

(1974) 11 BOM CK 0011

Bombay High Court

Case No: Spl. Civil Application No"s. 2594 and 2595 of 1974

Solhinder Singh Gyanchand
Kuckreja

APPELLANT

Vs

Kadu Babu Laxman and Others

RESPONDENT

Date of Decision: Nov. 26, 1974

Acts Referred:

- Bombay General Clauses Act, 1904 - Section 3
- Maharashtra Municipalities Act, 1965 - Section 115, 150, 16, 16(1), 2(32)

Citation: AIR 1975 Bom 303 : (1975) 77 BOMLR 333 : (1975) MhLj 655

Hon'ble Judges: Lentin, J; Deshmukh, J

Bench: Division Bench

Advocate: N.B. Shetye, D.K. Ghaisas and C.R. Dalvi, for the Appellant;

Judgement

Deshmukh, J.

Both these writ petitions are being summarily dismissed. However, as they involve a point of law of some interest, notice before admission was issued to respondent No. 1 as well as respondent No. 11, the Municipal Council. We have heard the learned counsel for the petitioner as well as respondent No. 1, but had not the benefit of any submissions on behalf of the Municipal Council, as it had no appeared.

2. The facts are not in dispute. The petitioner who is a common petitioner in both these petitions, is a resident of Lonavala and had filed nomination papers in Ward Nos. 19 and 21 for the impending Municipal elections. Respondents Nos. 1 to 9 in both the petitions were the other candidates contesting the election respectively in Ward Nos. 19 and 21. When the nomination papers were being scrutinised, a common objection was raised to the candidature of the petitioner in respect of both the Wards. The objections was that the petitioner is a joint owner of some house properties in Lonavala, some of which are owned by Kukreja Brothers, a partnership firm. and some are owned by the petitioner along with his brothers by way of joint

owners. In respect of all properties, bills as required by Section 150 of the Maharashtra Municipalities Act, 1965 were served upon the firm or the group of persons owning the property. In this manner the petitioner had in a law a bill served on him regarding the arrears.

3. After service of such bill the petitioner did pay some amounts but not the entire amount of the bills. Admittedly he paid only 1/4th amount of the bill where he is one of the four partners in Kukreja brothers and 1/3rd interest along with the two other co-owners. It is also an admitted other co-owners. it is also an admitted proposition that the rest of the balance of the tax remained unpaid. The petitioner has alleged that though the bills were year after year made in the name of Kukreja brothers, he always paid 1/4th or 1/3rd portion thereof for which the Municipality always issued him a receipt.

4. On the strength of these facts which are not in dispute the petitioner says that he is not in arrears and is not disqualified from becoming an elected Councillor under the provisions of Section 16(1) (h) of the Maharashtra Municipalities Act 1965 . However, the Returning officer upheld that objection of respondent No. 1 in respect of both the Wards and held that the petitioner is a joint owner of the properties along with others and therefore must be deemed to be in arrears because the payment of taxes of his own share is at best a matter of adjusting accounts between the partners, but so far as the Municipality is concerned the petition continues to be in areas and thus disqualified from being elected as a Councillor.

5. Against this order rejecting the nomination paper of the petitioner in Ward Nos. 19 and 21, the petitioner filed an appeal as provided by Rule 15 of the Maharashtra Municipalities Election Rules 1966. Both the appeals filed by him, being Misc. Appeals Nos. 160 and 162 of 1974, were heard by the Joint Judge. Poona. The learned Joint Judge came to the conclusion that the order of the Returning Officer was correct in view of the provisions of the said Act. The petitioner being a joint owner of property and still being in arrears admittedly in respect of property jointly owned by him, he would fall within the description of the person in arrears and thus is disqualified. Being aggrieved by this order, the petitioner has filed two separate writ petitions. Since they involve no disputes of facts and the point of law is common, we are passing this common order in both.

6. The short question that arises for our consideration is whether the petitioner on the admitted facts answers the description of a person being in arrears as contemplated by Section 16(1) (h) of the Maharashtra Municipalities Act. For the purpose of these petition, the statement of facts made by the petitioner is not disputed but we will assume that the petitioner is a partner alone with three others forming the partnership Kukreja Bros. This partnership owns some properties. The petitioner along with his two brothers also owns some property in which he has 1/3rd share. The bills are being prepared in respect of all these properties by the Municipality in one name only, viz., Kukreja Bros. Though such bills are served on

one of the three brothers or partners, the petitioner has always been paying the arrears of his share. viz 1/4th or 1/3rd as the case may be. We will further assume that after the service of such bills during the current year he paid all arrears of his 1/3rd or 1/4th portion of the bills, and if that can eliminate him from disqualification, he can be deemed to be person not in arrears as alleged by him.

7. However the question of law that falls for our consideration is whether in view of the provisions of the incidence of taxes relating to the house property, the petitioner would be still a person in arrears of taxes. In this behalf it appears to us that the provisions of the Maharashtra Municipalities Act are clear. Section 115 deals with the preparation of assessment list. It says that when a tax on building or land or both is imposed, the Chief Officer shall cause an assessment list of all buildings or lands or lands and buildings in the municipal area to be prepared in the prescribed form. The assessment is therefore of buildings or lands and the list is prepared in the prescribed form in relation to the taxes levied and taxes collectable relating to the lands or buildings or lands and buildings. It therefore appears that each piece of land or each house is liable to pay the tax to the Municipality. Until a house is subdivided and separated and marked as two houses in the City Survey and Record of the Municipality there appears to be one house and the house is liable as such to pay the tax.

8. It is admitted before us on behalf of the petitioner that though a partition deed has been made by the brother of their properties the disputed houses in the Municipal limits of Lonavala are not physically divided but their interests are only pronounced by the partition deed. For the purpose of assessment by the Municipality the houses are still undivided and each house represents a separate unit in that behalf.

9. If that is so, the Municipal list would show a certain house, - may be owned by 3 or 4 persons - and that house is liable to pay tax. Sub-section (2) of Section 115 of the said Act says that for the purpose of preparing such assessment list, the owner or occupier must furnish all the required information. The Municipalities act also defines who is an occupier and who is an owner for the purpose of this Act. We need not refer to the definition of occupier contained in clause (27) of Section 2, but it will be enough for our purpose to refer to the definition of "owner" in clause (32) of Section 2, which is as follows:

"(32) "owner" means -

(a) When used with reference to any premises, the person who receives the rent of the said premises, or who would be entitled to receive the rent thereof if the premises were let, and includes -

(i) an agent or trustee who receives such rent on account of the owner.

(ii) an agent or trustee who receives the rent of, or is entrusted with or concerned for, any premises devoted to religious or charitable purposes;

(iii) a receiver, sequester or manager appointed by any Court of competent jurisdiction, to have the charge of or to exercise the rights of an owner of the said premises; and

(iv) a mortgagee-in-possession;" and

(b) When used with reference to any animal, vehicle or boat, includes the person for the time being in charge of the animal, vehicle or boat".

So far as sub-clause (a) of Clause (32) is concerned, it is an inclusive definition. Initially that expression is used to the premises or who is entitled to receive the rent thereof, if the premises were let. There after the inclusive definition specifies others who are to be treated as owners for the purpose of this Act. The petitioner along with his brother or partners is a joint owner of all the properties and in which case, it is this group of persons who are entitled to receive the rent. Undoubtedly therefore each one of them would answer the description of being an owner under S. 2 (32) of the said Act.

10. Who will be liable under such circumstances to pay the taxes? Primarily it is the house and so long as it is owned by more than one person, the group of persons would be jointly and severally liable to pay the Municipal taxes. When taxes are, therefore, due they are due from everyone of them. If the partners or the joint owners have a certain definite share the payment of a portion of the taxes would not bring about a situation where one of the owners is not in arrears and the others are. All being jointly liable, the payment of any portion by any of the them may reduce the total liability; but does not in law bring about a situation where one of the owners paying a part of tax makes that person not liable to pay tax to the Municipality, If that is so every one of them will continue to be in arrears until the entire tax is paid.

11. The language used by S. 16(1) (h) is that no person shall be qualified to be a Councilor whether by election, co-option or nomination who is in arrears (otherwise than as a trustee) of any sum due by him to the council after the presentation of a bill therefore to him u/s 150. After the presentation of such a bill he must not be in arrears of any sum due by him to the Council. If the tax is recoverable jointly and severally each one of these joint owners is always in arrears until the entire sum claimed under the appeal is paid. There is therefore no doubt that the petitioner being the joint owner of the property cannot plead that he is not in arrears as the owner of the property simply because by an internal arrangement between the owners he has paid a portion of the arrears which, according to him, represents his share in the right, title and interest of the property. The reference to person in Section 16 would always include not only an individual but also any company or association or body of individuals whether incorporated or not as defined by clause

(35) of Section 3 of the Bombay General Clauses Act, 1904. Whether the ownership is of a partnership or a group of individuals each of this group constitutes "person" as defined by the Bombay General Clauses Act, 1904, and that would be the relevant meaning to be taken into consideration while construing the provisions of Sections 16 of the petitioner has been rightly held to be in arrears and thus disqualified u/s 16(1) (h) of the said Act.

12. This view seems to be fully supported by a judgment of the Andhra Pradesh High Court in the case of the [Thellakula Jalayya Vs. Namana Venkateswara Rao and Others](#) . That section dealt with disqualification of a Councillor and the sub-section laid down of a Councillor and the sub-section laid down that a person shall be disqualification of a Councillor and the sub-section laid down that a person shall be disqualified from election as a Councillor if such a person is at the date of the nomination or election as a Councillor if such a person is at the date of the nomination or election in arrears of any kind due by him otherwise than in a fiduciary capacity to the Municipality up to and inclusive of the previous year, in respect of which a bill or notice has been duly served upon him and the time if any specified therein for payment has expired. The partnership was in arrears and a question was raised for the consideration of the learned Judges whether an individual partner would still be disqualified because the Municipal arrears are due from a firm are not from the individual concerned. The argument was negated and it was held that the partnership always represented the group of persons and the levy on the firm in any manner and the recovery thereof in any manner would not change the legal position. viz that each person is liable to pay the Municipal dues. The learned Judges therefore upheld the objection of the Election Commissioner and the partner concerned was declared disqualified to contest the election. We are in respectful agreement with the reasoning and the conclusion in that judgment. In this view of the matter the petitioner has been properly held to be disqualified. The petition fails and is dismissed.

13. In the circumstances of the case, there will be no order as to costs.

14. Petition dismissed.