

(1933) 01 BOM CK 0030

Bombay High Court

Case No: None

Bandra Municipality

APPELLANT

Vs

Venechand Punamchand

RESPONDENT

Date of Decision: Jan. 19, 1933

Acts Referred:

- Bombay Municipal Boroughs Act, 1925 - Section 112

Citation: 149 Ind. Cas. 28

Hon'ble Judges: Rangnekar, J

Bench: Single Bench

Judgement

Rangnekar, J.

This appeal arises out of a suit brought by the Bandra Municipality to recover the amount of house-tax, water-tax, and sanitary cess from the defendant either personally or from his property. The Municipality claimed a first charge on the property for the payment of these taxes. The claim was resisted by the defendant both on facts and on law. The trial Court found that the defendant was not liable personally to pay the taxes, but as the defendant had purchased the property and had become the owner of it in November 1927, the plaintiff Municipality was entitled to a charge on the property in respect of the same. The defendant appealed to the District Court. In appeal the defendant did not resist the claim as regards the house-tax, but contended that the arrears for the sanitary cess and water-tax, could not be a charge on the property. The Municipality, curiously enough, did not file cross objections to the decree disallowing the claim personally against the defendant. The learned District Judge upheld the contention of the defendant and allowed the appeal. The result was that the claim of the Municipality to recover the sanitary cess and water-tax personally from the defendant was disallowed by the trial Court, and their claim to a charge in respect of these taxes, allowed by the trial Court, was disallowed by the appellate Court. Hence this appeal.

2. The appeal has been exhaustively argued by Mr. Parulekar on behalf of the Municipality, and he stated that if he was not able to satisfy the Court that the view taken by the lower Court with regard to the sanitary cess was wrong, he would not take up the Court's time in arguing the question of water-tax, as he felt that Section 112, Bombay Municipal Boroughs Act, might not in terms apply to it and he has confined his argument to the claim in respect of the special sanitary cess. The only question in appeal, therefore, is whether the Municipality under the Bombay Municipal Boroughs Act, XVIII of 1925, and the rules made by it u/s 58 of the Act, is entitled to a charge on property in respect of the tax known as special sanitary cess. The other question raised by Mr. Parulekar is that even if the Municipality are not entitled to a charge in this case, they are entitled to a personal decree against the defendant in respect of the amount due for this particular tax. The question thus raised turns upon a proper construction of certain sections of the Bombay Municipal Boroughs Act, 1925, read with the rules made by the Bandra Municipality under the Act. Chapter 7 deals with "Municipal Taxation"; the first Section in it is Section 73 under sub-heading (1) "Imposition of Taxes." The section lays down what taxes may be imposed by a Municipality. The word "tax" is defined by Section 3 as meaning various kinds of imports, cesses, charges or taxes. Section 73 shows clearly the distinction between various kinds of levies or cesses or taxes which the Municipality can impose. Thus u/s 73(i) we have a rate on buildings or lands. Under (ii) there is a tax on certain kinds of vehicles or animals, etc.; under (iii) a toll on other vehicles; under (iv) an octroi on animals, and so on. Then there is a tax on dogs. Then we come to (vii) which provides for a special sanitary cess upon private latrines, etc., cleansed by Municipal agency, after notice given as required under the section. Then there is a drainage tax, and in (x) there is a special water rate, which may be imposed in the form of rate assessed on buildings or in any other form and so on. Proviso (6) of the section shows that no special sanitary cess can be levied until the Municipality has issued either severally to the persons to be charged, or generally to the inhabitants of the borough...to be charged with such cess, one month's notice of the intention of the Municipality to perform such cleansing and to levy such cess.

3. Apart from anything else it seems to me to be clear from Section 73 itself that there is a distinction between a special sanitary cess and a rate on buildings and lands, further that in the case of the latter no liability would accrue and no cess would be allowed until a notice is given to the person to be charged thus indicating that the liability should be imposed on the person to whom the notice is given. In the same chapter under heading "(2) Assessment of and liability to rates on buildings or lands," there are several sections running from 78 to 89 which show clearly how rates on buildings or lands are to be assessed, and show clearly that it is the house-tax as such which is mentioned and referred to in these sections as a "rate on buildings or lands." Of these Section 85 makes it clear that the tax imposed in the form of a rate on buildings or lands is primarily leviable on the actual occupier

of the property upon which the tax is assessed. Then under heading "(4) Special provisions relating to certain taxes" in the same chapter, provision is made for assessing taxes other than those previously dealt with and for fixing the liability in respect thereof and this matter is dealt with in Sections 91 and 92 with the exception of octroi and tolls, which are dealt with under sub-heading (5). The next chapter, that is Ch. 8, refers to and deals with "Recovery of Municipal Claims," and it is in that chapter that Section 112 finds a place. It is on this section that Mr. Parulekar relies. It runs thus:

All sums due on account of any tax imposed in the form of a rate on lands or buildings or both, shall, subject to prior payment of land revenue, if any...be a first charge upon the building or land, in respect of which such tax is leviable♦.

4. It may be noticed that the language employed in this section in describing the tax which is declared to be a charge is substantially the same as the language in Section 85 which, it is clear, refers to a house-tax authorised u/s 73(i). I now come to the rules entitled "Bandra Municipality Rules, 1920," a copy of which is made available to me owing to the courtesy of Mr. Parulekar. At p. 108 there is a heading "Time and Mode of Recovery of Municipal taxes &c." The first Rule under that heading is Rule 337 which refers to Schedule E. Rule 317 says that the Municipality shall levy the taxes and recognise the exemptions specified in Schedule E, which is printed at p. 176 of the Bandra Municipality Rules. In Schedule E there are various columns under various headings, and col. 3 is in regard to "Class of persons or property liable," and the fourth shows "Amount for which or rate at which classes liable." It is not necessary to refer to these columns. Column 2 gives the names of taxes, and the first tax described is house-tax, which, it is clear, corresponds with the first in Section 73(i), and col. 3 shows that in respect of this tax all houses and buildings including land are liable. Coming to the special sanitary cess the following note appears under col. 3; "The owner or the occupant at the discretion of the Municipality"; the rest of the note is irrelevant. So that the liability in respect of the house-tax is clearly imposed on the house or building concerned; the liability in respect of the sanitary cess is imposed on the owner or occupant. Mr. Parulekar refers to col. 4 dealing with the amount which shows that the special sanitary cess is to be assessed in a particular manner, i.e., 4 per cent, of rental value as fixed for house-tax, assessment, etc.; and argues that that shows that it is a tax in the form of a rate on the houses or buildings. I am unable to accept this argument particularly in view of the specific language of the sections and the rules.

5. This then being the scheme of the Act and the rules, it is difficult to see how a special sanitary cess will come under the words "House rate on buildings" or even within the words "a rate on lands or buildings" occurring in Section 112 of the Act. There is no clear indication anywhere that in the case of this tax property was primarily liable. I think, therefore, that the view of the lower Appellate Court that the Act does not contemplate placing the burden of the special sanitary cess on the

building concerned is correct.

6. This brings me to the question as to whether Mr. Parulekar is entitled to ask for a personal decree in this appeal. The question arises in this way. The trial Court held that under the Act the defendant was not personally liable in respect of these taxes, but that his property was and that the taxes were a charge upon the same. The defendant appealed from the latter part of the decree. The Municipality filed no cross-objections to that part of the decree by which their claim to a personal decree was disallowed. The appeal Court allowed the appeal. Two questions arise. The first is whether in this second appeal the Municipality can ask for a personal decree. The other is whether under the Act the defendant is personally liable. I do not wish to express any opinion on either of these questions as it seems to me that on facts the Municipality must fail. The case for the Municipality was that the defendant's father was as mortgagee in possession and therefore the owner of the property and he was liable in respect of this tax. The taxes claimed were in respect of the period 1925-26 to January 1928.

7. Now the burden of proving that the defendant was the mortgagee in possession, and that the possession commenced from 1923 as alleged was on the Municipality. They never asked for an issue on that point in any of the Courts and they never led any evidence on it. All that happened was that this allegation was made in the plaint as to which the defendant stated that he did not know whether his father was a mortgagee in possession in 1923. The plaintiff then put in a purshis calling upon the defendant to produce the mortgage deed. The Municipality did nothing beyond this and the matter ended there. Apart from that the record is against them. It appears clearly from the documents which have been put in on behalf of the defendant that this property belonged to one Dala and he had mortgaged it to defendant's father. A suit on the mortgage was filed and in execution of the decree the defendant purchased the property in November, 1927. He applied to the Court for being put in possession and the Court made an order giving him possession in November 1927, and in those proceedings the mortgagor made a statement, which is on record, that he was in receipt of rent up to November, 1927 and further expressed his willingness to hand over possession in November, 1927. These facts clearly show that the defendant had nothing to do with the property till the end of 1927, and that being so, the claim of the plaintiff against him must fail. In the result, therefore, the appeal must be dismissed with costs.