Case Note: Case concerning levy of terminal tax by a Municipality. One of the issues was whether the place on the river where the tax was levied lay within the Municipal area. Since the river in question was a navigable river and in the case of navigable rivers boundary between the bed of a tidal river and the adjoining land is, as a general rule, the line of medium high water mark and the place the tax was levied was outside this the tax could not be so levied.

(1940)42BOMLR1034

IN THE HIGH COURT OF BOMBAY

Decided On: 28.06.1940

Narottamdas Harjivandas and Co. and Manibhai Chhotubhai and Co.
v.
The Bulsar Town Municipality

Hon'ble Judges:
N.J. Wadia and Sen, JJ.

JUDGMENT

N.J. Wadia, J.

1. These appeals arise out of two suits against the Municipality of Bulsar. Suit No. 85 of 1936, from which Second Appeal No. 105 arises, was filed by two plaintiffs Messrs. Manibhai Chhotubhai & Co. and Shah Narottamdas Harjivandas &Co. to recover from the Municipality a sum of Rs. 180 as the price of six bags of sugar, which, it was alleged, were illegally attached and sold by the Municipality for recovery of terminal tax and Rs. 325 by way of damages. The second suit, No. 87 of 1936, was filed by the firm of Shah Narottamdas Harjivandas & Co. for a declaration that the Municipality was not entitled to demand terminal tax or any other tax on goods which were not brought within the limits of the Municipality and to the naka appointed by the Municipality. In the alternative the plaintiff prayed 'for a declaration that the Municipality had no right to demand terminal tax or any other tax on goods landed at the Auranga river or at the Lilapur Dhakka or the Bhadeli Dhakka of the Auranga river. Plaintiff No. 1 in suit No. 85, Manibhai Chhotubhai & Co., is a firm doing business in sugar, tea, etc., in the village of Lilapur, situated on the northern bank of the Auranga river opposite to the town of Bulsar, which is situated on the southern bank, Plaintiff No. 2 in that suit, Shah Narottamdas Harjivandas & Co., is a firm of commission agents doing business in Bulsar. It is alleged that on October 23, 1935, plaintiff No. 2 had brought fifty bags of sugar from Bhavnagar on the ship, " Labhsavai". The bags were for the first plaintiff firm and were to be sent to them at Lilapur and were not intended to be landed in Bulsar. There were along with the consignment fifty other bags of sugar brought by the second plaintiff firm on the same

ship for their own use. These were landed in Bulsar and the terminal tax on them was duly paid. A demand was made by the municipal naka clerk for terminal tax on the fifty bags which were to be sent to plaintiff No. 1 at Lilapur. On this demand being refused,. the municipal clerk seized the six bags of sugar which had been unloaded from the ship into a cart, and attached them for recovery of the terminal tax. The amount claimed for the terminal tax was Rs. 68. Three out of the six bags were sold and a, sum of Rs. 70-4-0 for the amount due for the tax and for expenses was credited to the Municipality, and plaintiff No. 2 from whom the bags had been attached, was asked to take away the remaining bags of sugar and the balance of the sale proceeds. Plaintiff No. 2 refused to take delivery of the unsold bags and of the balance alleging that the goods belonged to plaintiff No. 1. The contention of both the plaintiffs was that the place where the goods were attached was outside the limits of the Bulsar Municipality which had therefore no right to levy terminal tax on the goods; that the goods were not brought into the limits of the Bulsar Municipality and were not intended to be so brought, and that they were not therefore liable to pay terminal tax to the Municipality. It was further contended that the seizure of the goods by the Municipality was illegal and also that it was excessive. Both the suits were tried together and were disposed of by the same judgment, both in the trial Court and in the lower appellate Court. The trial Court held that the Municipality was entitled to charge terminal tax on goods not brought to the octroi naka; that it was also entitled to levy the tax on goods which were unloaded on the southern bank of the Auranga river as well as on goods unloaded in carts standing in the middle of the river, and that the goods were seized within municipal limits. It therefore dismissed the plaintiffs' suit and directed that plaintiff No. 2 should be entitled to the return of Rs. 6-4-0, the balance of the sale-proceeds of the three bags which had been sold, as well as the three unsold bags or their price, if they had been already sold because of the failure of the plaintiffs to take delivery of them. This judgment was confirmed in appeal by the District Judge of Surat, and the plaintiffs have come in appeal.

2. The first contention urged before us is that the Bulsar Municipality had no power to levy terminal tax at all. This contention was not raised before the trial Court. It was first raised in the District Court, and being a pure point of law was allowed to be raised. Under Rule 3 of the Terminal Tax Rules and Bye-laws of the Bulsar Town Municipality, which were sanctioned by the Commissioner, N. D., in May, 1927, the Municipality is entitled to levy terminal tax on the goods specified in the Schedule, the tax being payable on import of the goods into the Municipality. Section 59 of the Bombay District Municipal Act, III of 1901, by which the Municipality in suit is governed, provides that subject to any general or special orders which the Governor in Council may make in this behalf, any Municipality (a) after observing the preliminary procedure required by Section 60 and (b) with the sanction of the Commissioner may impose certain specified taxes which are mentioned at items (i) to (x) of the Section and (x-a) " any other tax which, under rules made under Clause (a) of Section 80A, Sub-Section (3), of the Government of India Act, a local authority may be authorised to impose by any law made by the local Legislature without the previous sanction of the Governor-General." It is under the authority of this clause, which was introduced into the Bombay District Municipal Act by Act XXXVIII of 1920, that the Municipality has been levying the terminal tax. The contention of the plaintiffs is that under the provisions of this clause the Municipality cannot levy this tax

unless it has been specifically authorised to do so by a law made by the local Legislature. The contention of the defendant Municipality is that Clause (x-a) itself is sufficient authority to enable the Municipality to impose the tax and it has imposed the tax as required by the Section with the sanction of the Commissioner. Section 80A of the Government of India Act, 1919, provides that:

(3) The local Legislature of any province may not, without the previous sanction of the Governor-General, make or take into consideration any law (a) imposing or authorising the imposition of any new tax unless the tax is a tax scheduled as exempted from this provision by rules made under this Act.

The Scheduled Taxes Rules, which came into force on December 16, 1920, provided inter alia that:

3. The Legislative Council of a province may, without the previous sanction of the Governor-General, make and take into consideration any law imposing, or authorising any local authority to impose, for the purposes of such local authority, any tax included in Schedule II to these rules.

Schedule II mentioned eleven different kinds of taxes and included a terminal tax on goods imported into or exported from a local area. Act XXXVIII of 1920 by which Sub-clause (x-a) was introduced into Section 59 of the Bombay District Municipal Act came into force on September 14, 1920, that is, before the publication of the Devolution Rules; Sub-clause (x-a) of Section 59 of the Bombay District Municipal Act follows the wording of Rule 3 of the Devolution Rules. We are unable to accept the contention of the appellants that the Municfpality could not impose a terminal tax unless it was authorised to do so by a special Act of the local Legislature. The language of Clause (x-a) of Section 59, in our opinion, shows that it was not the intention of the Legislature to provide that the Municipality should not levy any other tax which under the rules made under Clause (a) of Section 80-A, Sub-Section (3), of the Government of India Act, a local authority could impose unless it had been actually authorised to impose it by a law made by the local Legislature. The clause merely described what taxes, other than those specifically mentioned, a local authority could impose, and the description was that they were to be such taxes as it was within the power of the local Legislature to authorise a Municipality to impose, in other words, such taxes as were mentioned in Schedule II of the Schedule Taxes Rules. The only reason apparently why the taxes are described in the manner in which they have been in Sub-clause (x-a) is that at the time when the terminal tax was introduced in the District Municipal Act, the Devolution Rules had not been brought into force. It was therefore necessary to. describe the other taxes which a Municipality could raise by saying that they were such taxes as the local Legislature could authorise a local authority to impose by a law passed by the local Legis-lature without the previous sanction of the Governor-General. The word ' may ' used in Clause (x-a) seems to us to mean no more than ' can' or ' could be'. It does not mean ' has been.' If the intention of the Legislature in introducing this clause had been to require that there should be specific legislation by the local Legislature authorising the imposition of any particular tax by a local authority, the concluding words of the clause " without the previous sanction of the

Governor-General" would not have been used. It would have been sufficient to say that " a local authority could impose any other tax which under the rules made under Sub-Section (3) of Section 80 A of the Government of India Act a local authority had been authorised to impose by any law made by the local Legislature." The use of the words " without the previous sanction of the Governor-General" seems to suggest that Clause (x-a) was intended merely to indicate that the other taxes which a local authority could impose were such as were mentioned in Schedule II of the Scheduled Taxes Rules, which specified the taxes which a local authority could be authorised to impose by any law made by the local Legislature without the previous sanction of the Governor-General. That being so, in our opinion, the view taken by the trial Court and the learned District Judge that Section 59 (x-a) of the Bombay District Municipal Act is itself sufficient authority to enable the Municipality to impose a terminal tax is correct.

3. While on this point, I will dispose of one other objection which has been urged with regard to the power of the Municipality to levy this tax. It is contended that the Municipality had no power to impose a terminal tax on goods in transit which are not meant for consumption within the limits of the Municipality. In our opinion there is no force in this contention. The Municipal Rules and Bye-laws dealing with the terminal tax define it as " an Octroi levied on the import into the said Municipality of goods specified in the Terminal Tax Schedule, such octroi not being liable to be refunded." " Import" is denned in the Rules as meaning " conveying goods by Railway or by Ship or otherwise into Municipal limits." It is clear therefore that the tax is leviable on all goods entering Municipal limits whether they are intended for consumption within the city or whether they are merely in transit through the city to some other place. The specific provision that 'the terminal tax was not liable to be refunded is not capable of any other interpretation than the one which we have put on it.

4. The next contention of the appellants, and the principal one in the appeal, is that the place where the terminal tax was demanded and the goods were seized by the Municipality for non-payment of the tax, was not within the municipal limits at all. For this purpose it is necessary to go into the question of the boundaries of the Municipality. By Government Notification No. 2126 of May 27, 1895 (exhibit 65) the northern boundary of the Bulsar Municipality was given as " The Auranga River ". According to the Gazetteer of the Bombay Presidency, Gujarat, Vol. II, p. 27, the town and port of Bulsar is situated on the left or southern bank of the Auranga river about four miles from the place where the river enters the sea. The Auranga river is described in the Gazetteer as being a tidal stream for the last fifteen miles navigable by boats of fifty tons and under for about six miles from the sea. West of Bulsar, according to the Gazetteer, the depth of the river at low tide varies from seven to nine feet. It is not disputed before us that the river is a tidal river, and although some attempt was made to contend that it was not a navigable river throughout the year at all times of the day, it was finally conceded that the river must be treated as a navigable river. The generally accepted test as to whether a river is navigable or not is whether it allows of the passage of boats at all times of the year [Secretary of State for India v. Bijoy Chand Mahatap (1918) I.L.R. 46 Cal. 390; the Law of Riparian Rights, Tagore Law Lectures, 1889, p. 110]. Judged by this test the Auranga is clearly a navigable river. On behalf of the Municipality reliance is placed on

the principle laid down in several cases, both Indian and English, that where a property is bounded by a road or a river, the boundary, even if given as the road or the river, is the middle of the road or river as the case may be. This principle is clearly not applicable to the case of a river which is tidal and navigable. Halsbury in dealing with tidal rivers (Vol. III, 2nd edn., p. 139, para. 241) points out:

Where land is said to be bounded by a river, a distinction must be taken between tidal rivers and non-tidal rivers; for, in those parts of rivers where the tide flows and reflows, the soil between the medium high water mark and medium low water mark prima facie belongs to the Crown, and therefore the boundary between the bed of a tidal river and the adjoining land is, as a general rule, the line of medium high water mark.

He then points out that in the case of non-tidal rivers or streams, whether navigable of not, the boundary is in general the line of mid-stream, inasmuch as, in the absence of all evidence to the contrary, the bed of such rivers and streams is presumed to belong to the riparian owners *usque ad medium filum aqux*. Under Section 37 of the Bombay Land Revenue Code the beds of rivers are the property of Government. The same principle has been held applicable in India: vide Vankata Lakshminarasamma v. The Secretary of State (1918) I.L.R. 41 Mad. 840, f.b., in which it was held that the principle, that in the case of a grant of land by Government described as bounded by a river the presumption is that the grant passes to the grantee the bed of the river ad medium filum aqux, applied to non-navigable rivers. The judgment of the full bench pointed out that in the case of navigable rivers the presumption has been laid down the other way by the Judicial Committee in several cases. The Auranga river being a tidal navigable river, the bed of the river belongs to the Crown up to the line of medium high water mark, that is, the line of the medium tide between the spring and the neap tides throughout the year: Halsbury, 2nd edn., Vol. XXXIII, p. 522.

5. Both the trial Court and the lower appellate Court have rightly held that the jurisdiction of the Municipality extends up to the line of the medium high water mark of the river; but they have fallen into an error in interpreting these words, and have taken the medium high water mark of the river as toeing the same thing as the middle line of the river ad medium filum aqux, and it is this confusion which has led both Courts to the finding that the place-where the ship was standing and where the goods were attached was within the limits of the Bulsar Municipality.

6. It has been found that the bed of the river is actually 1,056 feet broad, and as the portion of the bed in which the water was flowing at the time when the goods were attached was only thirty to forty feet broad, and was more than 638 feet from the northern bank of the river, the ship was clearly within the half of the river bed on the southern or Bulsar side. But this obviously would not bring the place within the jurisdiction of the Bulsar Municipality. The evidence of the municipal terminal tax clerk, Manibhai (exhibit 131), is to the effect that at the time of high tide the water touches the Custom House banisters on the Bulsar side. The evidence of Jivanji (exhibit 128), another terminal tax clerk in the service of the Municipality, is that at1 high tide the water touches the steps of the Custom House on the Bulsar side.. This would take the high tide mark on the Bulsar

side about thirty toi forty feet further up the bank than the point indicated by the other clerk. The oral evidence and the plan prepared by the Commissioner show that the actual portion of the river in which the water was, flowing at the time of the attachment was more than one hundred feet from the Custom House. It further appears from the evidence of the Municipal Officer who actually made the attachment of the goods that at the time of the attachment the ship was fifteen to twenty feet from the southern or Bulsar edge of the water. At the time when the attachment was made the tide must have been low since the bed of the stream, which according to the Commissioner's plan is said to be three hundred feet broad at the time of full tide, was at the time of the attachment only thirty to forty feet broad. It is clear therefore that the ship was standing at a place beyond the line of medium high water mark. It is unfortunate that owing to the fact that there was a confusion in the minds both of the trial Court and of the parties as to what the line of medium high water mark meant, no attempt was made to determine accurately the exact point of the line of medium high water mark. If we had the slightest doubt whether the place where the ship was standing and where the seizure was made did or did not lie above that line, we would have sent the case down to the trial Court for a finding on the question. But the evidence on the record is, in our opinion, such as to leave no room for doubt that the line of medium high water mark of the river was clearly at a point much higher than the place in the bed of the river where the ship was lyingi and close to which the actual attachment of the goods took place. As I have pointed out, at the time when the goods were attached the river was only thirty to forty feet broad and the ship was in the middle of this narrow strip of water, since it was fifteen to twenty feet from the edge of the water. That being so, however low the line of medium high tide may be, it could not possibly be lower than the centre of the river at low tide. It is clear therefore that the ship was standing at a place much below the line of medium high water mark, and on the evidence of the two municipal clerks it is clear that the goods were attached very close to the ship. One of the clerks Jiwanji (exhibit 128) says that the cart that was seized was standing on the Bulsar side of the ship, but touching it. The other clerk Manibhai (exhibit 131) says that the cart in which the attached goods were loaded was standing on the Bulsar side of the ship, some five to six feet away from it, the ship being twenty feet away from the southern or Bulsar edge of the water. Clearly therefore the place where the bags were seized was well below the line of medium high water mark and therefore outside the limits of the Municipality.

7. It was contended by the learned Counsel for the Municipality that according to the boundaries of the Municipality as given in the notification of 1895, to which I have referred, the whole of the Auranga river was included within the municipal limits. He points out that the northern boundary is given as "the Auranga river" and not up to the Auranga river. In support of his contention he relies on certain evidence which shows that the Municipality has been levying terminal tax on goods brought up the river for many years, and that since the year 1891 the Municipality has been receiving from the District Local Board half the proceeds of the auction sale of the ferry rights across the river opposite Bulsar town. Neither of these two facts, even if proved, would, in our opinion, be sufficient to establish that the Municipality had been granted the whole of the river. Nor does the language used in the notification of 1895 in describing the northern

boundary as the river justify the inference which the learned Counsel for the Municipality asks us to draw, that the whole of the river was included in the municipal limits.

8. In our opinion the bed of the Auranga river vests in the Crown and not in the Municipality, and as the place where the ship was standing and the place where the goods were attached were both below the line of medium high water mark, which is the boundary of the Municipal jurisdiction, the Municipality was not entitled to levy terminal tax on the goods which were seized from plaintiff No. 2. The plaintiffs in suit No. 85 of 1936 are therefore entitled to a refund of the value of the three bags of sugar which were seized and sold by the Municipality, and to a return of the three unsold bags or their price, if they have been sold subsequent to the judgment of the trial Court.

9. We agree with the view which the trial Court and the lower appellate Court have taken that the seizure was not excessive. The plaintiffs were not therefore entitled to any damages.

10. On the view which we have taken it is not necessary to discuss at length the further contention of the appellant that the Municipality was not entitled to seize the goods unless and until they were brought to the Municipal naka. According to the English version of the Municipal bye-laws the goods were liable to pay the tax on import as soon as they were brought within municipal limits, and even the Gujarati version of the bye-laws does not necessarily mean that they become liable to duty only if they are actually brought to the naka. The liability in our opinion arises as soon as the goods enter municipal limits.

11. Both the appeals must therefore be allowed and the plaintiffs' suits decreed. In appeal No. 105 of 1939 the appellants will be entitled to recover the sum of Rs. 76-8-0 the price of the three bags of sugar which were sold by the Municipality, and the three bags of sugar which remained unsold, or their price if they have been sold subsequent to the decree of the trial Court. As the appellants have succeeded as regards their main contention, we consider that they are entitled to their costs throughout on the portion of their claim which has been allowed.

12. Appeal No. 81 of 1939 will also be allowed. The plaintiff will get a declaration that the Bulsar Municipality is not entitled to demand terminal tax or any other tax for goods which are not brought within the limits of the Bulsar Municipality on the side of the river Auranga, that is above the line of medium high water mark of the Auranga river on the southern side. The parties will bear their own costs throughout.