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SUVA CITY COUNCIL

v.

SHIU NARAYAN CHAUHAN

B

[SUPREME COURT, 1970 (Knox-Mawer P.J.) 29th January, 18th May]

Appellate Jurisdiction

Local government—rates—judgment obtained for overdue rates against earlier owner of property—right by town council to recover unpaid portion from subsequent owner—Towns Ordinance (Cap. 106) s. 124 (2).

C

Merger—rates—judgment obtained for overdue rates against earlier owner of property—no merger so as to deprive town council of right to recover rates from person subsequently acquiring property—Towns Ordinance (Cap. 106) s. 124 (2).

Interpretation—Ordinance—rating—meaning of “any such overdue amount” in section 124 (2) of Towns Ordinance (Cap. 106).

D

Notwithstanding that a town council has obtained judgment for unpaid rates against a previous owner of land, to any extent that such rates remain unpaid they constitute an “overdue amount” within the meaning of subsection (2) of section 124 of the Towns Ordinance, and under that subsection are recoverable from any subsequent owner of the land.

Appeal from a decision of the Magistrate’s Court.

D. M. N. McFarlane for the appellant Council.

R. I. Kapadia for the respondent.

E

The facts sufficiently appear from the judgment.

KNOX-MAWER P. J.: [18th May, 1970]—

F

The respondent is the registered lessee of a property in respect of which rates, as assessed, are payable to the appellant. Some years ago, one Mr. Shiu Nandan was the lessee of this property. By two successive actions the appellant proceeded against Mr. Shiu Nandan for overdue rates in respect of 1961 and 1963. Judgments therefor were obtained against Mr. Shiu Nandan but the appellant has not recovered from the latter all such overdue rates. The appellant thus maintains that since part of those rates still remains unpaid its present claim against the respondent in respect of such balance cannot be denied.

The appellant relies upon subsection (2) of section 124 of the Towns Ordinance Cap. 106. Section 124 reads:—

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“(1) If any amount due and payable in respect of any rate is not paid to the council within the fixed time in the demand note it shall be lawful for a magistrate of the first class, upon written request made by the council to issue and cause to be executed a warrant for levying the amount with costs by distress and sale of the goods and chattels found on the premises of the person by whom such amount is payable, and such warrant shall authorise the person executing the same or his assistant to remain on the premises during the interval between such distress and sale whether such authority be expressed or not in the warrant. The provisions of this section shall be without prejudice to the right of the council to recover by ordinary civil proceedings any such amount which is due and payable.

H

(2) Any such overdue amount shall bear interest at the rate of seven per centum per annum, and shall be and remain a charge upon the rateable property in respect of which the same is payable, and may be recovered at any future time from any owner of such property with full costs of suit in any court of competent jurisdiction. A

(3) Notwithstanding the other provisions of this Ordinance it shall be lawful for a town council by resolution to waive the whole or any part of any amount due in respect of a rate, and any costs incurred for the purpose of recovering that amount, if it appears to the council that such amount is irrecoverable or that it should be written off on the grounds of the poverty of the person liable therefor; and if a warrant has been issued in respect thereof the court shall, upon being notified of such resolution, cancel the warrant. B

The respondent successfully contended below that he was not liable. The learned Magistrate Mr. Madhoji, in his judgment, stated as follows:— C

“ It is argued that by virtue of Section 124 (2) of the Local Government (Town) Ordinance Cap. 106 outstanding rates may be recovered at any future time from any owner of the property and by virtue of this subsection outstanding rates always remain a charge upon the rateable property.

It is submitted for the respondent that since judgment was obtained for the outstanding rates the charge merged in the judgment and that once judgment for the rates is obtained a subsequent owner is not liable. D

I have considered Section 124 carefully, In my opinion subsection 2 of the section refers to overdue rates when it mentions “ any such overdue amount ” and such overdue rates no doubt remain a charge on the rateable property in respect of which it is payable and may be recovered at any future time from any owner of such property with full costs of suit in any court of competent jurisdiction. E

However, once judgment is obtained for “ any such overdue amount ” due for rates then in my view such amount due for rates no longer retains its original character of rates but becomes a judgment debt and the amount due for such rates becomes merged in the judgment. Further so long as it is an amount due for rates there remains a charge on the land but once judgment is obtained the charge is extinguished. F

If for instance the appellant had not obtained judgment then the rateable property continues to remain charged with the overdue rates and such amount may be recovered at any time from any future owner of the property. But this in my view continues only so long as judgment is not obtained in respect of it from any owner whether original or subsequent. In view of this I hold that the appellant’s appeal fails and I dismiss the appeal accordingly. G

While mindful of the concern expressed by learned counsel for the respondent if Mr. Madhoji’s view is not sustained, I have nevertheless concluded that in law this appeal must succeed.

I have consulted the case law to which reference has been made. I have also sought such assistance as may be found in *Browning and Bluett’s Local Government Law and Practice*. 3rd Edition, *Local Government Law and Practice, New South Wales* 4th Edition, *Ball’s Law of Mortgages of Land in New Zealand*, 1935 Edition and *Halsbury’s Laws of England* 3rd Edition, Vols. 12 and 27. H

A I am unable to subscribe to the argument adopted below. In my opinion it cannot be gainsaid that part of the rates as assessed on this property for 1961 and 1962 remain unpaid. This therefore is an overdue amount within the meaning of the phrase "any such overdue amount" in subsection (2) of section 124 (supra), and under this subsection this "may be recovered at any future time from any owner of such property with full costs of suit". Judgment must accordingly be entered for the appellant in the sum claimed, namely £16.9.10 (\$32.98) and costs both in this Court and the Courts below.

B It is so ordered.
Appeal allowed.