
(1914) 08 BOM CK 0001
In the Bombay High Court
Case No : Second Appeal No. 770 of 1912

The Surat City Municipality

APPELLANT

Vs

Chhabildas Dharamchand

RESPONDENT

Date of Decision : 12-08-1914

Acts Referred:

Bombay District Municipal Act, 1901 — Section 82(3)

Citation : AIR 1914 Bom 22 : (1914) 16 BOMLR 749

Hon'ble Judges : Davar, J; Basil Soott, J

Bench : Division Bench

Judgement

Basil Scott, Kt., C.J.—This is an appeal by the Surat City Municipality against the decree of a District Judge, varying the decree of the first Court and holding that the plaintiff was entitled only to a sum of Rs. 23-13-0 in respect of moneys paid by him under protest to release certain property which was distrained by the Municipality in respect of arrears of taxes for a portion of the house in his possession. The money was recoverable by the plaintiff as having been paid under protest if he was able to show that the distress was not in accordance with law.

2. Now the power of the Municipality to levy distress upon the moveable property of a person from whom a tax is claimable depends upon the provisions of Chapter VIII of the District Municipal Act (Bom. Act III of 1901). It provides that: " When any amount, which is claimable as an amount on account of any tax which is now imposed in any municipal district, shall have become due, the Municipality shall, with the least practicable delay, cause to be presented to the person liable for the payment thereof, a bill for the sum claimed as due, and every such bill shall specify the period for which and the property in respect of which the sum is claimed, and shall also give notice of the liability incurred in default of payment, and of the time within which an appeal may be preferred as hereinafter provided against such claim; " and Clause (3) of Section 82 provides that : " if the sum for which any bill has been presented as aforesaid is not paid

within fifteen days from the presentation thereof, the Municipality may cause to be served upon the person liable a notice of demand;" and u/s 83 " if the person liable for payment does not, within fifteen days from the service of the notice of demand, pay or show cause why he should not pay or prefer an appeal, such sum may be levied under a warrant by distress." Therefore, the notice of demand upon which the right of distress is based depends upon the previous presentation of a bill complying with the statutory provisions set out in Section 82, Clause (2).

3. It is not disputed that, in this case the bill did not fulfil all the statutory requirements in that it did not state the time within which an appeal might be preferred u/s 86 of the Act. The procedure followed, therefore, was not a legal procedure. The whole right of distress depends upon the observance of the statutory formalities, it being a right conferred by the statute only upon those conditions. We, therefore, agree with the first Court in this respect, and without deciding the other questions which have been raised as to whether the amount of tax was claimable under the new Act of 1901, or whether any portion of the claim was barred by the law of Limitation, we can dispose of the appeal upon the ground that the distress was illegal for the reasons above stated. We therefore hold that the decree appealed against was right. We have been asked to give relief to the respondent upon a cross-objection that certain costs in the way of proof of documents which have been incurred are not sufficiently covered by the order for costs in proportion to the sum awarded; but we have no materials which justify us in altering the order of the lower Court as to costs. We confirm the decree of the lower appellate Court and dismiss the appeal and the cross-objections respectively with costs.