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**(1990) 12 KL CK 0050**  
**In the High Court Of Kerala**  
**Case No : S.A. No. 130 of 1985**

P.A. John

APPELLANT

Vs

Corporation of Cochin and others

RESPONDENT

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**Date of Decision :** 18-12-1990

**Acts Referred:**

Kerala Municipal Corporation Act, 1961 — Section 429

**Citation :** (1991) 1 KLJ 124

**Hon'ble Judges :** P.K. Shamsuddin, J

**Bench :** Single Bench

**Advocate :** N. Viswanatha Iyer, for the Appellant; M.P.R. Nair and V.B. Unni Raj, for the Respondent

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## Judgement

P.K. Shamsuddin J.

1. Plaintiff in O.S. No. 363 of 1980 on the file of the II Additional Sub Court, Ernakulam, is the appellant. The suit is for realisation of money. Plaintiff is the owner of building Nos. 25/1285/1 to 11 series situate within the Municipal Corporation of Cochin and the said buildings were assessed to property tax in quinquennial revision for the period from 1976-77 to 1978-79. According to the plaintiff, neither the Corporation nor the Commissioner of the Corporation Issued any demand to him under Rule 29 of the Rules in Schedule II of the Kerala Municipal Corporations Act. There is a statutory bar to issue of warrant of distraint without giving a notice of demand. The Revenue Inspector of the Corporation came to the house of the plaintiff on 22-3-1980 at 2 P.M. to enforce warrant of distraint illegally and started removing of valuable house-hold articles of the plaintiff from the residence to the Office of Cochin Corporation. An order of injunction was issued in L.A. No. 1305 of 1980 in O.S. No. 239 of 1980, restraining the Corporation from recovering the amount, but in violation of the said order, the Revenue Inspector seized the moveable properties. Plaintiff remitted the entire amount covered by the warrant under protest, which included Rs. 1,000/- expenses for the distraint. Plaintiff is therefore entitled to claim

refund of the amount paid together with interest at 6% per annum from 22-2-1980 and" he was also entitled to get Rs. 350/- which represented the expenditure incurred by plaintiff for bringing back the immovables to his residence from the office of the Corporation. Plaintiff also claimed Rs. 5,000/- by way of damages. A statutory notice dated 12-6-1980 was issued to the defendant, but no reply was sent. Hence the suit.

2. Defendant filed a written statement contending that the Revenue Inspector never violated the order of injunction passed by the Munsiff's Court, that the distraint warrants were executed long before the plaintiff moved the Munsiff's Court for injunction, that this fact was clear from a letter of plaintiff dated 22-3-1980 addressed to the 2nd defendant and also the receipt acknowledging the articles issued by the plaintiff, that the injunction order was received in the Office of the Corporation only on 24-3-1980, that the seizure was done after complying with all requirements of law and that the plaintiff paid the amount covered by the statutory warrant voluntarily. In the circumstances, plaintiff was not entitled to any relief.

3. On a consideration of the oral and documentary evidence the court below came to the conclusion that the defendants had not violated the order of injunction issued by the Munsiff's Court as alleged, and that there was no illegality in issuing the distraint warrant and in that view of the matter, the suit was dismissed.

4. In this appeal, learned counsel for the appellant has challenged the finding of the court below. Learned counsel submitted that the Corporation had not given any bill to the plaintiff demanding the property tax as contemplated under Rule 29 (1) of Schedule II (Taxation Rules) to the Kerala Municipal Corporation Act and therefore the warrant of distraint was illegal and that consequently the plaintiff was entitled to get refund of the amounts collected on the basis of such an illegal restraint warrant. In the written statement filed by defendants, they averred that there is compliance with Rule 29 (3) before distraint warrant was issued. According to them, it was only after issue of bills distraint warrants were issued. Learned counsel for appellant also submitted that as soon as the plaintiff came to know about the distraint warrant, he filed O.S. No. 239 of 1980 before the Munsiff's Court, Ernakulam and obtained an injunction, restraining defendants from collecting tax and that violating the order of injunction, the distraint was made with the help of police at 2 P.M. on 22-3-1981. Learned counsel submitted that the order of injunction was shown to the defendants before distraint was made, but defendants did not stop the proceedings. On the other hand, learned counsel for respondents submitted that the suit O.S. No. 239 of 1980 was filed by plaintiff and injunction was obtained only after the distraint was made and that the allegation that distraint was made violating the injunction order was untrue.

5. Before dealing with the contentions of the parties, it will be profitable to refer to the provisions relating to assessment, levy and collection of the property tax.

Section 98(a) of Kerala Municipal Corporations Act deals with Property tax. The Corporation is empowered to levy property tax. Section 102 deals with method of assessment of property-tax. Section 138 of the Act lays down that the Rules and Tables embodied in Schedule II shall be read as part of Chapter V which deals with taxation. Assessment of property tax is contained in Part II of Schedule II. Rule 4 of Part II Schedule II lays down that the Commissioner shall enter in the assessment books, the annual value of all lands and buildings and the tax payable thereon. Rule 5 states that a general revision of the assessment books shall be made by the Commissioner once in every five years and for this purpose the Commissioner may with the approval of the council arrange the territorial divisions of the City in such groups as may be considered necessary and revise the assessment books relating to each such group by rotation once in every five years. Rule 6 provides that an assessment once made shall continue in force until it is revised and until the revised assessment takes effect. Rule 7 provides that when assessment books have been prepared for the first time and whenever a general revision of such books has been completed, the Commissioner shall give public, the time when and the place where the books may be inspected and stating that revision petitions will be considered if they reach the municipal office within thirty days from the date for such notice in the case of the Government, the railway administration or a company and fifteen days from the said date in other cases. Rule 8 provides that the Commissioner may after giving notice to the parties concerned and hearing their objection, if any amend the property tax assessment books at any time between one general revision and another by inserting therein or removing therefrom any property or by altering the valuation of any property or the amount of tax. Rule II provides that the preferring or pendency of an application for the revision of the assessment of any tax under Rules 7, 9 or 10 shall not bar the collection thereof or operate as a stay of proceedings to enforce payment of the same. Rule 14 says that immediately after the disposal of a revision petition, the commissioner shall inform the petitioner or his authorised agent in writing of the orders passed thereon and shall, if necessary, cause the assessment books to be corrected.

6. Part VI in Schedule II deal with the collection of tax. Rule 29 (1) provides that where any tax not being a tax in respect of which a notice has to be served u/s 115 or section 123 is due from any person the commissioner shall cause to be served upon or sent to such person a bill for the same due before proceeding to enforce the provision of Rule 30. Section 115 deals with the question as to when payment of profession tax due and how to cause notice for payment of profession tax. Section 123 deals with notice to be sent and returned by, tax payers in respect of tax on animals, vessels and vehicles. Sub Rule (2) of Rule 29 says that a notice u/s 115 or Section 123 and a bill under Sub rule (1) shall be signed by the Commissioner and shall contain a statement of the period and ft description, of the occupation, property or thing for which the tax is charged and other particulars of the demand and notice of the liability which may be incurred in default of payment. Sub rule (3) says that where a notice or bill referred to in

sub rule (1) has not been served or given either in the half-year in which the tax became due or in the succeeding half year, the tax for the half-year first mentioned in this sub rule shall not be demanded. Rule 30 (1) provides that if the amount due on account of property tax is not paid on or before the due date and if the amount due on account of any other tax is not paid within 30 days from the service of the notice or bill referred to in Section 115 or Section 123 or rule 29 and if the person from whom the tax is due has not shown cause to the satisfaction of the commissioner why it should not be paid, the Commissioner may recover by distraint under his warrant and sale of the movable property of the defaulter or if the defaulter is the occupier of any building or land in respect of which a tax is due by distress and sale of any movable property which may be found in or on such building or land, the amount due on account of the tax together with the warrant fee and distraint fee and with such further sums as will satisfy the probable charges that will be incurred in connection with the detention and sale of the property so distrained. Sub rule (2) of Rule 30 provides that if for any reason the distraint or a sufficient distraint of the defaulters property is impracticable, the Commissioner may prosecute the defaulter before a Magistrate. Sub rule (3) provides that the Corporation can sue in a civil court for the recovery of any tax, duty or other amount due to it under the Act.

7. It is the case of the plaintiff that sub rule (3) of Rule 29 of Part VI Schedule II has not been complied with in the instant case. It may be noticed that Rule 29 (2) prescribes that a notice u/s 115 or 123 and a bill under sub rule (1) shall contain a statement of the period and a description of the occupation, property or thing for which the tax is charged and other particulars of the demand and a notice of the liability which may be incurred in default of payment.

8. Learned counsel for respondents submitted that Ext. B1 file contains the counter-foil of notices issued to the plaintiff in pages 137 to 157 and that these notices would satisfy the requirements of Rule 29 (3). Learned counsel for appellant, however, contended that these are not the notices contemplated under Rule 29, but a notice of quinquennial" revision and that in view of specific provision contained in sub rule (3) of Rule 29, tax cannot be demanded in the absence of a notice under Rule 29. This raises the question whether the bills or notices relied on by the Corporation satisfy the requirements of Sub rule (2) of Rule 29 so as to treat issue of those notices as sufficient compliance with the prerequisites for issuing distraint warrant. In this context, it may be noticed that notice that is contemplated under Rule 29 (1) should contain the period and the description of the property, for which tax is charged and particulars of demand and also notice of liability which may be incurred in default of payment as laid down in Rule 29 (2).

9. On a perusal of the notices relied on by the learned counsel for 1st defendant Corporation, I am satisfied that those notices do not satisfy the requirements of Rule 29 and those notices are only notices sent on quinquennial revision of property tax in respect of properties involved in this case, in compliance with

Rules 7 to 9 of the Rules. It has been clearly stated in those notices that the amount shown is tax due on quinquennial revision. It does not contain a statement of the period or a notice of liability, which may be incurred in default of payment as contemplated in clauses (a) and (b) of Rule 29 (2).

10. Sub rule (3) of Rule 29 states that where a notice or bill referred, to in sub rule (1) has not been served or given either in the half-year in which the tax became due or in the succeeding half year, the tax for the half-year first mentioned in this sub rule shall not be demanded. It has been provided in Rule 30 (1) as already mentioned that if the amount due on account of, any tax is not paid within 30 days from the service of the notice or bill referred to in Section 115 or Section 123 or Rule 29 and if the person from whom the tax is due has not shown cause to the satisfaction of the Commissioner why it should not be paid, the Commissioner may recover by distraint under his warrant and sale of movable property of the defaulter or if the defaulter is the occupier of any building or land in respect of which a tax is due, by distress and sale of any movable property which may be found in or on such building or land, the amount due on account of the tax together with the warrant fee and distraint fee and with such further sums as will satisfy the probable charges that will be incurred in connection with the detention and sale of the property so distrained.

11. What is discernible from the provisions contained in Rules 29 and 30 is that without issue of notice or bill, either in the half year in which the tax became due or in the succeeding half year, the tax for the half year first mentioned shall not be demanded. It is also clear that the distraint can be made if the amount due on account of any tax is not paid within 30 days from the service of the notice or bill referred to in Section 115 or Section 123 or Rule 29 and if the person from whom the tax is due has not shown cause to the satisfaction of the Commissioner, why it should not be paid. In the instant case, notice under Rule 29 was not served or given to the assesses and in the circumstances, the distraint made without making a demand is clearly in violation of the provisions contained in Rule 30 of the Schedule.

12. The further question that falls for consideration is whether on account of this illegality or irregularity in making the distraint, collection of the tax is illegal and the assesses can maintain a suit for recovery of the amount on the ground that there are violations of the provisions contained in Rules 29 and 30 of the Rules. Learned counsel for 1st respondent vehemently contended that there were appeals and revisions filed by the assesses against the quinquennial revision enhancing the tax and final orders, were issued and therefore the liability to pay tax became final. He further submitted that there is no case that the amount collected is something more than what was due from the assesses.

13. Learned counsel for appellant, on the other hand, submitted that Rules 29 and 30 are mandatory in character and therefore any amount collected on the basis of any illegal procedure adopted by the 1st defendant would render the collection itself illegal and the plaintiff is entitled to get back the amount if it is

established that the collection was made violating the provisions and procedural safeguards provided by the rule. Learned counsel for the appellant also submitted that Rule 30 gives a right to the assesses to show cause to the satisfaction of the Commissioner why the amount demanded has not been paid and if it is held that notwithstanding the procedural irregularities and illegalities committed by the concerned authorities of the Corporation, the amount collected is not repayable, that would be against all rules of fair play and justice. He also contended that there is a clear bar provided in sub rule (3) of Rule 29 against demanding tax for the half year without a notice contemplated in Rule 29. On the other hand, learned counsel for the Corporation brought to my notice Section 429 of the Act, which reads as follows:

429. Assessments, etc. not to be impeached:

(1) No assessment or demand made and no charge imposed under the authority of this Act shall be impeached or affected by reason of any clerical error or by reason of any mistake, (a) in respect of the name, residence, place of business or occupation of any person, or (b) in the description of any property or things or (c) in respect of the amount assessed) demanded or charged

Provided that the provisions of this Act have, in substance and effect, been complied with. And no proceedings under this Act shall, merely for defect in form, be quashed or set aside by any court.

(2) No suit shall be brought in any court to recover any sum of money collected under the authority of this Act or to recover damages on account of any assessment, or collection of money made under the said authority;

Provided that the provisions of this Act have, in substance and effect, been complied with.

(3) No distraint or sale under this Act shall be deemed unlawful, nor shall any person making the same be deemed a trespasser, on account of any error, defect or want of form in the bill, notice, schedule, form, summons notice of demand, warrant of distraint, inventory, or other proceeding relating thereto if the provisions of this Act, the rules and bye-laws have, in substance and effect, been, complied with:

Provided that every person aggrieved by any irregularity may recover satisfaction for any special damage sustained by him.

This is not a case where assessment, charge or demand is challenged on the ground of a clerical error or any mistake mentioned in sub section (1) of Section 429 of the Act, Learned counsel for the Corporation submitted that in view of sub section 429, (2) of section no suit shall be brought in any court to recover any sum of money collected under the authority of the Act or to recover damages on account of any assessment, or collection of money made under the said authority, provided that the provisions of this Act have in substance and effect, been complied with. It cannot be denied that. Rules 29 and 30 of Schedule II

have to be read as part of the Act and if there is failure to comply with the said provisions atleast in substance and effect, the bar contained in sub section (2) of Section 429 will not operate. It cannot also be said that in the instant case sub section (3) of Section 429 is attracted as there is no compliance with the provisions of Rules 29 and 30 of Rules.

14. It cannot be disputed that if tax is illegally collected from a person, a suit for refund of the amount is maintainable (See Ballabhadras Mathurdas Lakhani and Others Vs. Municipal Committee, Malkapur, and Municipal Committee, Akot Vs. Manilal Manekji Pvt. Ltd. and Another, . The foregoing discussion would show that the judgment and decree under challenge are unsustainable. I therefore allow the appeal, set aside the judgment and decree of the court below and pass a decree for recovery of Rs. 54,392.65 remitted under protest. Plaintiff has also claimed Rs. 5,000/- as damages. It has not been established that plaintiff has sustained any damage. Therefore, he is not entitled to recover Rs. 5,000/- claimed as damages Plaintiff has claimed Rs. 350/- as expenses for bringing back the seized moveables to his residence from the Office of the Corporation. Plaintiff is entitled to recover this amount as he had incurred that expenditure en account of illegal distraint matte by the defendant. The plaintiff will also be entitled to future Interest at the rate of 6% per annum till the date of realisation on the amounts decreed. No costs.