

## **Municipal Board vs Mansa on 6 December, 1950**

**Equivalent citations: AIR1951ALL634, AIR 1951 ALLAHABAD 634**

**Author: V. Bhargava**

**Bench: V. Bhargava**

### **JUDGMENT**

V. Bhargava, J.

1. These four appeals arise out of four different suits which were exactly similar in nature & which had been heard together by both the lower Cts. One single judgment has governed all the four suits in both the lower Cts. and, therefore, these appeals are dealt with together in this Ct. also. In all these four suits the pltfs. had claimed that they were owners of the sites of their houses situated in mohalla Chahkatoti within the limits of the Municipality of Mathura. Action had been taken by the Municipal Board to realise arrears of rent for the land of the houses from these pltfs. under the Municipalities Act. Thereupon these suits were brought for a declaration that the pltfs. themselves were the owners of the sites of the houses & that they were not liable to pay any rent at all to the Municipal Board. There was further a prayer for an injunction restraining the Municipal Board from continuing the processes for realisation of the arrears of rent & for a direction ordering the Municipal Board to refund the sums already realised.

2. The lower appellate Ct. has held that the pltfs. are not the owners of the land of their houses but are the permanent tenants of their land. It has further held that no rent has been paid by the pltfs. for a long time & that the pltfs. have been contesting the right of the Municipal Board to realise the rent. Under these circumstances, the lower Court has come to the view that the Municipal Board had no right to realise rent from the pltfs. Under section 291, U. P. Municipalities Act & on this view, has granted an injunction to the pltfs. restraining the Municipal Board from continuing the proceedings for realisation Under section 291 & has also granted a decree for refund of sums realised. The Municipal Board has come up in appeal against this grant of injunction by the lower appellate Court.

3. Cross objections have also been filed in three of these Appeals Nos. 1648, 1649 & 1651 by the pltfs. resp's. of those appeals. In the cross objection the resp's. claimed that the decision by the lower appellate Ct. that they were not proprietors of the site also was incorrect & may be set aside. In the relief asked for by them in the cross-objection they desire that their suits be decreed for all the reliefs which they had claimed in their plaints.

4. I may first deal with the cross-objections. The cross objections relate mainly to the question as to whether the resp's. were owners of the sites of the houses or not. The finding by the lower appellate

Ct., as mentioned above, is that they are not the owners of the sites of the houses which belong to the Municipal Board. This finding given by the lower appellate Ct. is a finding of fact & I do not see how this finding can be challenged in this second appeal. The lower appellate Ct. took into account the mass of documentary evidence filed in these cases & inferred from that evidence that the land on which these houses are situated belonged to certain members of the Cbaube community & they had transferred the land to the Municipal Board of Mathura. From the documentary evidence further the lower appellate Ct, has inferred that the resp's. were tenants of the land from those chaubes.

5. Learned counsel for the resp's. argued that there was no documentary evidence at all on the record to show that the resp's. were tenants or record as tenants & therefore this finding of the lower appellate Ct. should be set aside, as being not supported by any evidence at all. An examination of the documentary evidence by me, however, revealed that the documents do contain entries of tenants & therefore, this contention of the counsel for the resp's. fails. It is not possible for me to enter into the question whether the evidence provided by the documents has been rightly or wrongly disbelieved by the lower appellate Ct. because, on a question of fact, the decision of the lower appellate Ct. is final. This was a case where the documentary evidence itself indicated that the resp's. were tenants of the land & not its proprietors & therefore, the mere fact that they have been in possession of the land for a very long time creates no presumption of ownership in their favour. The lower Ct. also rightly held that, since the respondents, came into possession as tenants they could not acquire proprietary title by adverse possession unless adverse possession had been asserted by them to the knowledge of their landlords. In the present case there was no allegation of any such assertion, nor was there any proof of it. In these circumstances, the finding of the lower appellate Ct. that the resp's. are permanent tenants & not owner of the sites of the houses, is perfectly correct & must be upheld.

6. Coming to the appeals filed by the Municipal Board it appears to me that the lower Ct. committed grave error in considering that these cases fall within the purview of Section 291, U. P. Municipalities Act. The plaints & the written statements in all these suits showed that the Municipal Board treated the arrears of rent as realizable Under section 292, U. P. Municipalities Act & took proceedings to realise them Under chap. VI, U. P. Municipalities Act, as permitted by Section 292. No processes were ever issued Under section 291. There was, therefore, no question of granting any injunction to the pltf. reaps, restraining the applts. from making demand of rent Under section 291. The cases should have been considered only from the aspect of the right of the resp's. to obtain an injunction, restraining the applt. from taking proceedings Under section 166, 168 & 169, Municipalities Act. Under these sections, the Municipal Board has the power to issue a bill for the arrears of rent & if the payment is not made in compliance with the bill, to follow it up by a notice of demand. In response to this notice of demand, the person from whom the demand is made has either to make the payment or can show cause to the satisfaction of the Board or the person mentioned in Section 169 why he should not be required to pay that amount. On the failure of the person to make the payment or to show cause, the Municipal Board is empowered to recover the amount mentioned in the notice of demand by distress & sale of the moveable property of the defaulter Under a warrant.

7. In these suite, it is clear that the proceedings which were taken by the Board were in accordance with ch. VI. Notices of demand were served & thereafter realisation was attempted by distress & sale of the moveable properly Under warrant. Under these circumstances, the resp's. paid the amount under protest. Having paid the amount under protest, the resp's. have come to the civil Ct. to challenge the right of the Municipal Board to realise these arrears of rent. The principal ground taken by them that they were themselves the owners of the site of the house has failed but it appears from the comments made by the lower appellate Ct. that there was another contention on behalf of the resp's. according to which they would not be liable to pay rent to the applt. The contention was that no rent had ever been paid by them and, in any case, no rent had been paid for a very long time which exceeded twelve years & under these circumstances the Municipal Board had no right to realise the rent. The lower appellate Ct. took notice of this contention in its judgment but did not give any decision on it. The question as to whether the Municipal Board had the right to realise the rent, even on the finding that the resp's. are permanent tenants of the houses had to be decided before any injunction could be granted in favour of the resp's. The Municipal Board can be restrained from realising the arrears of rent only if it was held that the proceedings which were taken Under section 169, Municipalities Act, related to sums which were not recoverable under law either because the Municipal Board had lost the right to realise these sums or because they had become time barred. This aspect should have been considered by the lower appellate Ct & decided. In the absence of a decision on this point, no injunction should have been granted in favour of the resp. Refund also could not have been ordered without giving a clear finding on this point.

8. The question as to whether a suit in a civil Ct. does or does not lie in order to restrain a Municipal Board from continuing its proceedings Under section 169 was also discussed in the course of these appeals. It appears to me that there is nothing in the Municipalities Act which expressly or impliedly bars the civil Ct from considering the validity of the action being taken by the Municipal Board Under section 169. Section 169 does make a provision that a person from whom a demand is made may satisfy the Board that he is not liable to pay the amount demanded. But there are no further provisions under the Act by which a remedy could have been obtained against a wrongful order passed by the Board Under section 169. Section 164 & Section 321 taken together with Section 318 bar certain types of suits being taken to the civil Ct. These do not include suits to challenge decisions, given by the Board Under section 169. It appears to me that since no appeal or any other remedy was provided in respect of orders passed by the Board or the newly authorised person in Section 169, the Legislature deliberately did not include any provision in this Act debarring the aggrieved person from approaching civil Cts.

9. Consequently, whatever indication is available in the Municipalities Act shows that there can possibly be no implied intention to bar the jurisdiction of the civil Cts. in such matters. In the case of the Municipal Board, Benares v. Jokhun, 1939 A. L J. 183 : (A.I.R. (26) 1939 ALL. 394) refund was claimed in respect of tax which had been realised under the provisions of chap. VI, Municipalities Act. The refund of the amount realised was granted by a D. B. of this Ct; bar to the jurisdiction of the civil Ct. was argued before the Bench & the only provisions which were relied upon were those of Section 164, Municipalities Act & Section 9. Civil P. C. In the present case, Section 164, U P. Municipalities Act can possibly have no application because these suits relate to amounts recoverable as arrears of rent & not as taxes assessed Under Ch. v. The argument on Section 9, Civil

P. C., would be the same as in that Case & the answer to that argument viz. that Section 9 does not bar such a suit, given by the Bench must be followed by me. I may also say, with due respect, that I entirely agree with that decision. In these circumstances, it appears that there is no bar to granting an injunction & an order for a refund, as claimed by the pltfs. resps. but, as I have said above, they can only get the injunction or the order for refund, provided it can be found that the Municipal Board is realising or has realised amounts which were not legally due to the Municipal Board or were not realisable by it. This question has not been decided by the lower appellate Ct. & it appears to be necessary that these cases should be remanded to the lower appellate Ct. for the purposes of passing fresh decrees after giving a decision on this point.

10. I, therefore, allow these appeals, set aside the decree passed by the lower Ct. & remand them to the lower Ct. for a fresh decision in the light of the view expressed by me above. The costs of these appeals shall abide the result.

Cross-objections are dismissed with costs.