
(1935) 09 BOM CK 0001
In the Bombay High Court

Municipal Corporation

APPELLANT

Vs

Haji Eisa Haji Oosman

RESPONDENT

Date of Decision : 20-09-1935

Acts Referred:

City of Bombay Municipal Council Act, 1988 — Section 169

Citation : AIR 1936 Bom 49

Hon'ble Judges : Beaumont, C.J

Bench : Division Bench

Judgement

Beaumont, C.J.

1.This is an appeal by the Municipality of Bombay against a decision of Mr. Justice Tyabji; and the principal question is, whether upon the true construction of the Bombay City Municipal Act, 1888, a charge for water supplied by meter in respect of certain premises can be recovered by means of a charge on the premises u/s 212 of the Act. The question turns upon the construction of a few of the sections of the Act in question. Property taxes are imposed by Section 139, and Section 140 defines "property-taxes" as including amongst other things,

a water-tax of so many per centum of their rateable value as the Corporation shall deem reasonable with reference to the expenses of providing a water-supply for the city,

and then Section 141 enacts what premises are to be subject to the water-tax. Putting it shortly, they are premises connected with the Municipal water-works, or premises situate in a district in respect of which the Commissioner has given public notice that sufficient water is available from Municipal water-works for furnishing a reasonable supply to all the premises in that district. So that, under those two sections, any premises falling within the ambit of Section 141 are liable to water-tax, which is to be levied by a percentage on the rateable value of the premises. Then we come to Section 169, which provides in Sub-section (1) that:

(1) The Commissioner may?

(a) in such case as the standing committee shall either generally or specially direct, instead of levying the water-tax in respect of any premises liable thereto u/s 141, charge for the water supplied to such premises by measurement at such rate as shall from time to time be prescribed by the said committee in this behalf.

2. It is to be noted that under that subsection a charge on the premises for water supplied by meter is substituted for the levy of water-tax. It has been argued by Mr. Coltman on behalf of the Municipality that the charge for water supplied by meter remains a water-tax. But it seems to me that that view is inconsistent with the plain words of Section 169, Sub-section (1) and Sub-section (3), to which I will refer in a moment. No doubt, the Act might have been framed so as to provide that water-tax should be levied either on the percentage value of the premises, or on the amount of water consumed, in which case the tax, however levied, would still have been a water-tax. But that is not what is done by Section 169. Sub-section (2) of Section 169 deals with compounding and is not relevant, and sub-section (3) provides:

3. A person who is charged for water by measurement or who has compounded for a fixed periodical sum shall not be liable for payment of the water-tax, but any sum payable by him on account of water and not paid when it becomes due shall be recoverable by the Commissioner as if it were an arrear of water-tax.

4. The whole of that sub-section would be unnecessary if the charge for water supplied by meter remained a water-tax. The sub-section recognizes that it is not a water-tax, but directs that an arrear in respect thereof shall be recoverable as if it were an arrear of water-tax. It is necessary, therefore, to look at the sections which provide how arrears of water tax are recoverable. The arrears can be recovered by distress u/s 203 and the following sections, or u/s 209 from the occupier if the person primarily liable fails to pay, or by a suit Under-section 211. Then comes Section 212, which is the material section, and which is in these terms:

Property-taxes due under this Act in respect of any building or land shall, subject to the prior payment of the land-revenue, if any, due to Government thereupon, be a first charge upon the said building or land and upon the goods and chattels, if any, found within or upon such building or land and belonging to the person liable for such taxes.

5. That section in terms imposes a charge in respect of property-taxes due, which taxes include water-tax, but do not, in my opinion, include the charge by meter u/s 169. The only question, therefore, to my mind, is whether the recovery of arrears of payments by meter can be made by enforcing a charge u/s 212, having regard to the words of Section 169 (3), namely, that such arrear shall be recoverable "as if it were an arrear of water tax." If it were an arrear of water-tax, the money could be recovered by distress or by a suit or by enforcing a charge u/s 212; but the difficulty I feel in regard to the latter method is that in

respect of the money due by meter, there is no charge u/s 212, that charge being confined to property-taxes; and if we are to hold that money due by meter can be recovered by the enforcement of a charge u/s 212, we shall have to read into Sub-section (3) of Section 169 at the end after the words "as if it were an arrear of water-tax" some such words as "and as if the charge u/s 212 applied to sums so due." This being a charging Act, we are not, in my opinion, at liberty to read into it words which are not there, and to say that moneys due by meter can be recovered by enforcing a charge which does not extend to such moneys. The mere giving of a charge is not by itself a method of recovery. The charge exists u/s 212 in every case where property-taxes are in arrear; the charge may or may not be enforced; the Municipality may recover the arrears by other methods. It is only the enforcement of the charge which is really a method of recovery: and in respect of an arrear of a charge by meter this method of recovery is not available, because there is no charge to enforce. That being the case, I think the decision of the learned Judge on this question is right.

6. I am not prepared, however, to accept the view which the learned Judge took that Section 169 is based upon some contractual relationship, which distinguishes a charge by meter from a water-tax. In my opinion, there is no contractual relationship introduced by Section 169. With regard to the Madras cases on which the learned Judge relied, I think it is dangerous to attempt to construe one Act by a reference to decisions on other Acts quite different in character, even though the actual phrase in the several Acts may be the same. The Madras cases dealt with taxes not imposed with reference to the particular land sought to be charged. Personally, therefore, I think that no assistance can be derived from those cases. We have to decide the question entirely on the construction of Sections 140, 141, 169 and 212 of the present Act, and on the true construction of those sections I am of opinion that the charge claimed by the Municipality is not established. With regard to the second point as to the personal liability of defendant 3 (the respondent) for charges due before the date at which he purchased the property, it seems to me clear that charges by meter are necessarily apportionable *de die in diem* by reading the meter, and defendant 3 cannot be held liable for any water supplied and charged by meter before he took possession of the property, and as defendant 3 has paid into Court an amount sufficient to cover the charge for which he is personally liable, that claim of the Municipality also fails. The appeal, therefore, will be dismissed with costs.

Blackwell, J.

7. I agree. Section 169, Bombay City Municipal Act, 1888, makes a distinction between a water-tax and the charge for water supplied to premises by measurement which the Commissioner is empowered to charge in the cases therein referred to. Section 140 makes a water-tax as therein defined a property-tax. There is nothing in Section 140 to suggest that a charge for water supplied by measurement is a property-tax. Section 212 of the Act provides that the

property-taxes due under the Act shall be a first charge upon the building or land and upon the goods and chattels found thereon. So far, therefore, it seems to be plain that the charge conferred by Section 212 as far as water is concerned is only applicable to the water-tax mentioned in Section 140. Then Sub-section (3) of Section 169 provides:

A person who is charged for water by measurement or who has compounded for a fixed periodical sum shall not be liable for payment of the water-tax, but any sum payable by him on account of water and not paid when it becomes due shall be recoverable by the Commissioner as if it were an arrear of water-tax.

8. The authorized methods of recovery provided for in the Act, such as distress and a suit, are clearly made applicable to a sum payable on account of water treated as an arrear of water-tax; but the question is, whether the first charge provided for by Section 212 in respect of a property-tax is applicable to water supplied by measurement merely by virtue of the words "recoverable as if it were an arrear of water-tax" in Section 169 (3). Mr. Coltman has contended that Section 212 provides a method of recovery. I do not agree with him. Section 212 imposes a charge; and unless you have got a charge, you cannot take steps to enforce that charge. This being a charging Act, I think it must be construed strictly. It would have been quite easy to provide in the Act that the charge for water supplied by measurement should be deemed to be a property-tax, or should be upon the same footing as a water-tax, with which Section 140 deals. There is no such provision in the Act. I do not think we are justified, therefore, in treating the charge for water supplied by measurement as a water-tax, when the Act merely states that sums payable on account of such water shall be recoverable "as if it were an arrear of water-tax." Accordingly, I think that the appellants fail in their contention that there is a charge on the premises in respect of the water supplied by measurement, and that this appeal fails upon that point.

9. As regards the question of personal liability, I agree that the water supplied by meter must be treated as apportion-able de die in diem. That being so, it seems to me to be plain that defendant 3 incurred no liability until he became the owner of the premises. He has been content to take 18th August 1930 as the date from which his liability commenced, and it has been conceded that the sum of Rs. 75 paid by him into Court is sufficient to discharge his personal liability upon the footing that the amount is apportion able. I agree, therefore, that on both the points, this appeal fails and must be dismissed with costs.