

(1981) 05 DEL CK 0012

In the Delhi High Court

Case No : Regular Second Appeal No. 98 of 1972

Khushwant Singh and Another

APPELLANT

Vs

New Delhi Municipal Committee

RESPONDENT

Date of Decision : 11-05-1981

Acts Referred:

Citation : (1982) 21 DLT 410 : (1982) ILR Delhi 836

Hon'ble Judges : Yogeshwar Dayal, J

Bench : Single Bench

Advocate : K.L. Budhiraja, Sarvesh Kamtham and K.C. Mittal, for the Appellant;

Judgement

Yogeshwar Dayal, J.

(1) This second appeal is directed against the judgment and decree passed by the learned lower appellate court dated 29-5-72.

(2) The learned trial court had partly decreed the suit and partly dismissed the suit of the plaintiff appellants. Learned lower appellate court accepted the appeal of the respondent Committee and dismissed the appeal of the plaintiff appellant and thereby dismissed the suit of the plaintiffs,

(3) The suit of the plaintiff-appellants has been dismissed on the ground that it was barred under the Provisions of Section 86 of the Punjab Municipal Act (Punjab Act No. III of 1911), hereinafter called the Act.

(4) The plaintiffs, S. Khushwant Singh and Brg. Gurbux Singh filed a suit for a decree for perpetual injunction restraining the respondent Committee and its officials from recovering a sum of Rs. 43,369.99 from the plaintiffs, on ie

(5) The suit itself was filed on the allegations that the plaintiffs were the owners of the building known as "Scindia House". New Delhi which is a very old building having been constructed in 1933 or thereabout.

(6) It was averred that the building consists of both residential and commercial

premises which had been let to various tenants by the plaintiffs, Almost all the tenants, barring a few tenants, were tenants under the plaintiffs before November, 1939 and Therefore the plaintiffs are charging rents from these tenants at the rates at which the premises were let out on or before November, 1939 with the increase in rent permissible under various Rent Control Acts which had been in force in Delhi at the relevant time. (The plaintiffs attached with the plaint a list of all the tenants and the rents being paid by them).

(7) It was then averred that these rents were basis rents with the permissible increase under the Rent Acts and the total rents which the plaintiffs were recovering from the tenants came to Rs. 18940.33 per men which means that a sum of Rs. 2,27,283.96 was received by the plaintiffs as the annual rental income from the said property. Allowing 10% for repairs i.e. Rs. 8. 40 the annual letting value for the purpose of assessment of house tax came to Rs. 2,04,555.56. Calculated on "the annual letting value of the building, the house tax payable at 12% of the annual letting value comes to Rs. 25,596.45.

(8) It was further averred that vide a letter dated 2-12-1968 addressed by the Commercial and Taxation Officer of the defendant Committee, the plaintiffs were informed that a sum of Rs. 43,396.99 was due from the plaintiffs on account of house tax for the period ending 31-3-1969 in respect of the said property.

(9) The plaintiffs by their letter dated 13-12-68 called upon the defendant committee to give them details of the above mentioned amount but "to date no such details have been furnished by defendant to the plaintiffs". On the other hand, the defendant committee in order to put pressure on the plaintiffs to meet its unjust, illegal and unreasonable demand of Rs. 43,369.99 in respect of house tax payable on the above building referred the matter of recovery to the Collector, who has since issued a notice to the plaintiffs asking them to pay the above amount, otherwise, it would be recovered through distress measures.

(10) It was then submitted that the plaintiffs were liable to pay the amount of Rs 25)569.45 on standard rent or actual rent basis as house tax for the year ending 31-3-69 and for any subsequent year and that the defendant Committee had no right to recover the above amount from she plaintiffs, much less by distress measures.

(11) The defendant Committee contested the suit and filed a written statement. Inter-alia, the defendant committee pleaded that the suit was barred u/s 86 of the Act. It was pleaded that the suit was merely a device to some-how evade payment of Municipal taxes which is highly malafide and disentitles the plaintiffs to equitable relief of injunction. It was also pleaded that the suit was otherwise barred by Section 41 of the Specific Relief Act.

(12) On merits, it was pleaded that the plaintiffs are entered as assesseds of the property. The rates of rents being charged by the plaintiffs as alleged by them was denied. It was submitted that the suit property had been assessed strictly in accordance with Section 3(1) (b) of the Act.

(13) It was also submitted that the annual letting value had been fixed as per the rent which the plaintiffs were actually collecting from the premises in suit. The defendant Committee had revised the annual valuation for the purposes of house tax from Rs. 1,14,686.75 to Rs. 2,53,268.00 on the basis of actual/ reasonable rent w.e.f. 1-4-1967.

(14) After serving notices u/s 67 of the Act regarding the years 1967-68 while assessment for the year 1968-69 had been carried out as per Section 65 of the Act.

(15) It was then submitted that bill No. 10323 dated 16-9-68 for Rs, 43,820.97 for the period eliding 31-3-1967 was sent after finalising the assessment. As the plaintiffs failed to make payment, after service of the bills, notice for the said amount was duly issued to them.

(16) In the replication, the plaintiffs reiterated that the property had not been assessed according to the provisions of the Act. It was again submitted that the copy of the list of the rents was attached to the plaint as also to the copy meant for the defendants. This list contained the annual rents which the plaintiffs were recovering from the tenants and it was alleged that it appears the defendants had taken into account the water and electricity charges in determining the annual letting value of the property.

(17) The learned trial court on the pleadings of the parties, framed the following three issues :

1. Whether the impugned demand of the defendant Committee is illegal and without jurisdiction as alleged ? 2. Whether the suit of the plaintiff is barred by the provisions of -Section 86 of the Punjab Municipal Act ? 3. Relief.

(18) In support of its case the plaintiffs examined Shri Himmat Singh (PW 1) while the defendants examined Shri Raj Narain Garg, Statistical Assistant of the defendant committee as DWI.

(19) The defendant Committee, during trial, placed on record a notice dated 14-2-1968 (Ex. DI) proposing to revise "the annual value w.e.f. 1-4-67 to 31-3-68. The defendant Committee also disclosed in the notice the various tenants and the rents which were being charged by the plaintiff from them.

(20) The defendant Committee also produced another notice dated 14-2-1968 (Ex. D 2) proposing the enhanced rateable value for the year 1968-69 w.e.f. 1-4-68 and also produce the amended house tax list (Ex. D3) and the corresponding resolution of the Committee (Ex. U 4). It also produced on record the intimations Exts. D 5 and D 6 sent to the plaintiffs as a result of the revision of the assessment list which mentioned the resolution dated 19-3-68 finalising the assessment list as per notices for enhancement. It also produced various bills which were sent thereafter for collection.

(21) The learned trial court, however, took the view that for the year 1968-69 on

the basis of notice issued u/s 65 of the Act the suit is misconceived and is also barred under the provisions of Section 67 of the Act. As regards the other notice of enhancement of assessment for the year 1967-68 issued u/s 67 of the Act the Court took the view that it is bad and Therefore decreed the suit of the plaintiffs partly restraining the Committee from recovering the house tax on the basis of enhanced valuation for the year 67-68.

(22) Both the parties filed appeals before the learned lower appellate Court and as stated earlier the appeal of the committee was accepted and the appeal of the plaintiffs was dismissed. As a result, the suit of the plaintiffs was dismissed as barred u/s 86 of the Act.

(23) The learned trial court had decreed the suit of the plaintiffs, inter alia, on the ground that the enhancement of the valuation could not be w.e.f. 1-4-67 but could only be w.e.f. 1-4-68 as the notice dated 14-2-1968 (Ex. DI) could not take effect from 1-4-67 but could take effect from the following year in which it was given, namely, 1-4-1968.

(24) The learned trial court dismissed the suit of the plaintiffs in relation to the year 1968-69 on the ground that the notice was proper and assessment was made after following proper procedure and after giving opportunity to the plaintiffs and since the plaintiffs have not chosen to file appeal there from, the suit of the plaintiffs is barred u/s 86 of the Act.

(25) The learned lower appellate Court took the view that the decision of the learned trial court in holding that the notice for the year 1967-68 could not be given retrospective effect though it was issued in the same year was based on the judgment of Tatachari, J. (as His Lordship then was) in the matter of New Delhi Municipal Committee, vs, Punjab National Bank Ltd., R.S.A. I-Dofl963.

(26) The learned lower appellate Court however noticed that the judgment of Tatachari, J. has been reversed by Full Bench of this Court in New Delhi Municipal Committee Vs. Punjab National Bank Ltd. (L.P.A. No. 83/1967) wherein it was held that the amendment of the assessment list made u/s 67 of the Act could be operative from 1st April of the year during which the amendment was made and since in the present case the amendment was made during the relevant year the amended assessment could be operative w.e.f. 1-4-1967.

(27) The learned lower appellate Court thereafter took the view that the suit itself was barred u/s 86 of the Act.

(28) Mr. K.L. Budhiraja learned counsel for the appellants made the following submissions:

1. That the annual value has been arrived at after taking into account water and electricity charges paid by the tenants and this is admitted in the statement of Shri Garg, D.W. 1.
2. That the notice for assessment is bad as it does not give the formula or necessary facts for enhanced valuation.
3. That in arriving at the figure of the Committee was bound to fix the annual value annual letting value

by fixing the standard rent of the premises in dispute. 4. That the suit is not barred u/s 86 of the Act.

(29) Coming to the first submission it would be noticed that it is against the record. In fact, the statement of Shri Garg (D.W. 1) is just to the contrary. He has stated that in arriving at the annual letting value, the expenses for water and electricity payable by the tenants were excluded while arriving at the annual letting value. There is thus no merit in the first submission.

(30) The Second submission is only to be stated to be rejected. In fact, this objection should not have been allowed to be raised by the lower court the stage of arguments since it was not pleaded by the plaintiffs either in the plaint or in the replication. Further, the entire basis for enhancement is fully stated in the notice pointing out the actual rents which were being allegedly realised by the plaintiffs. This fact could be disputed before the assessing authority and the decision of the authority, if it went against the assesseds, could be challenged by way of appeal but no such appeal was preferred by the plaintiffs.

(31) The third and the fourth submissions may be dealt with together.

(32) I have already reproduced the substance of the allegations made in the plaint. It will be noticed from the plaint that no objection was even alleged to have been taken by the plaintiffs after receipt of the proposed notice of enhancement that the rents pleaded by them were the standard rents or that the rents allegedly being realised by the plaintiffs as claimed by the defendants were not standard rents under the Rent Control Act when they had filed objections. In fact, no such objections were taken before the committee and no such objection have been placed on record as having been made by them to the proposed enhancement.

(33) Again it will be noticed that the entire demand was -challenged as a whole but it was bifurcated by the learned lower appellate Court for the year 1967-68 and for the year 1968-69. The learned lower appellate Court rightly took the view that the learned trial court went wrong in splitting the claim of the plaintiffs in that behalf. However, I need not say anything further about it as I am in complete agreement with the learned lower appellate Court that the suit itself was barred u/s 86 of the Act.

(34) Provisions relating to tax are contained in Chapter V of the Act beginning from Section 61 to Section 86 of the Act.

(35) Section 61 provides for taxes which may be imposed. Section 62 provides for the procedure to impose taxes. Section 63 provides for preparation of assessment list and it contemplates that the Committee shall cause an assessment list of buildings and lands on which tax is imposed to be prepared, containing the various particulars including the " annual value and the amount of tax assessed thereon. Section 64- provides for publication and completion of assessment list. Section 65 provides for the revision of assessment list. In fact,

Section 64 contemplates that when the assessment list has been completed the Committee shall give public notice thereof and every person claiming to be owner or occupier shall be at liberty to take extracts there from and Section 65 provides that at the time of publication of such assessment lists, public notice of a time not less than one month thereafter would be given when the Committee would proceed to revise valuation and assessment. u/s 66 the assessment list is finalised after objections have been heard and it provides that subject to such amendments as may thereafter be duly made, the tax so assessed shall be deemed to be the tax for the year commencing on the 1st day of January or 1st day of April next ensuring as the Committee may determine. u/s 67, the Committee has been given power any time to amend the list by inserting the name of any person whose name ought to have been inserted or by inserting any property which ought to have been inserted or by holding the assessment of any property which has been erroneously valued or assessed through fraud, accident or mistake whether on the part of the Committee or of the assessee or in the case of a tax payable by the occupier, by the change in tenancy, after giving notice to any person affected by the amendment.

(36) Other material provisions are Sections 84 and 86 of the Act which are as under :

SECTION 84. Appeals Against Taxation (1)An appeal against the assessment or levy of any or against the refusal to refund any tax under this Act shall lie to the Deputy Commissioner or to such other officer as may be empowered by the State Government in this behalf: Provided that, when the Deputy Commissioner or such other officer as aforesaid, is, or was when the tax was imposed, a member of the Committee, the appeal shall lie to the State Government. (2) If, on the hearing of an appeal under the Section, any question as to the liability to, or the principle of assessment of, a tax arises on which the officer hearing the appeal entertains reasonable doubt, he may, either of his own motion or on the application of any person interested, draw up a statement of the facts of the case and the point on which doubt is entertained, and refer the statement with his own opinion on the point for the decision of the High Court. (3) On a reference being made under Sub-section (2) the subsequent proceedings in this case shall be, as nearly as may be in conformity with the rules relating to reference to the High Court contained in Section 113 and Order XLvi of the Code of Civil Procedure. (4) In every appeal the costs shall be in the discretion of the officer deciding the appeal. (5) Costs awarded under this section to the committee shall be recoverable by the committee as though they were arrears of a tax due from the appellant. (6) If the committee fail to pay any costs awarded to an appellant within ten days after the date of the order for payment thereof, the officer awarding the costs may order the person having the custody of the balance of the municipal fund to pay the amount."

(1)No objection shall be taken to any valuation or assessment, nor shall the liability of any person to be assessed or taxed be questioned in any other manner

or by any other authority than is provided in this Act. (2) No refund of any tax shall be claimable by any person otherwise than in accordance with the provisions of this act and the rules there under".

It may be noticed from the resume of the provisions of Chapter V that it provides a complete machinery for assessment and its procedure. It also provides for appeal and then reference to the High Court. Section 86, as worded, is a mandatory provisions and it contemplates that no objection shall be taken to any valuation of assessment, nor shall the liability of any person to be assessed or taxed would be questioned, in any other manner or by any other authority than is provided in the Act.

(37) Sections 84 and 86 came up for interpretation before the Supreme Court in the case of *Munshi Ram and others v. Municipal Committee, Chheharta* (1979 Municipalities and Corporation cases 344) wherein the Supreme Court, speaking through Sarkaria, J., observed in paragraphs 23, 24 and 25 as under :

"23. From a conjoint reading of Sections 84 and 86, it is plain that the Municipal Act, gives a special and particular remedy for the person aggrieved by an assessment of tax under this Act, irrespective of whether the grievance relates to the rate or quantum of tax or the principles of assessment. The act further provides a particular forum and a specific mode of having this remedy which is analogous to that provided in Section 66(2) of the Indian Income Tax Act, 1922. Section 86 forbids in clear terms the person aggrieved by an assessment from seeking his remedy in any other forum or in any other manner than that provided in the Municipal Act". "24. It is well recognised that where a Revenue Statute provides for a person aggrieved by an assessment there under, a particular remedy to be sought in that forum and in that manner, and all other forums and modes of seeking it are excluded. Construed in the light of this principle. It is clear that Sections 84 and 86 of the Municipal Act bar, by inevitable implication, the jurisdiction of the Civil Court. When the grievance, of the party relates to an assessment or the principle of assessment under this Act. "25. In the view we take we are fortified by the decision of this Court in *Firm Seth Radha Kishan (Deceased) Represented by Hari Kishan and Others Vs. The Administrator, Municipal Committee, Ludhiana*, wherein Sections 84 and 86 of this very Punjab Municipal Act, 1911 came up for consideration. Therein, the Municipal Committee, Ludhiana, imposed a terminal tax on Sambhar salt and assessed the appellant, therein, to a sum of Rs. 5,893.00 towards that tax at the rate of Rs. 10.00 per maund under Item 69 of the Government Notification by which the terminal tax was imposed. The assessee filed a suit against the Municipal Committee in the Civil Court, contending that Sambhar Salt ought to have been assessed at the rate of 3 pies per maund under Item 68: that he had been illegally assessed under Item 69 at the higher rate, and claimed refund of the amount paid by him, with interest. The Committee, inter alia, contended that Sambhar Salt was not common salt, and the Civil Court had no jurisdiction to entertain the suit. The trial Court held that Sambhar Salt was common salt within

the meaning of Item 68 of the Schedule, that the imposition of tax on it under Item 69 of the Schedule was illegal, and Therefore, the Civil Court had jurisdiction to hear and determine the suit by virtue of the CPC

(38) It may be noticed that the burden of arguments of learned counsel for the appellants relates to application of correct "Principles of assessment " by the Committee according to the Supreme Court the Act provides a particular forum and specific mode of having this remedy and Section 86 in clear terms forbids resort to any other forum or remedy even where grievance of the party relates to "the principles of assessments under the Act".

(39) It appears to me that the reasoning of the Supreme Court in the aforesaid case fully applies to house tax as well though the case before the Supreme Court related to the assessment of professional tax.

(40) The present case is not a case which could be called as levying tax outside the Act or amounted to abuse of powers under the Act. There is no word in the plaint that the principles of natural justice or the provisions of the Act were not followed so that it may amount to abuse of its powers by the Committee. In fact, the aforesaid provision provide complete machinery and Section 86 forbids resort to any other machinery for challenging the assessment of house tax.

(41) Learned counsel for the appellants also referred to me the decision of the Supreme Court in the case of *daulat Rai Kapoor v..New Delhi Municipal Committee and another*, 17 (1980) D.L.T. 88 to show that the annual letting value could not exceed the standard rent and the fact that the landlord was receiving higher rents than the standard rent is immaterial. It will be noticed that this judgment was given in exercise of powers under Article 226 of the Constitution and even if the principle enunciated therein is not followed, the remedy of suit is barred. I am not saying anything about the powers of the High Court under Articles 226 or 227 of the Constitution. In any case, no such objection was raised before the assessing authority and the objection relates to the principle of assessment which, in view of the aforesaid decision of the Supreme Court, cannot be urged in suit in view of Section 86 of the Act.

(42) The learned counsel then relied upon the decisions of" the Supreme Court in *Union of India (UOI) Vs. Tarachand Gupta and Bros*, and *Shree Raja Kandregula Srinivasa Jagannatha Rao Pantulu Bahadur Garu Vs. State of Andhra Pradesh*, . These cases have nothing to do with the scheme of the present Act with which we are concerned and are of no assistance in finding out the true scope of Section 86 of the Act. Section 89 has since been authoritatively interpreted by the Supreme Court in the aforesaid case.

(43) I am, Therefore, in complete agreement with the learned trial court in holding that the Suit is barred u/s 86 of the Act.

(44) The result is that the appeal fails and is dismissed with costs.