

(1958) 06 BOM CK 0026

In the Bombay High Court

Case No : Civil Rev. Application No's. 1454, 1455 and 1457 of 1956

The Uran Islampur Municipality

APPELLANT

Vs

Shankarrao Amritrao Jadhav

RESPONDENT

Date of Decision : 24-06-1958

Acts Referred:

Bombay District Municipal Act, 1901 — Section 164, 76, 77, 79

Citation : AIR 1960 Bom 467 : (1959) 61 BOMLR 284

Hon'ble Judges : Vyas, J; Tambe, J

Bench : Division Bench

Advocate : V.V. Albal, for the Appellant; G.R. Madbhavi, for the Respondent

Judgement

Vyas, J.

(1) These revisional applications raise a common question of law and therefore we have decided to dispose of them by a common judgment. The point of law which is raised in all these applications is this: If a person, who brings or introduces an article, on which octroi is payable, into the octroi limits of a municipal district, refuses to pay the octroi leviable upon the article, is a suit tenable against him under the Bombay District Municipal Act, 1901 (Bom. Act III of 1901)? There has been no decision of this High court, and we have not been referred to any decision of any other High Court, upon this point. It is for this reason that these revisional applications raise a point of some importance.

(2) For the purpose of delivering judgment, it will be convenient to set out the facts which have given rise to Civil Revisional Application No. 1454 of 1956. This revisional application has arisen out of a judgment and decree passed by the learned Civil Judge, Junior Division, at Islampur in Small Cause Civil Suit No. 33 of 1953. The plaintiff of that suit is the applicant in Civil Revisional Application No. 1454 of 1956. The said plaintiff is the Uran Islampur Municipality. This Municipality filed Small Cause Civil Suit No. 33 of 1953 to recover from the defendants the amount of Rs. 156-4-0 as octroi duty. It may be noted that the

defendants are traders residing within the limits of the Uran Islampur Municipality. The plaintiff's allegation is that in June 1948 the defendants imported a goods truck bearing No. 6140 within the municipal area and therefore they were bound to pay the octroi duty upon the truck. It is further the contention of the plaintiff that the defendants ran the truck within the municipal limits without paying the octroi duty. Repeated demands were made upon the defendants to pay the octroi, but, says the plaintiff, the defendants did not comply with those demands. As the result of the abovementioned circumstances, a small cause suit being Suit No. 33 of 1953 was filed in the Islampur Court by the plaintiff against the defendants for recovering octroi duty to the tune of Rs. 156--0.

(3) The suit was resisted by the defendants and one of the contentions which the defendants took was that the suit was not maintainable under the provisions of the Bombay District Municipal Act, 1901 and the by-laws made by the plaintiff Municipality under the Bombay District Municipal Act the liability to pay octroi upon the goods was cast upon the goods themselves and therefore no suit could be filed against the defendants to recover the octroi from them. The learned trial Judge accepted the contention of the defendants and held that no suit was maintainable against the defendants for the recovery of octroi from them under the Bombay District Municipal Act and the by-laws made by the plaintiff Municipality under the said Act.

(4) Under sub-section (1) of S. 48 of the Bombay District municipal Act, 1901, which I shall hereafter refer to as "the said Act" in the course of this judgment, every Municipality may from time to time with the previous sanction in the case of City Municipalities of the State Government or, in other cases, of the Commissioner, make, alter or rescind by-laws fixing octroi limits and stations; providing for the exhibition of tables of octroi; regulating, subject to any general or special orders which the State Government may make in this behalf, the system under which refunds are to be made when the animals or goods on which the octroi has been paid, or articles manufactured wholly or in part from such animals or goods, are again exported, etc., etc. The Uran Islampur Municipality, purporting to act under s. 48, sub-section (1), clause (j), of the Act, framed octroi rules and by-laws. Amongst these rules we find an important rule which is rule No. 6. Rule No. 6, sub-rule (1), provides, amongst other things, that every Import Naka Karkun shall, whenever goods are brought to his Nska, prepare an import bill by ascertaining and noting certain particulars. Amongst the particulars to be so noted are the rate at which the tax is calculated, the amount of the tax, if any, leviable on the goods, the name of the owner or person in charge of the goods, etc., etc. Sub-rule (2) of rule 6 provides that the Import Naka Karkun shall prepare so many separate import bills for each of such different portions of the goods taxable with not less than eight annas as the owner or person in charge of the goods desired. Then there is sub-rule (3) of rule 6 and this lays down that on payment of the amount, if any leviable, the Karkun shall sign the bill, detach it and deliver it to the person making the payment and shall retain

the counterfoil undetached in his import Bill Book. Then there is an important sub-rule, viz., sub-rule (5) of rule 6, and it will be convenient to set out the text of this sub-rule. Sub-rule (5) provides:

"Every Import Naka Karkun is hereby authoristed under S. 76 of the Bombay district Municipal Act III of 1901 to require a person to comply with the provisions of that section, and in case of refusal on demand to permit and inspection of the goods or to pay the amount leviabale thereon shall, unless there is any special reason to the contrary, exercisethe powers conferred on him by Ss. 76 and 79 of the said Act as set forth in schedule E hereto annexed". This would take us to sections 76to 79 of the Act It is important to bear in mind that part (5) of Chapter VII of the Act is the only part of the Act dealing with the levy and recovery of octroi and tolls. Sections 76 to 79 occur in part 5 of Chapter VII. Section 76, sub-section (1), provides that every person bringing into, or receiving from beyond, the octroi limits of a municipal district any article on which octroi is payable shall, when required by an officer authorized in this behalf by the Municipality, and so far as may be necessary for ascertaining the amount of tax chargeable, permit that officer to inspect, examine and weigh, and otherwise deal with the article, and communicate to that officer any information and exhibit to him any bill, invoice or document of a like nature, which he may possess relating to the article. It is thus clear that under sub-section (1) of S. 76 an obligation is cast upon a person who introduces, from beyond the octroi limits of a municipal district an article on which octroi is payable into the octroi limits of a municipal district, and to permit an officer authorised in this officer in his particular behalf by the unicipality to inspect, examine and weigh the article concerned. It also casts obligation upon the person concerned to communicate to the above officer any information which he may possssess relating to the article. then there is sub-section (2) of Section 76 and this sub-section says that if a person, who introduces an article on which octroi is leviabale into the limits of a municipal district from beyond those limits, refuses to permit the officer concerned to inspect the contents of the goods so introduced in order to ascertain whether the goods contain an artile in respect of which octroi is leviabale, the said officer may cause the goods to be taken without necessary delay before a Magistrate or such officer of the Municipality as the State Government appoints in this behalf. Then there is Section 77 which says that every officer demanding octroi shall tender to every person introducing any article, on which tax is claimed, into the limits of a Municipal District, a bill specifying the article taxable, the amount claimed and the rate at which the tax is calculated . Then there is sub-section (2) of Section 77 and this sub-section is an important sub-section since it provides for penalty for evasion of octroi. We next proceed to Section 79, and sub-section (1) of Section 79 says that in the case of non-payment on demand of any octroi or of any toll leviabale by a Municipality, the person appointed to collect such octroi or toll may seize any article on which the octroi is chargeable or any vehicle or animal on which the toll is chargeable or any part of its burden, which is of sufficient value to satisfy

the demand, and may detain the same. Then there is sub-section (2) of Section 79 and this sub-section provides that when any article seized is subject to speedy and natural decay, or where the expense of keeping it together with the amount of the octroi or toll chargeable is likely to exceed its value, the person seizing such article, may inform the person in whose possession it was that it will be sold at once, and shall sell it or cause it to be sold accordingly, unless the amount of octroi or toll demanded be forthwith paid. Then there is sub-section (5) of Section 79 and it deals with the surplus of the sale-proceeds of the article which is sold under sub-section (2). It is thus clear that under part (5) of Chapter VII, which deals with octroi and tolls, certain obligations are cast upon a person introducing from beyond the limits of a municipal district an article, upon which octroi is leviable, into the octroi limits of the municipal district and amongst those obligations is an obligation to permit a certain officer to inspect, examine and weigh the article, to communicate to that officer any information and exhibit to him any bill, invoice or document of a like nature, which he may possess, etc., etc. There is no provision under part (5) of Chapter VII casting a civil liability upon a person introducing the goods into the octroi limits of a municipal district. In other words, there is no charging section under part (5) of Chapter VII, under which it would be competent to a Municipality to proceed by way of a civil action against a person who refuses to pay octroi or toll. In case a person, who introduces an article, upon which octroi is leviable, into the octroi limits of a municipal district, refuses to pay octroi, then under part (5) of Chapter VII the Municipality has only one remedy to which it can have recourse, and that remedy is that a person, whom the Municipality may appoint in this behalf, may seize the article concerned and may, after seizure, detain the article and, where the article is subject to speedy and natural decay, may sell the article or cause it to be sold. While we are on this point it is important to bear in mind that under sub-section (2) of S. 77 a criminal liability is cast upon a person who refuses to pay octroi. He is made liable to prosecution and he can be fined up to the limit of ten times the value of the octroi or up to fifty rupees, whichever may be greater. It is thus clear that while enacting the various sections which are to be found in part (5) of Chapter VII, the Legislature had in its mind the question of the procedure to be adopted in case the person concerned refuses to pay octroi, and even so, under Chapter VII we do not find any section casting a civil liability upon the defaulter, i.e., the person who refuses to pay octroi.

(5) The learned Advocate Mr. Albal appearing for the plaintiff Municipality invited our attention to the provisions of S. 164 of the Act. Section 164 provides:

"In lieu of proceeding by distress and sale, or in case of failure to realise by so proceeding the whole or any part of any amount recoverable under the provisions of Chapter VIII, or of any compensation, expenses, charges or damages awarded under this Act, it shall be lawful for the Municipality to sue in any Court of competent jurisdiction the person liable to pay the same, as also any other person who may have in any other way caused, or may appear likely to cause, any other way caused property, rights or privileges of the Municipality".

Mr. Albal contends that the words "distress and sale" in the expression "in lieu of proceeding by distress and sale" which occurs in S. 164 refer to distress and sale wherever distress and sale are dealt with in the body of the Act. Now there is no doubt that there are provisions about distress and sale in Chapter VII of the Act, as also in Chapter VIII of the Act, and Mr. Albal says that the expression "distress and sale" which occurs in S. 164 would extend to the provisions of distress and sale both in Chapter VII and Chapter VIII. As I have said above, paragraph (5) of Chapter VII relates to the levy of octroi and tolls. Therefore, says Mr. Albal, if any person refuses to pay the octroi, he would be liable to be proceeded with under s. 164 of the Act. We have considered this contention of Mr. Albal, but we find it difficult to accept the contention. For the purpose of an argument, let it be assumed that Mr. Albal's contention is correct and let us examine the result which would arise out of it. Let us assume that when the Legislature used the words "distress and sale" in S. 164 of the Act, they intended these words to extend to distress and sale of an article under Chapter VII and also under Chapter VIII of the Act. Then, in that event, the Legislature would have made a provision as to what would happen in case of failure to realise the amount of the octroi by such distress and sale, that is to say, by distress and sale under Chapter VII and under Chapter VIII. If we turn to S. 164, however, the Legislature while providing for a remedy in case of failure to realise the amount of the octroi by distress and sale under the provisions of Chapter VIII, has made no provision to meet the case of failure to realise the amount of the octroi under the provisions of Chapter VII. The material words in S. 164 are the words "so proceeding" which occur in the expression "in case of failure to realise by so proceeding the whole or any part of any amount recoverable under the provisions of Chapter VIII", and there is no doubt that these words "so proceeding" relate to a proceeding by distress and sale under Chapter VIII. They have no relation to distress and sale under Chapter VII. As the language of S. 164 reads, it is clear that the words "so proceeding" have a relation to the words "distress and sale" occurring in the expression "in lieu of proceeding by distress and sale". In other words, the clause "in lieu of proceeding by distress and sale" and the clause "or in case of failure to realise by so proceeding the whole or any part of any amount recoverable under the provisions of Chapter VIII" are not to be read disjunctively, as Mr. Albal says. They are to be read in a connected way. That being so, upon a proper construction of S. 164, we are of the view that the words "distress and sale" which occur in the expression "in lieu of proceeding by distress and sale" in S. 164 relate to distress and sale under Chapter VIII of the Act. They have no relation to distress and sale dealt with under Chapter VII of the Act.

(6) On this point Mr. Albal invited our attention to a decision of this Court in the case of *The City Municipality Vs. The Hindustan Construction Company*, . It was held by Mr. Justice Wassoodew in that case that S. 203 of the Bombay Municipal Boroughs Act, 1925, provided an alternative remedy to make recovery of municipal dues by a suit. Mr. Justice Wassoodew stated that according to the first

part of S. 203 of the Bombay Municipal Boroughs Act, 1925, the said alternative remedy, viz., the remedy by way of a suit could be adopted in lieu of any process of recovery allowed by or under the Act," provided the person sued "was liable to pay". There are more reasons than one why this decision would not avail the plaintiff Municipality. In the first place, as I have said, there is no provision in part (5) of Chapter VII of the Act, which is the only part relating to octroi and tolls, which makes a person, who introduces an article into the octroi limits of a municipal district, liable to pay. Therefore, unless there is a provision in the Act which makes a person sued liable to pay, that person cannot be sued. Then, again, and this is important *The City Municipality Vs. The Hindustan Construction Company*, was not a case under the Bombay District Municipal Act, 1901, but it was a case under the Bombay Municipal Boroughs Act, 1925. Now, if we turn to S. 203 of the Bombay Municipal Boroughs Act, 1925, and compare the language of that section with the language of S. 164 of the Bombay District Municipal Act, 1901, we would find a substantial and fundamental difference between the language of the two sections. Section 203 of the Bombay Municipal Boroughs Act, 1925, provides:

"In lieu of any process of recovery allowed by or under this Act or in case of failure to realise by such process the whole or any part of any amount recoverable under the provisions of Chapter VIII, or of any compensation, expenses, charges or damages payable under this Act, it shall be lawful for a municipality to sue in any Court of competent jurisdiction the person liable to pay the same".

Now, if we turn to S. 164 of the Bombay District Municipal Act, 1901, the section provides:

"In lieu of proceeding by distress and sale, or in case of failure to realise by so proceeding the whole or any part of any amount recoverable under the provisions of Chapter VIII, etc., etc."

The important words which find place in S. 203 of the Bombay Municipal Boroughs Act, 1925, and which are significantly absent in S. 164 of the Bombay District Municipal Act, 1901, are "by or under this Act". If, for instance, S. 164 had read as follows: "In lieu of proceeding by distress and sale allowed by or under this Act, etc., etc.," then Mr. albal would have been right in his contention, and he would also have been right in relying upon the above mentioned case in support of his contention, that the words "distress and sale" would relate not merely to distress and sale provided under Chapter VIII, but also to distress and sale provided under Chapter VII of the Act. But the Legislature while enacting S. 164 of the Bombay District Municipal Act, 1901, did not use the significant words "by or under this Act" after the words "distress and sale". Instead, while dealing with a case of failure to realise the whole or any part of the amount of octroi, they dealt with a case of failure under Chapter VIII of the Act, clearly indicating thereby that when they used the words "distress and sale" in the opening part of S. 164, they intended to refer to distress and sale under Chapter VIII of the Act. Then, again, if we turn to S. 82, sub-section (1), clause

(a) of the Act, it provides: "When any amount, which, by or under any provisions of this Act, is declared to be recoverable in the manner provided by this Chapter, etc., etc." Here again, the important words "by or under any provisions of this Act" are to be found. I have already stated above that such words, namely the words "by or under any provisions of this Act", are not to be found after the words "distress and sale" in S. 164 of the Act. Clearly, therefore, when the Legislature used the words "distress and sale" while enacting S. 164, they did not intend to refer to "distress and sale" under Chapter VII of the Act.

(7) For the aforesaid reasons, we are of the view that the learned Judge was right in coming to the conclusion that if a person who introduces an article, upon which octroi is leviable, into the octroi limits of a municipal district from beyond those limits, refuses to pay the octroi, there is no provision in the Act which would make him civilly liable for the recovery of the amount from him. In these circumstances, the learned Judge was also right in dismissing the suit.

(8) Civil Revisional Application No. 1454 of 1956 accordingly fails and is rejected without any order as to costs.

(9) For the reasons stated above, Civil Revisional Applications No. 1455 and 1457 of 1956 are also rejected. Civil Revisional Application No. 1455 of 1956 is rejected without any order as to costs, while Civil Revisional Application No. 1457 of 1956 is rejected with costs.

(10) Revisions dismissed.