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Capoor, J.

seven years have elapsed since the original registration of this trade mark. It may be that under sub-section (2) of section 31 of the Act this trade mark may have been capable of challenge before the expiry of the period of seven years from the date of the registration on the ground that it was not a 'distinctive mark' under clause (e) of sub-secion (1) of section 9, but for the reasons already given, that is not enough to justify cancellation of the mark under section 32 of the Act.

The result, therefore, is that both the petitions are partly allowed but only to the extent that the registration of the respondents' mark No: 161543 be cancelled and that it be expunged from the register kept by respondent No: 2 and a notice shall be served upon the Registrar in the prescribed manner.

In view of the divided success of the parties, I leave them to bear their own costs in this Court.

B.R.T.

APPELLATE CIVIL

Before Mehar Singh and A. N. Grover, J.J.

MUNICIPAL COMMITTEE, PANIPAT,—*Appellant.*

versus

NIRANJAN LAL,—*Respondent.*

Regular Second Appeal No. 161 of 1960.

Punjab Municipal Act (III of 1911)—**S. 97(2)**—*Municipality imposing water tax*—*Whether can continue to charge water rate in excess of water tax.*

Held, that in a municipality in which water tax has been levied, such tax alone, and no additional charge, is leviable on quantity of water supplied as limited under sub-section

(1) of section 97 of the Punjab Municipal Act, 1912, and on the quantity in excess of that the municipality has the right to fix any rate as a charge, and in municipalities in which water tax has not been levied and which are described as "other municipalities" in sub-section (2) of section 97, a municipality has power to fix rate for the supply of water. The municipality which has levied water tax cannot continue to charge water rate from the house-owners if it be in excess of the water tax. Sub-section (2) of section 97 does not deal with individuals or with individual cases, it deals with the levy and imposition of water tax "in any municipality". The municipality is taken as a whole unit for the purposes of this sub-section, and single houses or owners of houses as individuals are not taken into consideration. Anything charged by a municipality, which has levied water tax, over and above that tax, is an additional charge which is expressly prohibited by sub-section (2) of section 97 of the Act.

Case referred by the Hon'ble Mr. Justice D. K. Mahajan, on 15th December, 1961 to a larger bench for decision of an important question of law involved in the case. The case was finally decided by a Division Bench consisting of Hon'ble Mr. Justice Mehar Singh and Hon'ble Mr. Justice A. N. Grover, on 31st December, 1962.

Regular Second Appeal from the decree of the Court of Shri Om Parkash Sharma, Senior Sub-Judge, with Enhanced Appellate Powers, Karnal, dated the 4th November, 1959, affirming with costs that of Shri R. S. Gupta, Sub-Judge, Ist Class, Panipat, dated the 2nd October, 1958, granting the plaintiff a decree for Rs. 63.05 nP. and for permanent injunction restraining the defendant Municipality from charging the plaintiff in respect of the water supply in question any sum of money in excess of the water tax against defendant Municipality with costs.

F. C. Mittal & G. P. Jain, Advocates,—for the Appellants.

H. L. Sarin & K. K. Cuccria, Advocates,—for the Respondent.

JUDGMENT

Mehar Singh, J.

MEHAR SINGH, J.—This is a second appeal by defendant, the municipal committee of Panipat in Karnal District, from the appellate decree, dated November 4, 1959, of the Senior Subordinate Judge of Karnal, affirming the decree, dated October 3, 1953, of the Subordinate Judge, Karnal whereby the suit of plaintiff, Niranjan Lal, against the defendant for recovery of a certain amount and permanent injunction restraining the defendant from overcharging the plaintiff was decreed with costs.

The plaintiff is the owner and occupier of a house within the municipal limits of the defendant municipality. Like other owners and occupiers of houses, the plaintiff was paying water rate for the supply of water by the defendant to him. On January 6, 1943, the State Government issued notification No. 3966-LG-42/862, copy Exhibit P. 3, whereby within the local limits of the defendant municipality water tax was imposed. There are in this notification, however, seven exemptions given from that tax and it is the last exemption that is material in the present case. It reads—"House in which a water connection has been provided and the connection is in use". Such a house is thus exempt from the notification and consequently from the levy of water tax. The plaintiff had a water connection in his house on the date of the notification, which connection continues upto to-day and it has been in use througout. The defendant-municipality has continued, in the circumstances, to charge water rate from the plaintiff for the supply of water even after the notification referred to above. The plaintiff then sued for refund of Rs. 63—0—6 as excess or additional charge over and above the water tax for the period

between January 1, 1955, and January 30, 1957. He also prayed for permanent injunction restraining the defendant from charging anything more than water tax from him.

The plaintiff has based his claim on section 97(2) of the Punjab Municipal Act, 1911 (Punjab Act 3 of 1911), and his contention, which has prevailed with the Courts below in spite of the opposition by the defendant-municipality has been that under that sub-section once water tax is levied in any municipality, nothing but water tax can be charged, and anything charged over and above the water tax is an additional charge expressly prohibited by that sub-section.

The plaintiff, as stated, succeeded in the trial Court as also before the appellate Court on appeal by the defendant-municipality. This second appeal by the defendant-municipality came first before Mahajan J., and the learned Judge, on December 15, 1961, considering that the question involved is one of considerable importance and is likely to arise in many similar cases referred the matter to a larger Bench and this is how this second appeal has come before us.

The question that arises for consideration in the present second appeal is whether in view of sub-section (2) of section 97 of Punjab Act 3 of 1911, once water tax has been imposed in the defendant-municipality, water rate can still continue to be charged from the plaintiff even though the amount leviable as water rate is higher than the amount leviable as water tax? Sub-sections (1) and (2) of section 97, leaving out explanations to sub-section (2), which are not in point here, are relevant for the consideration of the question and those sub-sections are—

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"97. (1) The committee may, on application by the owner of any building, arrange for supplying water from the nearest main to the same for domestic purposes in such quantities as it deems reasonable, and may at any time limit the amount of water to be so supplied whenever it considers it necessary.

(2) No additional charge shall be payable in respect of such supply in any municipality in which a water tax is levied, but for water supplied in excess of the quantity to which such supply is under sub-section (1) limited, and in other municipalities for all water supplied under this section payment shall be made at such rate as may be fixed by the committee with the approval of the State Government.

* * * * "

Sub-section (1) deals with the quantity of water that may be supplied by a municipality. It has been given power to place a limit upon such a supply. It is sub-section (2) that deals with the question of the charge for the supply of water. It deals with municipalities in which water tax is levied and municipalities in which no water tax is levied which are described as "other municipalities". The municipalities in which water tax is levied, additional charge over and above such tax is expressly prohibited in so far as supply of water remains limited within the scope of sub-section (1) but water tax rates are not applicable to (a) supply in excess of quantity limited under sub-section (1), and (b) supply of water in other municipalities, that is to say, municipalities other

than those in which water tax has been imposed. In these two cases a particular municipality has power to fix the rate that it will charge. It means (i) that in a municipality in which water tax has been levied, such tax alone, and no additional charge, is leviable on quantity of water supplied as limited under sub-section (1), and on the quantity in excess of that the municipality has right to fix any rate as a charge, and (ii) in municipalities in which water tax has not been levied and which are described as "other municipalities" in sub-section (2) a municipality has power to fix rate for the supply of water. This is apparent from the very words of sub-sections (1) and (2) of section 97. There is no ambiguity in this. The defendant-municipality is a municipality in which the water tax has been levied. It follows that in this municipality nothing in addition to water tax as an additional charge is payable by a house-owner as the plaintiff on the supply of water limited according to sub-section (1). The defendant-municipality is, however, free to fix its rate of charge on supply of water in excess of that limit, but that is a matter that does not arise in the present case. Obviously, the amount that the defendant-municipality has charged from the plaintiff over and above the water tax is the amount that is additional charge over and above that tax, the charging of which is prohibited by sub-section (2) of section 97.

The learned counsel for the defendant-municipality, however, contends that the plaintiff's case comes under the last exception in the notification, copy Exhibit P. 3, and as such he is not covered by sub-section (2) of section 97. It is abundantly clear that that sub-section does not deal with inidviduals or with individual cases. It deals with the levy and imposition of water tax

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"in any municipality". The municipality is taken as a whole unit for the prposes of this sub-section, and single houses or owners of houses as individuals are not taken into consideration. So this argument does not further the case of the defendant-municipality so as to negative the claim of the plaintiff.

The power of imposition of taxes is given to a municipality by section 61 of the Act. Only the first part of this section, as reproduced below, comes in for consideration—

> "61. Subject to any general or special orders which the State Government may make in this behalf, and to the rules, any committee may, from time to time for the purposes of this Act and in the manner directed by this Act, impose in the whole or any part of the municipality any of the following taxes,"—

Thereafter follows the list of taxes in sub-section (1) and there is the general power of taxation, with the previous sanction of the State Government, in sub-section (2). Under the provisions of section 61, a municipality can impose tax in the whole or in part of the municipality. This might have been helpful to the defendant-municipality if water tax by the notification under consideration had been imposed in a part of the defendant-municipality. This, however, is not the case. There are seven exceptions given in the notification and the learned counsel for the defendant-municipality points out that under section 71 of the Act the State Government has the power of exemption from tax and these exemptions have been made in exercise of that power. From this he further argues that

the levy of the water tax in the case of the defendant-municipality has been made under the provisions of section 61(2), with exceptions under section 71, and consequently there is no case of levy of water tax on the plaintiff which means that he cannot claim benefit of sub-section (2) of section 97. The notification imposes water tax on the whole of the defendant-municipality. The exceptions enumerated in it do not leave any part of it out of the imposition or levy of water tax. It has already been pointed out that according to sub-section (2) of section 97 water tax is levied in a municipality and not in relation to individuals or separate houses or separate properties. So the exceptions do not come within the scope of sub-section (2) of section 97 and do not advance the argument on the side of the defendant-municipality to any degree to its advantage. The water tax having been levied in the defendant-municipality, the levy is valid according to section 61, and as it is not a levy in regard to any part of it, it is obvious that it is a levy in the whole of it. The power of the defendant-municipality to charge anything additional to the water tax is negatived so far as the supply to the extent of the limit according to sub-section (1) of section 97 is concerned, though if there is supply in excess of that it can fix its own rate of charge. With the last aspect of the matter, this case is not concerned.

In consequence, the effect of the notification of January 6, 1943, copy Exhibit P. 3, when read with section 97 of the Act, is to levy water tax in the defendant-municipality with the consequence that the defendant-municipality can only charge water tax from the plaintiff and anything that it has charged from him over and above that is an additional charge which is expressly prohibited by sub-section (2) of that section. In this approach,

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the decisions of the two Courts below are correct. This appeal fails and is dismissed, but in the circumstances of the case, the parties are left to their own costs.

Grover, J.

A. N. GROVER,—I agree.

B.R.T.

CIVIL MISCELLANEOUS

Before A. N. Grover and Inder Dev Dua. J.

THE ROHTAK DELHI TRANSPORT (PRIVATE) LTD.,—*Petitioner.*

versus

RISAL SINGH AND ANOTHER,—*Respondents.*

Civil Writ No. 430 of 1961.

1962

January, 4th.

Industrial Disputes Act (XIV of 1947)—S. 10-A—Industrial dispute referred to arbitrator—Arbitrator—Whether to act in a judicial or quasi-judicial manner—Award given by the arbitrator—Whether should be a speaking order.

Held, that an arbitrator to whom an industrial dispute is referred for decision under section 10-A of the Industrial Disputes Act, 1947, has to act in a quasi-judicial manner and his decision will be a quasi-judicial decision.

Held, that the award of an arbitrator to whom an industrial dispute is referred for decision under section 10-A of the Industrial Disputes Act, 1947, being a quasi-judicial decision, must contain some particulars or grounds or reasons on which it is based. In other words, such a decision can be said to be no decision in the eye of law unless the order is supported by some grounds or points indicating how the final conclusion is arrived at. In the absence of such reasons arbitrariness or partial exercise of powers or taking into consideration extraneous circumstances cannot be eliminated and neither the parties concerned nor the High Court to which the mat-