

CALCUTTA HIGH COURT

Chanduram

Vs.

Municipal Commissioners of Kurseong Municipality

A.F.A.D. Nos. 709 and 710 of 1945

(R.P. Mookerjee and Lahiri, JJ.)

07.09.1950

JUDGMENT

R.P. Mookerjee, J.

1. These two appeals arise out of two suits brought under the provisions of Order 21, rule 63, Civil Procedure Code for establishment of the pltf's. right to proceed against certain holdings. The executing Ct. had allowed the claims as put forward by Defendant 4 to 10 who are the Appellants . in this Ct.

2. Defendants 1 to 3 were the recorded owners of two premises situated within the ambit of the Municipality of Kurseong. The pltf. Municipality brought two suits against the said recorded owners for recovery of arrear rates in respect of those two premises as had accrued due for the period 1937-1940. The suits were decreed on 4-4-1940. In execution of the said decrees the two holdings were attached before being put up to sale. Defendant 4 to 10 preferred claims against the order for attachment and contended that they had previously obtained a decree against Defendant 1 to 3 in Money Suit No. 21 of 1939 and in execution of that decree the properties in suit had been purchased by them on 21-2-1940. Defendants 4 to 10 had not been impleaded by the Municipality in the suits brought by them for the realisation of arrear rates. The claims preferred by Defendant 4 to 10 were allowed. The Municipal Comrs. have accordingly filed the present suits.

3. The Ct. of first instance decreed the present suits in part. The amounts decreed in favour of the Municipality for arrear rates were declared to be a first charge upon the defaulting holdings. It was, however, held that the Defendant 4 to 10 were *bona fide* purchasers for value without notice and the charge could not be enforced against them. On appeal by the pltf. before the Dy. Commr., Darjeeling, the decrees were modified and it had been directed inter alia that the decretal amounts were a first charge on the holdings concerned and that the pltf's. were entitled to

attach and sell them in satisfaction of the decree. There was, however, no personal liability so far as the Defendant 4 to 10 were concerned. Defendants 4 to 10 have come up on appeal to this Ct.

4. The only material question in issue in the present appeals is whether under Section 167, Bengal Municipal Act, there was a statutory charge on the premises in respect of the arrear rates and whether the earlier auction purchase in Feb. 1940 by Defendant 4 to 10 was subject to the charge, if there were any, for the rates. Other questions raised in the Cts. below have not been agitated before us.

5. At the outset it may be mentioned that the decrees obtained by the Municipality in 1940 were simple decrees for money. There was no declaration of any charge. The Municipality did not frame the suits as being suits to enforce a charge.

6. Section 167, Bengal Municipal Act XV [15] of 1932 runs as follows :

"The sum due on account of any rate under this Act from any person in respect of any holding shall, subject to the prior payment of the land revenue if any due to the Govt. or of the rent (if any) due to a landlord under the Bengal Tenancy Act, 1885, thereupon, be a first charge upon the same holding."

7. A similar provision is to be found in the Calcutta Municipal Act (III [3] of 1923) by which the consolidated rates payable to the Calcutta Corporation are made a first charge on the premises. The relevant portion of Section 205 of this Act is in the following terms:

"Consolidated rate due from any person in respect of any land or building shall, subject to the prior payment of land revenue (if any) due to the Govt. thereupon be a first charge upon the said land or building."

8. In similar terms were the provisions contained in the earlier Calcutta Municipal Act (iii [3] of 1899) (vide Section 228).

9. In *Akhoy Kumar v. Corporation of Calcutta*¹, it had been held that under Section 228, Calcutta Municipal Act (iii [3] of 1899) the consolidated rate as it accrues due from time to time is a first charge on the premises subject only to arrears of land revenue. Such a charge cannot be enforced against the property in the hands of a *bona fide* purchaser for value without notice.

10. That under Section 205, Calcutta Municipal Act (iii [3] of 1923) a charge was created by operation of law on the property in arrears, was accepted in *Corporation of Calcutta v. Arun Chandra*², and in the *Corporation of Calcutta v. Fool Kumari Dasi*³,

11. The provisions contained in Section 167, Bengal Municipal Act (XV [15] of 1932) are not in

any way different from those contained in the relevant provisions of the Calcutta Municipal Act.

12. A charge does not involve a transfer of an interest in any specific immovable property and such a charge cannot be enforced against a property in the hands of a *bona fide* purchaser for value without notice (*Akhoy Kumar v. Corporation of Calcutta*, 42 Cal. 625 : (AIR 1915 Calcutta 478), supra.) It has been found by the Ct. in the present case that the pltf. Municipality had not served any notice of arrear due on the Defendant 4 to 10 when they addressed a letter (Ex. B, dated 13-12-1989) to the Chairman of the Municipality for requisitioning the service of a drummer for announcing to the public by

¹42 Cal. 625 : (AIR 1915 Cal 478)

³41 C. W. N. 353 : (I. l. r. (1937) 1 Cal. 251)

²61 Cal. 1047 : (AIR 1934 Cal 862)

beat of drums the sale proclamation of the attached property which included the two holdings in question. It is pointed out that when the said Defendant had written another letter Ex.5 M dated 2-4-1940 for the service of a Municipal drummer to announce the purchase by Defendant 4 to 10 the said Defendant were not intimated of the outstanding arrears. It is pointed out that when an appln. was filed for the mutation of their names on 28-8-1940 Defendant 4 to 10 were intimated about the arrears which had already accumulated. The trial Ct. proceeded on the footing that the purchasers had no duty before they had actually purchased the property to make any enquiry from the office of the Municipality and that the duty was on the Municipality to inform any person who intended to purchase the same.

13. Reliance is placed on the following observations appearing in *Akhoy Kumar v. Corporation of Calcutta*⁴,

"To a purchaser acquiring title by involuntary alienation constructive notice cannot be imputed to the same extent as to the purchaser at a private sale. The purchaser without notice from a person who had notices is protected."

In the present case, the purchaser was one who had himself obtained a money decree against the owner of the holding in arrear and though constructive notice cannot be imputed to the same extent in the case of a purchaser of an involuntary alienation the question whether constructive notice is to be imputed in a particular case must depend on the fact of that case. This principle is not in any way at variance with the observations in *Nawal Kishore v. The Municipality of Agra*⁵. The question of constructive notice is a question of fact which falls to be determined on the evidence and circumstance of each case. The principle is that intending purchaser of a property within a municipal area where the property is subject to municipal tax which had been made a first charge on the property by statute, must be deemed to have been with knowledge of the possibility of some arrears being due to the municipality and it, therefore, becomes his duty before acquiring the property whether it be a private or at a court sale, to make enquiries as to the amount of tax which is due or which may be due. If he fails to make this enquiry this failure amounts to a wilful abstention or gross negligence within the meaning of section 3, T. P. Act and a notice must be imputed to him.

14. The learned Dy. Comr. was, therefore, correct in holding that Defendant 4 to 10 purchased the property subject to the charge of arrear rates.

15. That the decree obtained in the present case by the municipality is not a charge decree, has been overlooked by the Ct. below. Unless and until such a charge decree is passed it is not competent for the municipality to proceed against the property to enforce the charge. It is unquestionable that the municipality was in the present case entitled to get a charge decree at any time before such a claim becomes barred. We have, however, to consider a limited question in the present appeal whether in the absence of such a charge decree it is competent for the Ct. to declare such a charge in the present proceedings.

⁴42 Cal. 625 : (AIR 1915 Cal 478)

⁵I. l. r. (1943) all. 453 : (AIR 1943 All 115 f.b.)

16. The learned Dy. Comr. has referred to the prayer as made in the present suits which have been filed under Order 21, Rule 63, Civil Procedure Code. It is prayed that the immovable property in question is to be deemed to be charged for payment of the decretal dues by virtue of Section 167, Bengal Municipal Act. The scope of a suit under Order 21, Rule 63 of the Code is a very limited one. All that the Ct. is required to decide in this suit as framed is whether there had been, at the time when the present suits were filed, any decree against the property in question under which a charge had already been declared or in other words is the decree which is now under execution is of that nature that the Ct. is competent to declare that the property in the hands of Defendant 4 to 10 is liable under such a charge for the arrear rates. A charge which is created under Section 167, Bengal Municipal Act, becomes enforceable against the property only after a suit properly framed is brought for enforcement of that charge. The present suits are not of that description. No such suit had been brought by the pltf. municipality and the latter is not entitled to enforce a charge against the property in the hands of Defendant 4 to 10 in the present suit.

17. The result, therefore, is that the decrees as passed by the lower appellate Ct. are set aside as the pltf. is not entitled to get a declaration in the present suits that the decrees obtained in money Suits 19 and 16 of 1940 had created a charge on the holdings concerned.

18. The appeals are accordingly allowed and the suits dismissed with costs in all the Cts. (One set of hearing-fee for the two appeals in this Ct.).

Lahiri, J.

19. I agree.

20. By the Court- No separate order is necessary on the cross-objections.

Appeals allowed.