(1986) 05 P&H CK 0101

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 501 of 1985

Municipal Committee — APPELLANT

Vs

Krishanlal and Another — RESPONDENT

Date of Decision : 09-05-1986

Acts Referred:

Punjab Municipal (Executive Officer) Act, 1931 — Section 4
Punjab Municipal Act, 1911 — Section 61(1), 65, 67, 84, 86

Citation : (1987) 1 ILR (P&H) 342

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

Bench : Single Bench

Advocate : T.S. Doabia, for the Appellant; R.L. Gupta, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Sodhi, J.—The controversy in appeal here is with regard to the jurisdiction of the Civil Court to grant an injunction to the Plaintiff seeking to restrain the Municipal Committee from recovering house-tax, as assessed, in respect of a shop situated in Bhatinda in the context of the provisions of the Punjab Municipal Act, 1911 (hereinafter referred to as the Act). Section 86 is in the following terms:

86. (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 thereunder.

2. The power to revise the valuation and assessment and the assessment list as conferred by Sections 65 and 67 of, the Act has in terms of Section 4(b)(ii) of the Punjab Municipal (Executive Officer) Act, 1931, to be exercised by a sub-committee consisting of the Executive Officer and two members of the Municipal Committee appointed for this purpose. In the present case, the impugned order

Exhibit P. 5 of March 31, 1981, admittedly bears the signatures of only two members of the Municipal Committee, but not the Executive Officer. This being so, on the face of it, it was not a valid order, not having been passed by the competent authority and the demand for house-tax thereunder was, thus, not legal.

3. Counsel for the Municipal Committee, Mr. T.S. Doabia, however, sought to contend that by virtue of the provisions of Section 84 and the bar contained in Section 86 of the Act, the jurisdiction of the Civil Court stood barred and the remedy for the Plaintiff thus lay only under the Act. Cited in support here was the judgment of this Court in Romesh Kumar and Others Vs. The Municipal Committee, Gurdaspur and Others, , where it was held that Sections 84 and 86 of the Act bar the jurisdiction of the Civil Court in matters of assessment and computation of house-tax u/s 61(1)(a) of the said Act.

4. A reading of Romesh Kumar''s case (supra), would show that it was founded upon the earlier judgment of the Supreme Court in Munshi Ram and Others Vs. Municipal Committee, Chheharta, , where Sarkaria, J. speaking for the Bench observed:

It is well-settled that where a Revenue Statute provided for a person aggrieved by an assessment thereunder, a particular remedy to be sought in a particular form, in a particular way, it must be sought in that form and in that manner, and all other forms 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 where the grievance of the party relates to an assessment or the principle of assessment under this Act.

It was held that in making the assessment in that case, the Municipal Committee had acted "under the Act" and it followed, therefore, that the civil court''s jurisdiction to entertain and decide the suit was barred.

5. In adjudicating upon the jurisdiction of the civil court, the important point to consider thus is whether what was sought to be challenged was something done "under the Act" or otherwise. The remedy of appeal against the assessment and levy of tax as provided u/s 84 of the Act is only with regard to such assessment and levy "under the Act". In a case like the present, where the impugned order has been passed in violation of the statutory provisions by an authority not duly constituted, it cannot be said to be an order passed "under the Act" and the bar of Section 86 of the Act cannot, therefore, stand in the way of the Plaintiff seeking relief from the civil court.

6. A similar situation arose in Municipal Committee Amritsar v. Bala Ishar Dass 1982 S.L.J. P&H 134, where S.P. Goyal, J. observed:

The law is, therefore, well-settled that the legality on merits of the order of the Municipal Committee would not be open to challenge in a civil suit but if the order has been passed by a person or authority not competent to do so or has been passed in violation of the provisions of the statute or of principles of natural justice then the civil court would certainly have the jurisdiction.

This was a case where the impugned order of assessment of house-tax which was required to be passed by a sub-committee consisting of two members of the Municipal Committee and the Executive Officer was in fact passed by only one member of the subcommittee. It was held that the order was void and without jurisdiction and the Civil Court had the requisite jurisdiction to grant an injunction to restrain the Municipal Committee from recovering the house-tax under that order. This authority constitutes a binding precedent here.

7. It follows that in the circumstances as emerge in this case, the Civil Court indeed had the requisite jurisdiction to grant to the Plaintiff the relief claimed. This being so, no exception can be taken to the judgment and decree of the lower appellate Court, which is hereby upheld and affirmed. It is clarified, however, that it would be open to the Municipal Committee to assess and recover house-tax even in respect of the period in question in the present suit, in accordance with the relevant provisions of ''the Punjab Municipal Act, 1911, if they so permit.

8. This appeal is accordingly dismissed with costs.

