

(1939) 07 BOM CK 0013

Bombay High Court

Case No: Civil Revision Application No. 6 of 1939

Chunilal Jethalal

APPELLANT

Vs

Ahmedabad Borough
Municipality

RESPONDENT

Date of Decision: July 28, 1939

Acts Referred:

- Bombay Municipal Boroughs Act, 1925 - Section 73(2)

Citation: AIR 1940 Bom 41 : (1939) 41 BOMLR 1249

Hon'ble Judges: John Beaumont, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

John Beaumont, Kt., C.J.

This is a revision application against the decision of the Small Cause Court Judge of Ahmedabad. The applicant was charged with wheel tax u/s 73 (2) of the Bombay Municipal Boroughs Act, 1925, and he paid a sum of Rs. 600 under protest, and in this suit he sues to recover that amount. The learned Small Cause Court Judge dismissed the suit.

2. Section 73 (2) empowers a Municipality to impose a tax for the purposes of the Act including a tax on all vehicles used and kept for use within the said borough, whether they are actually within or outside the said borough.

3. The applicant's first contention is that the vehicles in respect of which he has been taxed were not kept for use within the borough. On the findings of the learned Judge it is, in my opinion, impossible to maintain that contention. The learned Judge held, I think rightly, that the words "kept for use within the borough" meant kept for normal use within the borough, and no doubt where a vehicle is kept for normal use outside the borough, an occasional user within the borough could be rejected on the principle of de minimis non curat lex. My attention on this point was drawn to a

decision of a bench of this Court♦Bandra Municipality v. Burmah Shell &c. Co. (1937) 40 Bom. L.R. 111 in which it was held that the lorries in question in that case were not kept for use within the borough. I have no comment to make upon the decision, but I would venture to suggest that Mr. Justice Macklin in a dictum not necessary for the decision of the case went rather too far in saying that user must be "main user" in order to fall within the section. Reference to a "main user" involves comparison between one method of user and another. It is possible to suppose a case in which a motor lorry might be kept for normal and regular use on two or three days in a week within the borough, and for regular use for the rest of the week outside the borough, and I think it would be difficult to say in such a case that the lorry was not kept for use within the borough, because it was kept for more extensive use outside the borough. However, on the facts of this case as found by the learned Judge I see no reason to differ from him in holding that the lorries were kept for use within the borough.

4. The other contention taken by Mr. C.K. Shah on behalf of the applicant is that he is not liable for the tax since the coming into operation on April 1, 1936, of the Bombay Motor Vehicles Tax Act of 1935. u/s 3 of that Act a tax at the rate fixed by the Provincial Government is to be levied on all motor vehicles used or kept for use in the Presidency, and Mr. Shah complains that he ought not to be subject, in respect of the same vehicle, to double taxation. But I know of no principle to prevent that. I can see nothing in either of the Acts in question which suggests that that position was not intended. The tax under the Bombay Municipal Boroughs Act is a tax levied by a Municipality on vehicles kept for use within the borough, and the tax under the Bombay Motor Vehicles Tax Act is a tax levied by the Provincial Government on vehicles used in the Presidency. A vehicle which is both used in the Presidency and is also used within the borough may be the subject of taxation by two taxing bodies.

5. In my opinion, therefore, the decision of the learned Judge was right and this application must be dismissed with costs.