipality under a contract for the collection of market cess. Justice Govinda Pillai disallowed the Municipal claim that the amount should be considered as "rent" under the Municipal Act, and held that the amount due under a

contract for the collection of market cess will not come under any of the Municipal dues mentioned in Section 365 so that the prosecution now started is incompetent. The learned Advocate for the appellant attempted to distinguish the above decisions by arguing that the question considered in those cases was whether a criminal prosecution lay or not. This argument is without substance. Though the above cases arose out of criminal prosecutions launched by the Municipality, the question decided was whether the amount due under the contractual obligation with a Municipality can be considered as Municipal dues. Another argument put forward by the appellant is that since the amount if collected from the different stall holders directly by the Municipality would be a Municipal cess, it does not change its nature when it is recovered under a contractual agreement. This position also cannot be accepted. It is not, as if under the contract entered into between the Municipality and the respondent, the latter agrees to become the agent of the Municipality, or to become a tax collector on their behalf. What he agrees to do is to pay the Municipality the sum of money as agreed to at the auction, in return, for the right to collect certain fees at the Municipal market What the Municipality agrees to do is to relinquish its right to collect those fees at the market place in return for the lump sum which the respondent undertakes to pay them. If the respondent defaults in the payment of this money, he is liable for breach of the contract and not for the non payment of tax. Therefore, it is clear that the money due from the respondent cannot be considered as money due under any Municipal cess and as such "recoverable under the Regulation". Thus the amount being one payable under a contractual obligation, a suit for its recovery becomes barred by limitation, three years after the cause of action arose and this case filed in 1120 is clearly barred by limitation.

In the result the appeal fails and is dismissed with costs.