

Allahabad High Court

Municipal Board vs B. Sarkar Bahadur Johari on 17 July, 1929

Equivalent citations: AIR 1929 All 870, 118 Ind Cas 713

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JUDGMENT Sulaiman, J.

1. This is an appeal from an order of remand by the lower appellate Court arising out of a suit for damages brought by the plaintiff against the Municipal Board of Allahabad. The Court of first instance framed three issues, the third one being one of limitation. It dismissed the suit on the ground of limitation only without deciding the other issues. The lower appellate Court has taken a contrary view and has held that the claim was not barred by limitation and has accordingly remanded the case.

2. It appears that the plaintiff is the occupier of a house which has been assessed to a prescribed minimum water tax and his house was connected with the main pipe of the municipal system of water supply upto March 1926. On 31st March 1926 his house was disconnected. After that date the Board admittedly for a long time did not allow him to connect his house with the main. The plaintiff served a notice on the Board on 9th October 1926 but waited for some time before instituting his suit which was actually filed on 30th March 1927.

3. The plea of limitation raised by the Board was to the effect that the cause of action accrued in favour of the plaintiff, if at all, on 31st March 1926 and he was bound to sue within 8 months of that date (including the two months allowed for notice) and that there was no fresh cause of action or no accruing cause of action in his favour.

Under Section 228(a) there is a statutory duty imposed upon the Board;

(a)(i) to maintain a system of water supply through pipes;

(ii) to lay on water at a prescribed pressure and during prescribed hours;

(iii) to supply water in all the chief streets, and

(b) to allow the owner or occupier of any building or land assessed to a prescribed minimum water tax to connect, for the purpose of obtaining water for domestic purposes, the building or land with a main by means of a communication pipe of the prescribed size and description.

4. The house of the plaintiff was previously connected. If the disconnexion amounted to a refusal to allow the occupier to connect his house with the main pipe there may be a continuing breach of the duty cast upon the Municipal Board. On the other hand if the disconnexion was an isolated act and the cause of action was not only complete but was exhausted, the plaintiff might be compelled to institute his suit within 8 months of the first disconnexion.

5. Section 228(b) does not speak of the Board connecting the house with the main pipe or disconnecting it. It refers to the duty of the Board to allow the owner to connect his house for the purpose of obtaining water from the main. If therefore the connexion is cut off and the owner is prevented from obtaining water from the main pipe by means of his communication pipe, there is, in my opinion, a continuing breach inasmuch as the owner is continuously prevented from connecting his house with the main pipe. This is a continuing refusal to permit him to get the connexion. In such a case there would be a continuing cause of action in his favour and the mere fact that the initial disconnexion took place more than 8 months ago would not deprive him of all remedy to sue for damages for the subsequent period. If the argument advanced on behalf of the Board were to be accepted the result would be that after the expiry of the period of 8 months from the date of the first disconnexion there would be no remedy left to the owner to claim damages for the breach of the duty as there would be no recurring cause of action at all.

6. I am of opinion that this could not possibly have been the intention of the legislature. The duty of the Board is a continuing duty and the breach of it is also continuing and gives a cause of action to the owner accruing from day to day. In this view the plaintiff would be entitled to claim damages for the period of 8 months prior to the institution of the suit.

7. The lower appellate Court has pointed out that the plaintiff has cut down his claim and is prepared to confine his relief to only that much period preceding the suit.

8. The learned advocate for the appellant has also contended that there ought to have been subsequent notices if the plaintiff wanted to claim damages for the period subsequent to the date on which the two months prescribed for the notice expired. This would be an intolerable state of affairs and would be casting upon an occupier an unreasonable duty to go on serving successive notices so long as he does not actually institute the suit and even if he does institute the suit he would be prevented to claiming damages pendente lite. The notice was quite sufficient. This contention therefore cannot be accepted.

9. The view taken by the Court below was therefore correct and I would dismiss the appeal.

Pullan, J.

10. I am entirely in agreement with the order already pronounced and I would merely add that the view taken by the Board as to the meaning of Section 228(1)(b) appears to me to be illogical. If the words "to allow the owner &c. to connect" refer only to the original act of connexion the only liability which the Board would incur would be owing to a refusal to allow the connexion to be made, and not to a subsequent stoppage of the connecting pipe. Such a view would be so narrow that it would render the Board liable to practically no suit for damages, and would also make that portion of Section 231, which refers to the liability of the Board under Section 228, for failure to supply water meaningless. It may be pointed out that this is the only liability mentioned in Section 231 and nothing is said about liability arising from a refusal on the part of the Board to allow an owner or occupier of premises to make a connexion. In my opinion the only reasonable interpretation of this section is that the words "to allow an owner or occupier &c. to connect" mean to allow the said

person to keep a connexion open once it is made. I agree in the order proposed.