(1972) 11 P&H CK 0028

In the Punjab And Haryana At Chandigarh

Case No : Civil Regular Second Appeal No. 1183 of 1965

Messrs Khalsa Shoe Co. APPELLANT

Vs

Municipal Committee, Ambala City RESPONDENT

Date of Decision : 06-11-1972

Acts Referred:
Punjab Municipal Act, 1911 — Section 3(1)

Citation : (1972) 11 P&H CK 0028

Hon'ble Judges : M.R. Sharma, J

Bench : Single Bench

Advocate : H.L. Sarin and M.L. Sarin, for the Appellant; P.C. Mehta, for Advocate-General, for the Respondent

Final Decision : Allowed

Judgement

M.R. Sharma, J.—R.S. As Nos. 1183 to 1186 of 1965 involve common questions of law and fact and hence are being disposed of by this judgment.

2. The appellants filed suits in the court of the learned Sub-Judge First Class, Ambala questioning the legality of notification dated June 4, 1957, issued by the Government. The respondent Committee had imposed water-tax at the rate of 5 per cent of the annual rental value as defined in section 3 (1) of the Punjab Municipal Act (herein after called the Act.) This tax was imposed on the occupiers of the buildings. The pleas raised in the plaint were controverted by the respondent-Committee and the parties went to trial on the following issues :--

(1) Whether the imposition of water-tax by the defendant is illegal, ultra vires, unreasonable, irrational and beyond jurisdiction of the Municipal Committee for the reasons given in the plaint ?

(2) Whether the plaintiffs, and if so, which of them are estopped from filing the suit ?

(3) Whether the suit is barred by limitation ?

(4) Whether the defendant is entitled to special costs ?

(5) Relief.

The suits were consolidated and the evidence was recorded in the suit out of which R.S.A. No. 1183 of 1965 has arisen. The learned trial court decided issue No, (1) against the plaintiff-appellants and decided issues Nos. (2), (3) and (4) in their favour. Because of the decision on issue No. (1) the suits of the plaintiff appellants were dismissed. The appeals filed by the plaintiff-appellants were dismissed by the learned Senior Subordinante Judge exercising enhanced appellate powers on April 30, 1965.

3. The learned counsel for ''he appellants has brought to my notice the earlier Municipal Acts which has since been repealed. Section 44 (1) of the Punjab Municipal Act of 1891 runs as under :--

44 (1): Besides the taxes mentioned in the foregoing sections, a committee, with the previous sanction of the Local Government, may, for the purpose of constructing or maintaining works for the supply of water to the municipality or paying the principal or interest of any loan raised for the construction of such works, impose, in manner directed by this Act a tax, to be called the water tax, upon buildings or lands which are so situated that their occupiers can benefit by the works.

This section gave express power to a municipal committee to impose the impugned tax. This section was, however, repealed by Municipal Act 1911. Section 61-B (h) of this Act runs as follows:---

61. Subject to any general or special orders which the Governor-General in Council may make in this behalf, and to the rules any committee may, from time to time, for the purposes of this Act, and in the manner directed by this Act, impose in the whole or any part of the municipality any of the following taxes, namely :--

(A)... ... ...

(B) with the previous sanction of the Government

... ...

(h) for the purpose of constructing or maintaining works for the supply of water to the municipality or paying the principal or interest, or both principal and interest, of any loan raised for the construction of such works, a tax payable by the occupier or, if there be no occupier, by the owner on the annual value of such buildings or lands as are so situated that their occupiers can benefit by the works. In determining the rate of such tax regard may be had among other considerations, to the distance of the buildings or Lands from the nearest point at which the water is deliverable from the works and to their level:

Provided that the total net proceeds of the tax, together with the estimated income for water supplied from the works under sections 97 and 98, shall not exceed the amount required for such purposes

Under this provision the Municipal Committee was authorised to impose tax on the annual value of a building payable by the occupier and failing that by the owner of the building. Section 96 of this Act provided that the municipalities in which water tax was imposed shall be duty-bound to make all arrangements for gratuitous supply of water to the public as were considered necessary. By virtue of Punjab Municipal Amendment Act 1928, section 61 of the Municipal Act was re-enacted and clause (hi of section 61 B was deleted. Section 96 of the Act was also reconstituted but it is not necessary for the purpose of these appeals to notice the changes made in that section Section 61 of the Municipal Act as it stands at present entitles the Municipality to impose certain taxes which are mentioned in that section but water-tax is not one of the taxes named as such. On the basis of this change in law, it is submitted by the learned counsel for the appellants that now the municipality has no jurisdiction to impose the impugned tax.

4. On behalf of the respondent, it is urged that u/s 61 (2) of the Act, the municipality has been empowered to impose any other tax with the previous sanction of the State Government subject of course to the condition that the proposed impost should be within the jurisdiction of the State Legislature. It is submitted that the present tax was a tax on the buildings which was imposed on the occupiers thereof and this tax falls within Entry No. 49 of List II of the Seventh Schedule of the Constitution. In support of this submission, the learned counsel for the respondents has also drawn may attention to section 61 (1) (a) of the Act which shows that tax payable by an owner on building and land shall not exceed twelve and a half per cent, on the annual value. The learned counsel has submitted that by some subsequent notification, the State of Haryana has enhanced this limit to 20 per cent, but he has not been able to show whether such an enhancement of the limit could be made by a mere notification to be published in the official Gazette instead of amending the statute. In order to assess the merits of the rival contentions it becomes necessary to notice section 61 of the Act which runs as follows :--

61. Taxes which may be imposed.--Subject to any general or special orders which the State Government may make in this behalf and to the rules, any committee may, from time to time for the purposes of this Act, and in the manner directed by this Act, impose in the whole or any part of the municipality any of the following taxes, namely :--

(1) a) a tax payable by the owner, on buildings and lands--

(i) not exceeding twelve and a half per centum on the annual value ;

(ii) rot exceeding in the municipalities of Simla, Dharamshala and Dalhousie one anna and four pies, and elsewhere one anna, per square yard of the ground area ; or

(iii) not exceeding in the municipalities of Simla, Dharamshala and Dalhousie four rupees, and elsewhere three rupees per running foot of frontage in streets or bazars ;

Provided that in the whole or any part of the municipality of Simla there may be imposed both a tax on buildings and a tax on land :

Provided further that in the case of lands and buildings occupied by tenants in perpetuity, the tax shall be payable by such tenants ;

(b) a tax on persons practising any profession or art or carrying on any trade or calling in the municipality ;

(c) a tax, payable by the owner, on all or any vehicles other than motor vehicles, animals used for riding, draught or burden, and dogs, when such vehicles, animals used as aforesaid, and dogs are kept within the municipality ;

(d) a tax, payable by the employer, on menieal domestic servants ;

(e) a tax, payable by the occupier of any building in respect of which the committee has, in exercise of the powers conferred by sections 159 to 165 of this Act, undertaken the house scavenging ;

(f) a tax payable by persons presenting building applications to the committee;

Provided that a committee shall not impose any tax without the previous sanction of the State Government when--

(i) it consists of members less than three-fourth of whom have been elected, or

(ii) its cash balances have, at any time within the three months preceding the date of the passing of the resolution imposing the tax, fallen below Rs. 20,000 or one-tenth of the income accumulated in the previous financial year whichever amount shall be less.

(2) Save as provided in the foregoing clause, with the previous sanction of the State Government any other tax which the State Legislature has power to impose in the State under the Constitution.

Nothing in this section shall authorise the imposition of any tax which the State Legislature has no power to impose in the State under the Constitution.

Provided that a committee which immediately before the commencement of Constitution was lawfully levying any such tax under this section as then in force, may continue to levy that tax until provision to the contrary is made by Parliament.

The scheme of this section shows that the Legislature has enumerated some taxes which a municipality is empowered to impose. The words " any other tax " appearing in sub section (2) above shows that taxes of the type expressly mentioned in sub-section (1) above cannot be imposed by a municipal committee in exercise of residuary power given under sub-section (2) with the previous sanction of the State

5. The question which now falls to be determined is whether by excluding a tax expressly mentioned in the earlier Acts from the category of taxes mentioned in section 61 (1) of the Act, the Legislature still intended to authorise a municipal committee to impose the same tax u/s 61 (2) of the Act. In The State of Bombay Vs. R.M.D. Chamarbaugwala, , it has been observed that in order to interpret the provisions of a statute it is permissible to a Court to take into consideration the history of the legislation. Section 61 of the Punjab Municipal Act 1911, noticed above clearly shows that the legislature had made an express provision for the imposition of water-tax When the Act was amended in the year 1923, the legislature expressly repealed this provision. In this situation, it cannot be said that the legislature entitled the municipal committee to impose the same tax u/s 61 (2) of the Act. I am fortified in this conclusion by a reading of section 61 (1) of the Act which enumerates the categories of taxes which a municipal committee can impose. If it was desired to give all embracing powers to the municipal committee to impose taxes by inserting section 61 (2) in the Act, then it was a simple thing to do away with the enumeration of the categories of taxes expressly mentioned in section 61(1) of the Act.

6. Again, the very argument advanced by the learned counsel for the respondent that the impugned tax fell within the ambit of Entry 49 of List II of the Seventh Schedule of the Constitution shows that it was a house-tax under a different name. The incident of the impugned tax is the occupation of a house. Merely because it is styled as water-tax it does not cease to remain a house-tax. The imposition of a house tax is specially authorised u/s 61 (1) (a) of the Act. Consequently, this tax cannot be imposed u/s 61 (2) of the Act because the latter section itself provides that under that sub-section only those taxes, which are not mentioned in section 61 (1) of the Act, can be imposed.

7. It is a settled principal of law that two parts of a statute have to be read together. Section 61 (1) (a) of the Act cannot be interpreted in a manner which brings it in conflict with section 61 (2) of the Act. Even if it is assumed that a house-tax can be imposed by a municipal committee in exercise of its residuary power u/s 61 (2) of the Act, the imposition cannot travel beyond the maximum limit laid down in section 61 (1) of the Act. Furthermore, the State Government while granting sanction for the imposition of a tax u/s 61 (2) of the Act exercises, an executive function. Such an exercise of power cannot travel beyond the limits set by the statute. Under these circumstances, merely because the Government has enhanced the limit of house-tax to the extent of 20 per cent by an executive notification it cannot be said that the limit prescribed by the statute stands modified In my considered opinion, the impugned tax is ultra vires the powers of the municipal committee.

8. In view of what has been stated above, the suits filed by the present appellants deserve to succeed and I order accordingly. These appeals are

consequently allowed but with no order as to costs.

