
(1927) 07 BOM CK 0005
In the Bombay High Court
Case No : Second Appeal No. 434 of 1925

Bhukhandas Lallubhai

APPELLANT

Vs

Thakoreram Kapilram

RESPONDENT

Date of Decision : 29-07-1927

Acts Referred:

Citation : AIR 1927 Bom 640 : (1927) 29 BOMLR 1465

Hon'ble Judges : Crump, J; Amberson Marten, J

Bench : Division Bench

Judgement

Amberson Marten, Kt., C.J.—The points involved here really lie in a small compass. The plaintiff was liable to the Committee of Management of the Surat Municipality for various rates including certain water charges. Under Rule 245 of the Surat Municipal Rules the Municipality was entitled to send one consolidated bill for the aggregate dues. The plaintiff refused to pay the consolidated bill. He tendered merely that part of the bill which related to water charges and to one other item. The Municipality declined to allow him to pick and choose in this way, and they next proceeded to cut off his water supply.

2. Now there is an express power given to the Municipality as regards the water supply. That is by-law 6 of Oh. XI which provides that "the Municipal Commissioner may, at any time, stop or cut off a private connection in any of the following events, viz., (1) in default of payment of water charges in respect of the private connection, within one month of the date of the presentation of the bill, till all arrears are paid." But there is no by-law enabling them to cut off the water supply because charges other than water charges are not paid. On the other hand the general remedy given by the Act in the event of the Municipal dues not being paid is that mentioned in Section 83, viz., a distress warrant.

3. The Municipality justify their action on the ground that as they were entitled to present this consolidated bill, it followed that they could cut off the water supply if it was not paid. Both Courts below held against them on this point. In our judgment the learned Judges were quite correct. The power to cut off a water

supply is a very serious power, particularly in a tropical country. And where the by-laws give a specific remedy, viz., to cut off the water supply in certain limited events, in my judgment it necessarily follows that in the absence of any other provisions of the Act, or the by-laws or the Rules, the Municipality is not entitled to cut off the water supply on grounds other than those expressly mentioned and authorised.

4. The result of their contention put forward before us would entirely alter by-law 6, and turn it into something quite different from what it really is. It, therefore, follows that in what the Committee of Management did, they were, acting illegally as found in the lower Courts.

5. Next comes the question of what relief should be granted. The trial Court granted a mandatory injunction to restore the water connection. That injunction has been complied with. The only variation made by the lower appellate Court was to add certain words that "the decree shall be without prejudice to the future exercise by the defendants of any powers vested in them at any time by statute or rules thereunder or by contract." This followed the form of injunction in another case in which the Surat Municipality were concerned, viz., *The Surat City Municipality Vs. Tyabali Daudbhai*, . Under these circumstances we think it is unnecessary to vary the order of the learned District Judge in this respect. It may, however, be pointed out that in the case of *Surat City Municipality v. Tyabali Daudbhai* there was an injunction granted to restrain the cutting off of the supply, whereas here there was a mandatory injunction to restore it. Consequently, it may well be that in the former case some qualifying words had to be inserted because otherwise the injunction might in fact operate perpetually. But here there was merely a mandatory injunction to restore the water supply and it ceased when it was complied with, for there is no injunction here to maintain the supply when so restored. In any event it clearly follows that whether or no the above words are inserted the restoration of the supply is without prejudice to future circumstances, e. g., if the plaintiff refused to pay the water charges in future. So there is no substance in the point.

6. Next coming to the question of damages, which is perhaps the only substantial point in the case, the learned trial Judge awarded the plaintiff Rs. 135-8-6, because this was the amount spent by him for labour charges to secure water from a particular well after the supply had been cut off. He accepted the plaintiff's evidence on that point, and accordingly awarded him those damages. On appeal this amount has been reduced to a rupee. As I understand the judgment of the lower appellate Court, this is because the plaintiff could have minimised the damages by paying up the whole amount of the consolidated bill, and then bringing some subsequent proceedings to recover the illegal amount. But that is not the true legal position. The defendants here were making an illegal demand in threatening to cut off the water supply if the consolidated bill was not paid. If then the plaintiff had complied with it, he might have been left without a legal remedy because the remaining dues besides the water charges

were in fact properly payable by him. The illegal demand would therefore have succeeded.

7. Then, as regards the other suggestion put forward, viz., that the plaintiff was acting contumaciously in refusing to pay what was justly demanded of him, that again seems to me to miss the real point. The defendants were acting in excess of their legal powers, and the plaintiff was entitled to object to their so doing. If in consequence the defendants took the law into their own hands and cut off this man's water supply, I think it only reasonable that they should pay for the consequences. The sum awarded by the lower Court was merely out of pocket expenses. There is nothing here in the way of inflated damages. Accordingly, in our opinion, the judgment of the trial Judge on this point ought to be restored.

8. Then, as regards the Surat Municipality who have been added since the appeal to us was presented, I should explain that the events in suit happened at a time when the Municipality had been suspended, and when a Committee of Management had been appointed by Government under the Act. That suspension has now terminated, and the Municipality is once more in possession of its powers and has now been brought on the record. But it was the Committee of Management who were actually the parties concerned when the events in suit happened, and also at the trial and for the matter of that in the lower appellate Court as well. Accordingly, it must be understood that while we think the decree must be maintained against the Committee of Management, it will be without prejudice to any right they may have of indemnity or otherwise against the Surat Municipality or the funds of the Municipality.

9. There was an argument that the Committee ought not to be made liable because they were acting under a bona fide belief that they had the requisite powers in cutting off the water supply in respect of other taxes. But, as pointed out by the learned District Judge, that belief is really an untenable one, and *Dhondu Dagdu v. Secretary of State for India* ILR (1912) 37 Bom. 101, 14 Bom. L.R. 949 affords no ground for the contention put forward in that respect on behalf of the respondents, even supposing there was an Act which protected acts done under a bona fide belief that they were in exercise of statutory powers.

10. Under these circumstances we think the appeal must be allowed in part. The variation made by the appellate Court in the decree, viz., that it is to be "without prejudice to the future exercise by the defendants of any powers vested in them at any time by statute or rules thereunder or by contract" is to stand. But the appellate order as to damages and costs is to be vacated, and the judgment of the trial Judge restored both as to damages and costs. As regards the costs in the lower appellate Court and in this Court, they must be paid by the respondents other than the Surat Municipality. The Municipality can bear their own costs. Cross-objections dismissed with costs.