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**(1961) 05 P&H CK 0004**

**In the Punjab And Haryana At Chandigarh**

**Case No :** Regular Second Appeal No. 609 of 1956

Municipal Committee, Kalka

APPELLANT

Vs

Raj Kishore

RESPONDENT

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**Date of Decision :** 09-05-1961

**Acts Referred:**

Punjab Municipal Act, 1911 — Section 86

**Citation :** (1961) 05 P&H CK 0004

**Hon'ble Judges :** P.C. Pandit, J

**Bench :** Single Bench

**Advocate :** B.S. Chawla, for the Appellant; G.P. Jain, for the Respondent

**Final Decision :** Dismissed

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## Judgement

P.C. Pandit, J.—This appeal arises out of a suit brought by Raj Kishore, plaintiff, for a permanent injunction restraining the defendant-Committee from recovering Rs. 2,920/10/9 and Rs. 987/15/9 on the basis of two notices, on account of octroi duty charged on the import of stone material during the years 1952/53.

2. The allegations of the plaintiff were that he had entered into a contract with the Pepsu Government for the carriage of stone material from the Pepsu Government Quarry at village Parwanu. This material was brought to the Railway plots at Kalka, which had been leased out to the Pepsu Government, and from there, the same was loaded into the railway wagons and sent to the destination. This material belonged to the Pepsu Government and was to be utilized for the building of Government roads. On 26th May 1952, vide Exhibit P.W. 5/1, the Executive Engineer, Patiala Division, Buildings and Roads, Patiala, informed the President of the defendant-Committee that their Department had concluded an agreement with the plaintiff-contractor for the supply of road material (bajri, boulders and ballast) to be extracted from the Pepsu Government Quarry at Parwanu for supply to Pepsu Public Works Department in connection with the Government road works and requested the defendant-Committee not to charge octroi duty on the material thus supplied as the same was to be utilized for

Government works. Another letter, exhibit P.W. 5/2, was sent by this Executive Engineer on 2nd June 1952 to the President of the defendant-Committee to the same effect, in which the quantity of the material to be supplied viz., 6 lacs c. ft., by the plaintiff was also mentioned. In June 1952 the plaintiff carried the stone material, which passed through the Municipal Area of the defendant-Committee and was then despatched to various destinations as desired by the Pepsu Government. This material was allowed to be deposited on the Railway plots without payment of any octroi duty on the same. During the last elections, Des Raj was elected the president of the defendant-Committee. Since he was not on good terms with the plaintiff, he got two resolutions passed by the defendant-Committee in the years 1954 for the recovery of Rs. 2,920/10/9 and Rs. 987/15/9 as octroi duty from the plaintiff on the import of the above-mentioned stone material into the Municipal Area of the defendant-Committee. This led to the present suit by the plaintiff against the defendant-Committee. The plaintiff alleged that these demands were illegal because he was not the owner of the goods, in respect of which the arrears of octroi duty were being claimed, that the Executive Engineer, Patiala Division, had written two letters to the defendant-Committee and had also issued certificates to the effect that the material which was being carried through the limits of the defendant-Committee, was to be utilised for the construction of the Pepsu Government roads; that these letters and certificates had been duly honoured by the defendant-Committee, which was now estopped from making any demand; and that the defendant Committee was not authorised to levy any octroi duty on the goods which were never imported within the Municipal limits of the defendant-Committee but the same merely passed through the Municipal limits and were handed over to the Railway Administration for safe carriage, to the destination at the Pepsu Government expense for road construction in the Pepsu State.

3. This suit was contested by the defendant-Committee, which pleaded that the plaintiff was liable to pay the octroi duty; that no valid certificates had been produced by him as required by law; and that the plaintiff had filed a similar suit sometime back, which was decided against him and the present suit was, consequently, barred by the principle of res judicata.

4. On the pleadings of the parties, the following issues were framed:

1. Is the amount not recoverable from the plaintiff on the grounds alleged in para No. 7 of the plaint.

2. Is the present suit barred by the provisions of res judicata?

3. Is the suit barred u/s 86 of the Punjab Municipal Act?

5. The trial Judge held that the plaintiff was liable for the amounts claimed by the defendant-Committee from him; and that the present suit was barred under the rule of res-judicata but the same was not barred under the provisions of section 86 of the Punjab Municipal Act. On these findings, the plaintiff's suit was dismissed.

6. Aggrieved by the decision of the trial Court, the plaintiff went in appeal to the learned Additional District Judge, Ambala, who reversed the findings of the trial Court on issues 1 and 2, accepted the appeal and decreed the plaintiff's suit. Against this decision, the defendant Committee has come here in second appeal.

7. The first question for decision in this appeal is whether the road material in dispute was liable to octroi duty or not. Item 2 appearing under the head (a) of the "List of exemptions from octroi" contained in Notification No. 4608-(C)-52/II-4201, dated 12th July 1952, (Exhibit D.A./14), issued by the Local Government Department in pursuance of the provisions of sub-section (10) of section 62 of the Punjab Municipal Act, 1911, runs as under:-

All road making materials such as timber, stone-ballast, coal-tar, steel, bitumen, sand, cement, Shingle and bricks for soiling coats and coal and other fuel used in steam road rollers or for melting coal tar imported by Government of India or by any local Government, or by any local authority (including a cantonment authority, or by contractors for use on the roads maintained by the Public Works Department of Government or any local authority (including a cantonment authority)), if accompanied at the time of import by a certificate signed by a Gazetted Officer of the Government department or by the President, Executive Officer or Secretary of the local Authority concerned, that such articles are required for road-making only.

According to this item, all road making materials imported by the Government of India or by any local Government or by contractors for use on the roads maintained by the Public Works Department of Government will be exempt from the octroi duty, if the same is accompanied at the time of import by a certificate signed by a Gazetted Officer of the Government Department that such articles are required for road making only. In the present case, it is common ground that the road material belonged to the Pepsu Government and the plaintiff was merely a carrier of these goods. He had taken a contract to bring these goods from the Government Quarry in village Parwanu to the Railway plots at Kalka, which were taken on lease by the Pepsu Government. These goods were to be loaded in the Railway wagons for carriage to the various destinations for road construction in the Pepsu State. These goods at the time of import had to be accompanied by a certificate signed by a Gazetted Officer of the Government Department that they were required for road making only. It is undisputed that the Executive Engineer, Patiala Division, Buildings and Roads, Patiala, wrote two letters on 26th May 1952 and 2nd June 1952, Exhibits P.W. 5/1 and P.W. 5/2, to the President of the defendant-Committee, informing him that the plaintiff-contractor had concluded an agreement with the Government for the supply of 6 lacs c. ft. road material from the Government Quarry at Parwanu to the Pepsu Public Works Department for use in connection with the Government road works and requested the defendant Committee not to charge any octroi duty on the same. It is also common ground that the persons who actually brought this material into the Municipal Area of the defendant Committee had with them

exemption certificates from the Department concerned. Some of these certificates were signed by the Gazetted Officer of the Department and some by others, who were not Gazetted Officers. Shri Rajinder Singh, Executive Engineer, P.W. 6, was in charge of this Quarry in 1952/53. He admitted that blank exemption certificates signed by him were handed over to the Sub Divisional Officer and that a number of exemption certificates produced in this case had been signed by Hardit Singh, Overseer. Babu Singh, an employee of the Pepsu Government, appeared as P.W. 3 and the learned trial Judge, while dealing with his evidence, has remarked as under:-

This witness deposed that the exemption certificates marked Exhibits P. 4 to P. 1039 and Exhibits P. 1130 to 4022 were signed by Shri Balaka Singh, Assistant Executive Engineer. He also identified the signatures of Shri Bakhshish Singh, Assistant Engineer on the exemption certificates, Exhibits P. 1040 to P. 1138. He also stated that the officers used to sign the blank exemption certificates which were handed over to the Overseer in charge of the Quarry. The blanks were filled by the witness or by the Overseer in pursuance of the authority given by the said officers. He admitted that this authority was a verbal one and not in writing. In cross-examination he admitted that the exemption certificates, Exhibits D 622 to D. 727, D. 728 to D. 7/6, D. 690 to D. 1054 and D. 1096 to D. 1332, were filled in by him and that they were signed by Shri S.R. Gupta and Shri S. Mohan, Overseers. He also admitted that certain other exemption certificates, Exhibits D. 1333 to D. 1541, and D. 1578 to D. 1610 and D. 1611 to D. 2273, related to the contract of the plaintiff and that they were signed by the Overseer alone, who was not a Gazetted Officer.

The goods in dispute were brought to the Railway plots on the basis of those exemption certificates. It appears from the evidence that sometimes objection was raised by the employees of the defendant-Committee regarding these certificates that they were not properly filled up and were not valid. But the fact remains that all the material in dispute was allowed to be taken to the Railway plots. It is true that under the Rules all the exemption certificates should have been issued by a Gazetted Officer of the Government and they should have been produced before the defendant-Committee at the time of the import of the goods. In the present case, however, taking into consideration the fact that the Executive Engineer of the Department concerned had given a prior intimation in writing, vide Exhibits P.W. 5/1 and P.W. 5/2, to the President of the defendant Committee for not charging any octroi duty on these goods and the very large number of exemption certificates that have been produced and the fact that admittedly all this material belonged to the Pepsu Government, I am of the opinion that there has been a substantial compliance of this Rule. Besides, if some of the exemption certificates were not signed by the Gazetted Officer of the Department concerned, then the defendant-Committee should have seized those particular goods, as provided for in section 82 of the Punjab Municipal Act, 1911, and should not have permitted them to be removed to the Railway plots unless either a valid exemption certificate was produced in respect thereof or octroi duty

chargeable was paid thereon, in this view of the matter, I am of the opinion that the goods in question were covered by item 2 of the Notification mentioned above and were not liable to any octroi duty and the amount in suit could not be recovered from the plaintiff.

8. Since I have found that these goods were not liable to octroi duty, the question, as to whether the Pepsu Government or the contractor or the persons, who actually brought these goods, were the importers of these goods, does not call for determination.

9. The next question that falls for decision is whether the present suit is barred by the principle of *res judicata*. In the previous suit, the defendant Committee had claimed a sum of Rs. 81/11/- from the plaintiff as octroi duty on some of the goods imported by the plaintiff under this very contract. As a result, the plaintiff brought a suit and contested his liability to pay this amount. That suit was dismissed on 4th May 1953, vide Exhibit D.A /17. The exemption certificates relied upon by the plaintiff in that suit were held to be illegal. On the basis of this decision, it was submitted that the present suit did not lie. After hearing the learned counsel for the parties, I am of the view that the finding of the lower appellate Court on this point is correct. The present suit relates to the carriage of road material during a different period than the one involved in the previous suit. Besides, the exemption certificates of the previous suit, which were held to be illegal, are not in dispute in the present suit.

10. It may be mentioned that the learned counsel for the appellant, conceded under issue No. 3 that the plaintiff could bring the present suit and the same was not barred u/s 86 of the Punjab Municipal Act, 1911.

11. In view of what I have said above, no other question needs to be decided in this appeal.

12. As a result, this appeal fails and is dismissed. In the peculiar circumstances of this case, however, I will leave the parties to bear their own costs throughout.