

(1970) 09 CAL CK 0044
In the Calcutta High Court
Case No : A.F.O.O. No. 268 of 1969

Administrator, Uttarpara Kotrung Municipality	APPELLANT
Vs	
Girija Prosad Paul and Another	RESPONDENT

Date of Decision : 08-09-1970

Acts Referred:

Bengal Municipal Act, 1932 — Section 155(4), 156

Citation : AIR 1971 Cal 207 : (1971) 1 CALLT 370

Hon'ble Judges : Sabyasachi Mukharji, J;Arun K. Mukherjea, J

Bench : Division Bench

Advocate : S.K. Rai Chaudhury and Biswa Ranjan Ghoshal, for the Appellant;
M.M. Sen, Kanai Lal Khan, (for Nos. 1 and 2) and Sunil K. Bose, (for No. 3), for
the Respondent

Final Decision : Dismissed

Judgement

Sabyasachi Mukharji, J.—In this appeal we are concerned with the right of the erstwhile Kotrung Municipality to realise, in the facts and circumstances of this case, by distress, the alleged dues on account of municipal tax for the period from 1st quarter of 1958-59 to the end of 4th quarter of 1962-63 and license fee for the period from 1st half of 1958-59 to the 2nd half year of 1962-63. It appears that holding No. 1, Shankaripara Ghat Lane in Ward No. 1, Kotrung, was originally acquired by the Corporation of Calcutta for the purpose of manufacturing; bricks to meet the requirements of the said Corporation of Calcutta. Subsequently, the Corporation of Calcutta leased out the said property and one Kishorimohan Banerjee, became a lessee thereof. It has been alleged that Sri Girija Prasad Paul, hereinafter, referred to as the petitioner No. 1 became a sub-lessee under the said Kishori Mohan Banerjee and it has been further asserted that he became a direct lessee under the Uttarpara Kotrung Municipality in respect of the aforesaid holding. It has been further alleged that Friends' Bureau, which is a registered partnership firm and hereinafter referred to as the petitioner No. 2, is working the brick field in the aforesaid holding since 1st of

November, 1960, as a licensee under the petitioner No. 1. The Corporation of Calcutta is the owner of the aforesaid holding in the records of the municipality. By a notification issued the Kotrung Municipality has been amalgamated with the Uttarpara Municipality and is now known as Uttarpara Kotrung Municipality, hereinafter referred to as the appellant. By a notice dated 17th of July, 1963 fixed in the aforesaid holding the appellant purported to attach 1,25,000 bricks on account of the alleged arrears of holding rates in respect of the aforesaid holding for the period from 1st quarter of 1958-59 to the end of the 4th quarter of 1962-63 and for the alleged arrears of licence fee for the period from the first half of 1958-59 to the end of the second half year of 1962-63, The petitioners Nos. 1 and 2 are the occupiers in respect of the aforesaid holding as contemplated under the Bengal Municipal Act, 1932 and the Corporation of Calcutta Is the owner thereof. The petitioners thereupon moved this High Court under Article 226 of the Constitution. In the petition it was alleged that in accordance with Section 132 of the Bengal Municipal Act, 1932 the Corporation of Calcutta being the owner of the holding was liable in respect of the same. It was further alleged that no bill or notice of demand, as required under the provisions of the said Act had been served on the Corporation of Calcutta. It was further alleged that no notice of demand and no hills in respect of the dues had been served upon the petitioners. It was further alleged that the petitioners were not liable for licence fees because the petitioners had always been ready and willing to pay fee for trade licence and had asked for the issuance of trade licence but they were refused and as such they were not liable. In those circumstances it was contended that the appellant was not entitled to levy any distress or to sell the said goods belonging to the petitioners and lying in the said holding. A rule nisi was issued and after affidavits and further affidavits were filed, the matter came up for hearing before D. Basu. J. By an order passed and judgment delivered by D. Basu. J., on the 10th of December. 1968 the learned Judge has made the rule absolute and the appellant was restrained from taking any further steps in pursuance of the impugned notice and the appellant was directed to refund the amount of sale proceeds kept in the custody of the Municipality as per order of this Court dated 14th August, 1963. But the appellant was given liberty to proceed afresh according to law. The learned Judge came to the conclusion that there has not been service of the notice of demand on the Corporation of Calcutta in accordance with the provision of Bengal Municipal Act, 1932. According to the learned Judge without service of notice of demand upon the owner, no distress can be levied, in the facts and circumstances of this case. It was further contended be-fore the learned Judge that the petitioners being occupiers were liable for the rates independently of the owner in view of the comprehensive definition of owner in Section 3(38) of the said Act. The learned Judge, however, found that even assuming that they were the owners there was no personal service upon the petitioners. Furthermore, the learned Judge came to the conclusion that in view of Section 165 of the Bengal Municipal Act, 1932 the claim of the Municipality from the beginning of 1958-59 to the second quarter of 1962-63 was barred by limitation and as such the impugned notice

must also be struck down on that ground as it included claim for the barred period.

2. Being aggrieved by the aforesaid judgment and order of D. Basu, J., the appellant has preferred the present appeal. On behalf of the appellant it was contended by Mr. S. K. Roy Chowdhury learned Advocate, that in view of the fact that the Corporation of Calcutta was resident outside the Municipal limits of the Kotrung Municipality, and in view of the fact that notice of demand and the bills were sent to the Corporation of Calcutta by registered post and the receipt whereof has not been denied by the Corporation of Calcutta, there has been sufficient compliance with the relevant provision of Bengal Municipal Act and there has been proper service of the notice and bills as required by the provision of the Act and the Municipality of Kotrung was entitled to levy distress. It is further contended that in any event it is not a question of non-service of notice but a mere irregular service and that should not be permitted to vitiate the proceedings for distress for the realisation of the dues. Alternatively, Mr. Roy Chowdhury contended, that the petitioners are owners in view of the definition provided u/s 3(38) of the said Act and there has been service upon the petitioners in accordance with the provision of the Bengal Municipal Act, 1932 and as such the distress levied was right and proper. It was contended that provisions of Section 165 and provisions of Section 156 are independent and separate provisions and the limitation provided under one section should not be imported into the provisions of another. In that context it was urged that the claim of the Municipality in the distress notice did not include any claim which had become barred under the provisions of the Act.

3. It is therefore necessary to consider the relevant provisions of the Bengal Municipal Act, 1932 to determine whether the distress levied was proper or not. Section 132 of the Bengal Municipal Act, 1932, hereinafter referred to as the said Act, provides that except as otherwise provided by the said Act, any rate which is assessed on the annual value of a holding would be payable by the owner of the holding. Section 147 of the said Act stipulates that the assessment list which is prepared in accordance with the provisions of the Act will be published and if in case any property is assessed for the first time or the assessment is increased, the Chairman shall give notice thereof to the owner or occupier of the property, if known. Section 152 of the said Act provides that by notification to be posted up in their office, the Commissioners shall declare at what hours of each day the office shall be open for the receipt of money and the transaction of business. Section 153 provides that tax shall be payable in quarterly instalment and every such instalment shall be deemed to be due on the first day of the quarter in respect of which it is payable. Section 154 provides how receipts are to be given. Section 155, Sub-section (1) provides that as soon as may be after any sum has become due on account of any tax toll, fee or rate, the Commissioners shall cause to be presented to the person liable a bill for the sum due. It is necessary to set out the relevant provisions of Section 155 and Section 156 here-under:--

"155. (1) As soon as may be after any sum has become due on account of any tax, toll, fee or rate, the Commissioners shall cause to be presented to the person liable a bill for the sum due.

(2) Every such bill shall contain a statement of the period and of the tax, toll, fee or rate for which the charge is made.

(3) The Commissioners at a meeting may by a resolution direct that a rebate of three and one-eighth per cent of the amount of any bill shall be allowed if payment of the amount for which the bill has been presented under Sub-section (1) is made into the municipal office within thirty days from such presentation, and thereupon rebate shall be allowed accordingly.

(4) If the said amount is not paid within thirty days from the date of presentation of the bill, a notice of demand in the prescribed form shall be served on the person liable. Such notice shall be signed by the Chairman. Vice-Chairman or any officer authorized by the Commissioners in that behalf and shall be served by a person authorized to receive payment:

Provided that no charge shall be made in respect of the service of such notice.

(5) On the amount of a bill remaining unpaid after its presentation, interest shall be payable at the rate of one pie per rupee per mensem on the said amount from the day next after the expiry of thirty days from the commencement of the quarter following that in which the bill is presented. Explanation."

"156. If any person, does not, within thirty days of the service of a notice of demand under Sub-section (4) of Section 155, pay the sum due, either to the Commissioners at their office, or to some person authorized by them to receive the money or show to the Commissioners sufficient cause for not paying the same the amount of the arrear due, along with interest and with costs according to the prescribed scale of fees, may, at any time, be levied by distress and sale of any movable property belonging to the defaulter, except ploughs, plough-cattle, tools or implements of agriculture or trade, wherever found or of any movable property belonging to any other person subject to the same exceptions which may be found within the holding in respect of which such defaulter is liable to such tax, toll, fee or rate:

Provided.

Provided." Section 165 of the Act provides as follows:--

"165. If the sum due from the owner of any holding remains unpaid after the notice of demand has been duly served, and such owner is not resident within the municipality or the place of abode of such owner is unknown, the same may be recovered from the occupier for the time being of such holding, who may deduct from the next and following payments of his rent the amount which may be so paid by or recovered from him:

Provided that no arrear of rate shall be so recovered from the occupier of any

holding if it has remained due from the owner thereof for more than one year or if it is due on account of any period during which such occupier was not in occupation of such holding:

Provided also that if any such holding is occupied in severalty by more than one person, the sum recovered from any one of such persons shall not exceed such amount, as shall bear to the total sum due the same proportion as the value of the part of the holding in the occupation of such person bears to the entire value of the holding."

In this connection it is also relevant to notice Section 510 which is in the following terms:--

"510. When any notice, bill, summons or other document is required by this Act or by any rule or by-law made thereunder to be served upon or issued to, any person as owner or occupier of any land or building, it shall not be necessary to name the owner or occupier in the document and the service or issue thereof shall be effected-

(a) by giving or tendering such document to the owner or occupier:

Provided that if there be more than one owner or occupier, and it is not in the opinion of the Commissioners practicable to serve the document on every one of them the Commissioners may serve the document on any one or more of them as they may think fit; or

(b) if the owner or occupier Is not found, by giving or tendering such document or by sending it by post to any adult male member of the family, or to a servant in the employ, of the owner or occupier or of any one of the owners or occupiers; and

(c) both in the cases mentioned in clauses (a) and (b) by affixing such notice, bill, summons, or other document on some conspicuous part of the land or building (if any) or other thing to which the document relates."

4. It will be appropriate here to note that under the provision of the Calcutta amendment of Order 5. Rule 17 of the Code of Civil Procedure, summons can be served on the defendant party by affixing when he cannot be found after due and reasonable diligence. The expression "after due and reasonable diligence" is of course absent in the provision of Section 510 of the present Act. Section 538 of the Act provides that no distress or sale made under the said Act shall be deemed to be unlawful nor shall any person making the same shall be deemed a trespasser on account of any error, defect or want of form in the bill, notice, summons, warrant of distress, inventory or other proceedings. Section 539 of the Act stipulates who is to be deemed owner or occupier where there are gradations of owners or occupiers.

5. The first point that requires consideration in this case, is whether the Corporation who is the owner of the holding in the records of the Municipality,

has been served with any bill or notice of demand as enjoined by the relevant provisions of the Act, and if not whether the distress has been properly levied in the facts and circumstances of the case. For the purpose of this application, the Municipality must proceed on the basis that the Corporation is the owner of the holding as recorded, though it may be observed that there is some dispute between Corporation of Calcutta and the petitioners regarding the title of the petitioners in the said holding. For the purpose of this application it is not necessary either to adjudicate or express any opinion upon that dispute. It is also an admitted position that there was no office of the Corporation of Calcutta within the territorial limits of the Municipality and the bills and notices were sent by post to the Corporation. For the purpose of this application it must also be accepted that the Corporation of Calcutta has received the said bills and notices by registered post. But the case of the petitioners is, that is not sufficient in law and the notice and the bills should have been personally served. We have noted the relevant provisions. Section 155 provides that the bill shall be presented to the owner. No mode of presentation of bill has been indicated in this connection, but Sub-section (4) of Section 155 of the said Act provides as noted before, that for the amount as remaining unpaid notice shall be served "by the person authorized to receive payment". The question is whether it is mandatory that notices shall be served personally upon the owner, i.e., upon the Corporation. In this connection it is significant to note the difference in language between the provisions of subsection (1) of the said section and provisions of Sub-section (4) of the said section, while Sub-section (1) permits the Municipality for bills to be caused to be presented, which may include within its ambit impersonal service, Sub-section (4) stipulates that it shall be served by the person authorized to receive payment. It is upon this service that u/s 156 of the Act that the Municipality gets the right to levy distress on failure to pay tax. The relevant sections indicate that the Municipality has to maintain two systems of collections, one at the office of the Municipality the other by tax collectors to realise moneys from whom moneys are due and the notice is required to be served by the person who is authorized to receive the money. Our attention was also drawn to the relevant Accounts Rules framed under said Act-Rule No. 61 deals with the collection of tax, and Rule 53 deals with the receipt forms. These also confirm that service by "the person authorized to receive payment" is a special mode of service contemplated by the said Act. It has been suggested that reason for such a provision is that the person charged with the payment should be given an opportunity to pay up the dues upon demand being made by the Tax Collector. We do not know whether that is the reason, but if it is so, it appears to be a cogent one. After all most of the municipalities intended to be covered by the said Act were originally rural municipalities and it was quite natural to make a provision that the person who is authorized to receive payment on behalf of the Municipality, i.e., the tax collectors would personally serve the notice of demand, giving the persons from whom moneys are due opportunity to pay up the dues, before the drastic process of distress is levied. Whatever may be the reason, it appears that the clear language of the section requires that notice of demand

must be served by "the person authorized to receive payment" and service by registered post is not sufficient to comply with the requirements of the section.

6. Mr. Roy Chowdhury, learned advocate for the Municipality, relied on the provisions of Section 510, Sub-section (b). He contended that where the owner does not reside within the limits of the Municipality u/s 510 the owner can be served by sending notice by registered post and such service would be in due compliance with the requirements of Section 155(4) of the Act. We are unable to accept this contention. Firstly, Section 155 provides by its very terms a definite method of service and upon that service to be effected by that method the special procedure of levying distress can be resorted to by the Municipality. In those circumstances we cannot accept the proposition, that even if Section 510 provides for a different method of service, that would override the requirements of Section 155(4) or Section 156 of the said Act. Levy by distress is a special method of coercive realisation and that right cannot be exercised by the Municipality unless it proceeds strictly in accordance with the provisions of the Act. In this respect, we are of the opinion that the requirement of service as stipulated by Section 155(4) to give the right as contemplated u/s 156 must be strictly followed. It has to be remembered that under the provision of Section 156 distress can be levied upon properties of persons other than owner. Therefore, there must be strict compliance. Secondly, we are unable to accept the contention that because of the provisions of Section 510 there has been proper service in this case on the Corporation. Because of the fact that the Corporation of Calcutta has no residence or has no office within the territorial limits of the Municipality, it cannot be said that the Corporation of Calcutta cannot be found. To construe "not found" in that way would be giving an artificial meaning to that expression, unwarranted by the context or the language of the section. It is true that in some cases where the owner is not within the Municipal limits of a Corporation he cannot be found easily, in the sense that the owner cannot be found without delay and expenses which might be disproportionate to the moneys due from the owner which are intended to be realised by levying distress. Yet, that cannot be a justification for reading the expression "not found" as "cannot be found without undue delay and expenses". Mr. Roy Chowdhury, with his usual fairness, drew our attention to the relevant provisions of the Bengal Municipal Act, 1884, the Calcutta Municipal Act, 1951. In the context of the different expressions used in those statutes, the deliberate use by the legislature of the expression "by the person authorized to receive payment" is significant and confirms the conclusion that the legislature was requiring a special mode of service of the notice of demand before giving the municipalities the right to levy distress. Mr. Roy Chowdhury argued that in modern times various owners reside in different parts of India or outside India and it would be impossible to levy distress in respect of those owners if personal service of the notice of demand was required. Mr. Roy Chowdhury drew our attention to Craies on Statute Law, 6th Edition, pages 86-87 and submitted that we should construe the provisions in such a way as to avoid manifest absurdity. Mr. Roy Chowdhury

was right that if possible such a construction should never be made which would lead to an absurd result. It was however to be remembered that the clear language in the statute cannot be ignored, it has to be further remembered that the legislature has in the very section used two different types of expressions. In one case it has spoken of the bills "caused to be presented" and in another case it has spoken of service "by the person authorized to receive payment". In that context to ignore the difference in language and read them as synonymous, would be to ignore the intention of the legislature. It has further to be remembered that literal construction does not really lead to an absurd result in this case. It has a plausible reason. Furthermore, the owner remains liable, the rights of the municipalities to recover their dues by other methods remain. It is only the special right of distress cannot be resorted to unless the special method of service has been effected. If the municipalities covered by the Bengal Municipal Act have many owners, who reside outside the limits of those municipalities, it is for the legislature to suitably amend the provisions of Section 155 and Section 156 of the Bengal Municipal Act, 1932. Mr. Roy Chowdhury drew our attention to a judgment in the case of *Bepin Chandra Biswas v. Corporation of Calcutta*, (1904) ILR 31 Cal 452. The facts of that case were entirely different. But if that case be an authority for the proposition that without service of the notice as required under the provision of the Act a distress can be levied, we are unable to accept the correctness of the decision. Reference may also be made to the decision of *Mritunjoy Bhattacharjee v. Ashutosh De*, (1954) 58 Cal WN 410, wherein it has been held that unless bill and demand notice has been properly served, distress cannot be levied.

7. Another contention that was urged in this case was that the petitioners should be deemed to be owners in view of the extended meaning to the expression "owner" under provisions of Section 3(38). Assuming that the petitioners are the owners, they must also be served in accordance with the provisions of Section 155(4). But on the materials before him the learned trial Judge has not accepted the position that the petitioners were served personally as required u/s 155(4) with the notice of demand. Indeed the finding of the learned trial Judge on this point has not been specifically challenged in this appeal before us. No materials have been shown to us which indicate that this finding of the learned trial Judge is wrong. In view of that finding and in the absence of a clear and satisfactory affidavit on the part of the Municipality establishing that the petitioners were personally served with the notice of demand in conformity with Section 155(4) of the said Act it is not possible to accept the position that the petitioners were served with the notice of demand in accordance with Section 155(4). In that view of the matter it must be held that even if the petitioners were owners, there has been non-compliance with Section 155(4), and as such distress cannot be levied in this case u/s 156 of the Act. It has also to be remembered that the Municipality has never proceeded on the basis that the petitioners are the owners, notice of distress makes it abundantly clear that the Municipality all along proceeded on the basis that the Corporation of Calcutta is the owner and in that

view of the matter, we are also of the opinion that Municipality cannot be allowed to take this stand now in this application.

8. In the view we have taken it must be held that the distress levied was not proper. But there is another aspect of the matter. The learned Judge has further held that the limitation provided u/s 165 of the Act would also apply, to the proceedings u/s 156 and inasmuch as the claim included, according to the learned Judge, a claim which has become barred, the distress levied was improper. We have noticed that the relevant provisions of Section 165 provide for recovery from occupier any tax due from non-resident owner provided the dues are not for periods more than one year and it gives a right to the occupier of deduction of the rent. The learned Judge has mainly relied for his conclusion on the basis that as distress is a more drastic remedy it would be unreasonable that the same should be allowed while the other methods of enforcing claims contemplated u/s 156 would become barred. According to the learned Judge that would be an unreasonable construction. We are however unable to accept this conclusion of the learned Judge. We have noted the actual provisions of both Sections 156 and 165. We have noticed that Section 156 provides for the right of the Municipality to levy by distress if any person, whoever he may be, who is liable, to pay has failed to pay and if notice and the bills have been served in accordance with law, as mentioned in the said section. The section also provides that in that case the Commissioner may levy distress "at any time". Section 165 is only a provision of recovery from the occupier after the money remains due from the owner. Section 165 and Section 156, in our opinion operate on two different fields and it would not be appropriate to engraft the limitation of one section to the provisions of another. Section 165 has its own scope and purpose and has its own limitation and Section 156 has its own scope and purpose and limitation. Limitation of the right to enforce that right by lapse of time must be statutory. It cannot be implied unless it follows as a necessary implication. We do not find in the context of this section any such necessary implication. Furthermore to imply that the right given u/s 156 must be limited to a period of one year would be to ignore the clear language "at any time" used in Section 156. That would be doing violence to the language for which there is no justification. No person is to be deprived of rights which would by law belong to that person, unless specific provisions of law which are alleged to take away those rights can be shown to apply clearly and in precise terms to his case. As a matter of fact the position, that Section 165 and Section 156. operates on two different fields was explained in the case of Jnanendra Bhusan Bakshi Vs. Chairman Municipal Commissioner, Naihati Municipality, . The learned Judge however was of the opinion that the Division Bench was not concerned with this question of limitation. But the aforesaid decision is a clear authority for^ the proposition that the two sections refer to different cases. In this view of the matter, we are of the opinion that on this question the learned Judge was in error in holding that the distress levied was invalid because it included claim for the barred period.

9. In the view however we have taken on the main question, this appeal must fail and is accordingly dismissed. The order dated 10th of December, 1968 of the learned trial Judge making the Rule absolute is hereby confirmed. The appellant is entitled to the refund of the amount of the sale proceeds kept in the custody of the Registrar of this Court as per order of this Court but this order will not preclude the appellant from proceeding afresh in accordance with law. There will be no order as to costs.

Arun K. Mukherjea, J.

10. I agree.