(1987) 07 P&H CK 0075

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 881 of 1978

Municipal Corporation, Ludhiana — APPELLANT

Vs

M/s Ram Parshad Kidar Nath — RESPONDENT

Date of Decision : 21-07-1987

Acts Referred:

Citation : (1987) 07 P&H CK 0075

Hon'ble Judges : J.V. Gupta, J

Bench : Single Bench

Advocate : T.S. Doabia, for the Appellant; Sarvshri Vijay Jhanji and Mr. O.P. Sharma, for the Respondent

Final Decision : Dismissed

Judgement

J.V. Gupta, J.—This is defendant''s second appeal against whom the suit for the recovery of Rs. 4.000.50 has been decreed by both the the Courts below.

2. The plaintiff respondent firm is the owner of property, Unit No. B-XXI 93, Ludhiana. It was assessed in the year 1970-71 at an annual value of Rs. (sic)/- and to the house tax of Rs. 918/- only. The plaintiff deposited Rs. 734/- as house tax within time so as to get the rebate. Subsequently, the appellant enhanced the rental value of the unit for the year 1971-72 to Rs. 27,000/- on March 8, 1971 and the plaintiff had to pay, under protest, the house-tax amounting to Rs. 1,944/- as against Rs. 2,430/- after getting the usual rebate. That amount was deposited on November 26, 1971. Later on, the appellant enhanced the house tax to Rs. 2430/- for the year 1972-73 and 1973-74 consecutively. In the present suit, the plaintiff challenged the legality of the order of enhanced assessment since 8, March 1971, on various grounds including the main grounds that no notice of enchancement was given to it, the appellant had not applied its mind, the order was a cryptic one giving no details of the reasons for the arriving at the enhanced assessment 2nd as such, it had got no entity in the eye of law. The suit was contested inter alia on the ground that the order of enhanced assessment was validly passed. The civil Court had no jurisdiction to try the suit.

The suit was barred by time. The trial Court found that the order dated March 8, 1971, copy, Exhibit P 3, was invalid and that the plaintiff was entitled to the refund of the amounts deposited by him. Consequently, the plaintiff''s suit was decreed. In appeal, the learned Additional District Judge framed two more additional issues relating to the jurisdiction of the civil Court to entertain the suit and the suit being barred by time. Both these issues were also found against the defendant and in favour of the plaintiff. Thus, the decree passed by the trial Court was maintained.

3. The learned counsel for the appellant submitted that according to the finding of the trial Court there was no proper hearing and that being so, it could not be said that no notice as such was issued to the plaintiff before passing the order, copy. Exhibit P. 3. Thus, argued the learned counsel, if the order was otherwise illegal, the same could be set aside in appeal and the civil Court will have no jurisdiction to entertain the suit. In support of the contention, the learned counsel relied upon M/s. Rama Krishan Rice Mills, Sultanpur Lodhi v. Municipal Committee, Sultanpur Lodhi (1985-1) 87 P.L.R. 221.

4. After hearing the learned counsel for the parties, I do not find any force in this contention. It was held in M/s Rama Krishna Rice Mills, Sultanpur Lodhi''s case (supra), that where the tax payer challenged the very basis of the legality of the tax, in that, that the given tax could not be imposed under the Punjab Municipal Act or the authority that had levied the tax or had passed the order of assessment, was not authorised under the said Act, then the question undoubtedly could be canvassed before the Civil Court. Admittedly no copy of the notice, if any issued to the plaintiff was produced on the record. Once it is held that the order was passed without any notice and providing any opportunity of hearing, then it could not be disputed that the civil Court had the jurisdiction to go into the matter.

5. The learned counsel further contended that the suit was barred by time as it was filed on September 18, 1974 whereas the impugned order, copy. Exhibit P. 3, was dated March 8, 1971. There is no force in this contention either. Admittedly, the amount was deposited on November 26, 1971, under protest. The suit is for the recovery of the amount paid in pursuance of the said order, illegally recovered by the appellant. The suit being within three years therefrom has been rightly held to be within time by the lower appellate Court.

6. Under the circumstances, the appeal fails and is dismissed with costs. However, the learned counsel for the appellant submitted that the appellant should be at liberty to re-assess the house tax in accordance with law for the relevant period and the decree passed in this appeal should not debar the appellant to do the same. The learned counsel for the respondent has no objection to the re-assessment of the house tax for the relevant period in accordance with law.