APPELLATE CIVIL.

Before Sir John Beaumont, Chief Justice, and Mr. Justice Sen.

1940
February 14

THE BRAHMIN MITRA MANDAL CO-OPERATIVE HOUSING SOCIETY, LTD., HAVING ITS REGISTERED OFFICE AT HITTECHHU BUILDING, KHADIA, AHMEDABAD (ORIGINAL PLAINTIFFS), APPELLANTS *v.* THE MUNICIPALITY OF AHMEDABAD, AHMEDABAD (ORIGINAL DEFENDANT), RESPONDENTS.*

Bombay Municipal Boroughs Act (Bom. Act. XVIII of 1925), s. 73 (x)—"Supplied by the Municipality", meaning of—Levy of general water rate—Buildings not connected up with water main—Owner, if liable to pay.

The words "supplied water by the Municipality" occurring in s. 73 (*x*) of the Bombay Municipal Boroughs Act, 1925, must either mean supplied to, that is connected up with, particular premises, or supplied for general public purposes, the latter being the true meaning of the words.

The plaintiff-society owned an estate within the municipal limits of the defendant Municipality. The society had buildings over the estate in question and none of the lands or buildings within the estate was directly supplied with water by the defendant.

The defendant having imposed on the buildings of the society a general water rate, the society sued to obtain an injunction restraining the Municipality from recovering the general rate from the plaintiff or its members :—

Held, that the mere fact that the Municipality's water system had not yet been extended to the district in which the society's premises were situate so as to enable those premises to be connected up did not show that the Municipality had not supplied water within the meaning of s. 73.

The High Court held that the matter was not *res judicata* by reason of the decision in the former representative suit since plaintiff was not a rate-payer at that time and was not bound by the decision in that suit.

SECOND APPEAL from the decision of H. P. Gunjal, Extra Assistant Judge, Ahmedabad, confirming the decree passed by H. R. Jetly, Third Joint Subordinate Judge.

Suit for injunction.

The plaintiff, a registered Housing Co-operative Society, owned land situated "on the extreme verge of the western border line" of the Municipality of Ahmedabad (defendant). The society has buildings over the land in question.

*Second Appeal No. 358 of 1938.

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It was alleged that defendant Municipality did not supply ordinary amenities and necessities of light, road, etc., to the area of the plaintiff and still the defendant was levying a general water rate for the buildings of the society under r. 326 of the rules.

The plaintiff accordingly sued for an injunction restraining the defendant from levying the said general water rate from the plaintiff society or its members.

The defendant contended that the rule was not *ultra vires* that it was legally entitled to levy the general water rate for water supplied for public purposes and that the matter was *res judicata* by reason of the decision in suit No. 26 of 1931.

The trial Judge held that the rule was not *ultra vires* and the notice of demand made by defendant was not illegal. He accordingly dismissed the suit.

On appeal, the Extra Assistant Judge confirmed the decree.

Plaintiff appealed.

Bhagwati, with *P. A. Dhruva*, for the appellants.

G. N. Thakor, with *V. N. Chhatrapati*, for the respondents.

BEAUMONT C. J. This is an appeal against a decision of the Extra Assistant Judge of Ahmedabad, and it raises a question whether the plaintiffs are liable to be assessed to general water-rate by the Municipality of Ahmedabad. The plaintiffs own an estate on the western border of the Municipality's district, and they are developing that estate for building purposes. None of the houses or lands forming part of the estate is supplied directly with water by the Municipality. Indeed the plaintiffs have spent a considerable sum in providing a water supply of their own. There are three stand pipes of the Municipality at a distance of approximately 240, 500 and 550 yards from the boundary of the plaintiffs' property. There is also a road running

close to the boundary of the plaintiffs' property which is kept watered by the Municipality. The Municipality have an extensive system of waterworks, and the evidence is that they have spent something like Rs. 45 lakhs in providing such waterworks, and they use water for various public purposes, such as watering roads, flushing public urinals, extinguishing fires, watering public gardens and so forth. The contention of the plaintiffs is that they are not liable to be assessed to a water-rate, unless water is connected to their premises or at any rate made available for use in their premises, and they say that in the circumstances which exist they are not liable for payment of water-rate.

The question turns on the construction of the relevant sections of the Bombay Municipal Boroughs Act, 1925, and the Rules made thereunder. Section 58 enables the Municipality to make rules not being inconsistent with the Act prescribing, amongst other things, the taxes to be levied in the municipal borough for municipal purposes and the conditions on which such taxes may be levied. Section 68 defines the duties of the Municipality, and such duties include (*j*) making reasonable and adequate provision for obtaining a supply or an additional supply of water, proper and sufficient for preventing danger to the health of the inhabitants from the insufficiency or unwholesomeness of the existing supply, when such supply or additional supply can be obtained at a reasonable cost. It is curious that there does not seem to be any express power enabling the Municipality to dispose of the supply of water which they have obtained. Under s. 68 (*j*), they may do what is necessary for preventing danger to the health of the inhabitants, and a supply of water to a particular locality or building might be necessary for that purpose, but there seems to be no express power given to the Municipality to supply water to the inhabitants of the borough for such purposes as they may require it. Then s. 73 deals with the imposition of taxes, and enables the Municipality to impose

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for the purposes of the Act any of the taxes mentioned, including (*x*) a general water-rate or a special water-rate or both for water supplied by the Municipality, which may be imposed in the form of a rate assessed on buildings and lands or in any other form, including that of charges for such supply, fixed in such mode or modes as shall be best adapted to the varying circumstances of any class of cases or of any individual case. Then it is to be noticed that under proviso (*c*) the water tax may be amalgamated with certain other taxes,—a rate on buildings or lands, a general sanitary cess and a lighting tax,—though so far as I know that power of consolidation has not been exercised. Then I may refer to s. 91, which has no direct bearing on the question before us but contains a reference to the purposes for which the water tax may be levied and provides that the Municipality may, instead of imposing a water-rate imposed in respect of the supply of water belonging to the Municipality to or for use in connection with any private lands or buildings, impose certain special rates. The section implies that the Municipality can supply water to or for use in connection with any private lands or buildings.

Then we have to consider the Rules which have been made under s. 58. Rule 320 provides that there shall be levied, amongst other rates, a general water-rate and a special water-rate. Rule 324 provides that there shall be a separate assessment for each tenement occupied separately. Rule 326 provides that the general wate-rate is leviable on all buildings and lands within the limits of the municipal borough, subject to certain exceptions which are not material. In r. 335 we come to the special water-rate, and that rule provides that the special water-rate shall be leviable, in addition to the general water-rate, on all buildings and lands which are either actually connected or technically deemed to be connected with the municipal water-pipes, stand-pipe or reservoir. Rule 336 prescribes what lands and buildings are to be deemed to be connected.

Now, the argument of the appellants is that under s. 73 (*x*) of the Act a rate can only be levied for water supplied by the Municipality, and the first contention is that "supplied by the Municipality" means supplied to a particular tenement by the Municipality, in other words connected up by the Municipality with their water-supply. If that construction is adopted, it would involve holding that the scheme of the Act and rules, imposing a general water-rate, and a special water-rate for buildings and lands connected up with the water-supply of the Municipality, is *ultra vires*, because no rate could be levied unless such connections had been formed. It would, I think, be very difficult to adopt that argument. These rules have been in force for a good many years, and their validity has not been challenged, and I think that it would be very difficult to hold that the owner or occupier of a tenement, who had the chance of connecting up with the Municipality's water-supply and who refused to do so because he had got an adequate supply on his premises, could escape altogether from the payment of wate-rate although he was enjoying all the public conveniences for which water is supplied by the Municipality. Mr. Bhagwati for the appellants fought shy of putting his case as high as that, and he was disposed to admit that there might be cases in which tenements might be liable for general water-rate, although they had not been connected up and were, therefore, not liable for special water-rate, but he said that to render premises so liable, water must be easily available. Well, that is an expression which it would be difficult to apply in practice. Mr. Bhagwati admitted that if the Municipality had a water main running down a road passing immediately in front of a house, the Municipality could be said to have supplied water for that house, but he argued that if the main was at a considerable distance away, then water could not be said to have been supplied, because it had not been made available. But in point of fact in neither of those cases is water supplied to the house. There

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seems to be no power under the Act or under the Rules enabling a ratepayer to insist on having his premises connected up with the Municipality's water-supply, and, therefore, the only distinction between the man who owns a house immediately adjacent to the Municipality's main and one who does not, is that the former has a greater expectation of being connected up with the main, if he desires so to be, than has the latter. In my opinion the words "water supplied by the Municipality" in s. 73 (*x*) must either mean supplied to, that is connected up with, particular premises, or supplied for general public purposes, and I have no doubt that the latter is the true meaning. It is noticeable that s. 73 (*x*) does not refer to supply in respect of any particular tenement, and the rates which may be levied are not assignable to the particular purposes in respect of which they are levied. There is no provision that money raised by a water-rate is to be spent only on providing water, or that a lighting rate is only to be spent on providing lights, whilst the provisions for consolidation are against the suggestion that the water-rate is concerned with particular tenements. I think the true construction of s. 73 (*x*) is that the Municipality can charge a water-rate if they supply water to the borough. No doubt, the question whether they do so supply is one of fact. It might very well be that a Municipality had made such an inadequate attempt to provide a proper system of water supply that they could not be said to have afforded a supply of water for the borough, although they had supplied some water but there is no suggestion of that sort here. It is in evidence that the Municipality of Ahmedabad have spent large sums on providing a water-supply, and the mere fact that their system has not yet been extended to the district in which the appellants' premises are situate so as to enable those premises to be connected up, does not, in my opinion, show that they have not supplied water within the meaning

of the section. I think, therefore, that the learned Extra Assistant Judge was right in the conclusion at which he arrived.

I should mention that it was rather faintly argued that this case was *res judicata,* because some years ago the present question came before the then District Judge of Ahmedabad, Mr. Lokur, in a representative suit, the plaintiff suing on behalf of himself and all the other ratepayers, and the learned District Judge came to the same conclusion as we have come to, namely, that the general water-rate was properly leviable. But, in my opinion, it is quite impossible to say that the plaintiff is bound by that judgment, because the plaintiff at the time of the judgment was not a ratepayer and, therefore, was not represented in the suit. Indeed the plaintiff-company had not come into existence at that time.

We were referred by Mr. Bhagwati to a judgment in *Kumbhar Shankarlal Maganlal* v. *Municipal Borough of Ahmedabad*[1] of Mr. Justice Wassoodew in which he seems to have reached a different conclusion from that to which we have come, but as his judgment is, I understand, subject to a Letters Patent Appeal and as the rules in that case were, I understand, a former edition of the rules, it is not, I think, necessary to refer to that judgment, though it is apparent from the foregoing reasons that to some extent the reasoning of the learned Judge does not commend itself to us.

The appeal fails and must be dismissed with costs.

SEN J. I agree.

Appeal dismissed.

Y. V. D.

[1] (1939) S. A. No. 7 of 1938, decided by Wassoodew J. in February 10, 1939 (unrep.).