1929

NARSI TOKERSEY & Co. v. SACHINDRANATH GAJANAN

Kemp J.

in suit No. 2773 of 1926 had adopted and continued the proceedings in that suit after completing his twenty-first year. I, therefore, answer issue No. 1 in the affirmative.

I appoint Mr. Fahey guardian of defendant No. 1 for the suit. Liberty to the plaintiffs to amend the plaint by describing defendant No. 1 as a minor and bringing on record Mr. Fahey as his guardian *ad litem*. Mr. Fahey appointed guardian *ad litem* for defendants Nos. 3 and 4. The defendants waive service of the summons. Written statement to be filed by March 26, 1929, affidavit of documents by the 2nd proximo, inspection forthwith thereafter and hearing on April 11, 1929, subject to part heard.

The plaintiffs to pay the costs of the trial of these two issues.

Attorneys for plaintiffs: Messrs. *Mohile & Parekh.*

Attorneys for defendants: Messrs. *Madhavji & Co.: Purnanand & Clubwala.*

B. K. D.

APPELLATE CIVIL.

Before Mr. Justice Madgavkar.

1929
July 5.

THE RAIPOOR MANUFACTURING CO., LTD., OF AHMEDABAD (ORIGINAL PLAINTIFF), APPELLANT *v.* THE AHMEDABAD MUNICIPALITY (ORIGINAL DEFENDANT), RESPONDENT.*

Bombay District Municipal Act (Bom. Act III of 1901), section 82, clause (2), sub-clause (b), paragraph (i)—Ahmedabad Municipality—Water-tax—Notice of demand—Liability—Immediate liability—Imposition of tax in the middle of the official year—Mill buildings—If appreciable portion of mill building

*Second Appeal No. 196 of 1927.

1929

RAIPOOR MANUFACTURING CO., LTD. v. AHMEDABAD MUNICIPALITY

*within limit the whole building liable for tax—Rules made by Ahmedabad Municipality—Rules 1, 2, 3, 4, 6, 21, 22.**

The plaintiff company owned a large plot of land on which they erected several buildings for the purposes of their mill within a compound. By May 31, 1923, the defendant-municipality laid a water-pipe within 75 feet of some of the said buildings and also erected two stand-pipes within 500 feet of some of the other buildings in the compound. On August 7, 1923, the municipality presented bills to the plaintiffs claiming water-tax on all the buildings in the compound from April 1, 1923, to March 31, 1924. The penalty for non-payment specified in the bill was one of eight annas. The plaintiffs denied liability for the tax on the grounds that (1) the bills did not sufficiently specify the liability incurred in default of payment and contravened section 82, clause (2), sub-clause (*b*), paragraph (i) of the District Municipal Act, 1901; (2) that no liability could be imposed in the middle of a year; and (3) that the buildings of the company were treated as one by the municipality while each building

---

*The material rules framed under section 46 (i) in Chapter XIII of Volume I of the Ahmedabad Municipal Code were the following :—

1. In these rules :—

(1) " Building " and " annual letting value " shall have the meaning defined in section 3, sub-sections (7) and (11), of the Act.

* * * * * * *.

2. The following taxes shall be levied in the Ahmedabad Municipal district as rates on buildings and lands :—

(1) Water-tax, (2) drainage-tax, (3) house and property-tax.

3. The said taxes shall be payable annually in advance in one instalment and shall accrue due on April 1st.

4. When a building or land is given water or drainage connection for the first time after April 1st, in a particular year, water connection fee and the drainage-tax on it for that year shall be leviable proportionately for the rest of the year from the date of such connection.

* * * * * * *.

6. The amount of each of the said taxes so payable shall be assessed on the following lines :—

* * * * * * *.

(*b*) Mill and factory buildings and tanks attended thereto, outhouses, warehouses, godowns, houses, bungalows, and all other buildings of any kind connected with them including areas occupied by otlas shall be assessed at the valuation of five rupees per square yard of each storey, floor or cellar.

* * * * * * *.

21. The water-tax shall be levied annually on all lands and buildings within the Ahmedabad Municipal district at the full rates prescribed in column 3 (except as provided in rule 28) of the schedule annexed to these rules, assessed on the annual letting value or valuation in accordance with rule 6.

22. Buildings or lands whereof no part is within 75 feet of a water-pipe or within 500 feet of a fire-plug, stand-pipe or water-reservoir shall be exempted from the water-tax. Provided that when such buildings or lands have water connection, they shall not be exempted from the water-tax.

1929

RAIPOOR MANUFACTURING CO., LTD. v. AHMEDABAD MUNICIPALITY

should have been separately considered and assessed only if it was within the taxable limits according to the rules framed by the municipality, and filed a suit for a declaration that they were not liable to pay the tax claimed:

Held, overruling the contentions, that (1) under section 82, clause (2), sub-clause (*b*), paragraph (i) of the District Municipal Act, 1901, the word "liability" meant the immediate liability and did not necessarily include all the liabilities mentioned in section 83 (1) of the Act, and therefore the bills were in order;

(2) that the municipality could enforce the liability for payment of a tax even if the property became liable to tax at any intermediate period during the official year;

(3) that on a proper construction of the rules not only the actual physical buildings within 75 feet of a water-pipe or 500 feet of a stand-pipe were liable for assessment, but if any appreciable portion of a mill building fell within those radii, the whole building of the mill became liable for the tax.

Partington v. *The Attorney-General*[1]; *Surat Municipality* v. *Chhabildas*[2]; and *The Queen* v. *The Official Principal of the Consistory Court*,[3] referred to.

SECOND appeal against the decision of M. G. Mehta, Assistant Judge of Ahmedabad, reversing the decree of B. R. Pathak, Subordinate Judge at Ahmedabad.

Suit for declaration.

The plaintiff company owned a large plot of land outside the city of Ahmedabad on different portions of which they erected buildings for the purpose of a textile Mill. Originally this locality was not within the Municipal limits of Ahmedabad, but in 1913 the Municipal limits were extended so as to include this locality. By May 31, 1923, the Municipality laid a water-pipe within 75 feet of some of the said buildings and also erected two stand-pipes within 500 feet of some of the other buildings in the plaintiff's mill compound. On August 7, 1923, the Municipality presented bills to the plaintiffs claiming Rs. 6,617, for water-tax from April 1, 1923, to March 31, 1924. The only penalty for non-payment specified in the bills was the liability to pay a penalty of eight annas for a demand notice. On December 11, 1923, the demand notice was sent by the Municipality. The plaintiff company paid the amount under

(1) (1869) L. R. 4 H. L. 100. (2) (1914) 16 Bom. L. R. 749.
(3) (1862) 31 L. J. Q. B. 106.

protest and filed a suit for a declaration that the Municipality was not entitled to charge the water-tax contending *inter alia* that the bills did not contain the details required by section 82, clause (2), sub-clause (*b*), paragraph 1, of the District Municipal Act; that the tax could only be levied from the quarter after the pipes were laid by the Municipality and that the buildings of the company had been treated as one by the Municipality while for the purpose of assessment each building should have been considered separately and assessed only if the same was within 75 feet of the water-pipe or 500 feet of the stand-pipes.

The defendant Municipality agreed to give up the claim for the months of April and May 1923 and pleaded that the levy of tax for the remaining part of the year was proper; that the details required by section 82 (2) of the Act were sufficiently given in the bills; and that the entire mill premises were liable to water-tax according to the rules framed by the Municipality if a portion of it was within the taxable limits.

The Subordinate Judge accepted the first two contentions of the plaintiff company and held that the defendant Municipality was not entitled to claim the tax from the plaintiffs.

On appeal, the Assistant Judge rejected all the contentions of the plaintiff company reversed the decree and dismissed the suit.

The plaintiff company appealed to the High Court.

G. N. Thakor, with *H. V. Divatia*, for the appellant.

R. W. Desai, for the respondents.

MADGAVKAR, J. :—The dispute between the plaintiff-appellant, the Raipoor Manufacturing Company, Ltd., at Ahmedabad, and the defendant-respondent, the Municipality, is in respect of water-tax for 1923-24

1929

RAIPOOR MANUFACTURING CO., LTD. v. AHMEDABAD MUNICIPALITY

Madgavkar J.

which the latter sought to levy on the former. The appellant's objections to the tax have ultimately been reduced to three. Firstly, the bill presented to him is defective in law, and admittedly inaccurate as regards amount, and therefore until a proper bill is presented, the appellant is not liable. Secondly, under the Rules, particularly rule 3 made under section 46, clause (1), this tax is payable only in advance in one instalment, and accrues due on April 1; he is not liable for any period before April 1, following the date when the tax first became due. Thirdly, the buildings on which the tax is leviable can only be buildings within a radius of 75 feet of a waterpipe or 500 feet of a fire plug under rule 22. Therefore, all the buildings outside these radii as shown in the plan are not liable merely because they are in the mill compound which belongs to the appellants.

The trial Court upheld the first two pleas, but not the last, and decreed the suit. The lower appellate Court rejected all three, and dismissed the suit. The plaintiff appeals.

The facts lie in a small compass. Under the Rules under section 46 (1) in Chapter XIII of Vol. I of the Ahmedabad Municipal Code, p. 159, under rule 1, clause (1) "buildings" have the meaning in section 3, sub-section (7) of the Bombay District Municipal Act. Rule 2 makes buildings and lands within Municipal limits liable for the water tax. Rule 3 defines the time for paying the tax. Rule 4 provides for a proportionate charge for a water or drainage connection. Rule 6, clause (*b*), defines the mode of assessing the taxes on mill and factory buildings. Rule 21 specifies the rate in accordance with the Schedule on the annual letting value the rate of the water tax. Rule 22 excepts from the water tax buildings or lands whereof no part is within 75 feet of a water pipe or within 500 feet of a fire plug.

standpipe or water reservoir. It appears that the plaintiff Mill was outside Municipal limits until 1913. Some disputes arose subsequently in regard to water connection charges. It has now been held by both the Courts, and is not disputed in appeal, that by May 31, 1923, the Municipal pipes were brought within 75 feet of the Mill buildings, and there were two standpipes within 500 feet marked M, H, on the plan, Exhibit 42, the radii being shown in red circles. The original bill presented by the respondent claimed the water tax from April 1, 1923, up to March 31, 1924. On presentation of the bill, the plaintiffs objected, and filed the suit, and paid the amount under protest in Court. Before the evidence the respondents admitted that the appellants could not be charged for the months of April and May; the appellants withdrew that portion and the question is therefore reduced to the amount for 10 months from June 1, 1923, to March 31, 1924. The original dispute covered a wider range, and raised a large number of questions, which have now been reduced to the three issues formulated at the outset of this judgment.

The objection to the bill, Exhibit 16, for the appellants is on the score that it fails to comply with section 82, clause (2), sub-clause (*b*), paragraph 1, and does not sufficiently set out the liability incurred in default of payment. It is argued that the word "liability" would include all the liabilities up to distress and the ultimate liability, and particularly the liability to distress and sale under section 82 (2) of the District Municipal Act, and not merely the first liability, so called, to a demand notice with a penalty of eight annas, which is the only liability actually specified in the bill, Exhibit 44. For the respondents it is contended that the liability does not mean all the liabilities, but merely the immediate liability in case of nonpayment of the bill.

1929

RAIPOOR MANUFACTURING CO., LTD. v. AHMEDABAD MUNICIPALITY

Madgavkar J.

and clause (3) of section 82 is relied upon as showing that under the law the bill only contemplates the mention of the notice of demand, and it is only when the bill is not paid and a notice of demand in the form of Schedule B is sent that in the notice of demand mention of a distress warrant is necessary, and therefore presumably not in the bill.

Reference is made for the appellants to section 102 of the Madras District Municipalities Act (IV of 1884), from which the corresponding section 82 of the Bombay Act is said to have been taken. It is important, however, to note that the Madras Act contains no provision for a notice of demand as the Bombay Act. The question, therefore, reduces itself whether by the word "liability," the Legislature meant the immediate liability or all the further liabilities including the ultimate liability. It may be conceded that fiscal statutes which impose pecuniary burdens must be strictly construed in favour of the subject, at least in regard to the liability to pay the tax, and also in regard to the amount: *Partington* v. *The Attorney-General*.[1] Similarly, in the case of penalties, the requirements of the law before the penalty is incurred must be strictly complied with. For instance, where the bill omitted to state the time within which an appeal might be preferred, as is necessary under section 82 (2) (*b*) (ii), the subject was held not liable: *Surat Municipality* v. *Chhabildas*.[2] At the same time such penal Acts are not to be so construed as to furnish a chance of escape and a means of evasion. "Repairs" in the Church Building Acts were held to include other matters such as lighting, cleaning, etc.: *The Queen* v. *The Official Principal of the Consistory Court*[3]; Maxwell on the Interpretation of Statutes, 5th Edition, pages 465 and 468. In other words, to revert to the

[1] (1869) L. R. 4 H. L. 100. [2] (1914) 16 Bom. L. R. 749.
[3] (1862) 31 L. J. Q. B. 106.

familiar maxim, the Courts have to consider what liability the Legislature meant to impose and the amount of it and the conditions necessary before the penalty, if any, was incurred. In the present case reading sections 82 and 83 together, the law contemplates that Municipalities should usually issue a notice of demand in the form of Schedule B before they had recourse to distress. It is true that the words in section 82, clause (3), are "the Municipality may cause to be served." It is in evidence here, however, that the practice in Ahmedabad was to serve such notices of demand as the bill actually states. As the clause now in question does not expressly say that all the liabilities including the ultimate liability incurred in default of payment are to be specified in the bill, on the ordinary canons of interpretation the argument for the respondent is, in my opinion, correct, that the Municipality sufficiently complied with the law when they stated the next step to which they would have recourse, viz., a notice of demand. It is true that the liability under the notice of demand was merely eight annas. But the slightness of the amount does not make it the less a liability within the meaning of the law. The bill has now been corrected and is from June 1. The first contention of the appellant therefore fails.

The second contention is as regards the period of liability. The argument for the appellants is based on the language of Rule 3, which runs as follows: "The said taxes shall be payable in advance in one instalment, and shall accrue due on April 1." Therefore, it is argued if any property became liable to tax after April 1 no bill could be presented till the following April. In other words the property must be exempted for the whole portion of the Municipal year after April 1. The original contention for the respondent

1929

RAIPOOR MANUFACTURING CO., LTD. v. AHMEDABAD MUNICIPALITY

Madgavkar J.

as appearing from the bill was the other extreme; apparently that if the property became liable at any intermediate period before March 31, the Municipality were still entitled to charge even for the period before from April 1 preceding.

The respondent has pointed out that in the original plaint itself the appellant's contention was not pushed so far as it was in the issue raised, the plaintiff alleging that the water rate could only be levied, if at all, from the quarter after the pipes were laid by the Municipality, in this case therefore, from July 1. I am happily exempt from considering the grounds *ad miseri cordiam* presented by either party in argument here, and I need not consider whether the plaintiff is an unfortunate mill-owner who, having no need of water, has still to pay these taxes to an extravagant Municipality, which pushes its water-pipe and stand-pipe within the legal limits only for the purpose of extracting the tax, or whether on the other hand he is seeking to evade payment of the taxes necessary if the Municipality is to discharge its legal responsibility for the prevention of fire, particularly in the neighbourhood of mills. Under rule 2, water-tax is a compulsory tax irrespective of and separate from the water connection, which depends on whether a particular rate-payer chooses to apply for and obtain a water-connection pipe. Compulsory water-tax is leviable on all buildings and lands including mill and factory buildings separately assessed under rule 6 (*b*), and the only exemption is that in rule 22 in the case of buildings or lands whereof no part is within 75 feet of a water-pipe or 500 feet of a fireplug, stand-pipe or water-reservoir. Therefore on the present findings until the end of May 1923 the appellant's buildings and lands were exempted. The respondents have acted prudently in giving up their claim made under the bill for the months of April and May,

1923. From June 1, 1923, the exemption ceased; the liability for water-tax commenced. If rule 3 had stopped short at the words " in one instalment," there would be no difficulty. The appellant could not have raised the present contention. That is solely based on the concluding words, " and shall accrue due on April 1." The words " shall accrue due " are not so clear as they might be; in any case they cannot be paraphrased in the sense which the trial Court has taken (p. 10, line 14), that the liability to water-rate is determined in the beginning of the year. The rule in question is not a rule of the Legislature. it is a rule made by the Municipality, which. after all is said and done, cannot be expected to have the expert draftsmanship available to Government. which in cases of important legislation such as the Bombay Land Revenue Code, has occasioned difficulty to the Courts. Reading rule 4, on which the appellants rely, it is perfectly true that rule 4 explicitly allows a proportionate levy for water and drainage tax after April 1. But is it therefore to be concluded that the water-tax and house and property tax in rule 2 are not leviable except on April 1? That construction, in my opinion, is untenable for two reasons: firstly, it is inconsistent with the words " in advance," secondly, because it is difficult to imagine that the Municipality merely because a house was completed on April 2, or the exemption of a building ceased at any date after April 1, would forego their entire tax payable annually in advance. Rule 3 is purely a general rule meant to provide for the case of recurring taxes already levied. This particular point, the difficulty of reconciling the words " payable in advance " and the words " accrue due on April 1 " escaped the draftsman of the rules and left a loophole for the present contention. That contention, in my opinion, is as unsound as the original

1929

RAIPOOR MANUFACTURING CO., LTD. v. AHMEDABAD MUNICIPALITY

Madgavkar J.

contention for the respondent based upon the same words of the same rule that because it was payable in advance and accrued on April 1, therefore April 1 must be taken to be April 1 preceding the date when the tax first became due. Neither construction, in my opinion, is correct. The proper construction is that adopted by the lower appellate Court. In this case the tax became due from June 1.

The third contention is as regards the portions of the buildings outside the circle. The definition of "buildings" is not very relevant. I am of opinion, particularly in view of rule 6, clause (*b*), and the mode of assessment on the value of the property that not merely the actual physical buildings within 75 feet of a water-pipe or 500 feet of a stand-pipe, as the case may be, are liable for assessment, but if any appreciable portion of a mill building falls within these radii, the whole building of the mills becomes liable. I refer to the case quoted above, *The Queen* v. *The Official Principal of the Consistory Court.*[1] The buildings of the mill are sufficiently wide to include all the buildings within the compound which have been assessed. The lower Courts were, therefore, right in rejecting this contention.

The appeal, therefore, fails and is dismissed with costs.

Decree Confirmed.

J. G. R.

[1] (1862) 31 L. J. Q. B. 106.

CIVIL REVISION.

Before Sir Norman Kemp, Kt., Acting Chief Justice, and Mr. Justice Murphy.

1929 *July* 9.

THE BOMBAY BARODA AND CENTRAL INDIA RAILWAY COMPANY, LIMITED (ORIGINAL DEFENDANT No. 1), APPLICANTS *v.* THE ARYODAYA SPINNING, WEAVING AND MANUFACTURING COMPANY, LIMITED (ORIGINAL PLAINTIFFS), OPPONENTS.*

Railway—Risk-note form B—Consignment note and railway receipt—Difference in dates—Dates not essential part of risk-note.

*Civil Revision Application No. 285 of 1928.