
(1976) 07 MP CK 0010

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 707 of 1975

Municipal Council, Neemuch

APPELLANT

Vs

Udairam Richpal Verma and another

RESPONDENT

Date of Decision : 20-07-1976

Acts Referred:

Constitution of India, 1950 — Article 226

Madhya Pradesh Municipalities Act, 1961 — Section 157, 164, 164(1), 164(3), 165

Citation : (1976) 07 MP CK 0010

Hon'ble Judges : P.D. Mulye, J;C. Kondaiah, J

Bench : Division Bench

Advocate : S.L. Garg and A.S. Garg, for the Appellant; R.G. Waghmare, for the Respondent

Final Decision : Allowed

Judgement

C. Kondaiah, J.—This application by the Municipal Council under Article 226 of the Constitution of India is to quash the order of the Magistrate, First Class, Neemuch dated 19-4-1974 dismissing the application of the petitioner u/s 165(1) of the M.P. Municipalities Act 1961 (hereinafter referred to as the Act.)

2. The writ petition raises an important though short question of law, whether the Magistrate is competent or has jurisdiction to go into the validity and correctness of the demand raised by the Municipality u/s 164 of the Act in an application u/s 165(1) for recovery of the amount. In order to understand the scope of the question, it is necessary to refer briefly the material facts, which are not in dispute and which lie in a short compass that gave rise to the question.

3. The petitioner Municipal Council had leased certain gardens to the respondent Udairam Verma some years back. A notice dated 25-3-1964 was issued by the Municipality to the respondent directing him to hand over possession of the land in question after terminating all his rights in the land. The respondent tenant did not pay to the Municipality any rent towards the land since the date of the service of the quit notice. The Municipality on 15-1-70 issued a bill u/s 164(1) of

the Act for a sum of Rs. 2447 towards rent due by the respondent for the period commencing from 1-4-1957 to 31-3-1970. As the respondent did not pay the amount indicated in the bill nor preferred an appeal to the Civil Judge, a notice of demand u/s 164(3) of the Act was issued on 5-3-1970 and served the same on the respondent.

4. As the Municipality did not get any payment from the respondent, an application u/s 165(1) read with section 313(2) of the Act was filed in the Court of the Magistrate, First Class, Neemuch on 25-3-1970 for the recovery of a total sum of Rs. 2604.44 P. and interest by issuing a distress warrant. The respondent appeared before the Magistrate and contested the claim of the petitioner contending inter alia that he ceased to be tenant of the petitioner Municipality from 1-4-1964 and, therefore no amount could be recovered from him by the Municipality by having resort to sections 164 and 165 of the Act and in any event the claimed recovery is not permissible in respect of the rent prior to six years. On the admission of the petitioner's counsel, it was held by the learned Magistrate that the rent due from the tenant for the period to 1-4-1964 has become barred by limitation u/s 176 of the Act and cannot be recovered. With regard to the claim for the subsequent period, it was found that the applicant cannot recover any rent from the respondent from 1-4-1964 to 31-3-1970 as the Municipality has terminated all the rights of the respondents on the land in question. Hence this writ petition.

5. S.L. Garg learned counsel for the petitioner contended that the Magistrate erred grossly in considering the merits of the claims of demand and in dismissing the application filed by his client the petitioner u/s 165(1) of the Act, as he is only a persona designata functioning as a ministerial officer, who had no other alternative except to issue distress warrant and process to recover the amount indicated in the demand notice by the sale of properties of the defaulter.

6. This claim of the petitioner is resisted by Shri R.G. Waghmare learned counsel for the respondent contending inter alia that the Magistrate functions u/s 165 of the Act as a quasi judicial authority and is empowered to go into the correctness and validity of the demand and the decision of the Magistrate is perfectly valid and justified and in any event this Court should not interfere with the order of the Magistrate under Article 226 of the Constitution, as the petitioner has an alternative remedy by way of a suit.

7. The answer to the question largely depends upon the scheme of the Act and in particular the provisions of sections 164, 165, 172, 176 and 177 of the Act and their application to the facts of the present case. Chapter VIII which consists of 15 sections commencing from section 164 deals with recovery of Municipal claims. Section 164 provides for presentation of bills for taxes, rent and other claims due and payable to the Municipality. The amounts in respect of which bills could be presented by the Chief Municipal Officer, are specified in clauses (a), (b) and (c) of sub-section (1) thereof. Clause (a) refers to any amount which by or under any provisions of the Act is declared to be recoverable in the manner

provided by Chapter VIII. Clause (b) applies to any amount which, not being leviable under sub-section (1) of section 157 or payable on demand on account of an octroi or a toll, is claimable as an amount or instalment on account of any other tax which is being imposed or may hereafter be imposed in any Municipality. Clause (c) speaks of any amount due on account of rent of any Municipal land, buildings, shops, gumities or any other property. If any amount specified in clauses (a), (b) and (c) of sub-section (1) has become due to the Municipality, the Chief Municipal Officer shall, with least practicable delay, present a bill for sums claimed as due to the person liable for payment thereof. Sub-section (2) of section 164 of the Act indicates the particulars specified in the bill. Sub-section (3) of section 164, which is material, reads thus :--

If the person to whom a bill has been presented as aforesaid does not, within 15 days from the presentation thereof, either--

- (a) pay the sum claimed as due in bill; or
- (b) show cause to the satisfaction of the Chief Municipal Officer or of such officer as the Council may appoint in this behalf, why he should not pay the same; or
- (c) prefer an appeal in accordance with the provisions of section 172 against the claims; the Chief Municipal Officer may cause to be served upon the person liable for the payment of the said sum a notice of demand in the form prescribed by rules.

Section 164(3), thus provides for payment of the sums claimed as due in the bill, by the person to whom the bill was issued, within 15 days from the date of presentation or satisfy the Chief Municipal Officer or any other officer concerned therewith that he need not pay the same or prefer an appeal as provided u/s 172 of the Act. Section 172 requires an appeal against the presentation of the bill to be filed within 15 days after presentation of the bill complained of to the Civil Judge Class I or the Civil Judge Class II, as the case may be, having jurisdiction over the Municipal area. The person who prefers an appeal, must deposit the amount due as per bill in the Municipal office. He is also entitled to file an application in writing that he disputes the claim of the Municipal Council either with regard to the rate or the quantum as it is in contravention of the Act or rules made thereunder. A further revision shall lie to a civil Court to whom an appeal against the order of the Civil Judge would lie, u/s 172(3) of the Act. The decision of the Civil Judge in appeal u/s 172 or the revisional Court, as the case may be, shall be final in this regard. Section 176 bars the issuance of the distraint or filing of suit for the recovery of any sums due to the Municipal Council under the Act in respect of any period prior to six years from the date on which such sum became due. We may also notice section 177 which reads thus :--

Saving--No distress or sale under this Act shall be deemed unlawful on account of an error, defect or want of form in the bill, notice, warrant of distress, inventory, or other proceeding relating thereto.

The Legislature has taken care and caution to see that the validity and correctness of a distress or sale for recovery of the sums due and payable to the Municipality shall not be questioned on account of some mistake or illegality or error or defect in the form of the bill, notice, warrant or distress., inventory or other proceedings relating thereto. This deeming provision in the saving clause makes any irregularity or illegality in the preparation and service of the bill, notice, warrant of distress, inventory legal and valid. This provision is enacted in the interests of public with the sole object of protecting the revenue or amounts due to a Municipality, a civic body. In substance, the amounts really due to the Municipality are sought to be amply safe guarded by the Legislature, as the citizen, who is liable to pay any amount to the Municipality, is not permitted to take advantage of any error, defect or mistake in the manner or method of recovery proceedings adopted by the Municipal authorities.

8. The sum and substance of the aforesaid provisions of the Act leave no doubt in our mind that the person, who is liable to pay any amount under a bill presented to him by the Chief Municipal Officer u/s 164, has been specifically provided the opportunity of preferring a regular appeal u/s 172 if he is aggrieved with the bill in any aspect. He is also permitted under clause (b) of sub-section (3) of section 164 to satisfy the Chief Municipal Officer or any other officer concerned that he need not pay the amount sought to be required to be paid and show sufficient material in support of his stand. The third alternative is that he has to pay the bill amount. If he did not pay the amount as per clause (a) of sub-section (3) or did not show sufficient cause to the satisfaction of the Chief Municipal Officer for his non-payment under clause (b) or did not prefer an appeal to the civil Judge u/s 172 provided for under clause (c), the Chief Municipal Officer would get jurisdiction to cause to be served upon him a notice of demand in the prescribed form requiring him to pay the amount indicated therein, as he is liable for the same. The Chief Municipal Officer would be entitled as a matter of right under the statute, to issue the demand notice if the person, on whom the bill has been presented u/s 164(1), has not responded to any of the courses specified in clauses (a), (b) and (c) of sub-section (3) of section 164 of the Act. There is no other alternative for the Chief Municipal Officer a statutory authority, except to issue a demand notice making the persons liable for the payment of the amount shown in the demand notice.

9. A distinction between a bill contemplated u/s 164(1) and the demand notice indicated in sub section (3) of section 164 must be noticed. What has been stated in sub-section (1) of section 164 is only a bill. The person to whom the bill has been issued has got a right at that stage to question the validity of the same relating to the quantum and the very right to issue the bill either by satisfying the concerned officer or by preferring an appeal to the Civil Judge u/s 172 of the Act. If he fails to satisfy the requirements of sub-section (3) of section 164, then the Chief Municipal Officer would get jurisdiction to issue a demand notice. The presentation of the bill u/s 164(1) should in no circumstances, be construed as a demand notice contemplated by 164(3). Such demand notice is a later one. This

demand notice may also be issued after the dismissal of the appeal by the civil Judge u/s 172, so also in the case of dismissal of further revision against the order of dismissal of the appeal by the Civil Judge. In such a case the decision relating to the liability of the person to whom the bill has been presented, has become final. In other words, it must be deemed to have become final, In such a state, the demand notice u/s 164(3) must be issued by the Chief Municipal Officer and he should proceed to recover the same by resorting to the provisions of section 165 of the Act.

10. If any citizen or person, to whom a bill has been presented u/s 164(1), did not avail of a statutory right provided in sub-section (3) thereof, he must blame himself and none others. Having failed to avail of the remedies available to him under the Act, it is not open to him to challenge the validity of the demand at the stage of proceedings u/s 165(1) of the Act. As pointed out earlier, the Civil Judge, as an appellate authority, is empowered to go into the questions of correctness and validity of the bill presented u/s 164(1) and all questions pertaining to the liability and quantum, must be gone into by him at that stage. The parties can lead evidence and establish their respective claims by adducing oral and documentary evidence. There is no restriction or bar on either of the parties to substantiate their stand. The revisional jurisdiction being limited, the questions, of illegality might be gone into and the decision of the Civil Judge in appeal or if there is any revision the decision of the revisional Court in this regard must be held to be final. This view of ours gains support from a reading of section 165 of the Act itself. Section 165(1) reads as follows :--

165. General power of recovery of arrears--(1) If a person on whom a notice of demand has been served under sub-section (1) of section 164 does not within fifteen days from the service of such notice pay the sum demanded in the notice, such sum with all cost of recovery and interest may be recovered on application of the Council to a Magistrate having jurisdiction within the limits of the Municipality, and such Magistrate may order recovery by distress and sale of any moveable property or attachment and sale of immovable property belonging to such person within the limits of his jurisdiction.

* * * *

This provision would come into play where the person, to whom demand notice has been issued u/s 164(3) did not pay the amount demanded within 15 days from the service of such notice, the Magistrate having jurisdiction within the limits of the Municipality concerned will get jurisdiction to proceed u/s 165(1) if an application is filed by the Municipality for recovery of the amount demanded by resorting to the recovery by distress and sale of any moveable property or attachment and sale of immovable property. Nowhere in this section it is stated that the Magistrate can go into the question of the validity and correctness or otherwise of the demand, either in respect of the quantum or in respect of the liability. As pointed out either, the statute has clearly provided for adjudicating such rights by way of regular appeal u/s 172 and the revision thereafter and the

stage of demand notice itself would come subsequent to the presentation of the bill u/s 164(1) by which time the validity and correctness of the bill of the amount sought to be recovered had almost become final. The Magistrate must be held to have no jurisdiction and incompetent to entertain the question of correctness and validity of the demand in the enquiry u/s 165(1). We could have very well appreciated the submission of Shri Waghmare, if the Magistrate had been given jurisdiction to decide the proceedings u/s 165 at the stage of the presentation of the bill. This construction would also not prejudice the citizen or any other person on whom the demand notice or the bill has been served by the Municipality because a separate regular procedure has been prescribed under the Act.

11. The Magistrate is no doubt functioning u/s 165 (I) as a persona designata: but however, regarding the use of the word "may" in the expression "such Magistrate may order recovery by distress and sale" in section 165(1) read with the proviso and sub-sections (2) and (3), we are of the view that the Magistrate is not a mere stamping authority or ministerial authority without discretion of any kind for him to exercise in the disposal of the application by the Municipal Council u/s 165(1). The use of the word "may" indicates that the Magistrate may or may not order recovery by distress and sale of the property. The proviso to section 165(1) requires that no interest shall be so recovered in any case in which the Magistrate, for reasons to be recorded in writing, considers it inexpedient that interest should be charged. Had the Magistrate been only required to perform the act of a ministerial officer without applying his mind, the proviso would not have been there in this form. The Legislature has specifically ordered the Magistrate to disallow the recovery of interest, if he considers it expedient that interest is some discretion left to the Magistrate. The Magistrate is not empowered to act arbitrarily or as a mere post office. He has to apply his mind to the facts of the case and pass appropriate orders u/s 165(1) in the course of the recovery of the amounts shown in the demand notice. Where the Magistrate has to resort to distress and sale of any movable property or attachment and sale of immovable property, he has to still exercise his discretion.

12. Sub-section (2) of section 165 of the Act also provides that when there is no sufficient moveable or immovable property belonging to such person within the jurisdiction of such Magistrate, the Magistrate may, on the application of the Council, grant a certificate of the amount due on account of arrears, with fees, and interest, if any and shall forward the certificate to the Magistrate within whose jurisdiction any moveable or immovable property belonging to such person is or believed to be and the Magistrate receiving such certificate shall proceed to recover by distress and sale of any moveable property belonging to the defaulter within the limits of his jurisdiction, the amount certified, with any further sum leviable on account of fees and shall remit the amount recovered to the Magistrate by whom the certificate was granted. Sub-section (3) specifies the kinds of property that shall not be distrained under this section. For the purposes indicated in the section itself, the Magistrate has to certainly exercise his

discretion judiciously and pass appropriate orders thereon. The only limitation, as pointed out earlier, is that he is not competent to go into the validity and correctness of the notice of demand issued by the Chief Municipal Officer under sub-section (3) of section 164. But with regard to all other matters pertaining to recovery, he has to exercise his discretion judiciously and, therefore we hold that he is not a mere ministerial officer but a quasi-judicial authority, who functions as a *persona designata*.

13. For all these reasons, we answer the question in the affirmative in favour of the Municipal Council the petitioner and against the respondent.

14. This brings us to examine the question relating to the quantum of the demand. Admittedly, the petitioner's counsel did not press for the recovery of the amount due and payable for the period prior to 1-4-1964. Section 176 also bars the recovery of any claim of the Municipal Council pertaining to a period prior to six years from the date of the demand. Before us also, this particular aspect has been conceded, in our view rightly, by Shri Garg. Hence the impugned order passed by the Magistrate must be and is hereby quashed and the application u/s 165 filed by the petitioner must be directed to be taken by him to his file and to be disposed of in accordance with law and in the light of the observations made in this order. The demand for the period from 1-4-1964 to 31-3-1970 will have to be apportioned out of Rs. 2447 and the recovery proceedings will have to be continued by the Magistrate in accordance with law.

15. In the result, the writ petition is allowed with costs. Counsel's fee Rs. 250 if certified. The amount of security deposit be refunded to the petitioner.