

Municipal Board, Mau Nath Bhanjan vs Raghunath Prasad on 26 August, 1953

Equivalent citations: AIR 1954 ALLAHABAD 121

JUDGMENT

Malik, C.J.

1. These three second appeals can conveniently be decided by one judgment as the points raised in all the three cases are identical.

2. The respondents in these cases are owners of certain shops in the Municipal Area of Mau. These shops were built by the side of a Municipal drain which was 2 feet 4 inches wide and 6 feet and 4 inches deep. It was dangerous for the customers coming to the shops to pass over the drain and the shop-keepers, therefore, put stone slabs on the drain to cover it up and make a passage to their shops. The appellants issued notices to the shop-keepers claiming a tax on what they called "a projection". When the appellants threatened the shop-keepers that they would realise the amount by the issue of distress warrants, the shop-keepers filed three test suits out of which these three appeals have arisen claiming an injunction against the appellants on the ground that the levy of the tax was entirely illegal and beyond the competence of the appellant Board.

The suits were dismissed by the trial Court on the ground that they were barred by Section 164, U. P. Municipalities Act. On all other points the finding was in the plaintiffs' favour. On appeals by the plaintiffs the lower appellate Court has decreed the suits and against the decrees passed by the lower appellate Court these second appeals were filed. These cases were referred to a Bench by a learned single- Judge in the year 1947 but the hearing was stayed pending the decision of a Full Bench of a case in which the question of jurisdiction of the civil Courts to entertain such suits was raised. The decision of the Full Bench in -- 'Municipal Board, Kanauj v. Manohar Lal', AIR 1951 All 867 (FB) (A) does not, however, deal with the question of jurisdiction of civil Courts in such matters.

3. The learned counsel for the appellants has urged that the Municipal Board was entitled to levy the tax under Sections 209 and 293, Municipalities Act and under bye-law No. 8 of the Mau Notified Area (now Municipal Area). Section 209 of the Act entitled a Municipal Board, subject to any rules made by the State Government, to give permission for construction of projections, and Section 293 gives the Municipal Board a right to charge fees for such projections. The lower appellate Court has held that no sanction having been obtained under Section 209, Municipalities Act to cover up the drain no fee could be levied, for the same under Section 293 of the Act. It is not necessary for us to go into that question as the cases can be decided on another ground.

4. The tax or the fee is chargeable under Rule 8 of the bye-law mentioned above which is in these terms:

"Projections over public streets or drains may be permitted only on the following conditions:

(i) that the owner or occupier shall daily remove all refuse from the land over which his projection extends and keep the land clean.

(ii) that the owner shall keep any open drain over which the projection extends in good working order and free from depression in which liquid can stagnate;

(iii) that the owner or occupier shall, at any time, on demand vacate the surface of his projection for a period of not more than 6 hours to permit of municipal servants inspecting or repairing or cleaning any covered drain therein;

(iv) that the owner shall duly pay in advance the fees prescribed by the next following bye-law."

5. The bye-law makes it clear that the fee to be charged is for 'a projection'. The learned District Judge inspected the locality and in the inspection note he has noted that "the Municipal drain is in front of the plaintiff's shop towards the north. The plaintiff has only covered the drain by stone slabs and this covering is not in the shape of platform. The drain is 2 feet 4 inches wide and 6 feet and 4 inches deep."

The learned District Judge has held in the judgment under appeal as follows:

"What the plaintiff has done is only that he has put stone slabs on the drain simply to enable customers to come to the shop. It is not a projection in the sense in which the term is generally used."

Projection from the shop would be something which projects from the shop on to the land of the appellant. If there had been a hanging platform in the shape of an extension of the floor of the shop to give a greater floor area, it might have been a projection. In these cases all that the plaintiffs have done is to put a few stone slabs to cover the drain so that, their customers may not have to jump across it and run the risk of falling into the drain. It cannot be said that the stones covering the drain are a projection of the plaintiffs' shops. The bye-laws were, therefore, clearly not applicable.

3. Learned counsel has relied on Section 164, Municipalities Act and has urged that the jurisdiction of the civil Court is barred and no suit can be maintained for determining the question of liability of the plaintiff to assessment. Section 164, U. P. Municipalities Act, Act 2 of 1915, is as follows :

"(1) No objection shall be taken to a valuation or assessment nor shall the liability of a person to be assessed or taxed be questioned in any other manner or by any other

authority than is provided in this Act.

(2) The order of the appellate authority confirming, setting aside or modifying an order in respect of valuation or assessment or liability to assessment or taxation shall be final; provided that it shall be lawful for the appellate authority, upon application or his own motion, to review any order passed by him in appeal by a further order passed within three months from the date of his original order."

7. The appellate authority mentioned in this section to whom a right of appeal is given under Section 160, Municipalities Act and who can entertain an appeal against an assessment is the District Magistrate. There is no further appeal provided. In case of doubt on questions of law, however, the District Magistrate, if he so desires, can make a reference to the High Court under Section 162 of the Act.

8. The question whether Section 164 bars the jurisdiction of the civil Court in a case where the assessment is wholly illegal and the Board has no right to assess the tax under the provisions of the District Boards Act was dealt with by a Full Bench of this Court in -- 'District Board of Farrukhabad v. Prag Dutt', AIR 1948 AH 332 (FB) (B) and a Division Bench of this Court in -- 'Devi Prasad v. Municipal Board, Kanauj', AIR 1943 All 741 (C) has held that, the law was the same in cases under the Municipalities Act.

9. Their Lordships of the Judicial Committee in

-- 'Secy. of State v. Mask & Co.', AIR 1940 PC 105 (D) have held that "The exclusion of the jurisdiction of the civil Courts is not to be readily inferred but such exclusion must either be explicitly expressed or clearly implied. Even if jurisdiction is so excluded, the civil Courts have jurisdiction to examine into cases where the provisions of the Act have not been complied with, or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure."

The decisions of this Court cited above conclude the point and we must, therefore, hold that the civil Court had jurisdiction.

10. At the close of the arguments while we were dictating the judgment, learned counsel for the respondents has drawn our attention to a Division Bench case of -- 'Jagannath v. Municipal Board, Saran', AIR 1939 All 337 (E), where it was held that Sections 160 and 164, Municipalities Act had no application to the fees chargeable for projections. It is not necessary for us to express any opinion, as we have not heard any argument on the point.

11. In our view the lower Court decided the cases correctly. These appeals have no force and are dismissed with costs.