
(1964) 10 P&H CK 0018
In the Punjab And Haryana At Chandigarh
Case No : Second Appeal No. 1482 of 1962

Municipal Committee Chheharta

APPELLANT

Vs

Munshi Ram and Others

RESPONDENT

Date of Decision : 22-10-1964

Acts Referred:

Punjab Municipal Act, 1911 — Section 61(1), 84, 86

Citation : AIR 1965 P&H 168

Hon'ble Judges : D.K. Mahajan, J

Bench : Single Bench

Judgement

(1) This second appeal is directed against the decision of the Additional District Judge, Amritsar reversing on appeal the decision of the trial Court dismissing the plaintiffs' suit.

(2) The plaintiffs are the members of a partnership known as Bharat Industries Chemical Colours, Chhenarta and are registered under the Factories Act. The Chheharta Municipal Committee had by a notification dated 15th of May 1946 imposed profession tax u/s 61(1)(b) of the Punjab Municipal Act. In the initial stages the tax was Rs. 15/- in the year 1958 by another notification.. The partners disputed the liability to pay Rs. 1200/- as tax and according tot hem only Rs. 200/- was payable because the profession of the partnership was one. This contention did not prevail with the Assessing Authority with the result that the present suit for injunction restraining the Municipal Committee from realising tax more than Rs. 200/- was filed. The Municipal Committee in defence raised the pleas that he civil courts had no jurisdiction that the tax was on individuals, i. e. persons and not on business or trade, and that no injunction in circumstances could be granted.

The trial court held that civil courts' jurisdiction was barred by reason of sections 84 and 86 of the Municipal Act and that tax at the rate of Rs. 200/- per partner could be recovered and in this view of the matter dismissed the suit. Against that decision an appeal was taken to the District Judge which came up for hearing

before the Additional District Judge Amritsar. The learned Additional District Judge did not deal with the question of jurisdiction. He deal with the question whether an independent tax on each of the partnership could be imposed. He came to the conclusion that a collective tax on the partnership could be imposed and for this he relied on Davies v. President of the Madras Municipal Commission ILR Mad 140. In this view of the matter, decision of the trial Court was reversed and plaintiffs' suit was decreed. It is against this decision of the trial Court was reversed and plaintiffs' suit was decreed. It is against this decision that the Municipal Committee has come up in second appeal.

(3) Mr. Anand Saroop, learned counsel for the Committee in the first instance raised the contention that the civil courts have no jurisdiction to deal with the matter. He relies on the provisions of sections 84 and 86 of the Punjab Municipal Act and the decision of their Lordships of the Supreme Court in Firm Seth Radha Kishan v. Administrator Municipal Committee, Ludhiana AIR 1963 Sc 1546 and of the is Court in Kelash Nath and Others Vs. Municipal Committee, Batala, . So far as the decision of the Supreme Court is concerned it does not support Mr. Anand Saroop. Their Lordships made it abundantly clear that a suit in the civil court will lie if a special Tribunal abuses its power or does not act under the Act but in violation of its provisions. This will show that the question whether the tax has been imposed under the provisions of the Act is interconnected with the question of jurisdiction. As I am taking the view that payment in excess of Rs. 200/- is not justified under the Act a fortiori the civil courts can entertain the suit.

In this connection reference may also be made to the Full Bench decision of the Lahore High court in Municipal Committee, Montgomery v. in somewhat similar circumstances it was held that the civil courts had the jurisdiction to deal with the matter that arose in that case and a similar argument based on sections 84 and 86 of the Punjab Municipal Act was repelled. I, therefore see no force in the argument that the jurisdiction of the civil court was barred to entertain and deal with the present suit.

(4) This brings me to the second contention of the learned counsel which is that the tax is on persons and as the partnership has no legal entity therefore each partner is carrying on the profession of a factory owner and liable pay tax although the factory, the ownership of which gives rise the liability is one. It is not disputed that the partners were not carrying on separate business. This is also not the case that order to avoid tax the partners who had separate business amalgamated their businesses. Even if they had does so I do not see anything wrong in such amalgamation. All that can be said with regard to any such amalgamation is whether it has come about merely for the purposes of evading tax and that in fact the business are and continue to be separate.

In the present case I am not concerned with such a contingency. The partnership has been carrying on the business as such then it was taxed in 1946. It is true that each partner paid the tax because the at that time as nominal and nobody thought it worthwhile to contest the matter. If the exaction then was illegal it will

not cease to be so, merely because it has been acquiesced and submitted to in the past. Therefore the only question that requires to determination is whether it is partnership which is liable to tax or the tax has to be paid by each member of the partnership as an individual though the basis on which the liability arises is one that is the business is one.

(5) The word "person" is not defined in the Municipal Act. The Punjab General Clauses Act, section 2(40), defines the same in these terms:

"Person" shall include any company or association or body of individuals whether incorporated or not."

(6) It will be seen that partnership is a person within this definition. Therefore it follows that in the case of a partnership carrying on business or profession trade or calling the tax has to be borne by the partnership as such. It is no doubt true that a partnership has no legal entity and is a body of persons who are jointly and severally owners of the business of the partnership and so also its liabilities. But the fact still remains that section 2(40) of the General Clauses Act does recognize it as a person. Therefore, if partnership is liable to tax for the partnership business it cannot be suggested that its members are also liable to pay in being the owners of that business. In this way the liability on that partners will fall twice. This the Act does not either envisage or contemplate. Though the tax can be recovered from one or more of the members of such partnership but the liability of each members not for the purpose of tax to be taken in the sense in which Mr. Anand Sarup will have it namely that each member of the partnership is carrying on a separate trade or calling etc. and therefore is liable to pay tax though the business of each individual partner is the same partnership business. The scheme of section 61 of the Act does not warrant this contention of Mr. Anna Sarup.

As in clauses (a), (b), (e) and (f) of sub-section (1) of section 61, the tax is on the persons who own buildings or practice any profession etc. or occupiers of any building or presenting buildings applications. Same is that scheme with regard to clause (d). Tax is being levied either on a building or on a profession or business. It is not the intention of section 61 that the incidence of tax increases or decreases according to the number of owners of the building etc. i. e. if building is owned by one person he pays one tax and if it is owned by three persons the incidence of tax increases three times.

This view also finds support from the The Municipal Commissioner of Negapatam v. Sadaya Pillai ILR Mad 74 and ILR Mad 140. I am in respectful agreement with the entire reasoning of the learned Judges in both these cases. There is no rational basis for that demand of tax from each individual partner of a firm when the law recognises a firm as a person which can be taxed for a business or trade carried on by it. After giving the matter my careful consideration. I am clearly of the view that the learned District Judge was perfectly right in decree in the suit.

(7) For the reasons given above I dismiss this appeal but in view of the difficult

nature of the case I would not make any order as to costs.

(8) Mr. Anand Sarup prays for a certificate for leave to appeal under clause 10 of the Letters Patent. I grant the necessary certificate.

(9) Appeal dismisses.