

The municipal corporation was far more negligent and blameworthy than the respondent in allowing the arrears to accumulate.

[CASE BRIEF] Ahmedabad Municipal Corporation of the City of Ahmedabad V/s Haji Abdulgafur Haji Hussenhbai

Case name	Ahmedabad Municipal Corporation of the City of Ahmedabad V/s Haji Abdulgafur Haji Hussenhbai
Case number	Civil Appeal No. 1161 of 1967
Court	The Supreme Court of India
Bench	Dua, I.D. Bhargava, Vishishtha
Decided on	18/03/1971
Relevant Act/Sections	Transfer of Property Act (4 of 1882), Bombay Provincial Municipal Corporation Act, 1949 . Provincial Insolvency Act, 1920.

➤ **Brief Facts and Procedural History:-**

1. In 1950, a building was vested in the receivers, on its owner being adjudicated an insolvent. In 1951, the receivers secured necessary orders from court for paying off municipal taxes then due, but the receivers did not pay and the municipal corporation did not also pursue the matter.
2. In 1954, the property was brought to sale in execution of a mortgage decree obtained by a mortgagee of the property and the respondent purchased it at the court sale. Before the purchase he made enquiries from the receiver if there were any dues against the property, but he was not informed about the arrears of municipal taxes. In 1955, the municipal corporation attached the property for arrears of municipal taxes due from 1949, and the purchaser filed a suit for a declaration that the arrears were not recoverable by sale of the property.

➤ **Issue before the Court:**

1. Whether under s. 141(1) of the Bombay Provincial Municipal Corporation Act, 1949, read with s. 100 of the Transfer of Property Act, 1882, the property could be sold for as it had arrears, in the hands of the respondent even if he was a transferee for consideration without notice.
2. Whether the respondent, who was an auction purchaser at a court sale, could be held liable to pay the arrears of taxes and the property could be held subject to the liability on the ground that he had constructive notice of the existence of the arrears.

➤ **Ratio of the Court:**

1. In this appeal on certificate granted by the High Court of Gujarat under Article 133(1)(c) of the Constitution of India, the question raised relate to the liability of auction purchaser of property at court sale for the arrears of municipal taxes due on the date of sale to the municipal corporation of the City of Ahmedabad which dues are a statutory charge on the property sold and of which the purchaser had no actual notice.
2. The Court referred to Section 100, Transfer of Property Act, lays down that –
 - a. *No charge is enforceable against any property in the hands of a transferee for consideration without notice of the charge except when it is otherwise expressly provided by any law for the time being in force.*
3. The real core of the saving provision of law is not mere enforceability of the charge against the property but enforceability of the charge against the property in the hands of a transferee for consideration without notice of the charge. S. 141 of the Bombay Municipal Act is not such a provision. It merely creates a charge in express language, but apart from creating a statutory charge, it does not further provide that the charge is enforceable against the property in the hands of a transferee for consideration without notice of the charge.
4. However, there is no basis for the contentions that s. 100 of the Transfer of Property Act does not apply to auction sales. This Court in **Laxmi Devi v. Mukand Kunwar, [1965] 1 S.C.R. 726** pointed out that s. 100 applies to proceedings by operation of law also.
5. According to s. 3, Transfer of Property Act, a person is said to have notice of a fact when he actually knows the fact or when but for wilful abstention from enquiry or search which he ought to have made, or gross negligence, he would have known it. In the latter case he is presumed to have constructive notice. However, in **Nawal Kishore v. The Municipal Board, Agra I.L.R. [1943] All. 453**, it was stated that the question of constructive notice is a question of fact which falls to be determined on the evidence and circumstances of each case.
6. The material in the present case does not justify that the respondent purchaser should be fixed with any constructive notice of the existence of the arrears, because;
 - a. *He could not reasonably have thought the municipal corporation had not cared to secure payment of the taxes due since 1949;*
 - b. *the municipal corporation was far more negligent and blameworthy than the respondent in allowing the arrears to accumulate;*

- c. *though he made enquiries from the receivers they did not give any intimation about the arrears; and*
- d. *the building was in the occupation of tenants and the rent was recovered by the receivers and the reasonable assumption would be that the municipal tax, which was a charge on the property and given priority under s. 61 of the Provincial Insolvency Act, 1920, had been paid by the receivers.*

7. Thus, the plaintiff could have no reasonable ground for assuming that they were in arrears. From the plaintiff's testimony it is clear that he did nevertheless make enquiries from the receivers if there were any dues against the property though the enquiry was not made specifically about municipal dues. Apparently he was not informed about the arrears of municipal taxes. On these facts and circumstances we do not think that the plaintiff could reasonably be fixed with any constructive notice of the arrears of municipal taxes. we cannot hold that the plaintiff as a prudent and reasonable man was bound to enquire from the municipal corporation about the existence of any arrears of taxes due from the receivers.

➤ **Decision Held:**

1. As the question of constructive notice has to be approached from equitable considerations we feel that the municipal corporation in the present case was far more negligent and blameworthy than the plaintiff.
2. We have, therefore, no hesitation in holding that the High Court took the correct view of the legal position with the result that this appeal must fail and is dismissed. As there is no representation on behalf of the respondent there will be no order as to costs.