(1983) 06 P&H CK 0019

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 286 of 1975

Faqir Chand and Others — APPELLANT

Vs

Municipal Committee and Others — RESPONDENT

Date of Decision : 02-06-1983

Acts Referred:
Punjab Municipal Act, 1911 — Section 81, 81(1)

Citation : (1984) 1 ILR (P&H) 164

Hon'ble Judges : Prem Chand Jain, J

Bench : Single Bench

Advocate : Arun Jain, for the Appellant; Naginder Singh, for the Respondent

Final Decision : Allowed

Judgement

Prem Chand Jain, J.—Faquir Chand and others Plaintiffs filed a suit for permanent injunction restraining the Municipal Committee Sultanpur Lodhi Defendant from recovering the arrears of the professional tax on the allegation that the recovery of the amount in dispute had become time barred. The suit was contested by the Defendant. The learned Subordinate Judge 1st Class granted a decree for permanent injunction in favour of the Plaintiffs restraining the Defendant from recovering the amount of tax as the same was barred by limitation.

2. Feeling aggrieved from the judgment and decree dated 20th June, 1972, of the trial Court, the Municipal Committee Defendant preferred an appeal. The learned Senior Subordinate Judge exercising the enhanced appellate powers upset the finding of the trial Court on limitation and held that the Municipal Committee could recover the amount in dispute at any time and no question of limitation would raise.

3. Dissatisfied from the judgment and decree of the learned Senior Subordinate Judge, Faqir Chand and others have filed the present Regular Second Appeal.

4. The only question that needs determination in the present case is whether a right is created to realise certain categories of dues without any limitation of

Time u/s 81 of the Punjab Municipal Act, 1911 (hereinafter referred to as the ''Act''), which reads as under:

81. Recovery of taxes etc. (1) Any arrears of any tax, water-rate (rent) fee or any other money claimable by a committee under this Act may be recovered on application to a Magistrate having jurisdiction within the limits of the municipality, or in any other place where the person from whom the money is claimable may for the time being be resident, by the distress and sale of any movable property within the limits of his jurisdiction belonging to such person. The costs of such proceedings shall be recoverable from the defaulter in the same manner as the said arrears.

(2) An application made under Sub-section (1) shall be in writing and shall be signed by the president, a vice-president or the secretary of the committee, but it shall not be necessary to present it in person.

5. It was contended by Mr. Arun Jain, learned Counsel for the Appellants, that Section 81 of the Act only provided a special procedure for the realization of the arrears of any tax, water-rate (rent) fee or any other money claimable by a committee, that the said amount could be recoverable only if its recovery was not barred by the law of limitation and that any claim which was otherwise time barred could not be recovered by resorting to the procedure referred to in Section 81 of the Act. In support of his contention, the learned Counsel had placed reliance on Kalu Ram v. New Delhi Municipal Committee and Anr. 1965 P.L.R. 1190 and New Delhi Municipal Committee Vs. Kalu Ram and Another, . On the other hand, it was contended by Mr. Naginder Singh, learned Counsel for the Respondents, that the provisions of Section 81 of the Act were not subject to any period of limitation, that the Municipal Committee could recover arrears of unpaid taxes by issuing distress warrants u/s 81 of the Act and that even if the remedy to recover arrears of such unpaid taxes was barred by limitation, then also the recovery of the same under the Act would legally be permissible. In support of his contention, the learned Counsel placed reliance on The Surat Borough Municipality Vs. Sarifa Karunnissa Begam Saheb and Sayed Mustafa Saysd Sakkaf Edroos Saheb, and The Surat Borough Municipality Vs. Sarifa Karunnissa, .

6. After giving my thoughtful consideration to the entire matter, I find considerable force in the contention of the learned Counsel for the Appellants. As would appear from the terms of Section 81 of the Act, it provides a summary procedure for the recovery of arrears of any tax, water-rate (rent) fee or any other money claimable by a committee under the Act. On an application made by the committee, a Magistrate having jurisdiction may recover the arrears claimable by a Committee by the distress and sale of any moveable property belonging to the defaulter. Under this section a summary procedure is provided for the recovery of certain categories of dues with the object of avoiding all complications involved in litigation. The provisions of this section cannot be construed to mean that even though the Municipal Committee had lost the remedy to recover the amount in a court of law, it still retained the right to

recover it by invoking the coercive machinery. Section 81 of the Act only provides a special procedure for the recovery of the claimable money and does not constitute a source or foundation of a right to claim the money otherwise time barred. Consequently I hold that the procedure prescribed u/s 81 of the Act cannot be resorted to by a Municipal Committee for the recovery of the time barred dues. In the view I am taking, I find full support from the judgment in Kalu Ram''s case (supra) which has been affirmed by the Supreme Court in New Delhi Municipal Committee''s case (supra).

7. Coming to the judgments cited by the learned Counsel for the Respondents, I find that in the wake of my conclusion based on the Supreme Court judgment, with respect, I am unable to subscribe to the view enunciated therein.

8. For the reasons recorded above, I allow this appeal, set aside the judgment and decree of the learned Senior Subordinate Judge Exercising the enhanced appellate powers and restore those of the trial Court. In the circumstances of the case, I make no order as to costs.

