
(1924) 12 BOM CK 0005
In the Bombay High Court
Case No : Appeal No. 162 of 1921

Kalyan Municipality

APPELLANT

Vs

Govind Karsan Ramji

RESPONDENT

Date of Decision : 16-12-1924

Acts Referred:

District Municipalities Act — Section 65(1)

Citation : AIR 1925 Bom 419 : (1925) 27 BOMLR 447

Hon'ble Judges : Norman Macleod, J;Crump, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Norman Macleod, Kt., C.J.—This is a suit by the plaintiff for the recovery of Rs. 368-C-I levied from him by the Municipality of Kalyan for general sanitary cess and shop-tax in regard to the property situated within the Kalyan Municipal area. The plaintiff's contention was that the recovery was illegal inasmuch as he was not given the notice required by Section 65 (1) of the District Municipal Act, and because the Municipality did not observe the procedure prescribed by Sections 59 to 65 of the Act in regard to the imposition of these taxes.

2. A preliminary point has been taken that no appeal lies, the suit being of a Small Causes Court nature. If the plaintiff had confined his claim to the amount taxed and illegally recovered by him, then it would have been a suit triable by the Small Causes Court, and consequently there would be no second appeal. But the plaintiff asked for interest on that sum and that could only have been awarded as damages or compensation for the amount having been illegally recovered from him. Consequently the jurisdiction of the Small Causes Court would be barred under Article 35 (j) of the second schedule and a second appeal lies.

3. We are not concerned in this appeal with the amount of the claim which relates to the shop-tax, as it is admitted that the levy of the increase) in shop-

tax was illegal for want of sanction of the Governor-in-Council, so we are only concerned with the amount levied for the general sanitary cess. Both the lower Courts have held that that levy was illegal on the ground of want of notice u/s 65 (1) of the District Municipal Act. The only thing that can be said for the respondent's argument is that it has found favour with the judges in the lower Courts. It is perfectly obvious that the plaintiff misread Section 65 (1) and has confused taxation with assessment. The Municipality were not assessing plaintiff's property for the first time, nor were they increasing the assessment. Therefore no notice was required to be given to the plaintiff under that section. They were levying the tax u/s 59 (vii):- "A general sanitary cess for the construction or maintenance, or both construction and maintenance, of public latrines, and for the removal and disposal of refuse". Proviso (a) says such a tax can be levied at a rate on buildings. The Municipality can impose separately any two or more of the taxes described in clauses (i), (vii), (viii), and (ix), or they may impose a consolidated tax assessed at a rate on buildings or lands. The fact remains that they were empowered to impose a general sanitary cess, they did so by resolving that a rate of three per cent, on the letting values of buildings should be levied for that purpose. It is not suggested that the proper measures were not taken in order to validate the imposition of the tax.

4. I cannot, therefore, agree with the lower Courts that the levy of this tax was illegal on the ground of want of notice under H. 65 (1) of the Act. Therefore the appeal must be allowed.

5. There will only be a decree for the amount of the shop-taxes admittedly not properly exacted from the plaintiff.

6. Each party to bear its own costs throughout.

Crump, J.

7. I agree.