

(1963) 11 MAD CK 0065

In the Madras High Court

Case No : Second Appeal No. 1180 of 1961 and Civil Revision Petition No. 1210 of 1959

The Coimbatore Municipal Council

APPELLANT

Vs

C.P. Kandaswamy

RESPONDENT

Date of Decision : 08-11-1963

Acts Referred:

Tamil Nadu District Municipalities Act, 1920 — Section 129, 131, 132, 306, 306(3)

Citation : (1965) ILR (Mad) 126

Hon'ble Judges : Anantanarayanan, J

Bench : Single Bench

Advocate : V. Ramaswami and A. Ramanathan, for the Appellant; T.K. Subramania Pillai, A. Ramalingam, A. Sarojini Bai and C.S. Rajappa, for the Respondent

Final Decision : Dismissed

Judgement

Anantanarayanan, J.—These two related proceedings, both of which are instituted by the Coimbatore Municipal Council represented by its Commissioner, involve a question of some degree of interest, namely, whether the municipality can insist upon charging for its water-supply upon a basis of the consumed quantum of supply (meter-rate), when the original contract between the proprietor of the building in question and the municipality was for supply of water for domestic consumption upon the flat or tap-rate, merely because a part of the premises is subsequently utilised for a business purpose. The point is not covered by authority, though there are authorities available, to which I shall make a reference a little later, the dicta in which impinge upon certain related aspects of the central question. It is essential, first, to have a dear idea of the actual facts, as established by the concurrent findings of the Courts below, and they are as follows:

The original contract between the municipality and the proprietor and occupier of this building, was for the supply and charge of water for domestic consumption,

upon the flat-rate basis of rupees two per tap. Only one tap was fixed upon the premises, and there was initially no difficulty about the situation. But in 1954-55, the present Respondent purchased the building, and he then wanted certain reconstruction measures carried out during which period he had to temporarily use water for a non-domestic purpose. Admittedly, there was correspondence between the parties, and it was agreed that during this temporary period, a meter should be fixed, and that the Respondent should pay charge for the actual supply at the rate of two and a half annas per gallon, excluding a specified free allowance. The meter was accordingly fixed on the premises, and the Respondent completed the building operations and duly reported the fact to the municipality on 24th June 1955. He also, requested the municipality to take away the meter, and to resume water supply upon the basis of the earlier contract, namely, flat-rate for the tap installed.

2. One of the grounds in these proceedings (second appeal and revision proceedings) relates to the question of the actual amount decreed in favour of the municipality in Small Cause Suit No. 1177 of 1958. An amount of Rs. 25-4-0 was decreed, against the suit claim of Rs. 117-7-0. It is urged that, though the building operations were completed by 24th June 1955, the meter charges were paid by the Respondent only on 15th January 1956, and hence that the municipality should have been awarded a decree upon the meter-rate of supply, not merely till 24th June 1955 but till 15th January 1956. But though it is true that the Respondent had to bear the meter charges, those charges could have been collected subsequently, and the municipality, should really have removed or disconnected the meter, when the Respondent made a report of the completion of building operations by 24th June 1955. It is not the case of the Appellant-municipality that the operations continued thereafter also, and that water was diverted to such use. Under those circumstances, there is really no necessity to interfere with this finding of fact, nor will I have jurisdiction to do so in second appeal, or in revision.

3. The real question is not this. The controversy really arises because of the two shops which came into existence in a portion of this building after reconstruction, one of which is a shop occupied by a radio dealer, and another by a dealer in automobile spare parts. The municipality ultimately disconnected the meter on 13th March 1956. The municipality would appear to have collected water charges upon the flat-rate only, irrespective of the emergence of the two shops in parts of the building, after the temporary contract with regard to the building operations had come to an end, and the original contract had been resumed. But there was an objection raised by certain auditor and it is on the basis of this objection that the legal proceedings have arisen. Briefly stated, the point urged by the municipality is that bye-laws have been framed for water charges by virtue of the powers vested in the municipality u/s 306(3)(c) of the District Municipalities Act (V of 1920). Since this is the crux of the controversy, and learned Counsel for the Respondent concedes that bye-laws 2 and 3 will govern the matter, I hereby extract and set forth the two bye-laws concerned:

2. Except in cases specified in bye-law No. 3, house service connections for dwellings where water should be draw for purely household purposes, shall be permitted on the tap-rate system or on meter system. But if the Executive Authority has reason to believe that in any case the water supplied under tap-rate system is used for other than household purposes or is wasted or is likely to be used for other than household purposes or wasted he may request the owner or occupier to meter the connection at the owner's or occupier's cost in accordance with the specification given by the Executive Authority and in default execute the work and recover the charges as per bye-law Nos. 10 and 11 infra.

3. Notwithstanding anything contained in bye-law No. 2 supply of water in the following cases shall be on meter basis only irrespective of the fact that the entire building is used for the purposes mentioned below or not.

Schools, clubs...shops or business premises...workshops, building construction original, additional and alterations, requiring licence under the District Municipalities Act, and as well as water supplied for non-domestic purposes...

It will at once be obvious that, if the executive Authority (in this case the Commissioner), had reasons to believe that the water supplied under tap-rate system for domestic consumption was being used for other than household purposes, namely, that the Respondent-proprietor was either actually supplying water to the two shops, or permitting those tenants to take any part of the water supplied, the Executive Authority has discretion under by-law 2 to, direct the installation of a meter, so that the supply will thereafter be on the meter-rate system, according to the quantity consumed. So much is conceded. But in the present case, we have no ground for the assumption that the Executive Authority had reason for any such belief or that he insisted upon the installation of a meter, because of his subjective satisfaction to the effect that part of water supplied was being taken for the two shops. On the contrary the Courts below have clearly found that the single tap on the premises is not accessible to the two tenants of the two shops at all, and that no part of the water supplied was being diverted for the two shops or taken by the tenants of such shops. Naturally enough, the argument might be put forward that it would be very difficult for the municipal authorities to prevent such diversion or even to keep a watch, to see that such diversion does not occur or that, if it occurs, notice is forthwith given under by-law 2, for the installation of a meter. But the remedy is simple. If the Executive Authority has any information to the effect that" the persons occupying such non-residential premises in the building are using any part of the water supply originally meant for purely domestic purposes, or any grounds for so holding, he can exercise his powers under by-law 2. But in the present case, it is not claimed on behalf of the Appellant-municipality that action was taken under by-law 2 and that, for the declaratory suit filed by the Respondent, Original Suit No. 292 of 1958 out of which the Second Appeal 1180 of 1961 has arisen, ought not to have been decreed.

4. But learned Counsel for the Appellant-Municipality would attempt to

substantiate the claim of the Appellant, as a question of law under by-law 3 extracted and set forth above. But I think it can be easily shown that by-law 3 has no application to the present facts. By-law 3 will apply where there is supply of water to shops or business premises, either in the form of a contract or agreement for such supply by the municipality, or even in the form of a mere application for such supply by the occupier of the shop or business premises concerned, whether that category of premises be the entire building or only a portion of the building. But by-law 3 will have no application where the building is used by a family for residential purposes, and the supply of water is for domestic consumption to this family. If, in such a case, a small part of the building is utilized for a shop or business premises, by-law 3 will, apply, as soon as it could be claimed that there was supply of water to the, concerned premises. The municipality is certainly entitled to install a meter, and supply water on that basis alone. But I am unable to see" how there can be any presumption that a shop or business premises must necessarily utilize water at all. That depends on the nature of shop or business, and many cases are conceivable where the concerned business can be run, without any reference to water supplied to any extent. The true remedy in, all such cases, whenever there is suspicion that the water supplied for domestic consumption is being also partly used by the shop in a portion of the building it is for the Executive Authority to act under by-law 2. The municipality cannot invoke by-law 3, unless it can be postulated that there is supply of water to the concerned business premises, whether the business premises be situate in the entire building, or in a part of the building.

5. Some light is thrown upon this matter, though not upon the question directly involved, in two decisions to which my attention has been drawn. In *Masulipatnam Municipal Council v. Brundavan Talkies Ltd.* (1953) 2 M.L.J. 37 Satyanarayana Rao J., held, after setting forth the relevant provisions of Sections 129 and 131 of the Madras District Municipalities Act, that the language of Section 131 indicated that the essential test was the user, and the nature of consumption of the water. Certain criteria were laid down by the learned Judge to determine this, and certain English cases were also discussed.

6. In *Satyanarayana v. Commr. Bezwada Municipality* (1954) 2 M.L.J. (Andh.) 27, the learned Chief Justice of the Andhra Pradesh High Court had occasion to consider the applicability of Sections 131, 132, 306 and 307 of the Madras District Municipalities Act, to the facts of the case before him. The decision is authority for the view that a combined reading of the provisions made it abundantly clear that the municipality could frame by-laws in respect of buildings constructed before the by-laws were made, to provide for the supply of water for domestic consumption. Whether the supply of water be for domestic consumption and use or for other purposes, the supply is always to the building, and the words supply of water to buildings in Section 307 , take in both domestic and non-domestic purposes.

7. The situation has thus to be clarified as follows : The decrees of the Courts

below upon the present facts are correct, and call for no interference except to the limited extent that the declaration granted to the Respondent in Original Suit No. 292 of 1958 cannot be understood in absolute terms. No doubt, upon the facts as found by the Courts below, the municipality cannot charge water rate upon meter system for the concerned period; the injunction is, therefore, justified. But this will be without prejudice to the power of the Municipal Authorities to act under by-law 2 if the Executive Authority of the municipality is satisfied that any part of the water supplied for domestic consumption to this building, is being used for the business premises situate in a portion of the building. If he is so satisfied, he may, by an order in writing, direct the installation of a meter, either by the owner himself or by the staff of the municipality at the cost of the owner. Thereafter, the supply of water is liable to be charged on the water-rate basis. But of course, such satisfaction by the Executive Authority, though subjective, must be well founded, and not merely arbitrary or capricious. With this clarification, the Second Appeal and Civil Revision proceedings are dismissed. In the circumstances of the matter, I direct that the parties will bear their own costs here. No leave.