1896.

BALVANT G. OZE v. SECRETARY OF STATE FOR INDIA.

brings the case within the provisions of section 48 of the Act. We think that it does. The first part of the section hardly, we think, applies to the case. The plaintiff's land cannot well be said to receive by percolation or leakage from the canal an advantage equivalent to that which would be given by a direct supply of canal water for irrigation, but the second part of the section, in our opinion, applies. The *nála ex concessis* in the opinion of the canal officer has been filled with a supply of water which has percolated or leaked from the canal. The plaintiff's cultivated land derives by a surface flow a supply of the water which has so percolated or leaked, and the conditions of the section are thus, we think, fulfilled. It does not seem to us to be material whether the reservoir which collects the percolation from the canal is a natural reservoir or one artificially formed so long as the water flows from it by a surface flow on to the plaintiff's land. If the plaintiff can show that the opinion formed by the canal officer is erroneous, and that the *nála* is kept supplied by sources independent of the canal water, his remedy is to c[illegible] the canal authorities of that fact and not by suit in [illegible] Court. We must confirm the decree appealed from with[illegible]

Decree c[illegible]

APPELLATE CIVIL.

Before Mr. Justice Ranade and Mr. Justice Hoskin[illegible]

1896.
August 6.

VASUDEVACHARYA AND OTHERS (ORIGINAL PLAINTIFFS) *v.* THE MUNICIPALITY OF SHOLAPUR (ORIGINAL RESPONDENTS.*

Municipality—District Municipal Act (Bom. Act XXVI [illegible] District Municipal Act (Bom. Act VI of 1873), Sec. 14(1) [illegible] under—Rule 16(2)—Rule not mandatory but only perm[illegible] Act (IX of 1872), Sec. 265—Suit for damages and injun[illegible] municipality from stopping water-supply—Right to sue in c[illegible]

The plaintiffs having sued the Municipality of Sholápur fo[illegible] an injunction restraining the municipality from stopping t[illegible] to their house, the first Court allowed the claim, but the J[illegible]

* Second Appeal, No. 216 of 1896.

(1) Section 14 of the District Municipal Act (Bom. Act VI of [illegible]

14. *Clause 1.*—It shall be the duty of every municipality [illegible] constitution as conveniently may be, to prepare rules, and [illegible]

1896.

VASUDEVA-CHARYA v. MUNICIPALITY OF SHOLA'PUR.

missed the suit, holding that it was premature, and that the plaintiffs had no right to sue the municipality for damages under Rule 16 of the Rules framed by the municipality under section 11 of the District Municipal Act (Bom. Act VI of 1873), that rule providing that "parties dissatisfied with a decision of the managing committee or of any sub-committee may prefer an appeal to the municipality whose decision shall be final."

Held, reversing the decree, that the rule must be construed as permissive and not mandatory. It referred to departmental procedure only and did not debar the institution of the civil suit.

SECOND appeal from the decision of G. Jacob, District Judge of Sholápur-Bijápur, reversing the decree of Ráo Sáheb Ramchandra Vyankatesh Patki, Joint Subordinate Judge of Sholápur.

The plaintiffs sued the defendants for an injunction restraining them from stopping the supply of water to the plaintiff's house and for damages, alleging that the defendants had illegally and of malice stopped the supply of water through the pipe in their house.

The defendants pleaded that they had a right under the District Municipal Act (Bom. Act VI of 1873) to stop the supply of water, and that the damages claimed were excessive.

The Subordinate Judge found that the defendants were not entitled to stop the water-supply under the District Municipal Act or under the rules framed under the Act. He, therefore, allowed the claim with further damages from the date of suit to be determined in execution proceedings.

On appeal by the defendants the Judge reversed the decree and dismissed the suit. The following is an extract from his judgment:—

Rule XVI of the Rules framed under the Act and sanctioned by Government in Resolution No. 3630 of the 28th December, 1874, provides that "parties

to time repeal, alter or amend the same as occasion may require, regulating the nature and action of the municipal executive administration:

Provided that no rule shall have effect until the same shall have been approved by the Governor in Council.

All rules when so approved shall, until altered or rescinded under the same authorities, have the same force as if they had been inserted in this Act.

(2) Rule 16:—

16. Parties dissatisfied with a decision of the managing committee or of any sub-committee appointed under section 1 of these rules.....may prefer an appeal the municipality whose decision shall be final.

1898.

VASUDEVACHARYA v. MUNICIPALITY OF SHOLAPUR.

dissatisfied with a decision of the managing committee or of any sub-committee appointed under section 1 of these rules may prefer an appeal to the municipality whose decision shall be final."

The plaintiffs did not avail themselves of this remedy. Following the decision in *Salharam* v. *Chairman of the Municipality of Kalyan* (1) I must, therefore, hold that the plaintiffs' suit was premature, or in other words that they had no right to sue the municipality for damages.

The plaintiffs preferred a second appeal.

Gangaram B. Rele for the appellants (plaintiffs) :—The decision relied on by the Judge is not applicable. That decision was passed under the old District Municipal Act (Bom. Act XXVI of 1850), while the Act now in force is Bombay Act VI of 1873. Further, clause (1) of Rule VI of the Rules framed under the Act of 1850 made it compulsory upon an aggrieved party to complain to the municipality because it laid down that all complaints against the municipality *shall* be addressed in the first instance to the Municipal Commissioner. According to Rule 16 of the Rules framed by the municipality under the Act it was not obligatory on us to lodge a complaint to the municipality, the word used in it being *may* and not *shall*. If we had gone to the municipality we would have been debarred from seeking a remedy in the civil Court, as the rule makes the decision of the municipality final.

Ráo Sáheb *Vasudev J. Kirtikar* (Government Pleader), for the respondent (defendant) :—The word *may* in Rule 16 should be construed to mean *must*, because the latter part of t[illegible] rule lays down that the decision of the municipality shall be final. If it be left open to parties to seek redress either by resorting to a civil Court or to the municipality, then the parties would naturally seek their remedy by a suit, and then the clause as to the finality of the decision of the municipality would be a dead letter. It has been held that the word *may* occurring in section 265 of the Contract Act means *must*—*Prosad Doss Mullick* v. *Russick Lall Mullick* (2); *Delhi and London Bank, Limited*, v. *Orchard* (3).

(1) 7 Bom. H. C. Rep. (A. C. J.), 33.
(2) I. L. R., 3 Cal., 47.
(3) I. L. R., 7 Cal., 157.

1896.

VASUDEVA-CHARYA v. MUNICIPALITY OF SHOLA'PUR.

RANADE, J.:—The District Judge has in this case reversed the decree of the Court of first instance, and dismissed appellants' suit against the respondent, the Municipality of Sholápur, on the ground that the suit was not maintainable, as the appellants had not complied with the provision of Rule 16, which directs that "parties dissatisfied with the decision of the managing committee or any other sub-committee *may* appeal to the municipality whose decision shall be final." He relied upon the authority of *Sukharam* v. *Chairman of the Municipality of Kalyán*[1].

It was, however, contended before us that that decision had reference to the rules made under Act XXVI of 1850, while the rule in dispute is one of a set of rules framed under section 11 of Act VI of 1873. It was further pointed out that while clause 1 of the former set of rules directed that "all complaints against the municipality *shall* in the first instance be addressed to the Municipal Commissioners," Rule 16 framed under the latter Act was not mandatory, but only permissive, as it used the word "may" in place of the old word "shall." The respondent's pleader urged, on the other hand, that the word "may" in the new set of rules should be construed as though it meant "shall," and referred to the decisions passed upon section 265 of the Contract Act, where a similar construction had been placed upon the word "may" as being intended to be mandatory, and not permissive only.

There can be no doubt that, under certain circumstances, such constructions have been placed on the word "may." Maxwell on the Interpretation of Statutes discusses this subject at some length, and his remarks show that Courts in England have no doubt held that where a Statute confers an authority ... an act which the public interests demand, the directory, permissive, or enabling words used in it must be construed as imperative, unless there be special grounds for a contrary construction. Special consideration, however, may show that the permissive words used were intended to confer a discretionary power only. The question thus resolves itself into one of giving effect to the intentions of the Legislature.

(1) 7 Bom. H. C. Rep., 33.

1896.

VASUDEVACHARYA v. MUNICIPALITY OF SHOLAPUR.

In the present case, it may be noted that the dispute relates to the interpretation of a rule made by the municipality itself and liable to be altered by it, and not to an Act of the Legislature. Further, reading Rules 15, 16, 17 together, it will be seen that while in Rule 15, which relates to complaints against servants, the words used are that such complaints shall in the first instance be addressed to the managing committee, and in Rule 17 it is provided that appeals in respect of orders under section 33 shall lie to the President, whose decision shall be final, it is only in Rule 16 that the permissive "may" is used, though it is provided that the decision of the municipality shall be final. The respondent's pleader laid some stress upon the use of these last words. It appears to us, however, that by themselves they are not sufficient to take away the permissive character of the rule when it is read side by side with the preceding and succeeding rules. Under the old rules, an appeal was permitted from the decision of the municipality to the Collector, and in cases of doubt the matter could be taken to the Police Commissioner, whose decision was declared to be final. This appeal to the Collector and Police Commissioner was taken away in the new set of rules, as the new Act contained an express provision permitting parties who had complaints against the municipality or its officers to bring civil suits after giving due notice. This notice afforded opportunity to the municipality to remove all cause for complaint if it were inclined to do so. The intention of the Legislature being thus plainly manifested, it is clear that the rules must be construed in consonance with the same, and Rule 16 must be construed as permissive, and not mandatory. It refers to departmental procedure only, and does not debar the institution of the civil suit.

For these reasons, the decree of the lower Court must be reversed, and the case remanded for trial on the other issues, and final disposal on the merits. Costs of this appeal on the respondent, and other costs to abide by the final result.

Decree reversed and case remanded.