

---

**(1977) 02 AP CK 0020**  
**In the Andhra Pradesh High Court**  
**Case No : S.A. No. 135 of 1975**

G. Brahmaji

APPELLANT

Vs

The Visakhapatnam Municipality

RESPONDENT

---

**Date of Decision :** 09-02-1977

**Acts Referred:**

Andhra Pradesh Municipalities Act, 1965 — Section 140, 141, 3, 330, 331

**Citation :** (1977) 02 AP CK 0020

**Hon'ble Judges :** S.H. Sheth, J

**Bench :** Single Bench

**Advocate :** P.V. Sessaiah, for the Appellant; Aruna Kumari, for the Respondent

**Final Decision :** Dismissed

---

## Judgement

S.H. Sheth

1. The plaintiff is a consumer of water supplied by Visakhapatnam Municipality. On 30th September, 1969 the Municipality sent to the plaintiff bill for the period of 1963 64 to 1964-66 and called upon him to pay a sum of Rs. 4,506.00 within seven days from the date of the service of that notice failing which, the Municipality threatened to disconnect his water supply and to take legal action to recover the amount due from him. The plaintiff, therefor, filed the present suit for a perpetual injunction restraining the Municipality from cutting off his water supply. It may be stated that the Municipality served upon the plaintiff the impugned bill in respect of water supplied to the plaintiff in his theatre known as "Poorna Theatre". The plaintiff's case was that there were no bye-laws at the relevant time which authorised the Municipality to levy water tax or water charges in respect of the water supplied to the residents of Visakhapatnam town. Secondly, he pleaded that there was an earlier litigation between the parties on the same subject and that decision operated as resjudicata. The principal grievance which the plaintiff made was that he was liable to pay water charges only for domestic supply of water and not at higher charges for supply of water to his theatre which is his business concern. In defence the Municipality

contended that u/s 140 of the Andhra Pradesh Municipalities Act, 1965 (hereinafter referred to as "the Act") it was entitled to charge a different (sic) for the water supplied to a business concern. Secondly the Municipality pleaded that no bar of *resjudicata* his the present suit. At the appellate stage it was contended by the Municipality that the suit a for mere injunction without seeking a declaration was not maintainable. The learned trial Judge negatived the Plaintiff's case on merits. The plaintiff, thereafter, appealed to the appellate Court. The Appellate Court confirmed the findings recorded by the trial court and also held that the suit for a mere injunction was not maintainable without the plaintiff seeking a declaration. The appeal was, therefore, dismissed.

2. It is that appellate decree which is challenged by the plaintiff in this second appeal. So far as the plaintiff's contention relating to *resjudicata* is concerned it is without any substance. O.S. 61/1970, was the earlier suit between the parties in which the plaintiff's liability to pay water charges was challenged. A certified copy of the Judgment recorded in that suit is at Ex. A.I. It was decided on 26th September 1972. The amount which the Municipality claimed from the plaintiff represented the water charges for the period from 1st, March 1958-59 to 1st Nov. The bye-laws under which the suit claim is made from the plaintiff came into force on 31st December 1960. Therefor, the present bye-laws with I am concerned in this suit did not govern the claim of the Municipality in the earlier suit. Since the bye-laws came into force subsequent to the period for which the claim was made in the earlier suit they were not applicable to that case. Therefore, the suit claim made under the bye-laws which came into force on 31st December 1960 cannot be said to be hit by *resjudicata* nor can it be said that the principle laid down in that decision would govern the present claim. The Courts below were, therefore, justified in taking the view that the decision recorded in O.S. 61/1960 on the subject of plaintiff's liability to pay water charges does not bar or govern the present claim made by Municipality.

3. So far as the merits are concerned, it is necessary to have a look at Section 141 of the Act. It confers upon the Municipality, power to make bye-laws for water supply. It inter alia authorises it to classify the supply of water under such categories as (i) supply to residential building (ii) supply to residential hotels; (iii) supply to shops, commercial establishment (other than industrial undertakings), restaurants, eating houses, theatres and places of public amusement or entertainment ;(iv) supply to industrial undertakings (v) supply to non-residential buildings not falling within the scope of category (ii), category (iii) or category (iv) Section 330 of the Act confers upon the Municipality power to make bye-laws. It inter alia provides that the Municipality may make bye-laws for the supply of water for consumption and use and for the measurement of water. Section 331 empowers the Municipality to give retrospective effect to certain bye-laws. Section 332 lays down conditions precedent to making the bye-laws Section 333 requires the confirmation of the bye-laws by the Government and section 334 requires the Municipality to sell at the Municipal Office amongst other things rules and bye-laws. It is not in dispute that u/s 141 read with

section 330 no bye-laws have been made by the Municipality in regard to supply of water. Section 391 provides for repeal of the enactments which were in favour prior to the enactment of the Act. There is no provision in that section under which the rules or bye-laws which were in force prior to the enactment of the Act can be continued in force. However, section 389 provides as follows.

In regard to the first constitution of council for any local area u/s 3, or to the first reconstitution in accordance with the provisions of this Act, of a council in existence at the commencement thereof and otherwise in first giving effect to the provisions of this Act, this Act shall be read subject to the rules in Schedule IX.

4. Schedule IX contains transitional provisions. Rule 12 in Schedule IX provides for continuance of existing taxes and other levies. It provides this :--

Any tax, cess or fee which was being lawfully levied by or on behalf of any council at the commencement of this Act and which may be lawfully levied under this Act, shall, notwithstanding any change in the method or manner of assessment or levy of such tax, cess or fee, continue be levied by or on behalf the of the council for the year in which this Act is brought into force, and unless the Government by general or special order otherwise direct, for subsequent years also.

5. The bye-laws relating to water supply which the Municipality had made and which were in force prior to the enactment of the Act were mad under the Madras District Municipalities Act, 1920. They came into force on 31st December, 1960. These bye-laws which came into force in 1960 and which were in force when the Act came into force, therefore, continue to remain in operation, even after the present Act came into force, by virtue of Rule 12 of Schedule IX to the Act. However, the argument which Mr. Seshaiah has raised is that the plaintiff would be liable to pay water charges under the old bye-laws only if prior to the enactment of the present Act, water tax or water charges were lawfully levied by or on behalf of the Council. His argument is that water tax was not levied on the Plaintiff "lawfully" prior to the enactment of the Act. That, in my opinion, is not the correct construction of Rule 12. What rule 12 contemplates is the lawful levy of water tax on the residents of Visakhapatnam town under the bye-laws relating to water cess which came into force on 31st December 1960 and not on the plaintiff individually. There is no dispute that under the water cess bye-laws which came into force in 1960, water tax was levied lawfully on the residents of Visakhapatnam town. Therefore, under those bye-laws read in the light of Rule 12 in schedule IX, the Municipality could lawfully levy water tax on the plaintiff for the water consumed by him.

6. It has next been argued by Mr. Seshaiah that the bill which the plaintiff was questioning is for the period from 1963-64 to 1964-67. According to him, the claim for the period prior to the date when the present Act came into force was time barred and that there was nothing in the present Act, Rules or bye-laws by

which the Municipality could recover a time-barred claim from him. Under the old law three years" period was prescribed to enable the Municipality to recover water tax or water charge Under the present Act "six years" period has been prescribed for such a claim. In 1965 when the present Act came into force the defendant claimed water charges for 1963-64 and the subsequent years and that claim was not time barred because at that date only a period of two years had elapsed In respect of the water tax which the defendant demanded from the plaintiff. The argument raised by Mr. Sessaiah is, therefore, not well founded. There was nothing which was time-barred when the present Act came into force. If the claim made by the Municipality for the period prior to 1963 was within time then that claim could be recovered by the Municipality within a period of six years under the present law. Since it was not time-barred when the Act came into force it cannot be said that it was not lawfully levied and was, therefore, not recoverable from the plaintiff. The next contention which Mr. Sessaiah has raised is that prior to 1965 water cess was classified into water supply to residential buildings or for domestic purposes and water supply for non-domestic purposes and that such a classification could not survive under the present Act. Therefore, according to Mr. Sessaiah, water tax due and payable by the plaintiff in tot context of its classification under different heads under the old law cannot be automatically converted into water charge under an altogether different classification under the new law. Rule 12 in Schedule IX provide that the Municipality can levy a tax, cess or fee under the new Act even if under the present Act any change in the method or manner of assessment or levy of such tax, cess or fee has been made. Therefore, the alteration of categories of water supply under the present Act does not render the present demand illegal. In my opinion, therefore, the courts below were justified in dismissing the plaintiff's suit. Since I have decided on merits against the plaintiff, it is not necessary for me to decide whether the suit for an injunction without a prayer for a declaration is maintainable or not. In the result, the appeal fails and is dismissed with no costs.