

(2002) 05 AHC CK 0052
In the Allahabad High Court
Case No : F.A.F.O. No. 1710 of 2001

Som Datta Builders Ltd.

APPELLANT

Vs

Kanpur Jal Sansthan and Another

RESPONDENT

Date of Decision : 03-05-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2
Uttar Pradesh Municipal Corporation Act, 1959 — Section 226
Uttar Pradesh Water Supply and Sewerage Act, 1975 — Section 30, 53, 53(2),
53(4), 54

Citation : AIR 2002 All 249 : (2002) 3 AWC 1950 : (2002) 2 UPLBEC 1777

Hon'ble Judges : Vineet Saran, J;G.P. Mathur, J

Bench : Division Bench

Advocate : Z.M. Naiyer, for the Appellant;

Final Decision : Dismissed

Judgement

G.P. Mathur, J.—This appeal under Order XLIII, Rule 1(r) of CPC has been filed by the plaintiff against the judgment and order dated 25.8.2001 by which the application 5C for grant of interim injunction filed by it, was rejected.

2. The plaintiff-appellant has filed O.S. No. 1212 of 2000 praying that it be declared that all the demand bills of house tax, water tax and drainage tax made by the defendants for the period 1993 to 2001 in respect of the premises bearing No. 15/299 are void ab initio. Another prayer made in the suit is that a decree of permanent injunction be passed restraining the defendants from raising a demand of house tax amounting to Rs. 6,26,801 and water tax and drainage tax amounting to Rs. 21,88,377 in respect of the aforesaid premises.

3. The case of the plaintiff, in brief, is that premises No. 15/299 is a Shopping Plaza having 97 shops attached to Hotel Landmark. The shops were assessed to house tax by the Nagar Nigam, Kanpur (defendant No. 2) which was challenged by the plaintiff by filing 97 appeals. The Judge, Small Causes Court, Kanpur Nagar allowed the appeals by the judgment and order dated 24.3.1995 and

quashed the assessment with the observation that the same may be done in accordance with Section 174(a) of U.P. Municipal Corporation Adhiniyam, 1959 (hereinafter referred to as the Adhiniyam). The defendant No. 2 filed a single appeal against the aforesaid Judgment before the District Judge, Kanpur Nagar being Appeal No. 13 of 1995, which is still pending. The Nagar Nigam has not determined the annual value of the premises in accordance with Section 174(a) of the Adhiniyam but is issuing bills for house tax. The Kanpur Jal Sansthan defendant No. 1 has not made any assessment in accordance with Section 53 of U. P. Water Supply and Sewerage Act, 1975 (hereinafter referred to as W.S.S. Act). However, it issued bill dated 15.11.2000 for Rs. 21,88,377 towards water tax and sewerage tax for premises No. 15/299 (97 shops). According to the plaintiff, the demand made by the defendants was contrary to the provisions of the Adhiniyam and W.S.S. Act. The suit was, accordingly, filed for the relief mentioned above.

4. The plaintiff-appellant also filed an application 5C praying that the defendants be restrained from realising any house tax, water tax and drainage tax with regard to premises No, 15/299 Civil Lines, Kanpur Nagar (97 shops) during the pendency of the suit. Both Kanpur Jal Sansthan (defendant No. 1) and Nagar Nigam, Kanpur Nagar (defendant No. 2) filed separate objections opposing the application. It was submitted in the objections that the premises in dispute had been properly assessed by the Nagar Nigam and adopting the said assessment, the Kanpur Jal Sansthan (defendant No. 1) had raised the demand of water tax and sewerage tax. The defendant No. 1 submitted that the assessment made by it was proper and on the basis thereof, the demand for house tax had been made. The learned Civil Judge (Senior Division), after considering the pleading of the parties and the legal submission made, held that no case had been made out for grant of injunction order in favour of the plaintiff and accordingly rejected the application 5C.

5. Sri Z.M. Naiyer learned counsel for the appellant has submitted that the assessment made by the Nagar Nigam in accordance with Sections 207 to 209 of the Adhiniyam had been challenged by the plaintiff by filing 97 appeals which were allowed by the Judge, Small Causes Court on 24.3.1995 and a direction was issued to defendant No. 2 to reassess the premises in accordance with Section 174(a) of the Adhiniyam. The defendant No. 2 had preferred a single appeal against the aforesaid decision of 97 appeals before the District Judge which had not yet been decided. The Kanpur Jal Sansthan had not made any assessment of the annual value of the premises u/s 53(2) of the W.S.S. Act and consequently, it could not raise any demand of water tax and sewerage tax. According to the learned counsel, the demand of house tax, water tax and sewerage tax made by the defendants from the plaintiff was wholly illegal and without any authority of law and therefore the plaintiff-appellant was entitled to an interim injunction order in its favour and the learned Civil Judge (Senior Division) committed manifest error of law in rejecting the injunction application. Sri M. K. Shukla, learned counsel for the defendant-respondents has, on the other hand,

submitted that against the decision of the Judge, Small Causes Court, the defendant No. 2 had preferred an appeal before the District Judge u/s 476 of the Adhiniyam which was still pending and, therefore, it was wrong to contend that the assessment made by the Nagar Nigam stood wiped out. The Nagar Nigam was, therefore, entitled to levy house tax upon 97 shops in the premises in dispute, which are owned by the plaintiff. Sri Shukla has further contended that where no assessment had been made by Jal Sansthan, it is entitled to raise demand for water tax and sewerage tax on the basis of the assessment of annual value done by the Nagar Nigam in accordance with Sub-section (4) of Section 53 of the W.S.S. Act. It has also been urged that the demand raised being for various kinds of taxes which is a quantified amount, there is absolutely no occasion for grant of an injunction order in favour of the plaintiff as it would not suffer any irreparable injury in the event of the refusal of the injunction order and the balance of convenience also lay in favour of the defendants which are public bodies working for the benefit of public at large.

6. Chapter IX of the Adhiniyam deals with corporation taxes and defines "annual value of the property" u/s 174 and also enumerates various types of the taxes which can be imposed by the Nagar Nigam. Sections 207 to 213 lay down procedure for preparation and making of assessment of the annual value of the property. Section 472 provides for an appeal against any annual value or tax fixed or charged under the Adhiniyam and the same lies before the Judge, Small Causes Court. Section 476 provides for an appeal before the District Judge against the decision of the Judge, Small Causes Court made u/s 472 of the Adhiniyam. The plaintiff-appellant preferred 97 appeals against the assessment made with regard to the premises in question and all these appeals were consolidated and were decided by a common judgment and order dated 24.3.1995 by the Judge, Small Causes Court, Kanpur Nagar. The defendant No. 2 preferred a Tax Appeal bearing No. 13 of 1995 before the District Judge, Kanpur Nagar challenging the aforesaid order dated 24.3.1995, which is still pending. The main contention raised by the learned counsel for the plaintiff-appellant is that by filing a single appeal, the defendant No. 2 has allowed the judgment and order of the Judge, Small Causes Court dated 24.3.1995 to become final with regard to 96 shops and as the direction issued in the aforesaid order to reassess the premises in accordance with Section 174(a) of the Adhiniyam had not been complied with, it is not open to the Nagar Nigam to raise any demand of house tax. It is noteworthy that there is only one judgment and order dated 24.3.1995 of the Judge, Small Causes Court and the same has been challenged by the defendant No. 2 in appeal before the District Judge. If the said judgment is set aside in appeal, the order in favour of the plaintiff by the Judge, Small Causes Court would disappear. Therefore, it is not possible to hold at this stage that the order dated 24.3.1995 passed by the Judge, Small Causes Court has become final with regard to 96 shops of premises No. 15/299, Civil Lines, Kanpur Nagar. Such a question can be examined only after the Appeal No. 13 of 1995 has been decided by the District Judge.

7. Sub-section (3) of Section 53 of W.S.S. Act empowers Jal Sansthan to make assessment of the annual value of the property. Sub-section (4) of Section 53 of W.S.S. Act provides that until assessment of the annual value of premises in any local area is made by Jal Sansthan, the annual value of all the premises in that local area, as assessed by the local body concerned for the purposes of house tax, shall be deemed to be the annual value of the premises for the purposes of this Act as well. Therefore, in a case where the Jal Sansthan has not made any assessment, the annual value of the premises shall be deemed to be the same as assessed by the local body concerned which in the present case would mean Nagar Nigam. Since the Jal Sansthan has not made any independent assessment of the annual value of the property, it is entitled to proceed on the basis of the assessment made by the Nagar Nigam. There is no dispute that the Nagar Nigam, Kanpur Nagar has made assessment of the annual value of the premises in question. Therefore, the contention of the learned counsel for the plaintiff-appellant that the Jal Sansthan having not made any assessment, it cannot levy any tax, has no substance and has to be rejected.

8. Sri M.K. Shukla has referred to certain statutory provisions, which according to him, create a bar in challenging the imposition of tax by means of a civil suit. Section 226 of the Adhiniyam reads as follows :

"226. Bar to jurisdiction of civil and criminal courts in matters of taxation.--No objection shall be taken to a valuation or assessment nor shall the liability of a person to be assessed or taxed be questioned in any other manner of before any other authority than is provided in this Act.

Section 30 of W.S.S. Act reads as follows :

30. Disputes with consumers. --Subject to the provisions of this Act, any dispute arising between the Jal Sansthan and the consumer shall be referred to the Nigam whose decision shall be final."

Section 2 (4) of the aforesaid Act defines a consumer and It means any person getting the benefit of any water supply or sewerage service from the local body, Jal Sansthan or the Nigam, as the case may be. Section 2 (15) of the same Act defines a Nigam and it means Uttar Pradesh Jal Nigam established u/s 3. There is no dispute that the plaintiff is getting the benefit of water supply and also of sewerage services and, therefore, it is a consumer within the meaning of Section 2 (4) of the W.S.S. Act and consequently, it can approach the U. P. Jal Nigam for deciding the controversy raised.

9. The contention raised by Sri M. K. Shukla that the demand of tax cannot be challenged in a civil suit as the same is barred also deserves notice. In State of Kerala v. M/s. N. Rama Swamy Iyer, AIR 1966 SC 1738, it was held as follows :

"The Jurisdiction of the civil court may be excluded expressly or by clear Implication arising from the scheme of the Act. Where the Legislature sets up a special tribunal to determine questions relating to rights or liabilities which are

the creation of a statute, the jurisdiction of the civil court would be deemed excluded by implication."

This question was again considered at length by another Constitution Bench in *Dhulabhai and Others Vs. The State of Madhya Pradesh and Another*, wherein, Chief Justice Hidayat Ullah, who delivered the Judgment for the Court laid down principles regarding exclusion of jurisdiction of the civil court. Sub-paras (1) and (6) of para 32 of the reports, which have a bearing on the controversy in hand, are being quoted below :

"Sub-para (1).--Where the statute gives a finality to the orders of the special tribunals the civil court's jurisdiction must be held to be excluded if there is adequate remedy to do that the civil courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principle of judicial procedure.

.....

Sub-para (6).--Questions of the correctness of the assessment apart from its constitutionality are for the decision of the authorities and a civil suit does not lie if the orders of the authorities are declared to be final or there is an express prohibition in the particular Act. In either case the Scheme of the particular Act must be examined because it is a relevant enquiry."

The heading of Section 226 of the *Adhiniyam* is "Bar to jurisdiction of civil and criminal courts in matters of taxation". This section creates a bar in challenging the valuation and assessment or liability of a person to be assessed or taxed in any other manner or before any other authority than is provided by the *Adhiniyam*.

10. The law declared by the Hon'ble Supreme Court in *Dhule Bhai's* case (*supra*), shows that if the statute gives finality to the orders of a special tribunal, civil court's jurisdiction is excluded except where the provisions of the Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure. But if there is an express prohibition in a particular Act, a civil suit challenging the correctness of the orders passed by the authorities does not lie. Therefore, the assessment of the annual value of the property for the purpose of levy of house tax under the *Adhiniyam* cannot be called in question in the civil suit. Since the *Jal Sansthan* has not made any assessment of its own, which it was empowered to do u/s 53(2) of W.S.S. Act, it is entitled to levy water tax and sewerage tax on the basis of the assessment of the annual value made by *Nagar Nigam* by virtue of Section 53(4) of the Act. Therefore, the levy of water tax and sewerage tax cannot be challenged in the civil suit.

11. The view which we have taken above finds support from the law laid down by the Supreme Court while considering a similar controversy in *Revenue Statutes*.

In *Munshi Ram and Others Vs. Municipal Committee, Chheharta*, it was held as under :

"It is well-recognised that where a Revenue Statute provides for a person aggrieved by an assessment thereunder, a particular remedy to be sought in a particular forum, in a particular way, it must be sought in that forum and in that manner, and all other forums and modes of seeking it are excluded. Construed in the light of this principle. It is clear that Sections 84 and 86 of the Punjab 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."

12. Again in *Raja Ram Kumar Bhargava (Dead) by Lrs. Vs. Union of India (UOI)*, while considering the provisions of Income Tax Act, the Supreme Court held that wherever a right, not preexisting in common law, is created by statute and that statute itself provided a machinery for the enforcement of the right, both the right and the remedy having been created *uno faltu* and finality is intended to the result of the statutory proceedings, then, even in the absence of an exclusionary provision, the civil court's jurisdiction is impliedly barred.

13. There is an additional reason in upholding the order passed by the learned Civil Judge (Senior Division) by which the plaintiffs application for grant of an Injunction, has been rejected. It is well-settled principle of law that interim injunction can be granted only if the plaintiff will suffer Irreparable injury which cannot be compensated in terms of money. Even if *prima facie* case is made out and the balance of convenience is also in favour of the plaintiff, no Injunction can be granted if the injury is such which can be compensated by way of damages. See *M/s. Anand Biscuit Company v. M/s. Anand Food Products* 1989 AWC 980 and *H.S. Shah v. Abdul Saheb* 1988 AWC 1485 (SC). In the later case, the Supreme Court set aside the order of the High Court by which an injunction was granted restraining the appellant's. Society from interfering with respondents" functioning as the Head Master of the institution on the ground that he could be compensated by way of damages in terms of money in the event of his success in the suit wherein, he had challenged the order terminating his services. Since in the present case, the authorities are seeking to recover a fixed sum of money by way of taxes from the plaintiff, it cannot be said that refusal of the injunction order will cause such irreparable injury to the plaintiff which cannot be compensated in terms of money. In these circumstances, there is absolutely no ground for granting any interim injunction order in favour of the plaintiff.

14. In view of the discussions made above, the appeal fails and is hereby dismissed.