
(2003) 08 P&H CK 0128

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 3042 of 1979

Amritsar Contonment Board

APPELLANT

Vs

Kuldip Chand and Another

RESPONDENT

Date of Decision : 13-08-2003

Acts Referred:

Contonments Act, 1924 — Section 2

Citation : AIR 2004 P&H 43 : (2003) 135 PLR 307 : (2003) 4 RCR(Civil) 41

Hon'ble Judges : S.S. Nijjar, J

Bench : Single Bench

Advocate : R.K. Chhibar and Lalit Thakur, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

S.S. Nijjar, J.—This Regular Second Appeal has been filed against the judgment of Mr. Iqbal Singh, Addl. Distt. Judge, Amritsar dated 6.4.1979 rendered in Civil Appeal No. 143 of 1977.

2. The respondents had filed suit, before Mr. P.S. Bajaj, PCS, Sub Judge, 2nd Class, Amritsar for permanent injunction against the appellant, Amritsar Cantonment Board restraining them from realising an amount of Rs.600/- as per demand notice dated 21.2.1975. The suit filed by he respondents was dismissed by the judgment of the trial court dated 14.2.1977. The respondents filed Civil Appeal No. 143 of 1977 which has been allowed by the learned Additional District Judge, Amritsar. The suit of the plaintiffs has been decreed as prayed for. Hence, the Cantonment Board has filed the present Regular Second Appeal.

3. The suit was initially filed by D.P. Mohindru who died and was represented by legal heirs in the trial court. The Cantonment Board had raised a demand of Rs.600/- by issuing demand notice dated 21.2.1975 as scavenging tax for the period 1.1.1974 to 31.3.1975, in relation to Bungalow No. 17 which was owned by the plaintiffs. This kothi fell within the Cantonment area. The notice was

challenged by the plaintiffs on a number of grounds, namely, (i) the notification dated 5.1.74 imposing scavenging tax is illegal; (ii) the plaintiffs have got flush system in their kothi and the tax has been imposed for out houses, situated in that kothi, which are not in their possession; (iii) the tax imposed is arbitrary, excessive; (iv) the plaintiffs being not in possession of out houses, are not liable to pay any tax.

4. The defendant filed a written statement and stated that (i) the suit is not maintainable as notice u/s 273 of the Cantonments Act was not served before filling the suit; (ii) the suit is time barred; (iii) the plaintiffs did not file any appeal against the order imposing scavenging tax upon them, and therefore, the suit is not maintainable. The claim of the plaintiffs was contested on merits. The trial Court framed the following issues;-

"1. Whether the demand of Rs.600/- on account of scavenging tax from the plaintiffs for the period 1.1.74 to 31.3.75 by the defendant is illegal etc. and plaintiffs are not liable to pay the same for the reasons alleged in para 3 of the plaint? OPP.

2. Whether the suit is not maintainable for want of service of notice u/s 80 CPC and u/s 273 of the Cantonment Act? OPD

3. Whether the plaint is not properly signed and verified? If so, to what effect? OPD.

4. Whether the suit is time barred? OPD.

5. Whether the suit is not legally maintainable? OPD.

6. Relief.

5. On issue No. 1, the trial court held that the notification imposing the tax u/s 60 of the Cantonments Act has been validly issued with the previous sanction of the Central Government. After appreciating the evidence of the parties, the trial court held that the flush system does not exist in the out houses of the Kothi No. 17 which was admittedly within the Cantonment area. The scavenging tax had been levied only with respect to out houses. It was also held on the basis of the evidence that there are no conservancy services provided by the plaintiffs with regard to the out-houses. The trial Court observed that Manohar Lal, PW3 had admitted that no conservancy services had been provided for the let out-houses which are in the possession of the tenants. This position is reiterated by PW2 Alwan who was a tenant of the plaintiffs in the out-houses. The trial Court, therefore, held that the case of the plaintiffs does not fall within the provision contained in Notification Ex.P4 which is as under;-

"Provided that no such tax shall be leviable where the occupier provides his own conservancy services under intimation to and to the satisfaction of the Cantonment Board and no conservancy services are rendered by the Cantonment Act."-

6. The trial Court rejected the argument that the tenants would be liable to pay the tax as the out-houses are occupied by the tenants.

7. The Appellant Court has reversed the findings of law recorded by the trial Court by holding that since the tenants are in actual occupation, the liability to pay the tax would also be of the tenants.

8. I have heard the learned counsel, for the appellant and perused the record. None is present on behalf of the respondents inspite of service.

9. I am of the considered opinion that the findings recorded by the appellate Court are erroneous. It is not disputed that the plaintiffs are the owners of the kothi together with the out-houses. The term "Occupier" is defined in Section 2(xxiii) of the Cantonments Act, 1924 which reads as follows:-

"2. (xxiii). "Occupier" includes an owner in occupation of, or otherwise using his own land or building""

10. The trial Court had correctly interpreted the expression to mean that the clause is wide enough to cover a person who may not be himself in occupation of the building, but still using his building otherwise, say, where a person lets out his building to a tenant. The trial Court has rightly held that the owner would still be occupier of the land which is being enjoyed by the owner through the tenant. The interpretation placed on the term "occupier" by the lower appellate Court would amount to deleting the expression "or otherwise using his own land or building" from Section 2(xxiii) of the Cantonments Act.

11. In the grounds of appeal, Mr. R.K. Chhibbar, learned Sr. Senior Advocate had framed the following substantial questions of law:-

"1. Whether the building can sub-divided for the purpose of scavenging tax?

2. Whether the lessor is covered within the meaning of occupier and hence liable to pay the tax?

3. Whether actual user of the whole building is necessary for realising scavenging tax?"

12. The expression "occupier" would undoubtedly cover the lessor of the tenanted premises. The term "building" would include the out-houses. It is so provided in Section 2(iv) of the Cantonments Act, 1924 which is as follows:-

"2. (iv). "Building" means a house, stable, latrine, shed, hut or other roofed structure, whether of masonry, brick, wood, mud, metal or other material, and any part thereof, and includes a well and a wall (other than a boundary wall) but does not include a tent or other portable and temporary shelter;"

13. The aforesaid definition leaves no manner of doubt that the building would include the structures outside the main buildings which are attached to the main house. It is not necessary for the owner to be in actual possession of the part of the building in relation to which the tax has been imposed. Mr. Chhibber has

relied on a judgment of the Supreme Court in the case of Corporation of the City of Nagpur Vs. The Nagpur Handloom Cloth Market Co. Ltd., and submitted that a part of the building would be included in the definition of a building. A perusal of the definition of building as given in the Cantonments Act would show that it is an inclusive definition. In the aforesaid judgment, the Supreme Court has held that the definition of "Building" which is inclusive in nature would contain an inherent indication that a part of a building would be a building for the purpose of imposition of liability to pay rates, and assessment of such liability. In view of the above discussions, I am of the view that the lower appellate court has erred in reversing the findings of law recorded by the trial Court.

14. Consequently, the present Regular Second Appeal is allowed. The judgment and decree dated 6.4.1979 passed in Civil Appeal No. 143 of 1977 by the learned Additional District Judge, Amritsar are hereby set aside. The judgment and decree dated 14.2.1977 passed by the Id. Sub Judge, 2nd Class, Amritsar in Suit No. 279/1978 are restored and the suit filed by the plaintiffs is dismissed.