The Municipal Corporation of Bombay Vs Charandas Vassonji

Court: Bombay High Court

Date of Decision: Oct. 20, 1927

Acts Referred: City of Bombay Municipal Council Act, 1988 â€" Section 485

Citation: AIR 1928 Bom 104 : (1928) 30 BOMLR 169 : 108 Ind. Cas. 488

Hon'ble Judges: Rangnekar, J

Bench: Single Bench

Judgement

Rangnekar, J.
This is a suit by the Municipal Corporation of Bombay to recover a sum of Rs. 4158-11-0 being the balance of the amount

due to them for Municipal property taxes from the years 1922 to 1927 in respect of two properties belonging to the defendants Nos. 2091 and

2093 situate in D Ward, Bombay. The claim so far as property No. 2091 is concerned is baaed upon an increase in the assessment of the

property from 1922 to 1925 and another increase thereafter from 1925 to 1927. The claim as to the other property is based on an increase in the

assessment from the year 1922.

2. The defence briefly is that the Municipality is not entitled to recover the increased assessment in respect of property No. 2091 as they have not

complied with the provisions of the Municipal Act, and in respect of the other property the same reason is advanced for resisting the claim and the

further reason that that property was demolished some time in May 1923 and notice of such demolition was given to the Corporation in September

1923, and therefore it is alleged that no assessment whatever is due in respect of the second property after 1923.

3. It appears from the evidence that the properties belonged prior to 1919 to Vassonji Madhavji, father of the defendants. He died some time in

1919 and these properties, although they stood in his name, were managed by his widow Monghibai during the minority of the defendants. The first

defendant attained majority some time in February 1922. Monghibai died in 1924. It is not necessary to go into the various provisions of the

Municipal Act in order to come to a decision in this case except the sections which relate to the service of the special notice for increased

assessment provided for by Section 162. But it appears from the evidence that all the requirements of the Municipal Act were complied with so far

as the public notice as regards the assessment was concerned, Not only that but the assessment under the provisions of the Act became final and a

certificate to that effect was issued by the Municipal Commissioner from time to time from Ib21 to 1927. This part of the case is not disputed, the

real dispute turning upon the claim as to the increased assessment.

4. Section 162 requires that where the rateable value of any premises is about to be increased the Commissioner should as soon as possible after

the issue of the public notice under Sub-section (1) of that section give special written notice to the owner or occupier of the said premises

specifying the claim as to increased assessment and informing him that any complaint against the same will be received by him within fifteen days

from the service of the special notice. The plaintiffs state that in accordance with this section, Sub-clause (2) special notices were given in respect

of both the premises in 1921 and subsequently in 1925 as to one of the properties. The question is whether the Municipality has complied with the

provisions of this section.

5. It appears from the evidence that special notices to be served in accordance with Section 162 were handed over to a Ward clerk by name

Aroskar in January 1921. Aroskar first attempted to serve the notices on Monghibai who was living then in De Souza Street, D Ward. But he

found that the place of residence of Monghibai was locked and that Monghibai could not be found. Thereafter he went to the premises in D Ward

and made inquiries on the spot. As a result of information which he received from the tenants on the premises he found that a man called Bisheshar,

a Bhaya, was living in a room in one of the buildings and was in the service of the owners on whose behalf he was recovering rents from the tenants

of the premises in question. He thereupon went to Bisheshar and tendered these special notices to him on January 17, 1921, and he swears that

those notices were accepted by Bisheshar. He made an entry in his field book at the time which supports the oral evidence which he has given

about the service of the special notices, and that is Exhibit M. Thereafter the Municipality sent notices of demand addressed to the owners which

are admitted to have been received by the defendants and it was after these notices of demand that in March 1921 correspondence ensued

between the solicitors of the defendants and the Assessor and Collector in the the first instance and between them and the Municipal

Commissioner thereafter. The defendants in that correspondence alleged that the service was not properly effected as they had no man of the name

of Bisheshar in their service. Their solicitors subsequently had interviews with both the Commissioner and the Assessor, as a result of which

ultimately the present suit was filed.

6. The question, therefore, is whether Bisheshar was in the service of the defendants and whether he was a servant of the family of the defendants.

[His Lordship at this point discussed the evidence and expressed his conclusion as follows :] Therefore, I find on the evidence that Bisheshar in fact

was receiving and collecting rents of this property from the tenants thereof at the time the service on him was effected. Tricundas admitted that

whenever the Bhayas brought rent to him he entered the amount of the rent and the name of the Bhaya in his books, and in his cross-examination

he admitted that he was keeping rough books. These books have not been produced before me.

7. But it is further argued that even supposing Bisheshar was recovering rents of these properties he was not a servant of the family of the owners

within the meaning of Section 485, and that, no doubt, is an important question which arises for determination in this case, and I proceed to deal

with it now.

8. There are two sections in the Act which lay down the procedure to be followed by the Municipal authorities in effecting service of any notice,

bill, summons or schedule etc, which is required by the Act to be served on owners of premises and other persons. In construing these sections I

think it is permissible to consider the aim, the scope and the object of the statute. If the intention of the Legislature was that the widest possible

powers should be given to the Municipal authorities in order that the object of the Act should be carried out, then I think it is the duty of a Judge to

put upon these sections what is called a beneficial construction. In my opinion, having regard to the object of the City of Bombay Municipal Act,

any construction which would facilitate the carrying out of that object ought to be adopted rather than any construction which would retard the

fulfilment of the purpose and object of the statute.

9. Section 484 lays down that whenever service of notice etc. is to be effected on any person then it has to be effected in four ways; and it seems

to me that although, as Mr. Mulla contends, the method of the service in Sections 481 and 485 is identical with some exceptions, the object of

Section 484 is to have service effected on a person eo nominee, and that appears from the wording of that section. u/s 485 wider powers seem to

have been given to the Municipal authorities for the purpose of effecting service on an owner or occupier of premises. That section says that when

any notice etc. is required by this Act (omitting unnecessary words) to be served upon or issued or presented to the owner or occupier of any

building or land ""it shall not be necessary to name the owner or occupier therein, and the service... shall be effected, not in accordance with Section

484 but as follows."" Then follow Sub-clauses (a)(b) and (c). Now the first thing to notice is that it is not at all necessary under this section to

address the notice in any particular name. This, to my mind, indicates that the legislature intended to confer on the Municipal authorities widest

possible powers for effecting service. All that the section requires is that service should be effected in accordance with the provisions of Sub-clause

(a), (b) or (c) Clause (a) directs that notice etc. shall in the first place be given or tendered to the owner or occupier, or if there be more than one

owner or occupier, to any one of the owners or occupiers of such building or land. In Sub-clause (b) if the owner or occupier or no one of the

owners or occupiers is found the service of the notice etc. shall be effected by giving or tendering the said notice etc. to some adult male member

or servant of the family of the owner or occupier or of any one of the owners or occupiers. Or, thirdly, if none of the means aforesaid be available,

by causing such notice etc. to be affixed on some conspicuous part of the building or land to which the same relates.

10. In a forcible argument Mr. Mulla contends that service on Bisheshar does not come within any of these clauses. Turning to Clause (b) his

argument is that even if Bisheshar was collecting rents on behalf of the defendants he could not be said to be a servant of the family of the owner.

Taking the provisions of these two sections together and bearing in mind the object of the legislature in framing these sections, it seems to me that

what Clause (b) really requires is that if service cannot be effected in the manner provided by Clause (a), then it is open to the Municipal authorities

to effect service by tendering or giving the notice etc. to an adult male member of the owner''s family or a servant of his family.

11. I do not propose to consider the hypothetical cases put forward in the course of the argument. The position appears to me on the evidence to

be that the property in this case belonged to the defendants, and that is not disputed, subject to some interest in Monghibai, and that, therefore, the

property was the family property; and that being so a person who recovers rent on behalf of the family and to which the family is entitled, would, I

think, fall within the description of ""servant of the family of the owner"". I hold on the evidence in the case that Bisheshar was a servant of the family

of the owners within the meaning of Sub-clause (b) of Section 485, and service on him was proper service under the Act.

12. There is no doubt that the object was, as I have stated, to give very wide powers to the Municipal authorities to effect service. If one turns to

Order V, Rule 15, Civil Procedure Code, one finds that under that rule whore in any suit the defendant cannot be found and has no agent

empowered to accept service of the summons on his behalf, service may be made on any adult male member of the family of the defendant who is

residing with him and the explanation to the rule says: ""A servant is not a member of the family within the meaning of this rule."" Contrasting this

provision with that of Section 485, it seems to me to be very clear that the restrictions imposed under Rule 15 of Order V of theÃ¯Â¿Â½Ã¯Â¿Â½Civil

Procedure Code, are done away with when one comes to Clause (b) of b. 485. And I think there is considerable force in Mr. Coltman''s argument

that these words are put in this clause in order in enable the Municipal authorities to effect service in cases of a joint family property. To accept the

narrow construction which the learned Counsel for the defendants would put on these words would result, in my opinion, in certain absurd results.

For instance, if these words are to be taken in their narrow sense, namely, that a person on whom service is to be effected must be a domestic

servant, this would result in making the service effected on the servant of the owner himself bad or invalid. This could hardly have been intended by

the legislature. In nay judgment a servant of the family of the owner means a servant employed for the benefit of the family in general and paid out

of the family property or funds.

13. But supposing that the service on Bisheshar can be challenged on the ground that he is not a servant of the family of the owner, I think the case

falls also within Sub-clause (a) of that section. Section 3 of the Act gives a statutory definition of the term ""owner"" and that seems to be very clear.

It says that unless there be something repugnant in the subject or context, ""owner"", when used in, reference to any premises, means the person who

receives the rent of the said premises, or who would be entitled to receive the rent thereof if the premises were lot, and includes (1) an agent or

trustee who receives such rent on account of the owner. Therefore every possible way by which the Municipality can get at a person who has a

beneficial interest in the property in order to secure compliance with the provisions of the Municipal Act has been contemplated and provided for

by extending the ordinary meaning of the term ""owner"" by Section 3 of the Act, except of coarse when the context itself is against such a

construction.

14. Now, if as I have found, Bisheshar was actually receiving the rent, whether he was doing so rightly or wrongly, and in this case I think he was

doing so rightly, I do not see what objection there can be in holding that the service upon him would fall within Sub-clause (a) of Section 485. Mr.

Mulla''s argument, as I understand it, is that having regard to the context and the terms of Section 485, the word ""owner"" must be understood in

every case in the ordinary sense, and he bases it on the words of the section ""it shall not be necessary to name the owner or occupier"", and he

argues that when the Act says that it is not necessary to name the owner, the term ""owner"" must be understood in the ordinary sense. Having given

my best consideration to the arguments, I still fail to see what there is in the context which prevents an extended meaning allowed by Section 3

being put on the term ""owner"" in Section 485. The underlying idea of Section 435 seems to me that whereas u/s 484 it is necessary to mention the

name of the owner, u/s 485 no name need specifically be mentioned. And obviously this provision is made for very good reasons. There are

several properties in Bombay which stood and are standing in the names of persons long since dead, and sometimes it is very difficult if not

impossible to find out who really the owner of the property is; and the provision that it should not be necessary to name the owner is made to meet

cases like these. There are many properties in Bombay which belong to a joint and undivided Hindu family, or to people who are governed by or

follow the Hindu law. Obviously it is difficult to know who the ""owner"" of such properties is; it would be equally difficult to know if a servant is a

servant of the family or of any member of a family. It is to meet cases like these that the legislature has enacted Section 3 and Section 485 of the

Act. I am unable to see why the word ""owner"" in Section 485 should not be construed be as to bear the extended sense allowed by Section 3.

15. In the case of Peek v. Waterloo Board of Health (1863) 2 H. & C. 709 a case which arose under the Public Health Act, the Court held in

defining the word ""owner"" that a person who is de facto receiving the rent would be the owner within the meaning of Section 2 of that Act. The

case is cited in Halsbury, Vol. XXIII. So far as I can see, it has not been repealed, and I think it is an authority which throws considerable light on

the question which I have to decide in this case.

16. I hold, therefore, that the special notice was properly served in this case on January 17, 1922.

17. That being the position, the remaining questions do not present any difficulty. So far as the property No. 2091 is concerned the increased

assessment continued as it remained final. No objection was raised thereafter by the defendants and the assessment was good under the provisions

of the Act until 1925. In 1925 there was a farther increase in the assessment and it appears from the evidence of the ward clerk Correia that he

made attempts to effect service of special notices u/s 162, Sub-clause (2), on the owners. The first time he went he found from the tenants of the

ground floor that neither Monghibai nor the defendants were in Bombay and that the house was closed, but he was informed that the owner would

return in two or three days. Accordingly, on January 25, 1926, he went again to the place of residence of Monghibai. He went up to the floor on

which she was residing and found that the house was closed and it was after that ha went to the properties in suit and there he effected service in

accordance with Sub-clause (b) of Section 485. Monghibai, unfortunately, is dead, and it is very easy for Tricumdas to come and say that

Monghibai was in Bombay in 1925 and never went out except for half an hour in the morning and an hour in the evening. I have no hesitation in

disbelieving Tricumdas. I think, therefore, under the circumstances of the case, the ward clerk was justified in pasting the special notice on the

property of which intimation was immediately given to the defendants. It is admitted that there has been no appeal or complaint against that

assessment.

18. Then, there is one part of the case with reference to the other property No. 2093, as to which the case on behalf of the defendants is that the

property was demolished in May 1923, Now, if the property is demolished notice has to be given u/s 153, and although it is alleged in the written

statement that such notice was given, it is now clear on the evidence, and it is fairly conceded by counsel, that there was no such notice given. But

apart from that what appears from the evidence is that a part of the building fell down in 1923 and the whole building was not demolished in the

first instance and it was long after that the work of demolition was taken in hand. There being no notice or objection to the assessment up to 1927,

the defendants'' case with regard to property No. 2093 must fail.

19. Now, as to the actual particulars, the defendants claim credit for certain amounts which are mentioned in Exh. No. 1 to the written statement. It

is now admitted that the claim is unsustainable. The Municipality has recovered rents from the tenants of the property to the extent of Rs. 239-2-0.

The Municipal case is that this rent was recovered in respect of property No. 2092 which is not the subject-matter of this suit. But it is agreed

between the parties that the plaintiffs should give credit to the defendants for that amount.

20. Therefore, in the result there will be a decree for the plaintiffs for Rs. 3,831-1-0.

21. The defendants having failed on all points must pay the costs of the Municipality.

22. Counter-claim will be dismissed with costs.

23. There will be a decree in terms of prayer (h) to the plaint also. In default of payment within six months there will be an order that the premises

be sold and the sale proceeds applied in and towards the payment of the amount.