

(2019) 08 SC CK 0056

In the Supreme Court Of India

Case No : Civil Appeal Nos. 6377, 6378 Of 2019

South Delhi Municipal Corporation & Anr

APPELLANT

Vs

M/S Today Homes And Infrastructure Pvt. Ltd. Etc.

RESPONDENT

Date of Decision : 19-08-2019

Acts Referred:

Constitution Of India, 1950 — Article 226

Delhi Municipal Corporation Act, 1957 — Section 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131 132, 133, 134, 135, 169, 170, 171

Code Of Civil Procedure, 1908 — Section 9

Madhya Bharat Sales Tax Act, 1950 — Section 17

Citation : (2019) 8 JT 357 : (2019) 11 Scale 33 : (2019) 5 ALT 1 : (2019) 7 SLT 313 : (2019) 2 TLR 12

Hon'ble Judges : L. Nageswara Rao, J; Hemant Gupta, J

Bench : Division Bench

Advocate : Praveen Swarup, Diggaj Pathak, Shweta Sharma

Final Decision : Allowed

Judgement

L. Nageswara Rao, J

Leave granted.

1. The order of assessment dated 01.03.2013 and the demand for payment of property tax made on the Respondents was the subject matter of challenge in a civil suit filed before the High Court of Delhi. Learned Single Judge of the Delhi High Court rejected the plaint by holding that the suit was not maintainable. The appeals filed by the Respondents were allowed by a Division Bench. The judgment in the said civil suit was consequently set aside and the learned Single Judge was directed to decide the point of jurisdiction afresh on the basis of legal principles laid down in the judgment of the Division Bench. Aggrieved thereby, the South Delhi Municipal Corporation (hereinafter, 'the SDMC') has filed this appeal.

2. M/s GPS Properties Pvt. Ltd. was the highest bidder in the auction of commercial plot Nos.4, 5 and 6 of Shivaji Complex, District Centre, Raja Garden, New Delhi. Said property was allotted by the Slum & J. J. Department of the Municipal Corporation of Delhi in favour of M/s GPS Properties Pvt. Ltd. Approval for construction of a mall/commercial complex was granted by the Delhi Development Authority (hereinafter, 'the DDA'). M/s GPS Properties entered into a development agreement with M/s Today Homes and Infrastructure Pvt. Ltd. for construction of a mall/commercial complex and for sale of units therein. Occupancy certificate/completion certificate was granted by the DDA vide its letter dated 25.07.2008. The property was assessed for payment of taxes and a demand was raised pursuant to the assessment order. The Respondents approached the Municipal Taxation Tribunal (hereinafter, 'the Tribunal') by filing an appeal under Section 169 of the Delhi Municipal Corporation Act, 1957 (hereinafter 'the Act'), which was later withdrawn. Thereafter, a civil suit was filed in the High Court of Delhi challenging the assessment order dated 01.03.2013 and the warrants of attachment. The Appellant raised a preliminary objection regarding the maintainability of the suit which was accepted by the learned Single Judge, who placed strong reliance on the judgment of this Court in *NDMC v. Satish Chand* (2003) 10 SCC 38 to hold that the civil suit was not maintainable.

3. The approach of the learned Single Judge was disapproved by the Division Bench. The Division Bench held that the learned Single Judge overlooked the distinction between an express bar of a civil suit and where there is no express bar but the remedy provided is onerous. The High Court further observed that the learned Single Judge failed to take into account the relevant factors to determine the maintainability of the civil suit. According to the Division Bench, the learned Single Judge had neither examined whether the remedy provided by the Statute was onerous nor determined whether the limited window for filing a civil suit, in spite of a bar, was available to the Respondents. The Division Bench remanded the matter back for fresh consideration by the learned Single Judge who was directed to examine the facts of the case in the light of the observations made by the Division Bench and the law laid down by this Court.

4. Whether a civil suit is maintainable in disputes pertaining to payment of tax under the Delhi Municipal Corporation Act, 1957 is the question that arises for our consideration in these appeals.

5. Section 9 of the Code of Civil Procedure, 1908 (hereinafter 'the CPC') confers jurisdiction on the Civil Courts to try all suits, excepting those which are either expressly or impliedly barred. Chapter VIII of the Act deals with levy of taxes that can be imposed by the Corporation. Property tax is dealt with in Sections 114 to Section 135 of the Act. Sections 169 to 171 which relate to appeals that may be filed against orders of assessment are as follows:

169. Appeal against assessment, etc.

(1) An appeal against the levy or assessment or revision of assessment of any tax under this Act shall lie to the Municipal Taxation Tribunal constituted under this Section:

Provided that the full amount of the property tax shall be paid before filing any appeal:

Provided further that the Municipal Taxation Tribunal may, with the approval of the District Judge of Delhi, also take up any case for which any appeal may be pending before the Court of such District Judge:

Provided also that any appeal pending before the Court of such District Judge shall be transferred to the Municipal Taxation Tribunal for disposal, if requested by the applicant for the settlement thereof on the basis of annual value.

(2) (a) the Government shall constitute a Municipal Taxation Tribunal consisting of a Chairperson and such other members as the government may determine:

Provided that on the recommendation of the government, the Chairperson may constitute one or more separate Benches, each Bench comprising two members, one of whom shall be a member of the Higher Judicial Service of a State or a Union Territory and the other member from the Higher Administrative Service, and may transfer to any such Bench any appeal for disposal or may withdraw from any Bench any appeal before it is finally disposed of.

(b) The Chairperson, and not less than half of the other members, of the Municipal Taxation Tribunal shall be persons who are or have been the members of the Higher Judicial Service of a State or a Union Territory for a period of not less than five years, and the remaining members, if any, shall have such qualifications and experience as the Government may by rules determine.

(c) The Chairperson and the other members of the Municipal Taxation Tribunal shall be appointed by the government for a period of five years or till they attain the age of 65 years, whichever is earlier.

(d) The other terms and conditions of service of the Chairperson and the other members of the Municipal Taxation Tribunal, including salaries and allowances, shall be such as may be determined by rules by the Government.

(e) The salaries and allowances of the Chairperson and the others members of the Municipal Taxation Tribunal shall be paid from the Municipal fund.

(3) In every appeal, the costs shall be in the discretion of the Municipal Taxation Tribunal or the Bench thereof, if any.

(4) Costs awarded under this section to the [a Corporation] shall be recoverable by the [a Corporation] as an arrear of tax due from the appellant.

(5) If [a Corporation] fails to pay any costs awarded to an appellant within ten days from the date of the order for payment thereof, the Municipal Taxation Tribunal may order the Commissioner to pay the costs to the appellant.

170. Conditions of right to appeal.

No appeal shall be heard or determined under section 169 unless-

(a) the appeal is, in the case of a property tax, brought within thirty days next after the date of authentication of the assessment list under section 124 (exclusive of the time requisite for obtaining a copy of the relevant entries therein) or, as the case may be, within thirty days of the date on which an amendment is finally made under section 126, and, in the case of any other tax, within thirty days next after the date of the receipt of the notice of assessment or of alteration of assessment or, if no notice has been given, within thirty days after the date of the presentation of the first bill or, as the case may be, the first notice of demand in respect thereof:

Provided that an appeal may be admitted after the expiration of the period prescribed therefor by this section if the appellant satisfies the (Municipal Taxation Tribunal) that he had sufficient cause for not preferring the appeal within that period;

(b) The amount, if any, in dispute in the appeal has been deposited by the appellant in the office of [a Corporation].

171. Finality of appellate orders.

The order of the [Municipal Taxation Tribunal] confirming, setting aside or modifying an order in respect of any rateable value or assessment or liability to assessment or taxation shall be final:

Provided that it shall be lawful for the [Municipal Taxation Tribunal], upon application or on its own motion, to review any order passed by it in appeal within three months from the date of the order.

6. There is an inherent right to approach a civil court. The bar on a civil court's jurisdiction is not to be readily or lightly inferred. The jurisdiction of civil courts can be excluded by an express provision of law or a clear intendment in such law. *Wolverhampton New Waterworks Co. v. Hawkesford* [1859] 6 C. B. (NS) 336 resolved the dispute pertaining to the bar on jurisdiction of civil courts, in the following manner:

"One is where there was a liability existing at common law, and that liability is affirmed by a Statute which gives a special and peculiar form of remedy different from the remedy which existed at common law: there, unless the Statute contains words which expressly or by necessary implication exclude the common law remedy the party suing has his election to pursue either that or the statutory remedy. The second class of cases is, where the Statute gives the right to sue merely, but provides, no particular form of remedy: there, the party can only proceed by action at common law. But there is a third class, viz., where a liability not existing at common law is created by a Statute which at the same time gives a special and particular remedy for enforcing it..... The remedy provided by the

Statute must be followed and it is not competent to the party to pursue the course applicable to cases of the second class."

7. In a case arising under the Sea Customs Act (1878), the Privy Counsel in *Secretary of State v. Mask* AIR 1940 PC 105 observed as follows:

"It is settled law that the exclusion of the jurisdiction of the civil courts is not to be readily inferred, but that such exclusion must either be explicitly expressed or clearly implied. It is also well settled that even if jurisdiction is so excluded, the civil courts have jurisdiction to examine into cases where the provisions of the Act have not been complied with, or the statutory tribunal has not acted in conformity with the fundamental principle of judicial procedure."

8. Section 17 of the Madhya Bharat Sales Tax Act, 1950 barred the jurisdiction of any court in matters pertaining to assessments made under the Act. The recovery of Sales Tax under the said Act was the subject matter of civil suits filed by the assesseees. The State objected to the maintainability of the civil suits on the ground that jurisdiction of civil court was barred. After taking note of several judgements of this Court on the point of ouster of jurisdiction of the civil courts, *Hidayatullah, J. in Dhulabhai and Ors. v. The State of Madhya Pradesh and Anr.* 1968 (3) SCR 662 at 682 observed as follows:

(1) Where the Statute gives a finality to the orders of the special tribunals the Civil Courts' jurisdiction must be held to be excluded if there is adequate remedy to do what 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 principles of judicial procedure.

(2) Where there is an express bar of the jurisdiction of the Court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the Civil Court.

Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the Statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in Civil Courts are prescribed by the said Statute or not.

(3) Challenge to the provisions of the particular Act as ultra vires cannot be brought before Tribunals constituted under that Act. Even the High Court cannot go into that question on a revision or reference from the decision of the Tribunals.

(4) When a provision is already declared unconstitutional. or the constitutionality of any provision is to be challenged, a suit is open. A writ of certiorari may

include a direction for refund if the claim is clearly within the time prescribed by the Limitation Act but it is not a compulsory remedy to replace a suit.

(5) Where the particular Act contains no machinery for refund' of tax collected in excess of constitutional limits or illegally collected a suit lies.

(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.

(7) An exclusion of the jurisdiction of the Civil Court is not readily to be inferred unless the conditions above set down apply.

9. A perusal of the relevant provisions of the Act would show that there is no express bar on the jurisdiction of Courts. However, Section 169 of the Act provides for an appeal to the Municipal Taxation Tribunal. Section 171 of the Act provides that the order of the Municipal Taxation Tribunal in the appeal filed by the Assessee shall be final. According to the Corporation, the aforementioned Sections, read together, create a bar on the jurisdiction of civil courts.

10. Any person having a grievance that he had been wronged or his right has been affected can approach a civil court on the principle of 'ubi jus ibi remedium' - where there is a right, there is a remedy. As no internal remedy had been provided in different statutes creating rights or liabilities, the ordinary civil courts had to examine the grievances in the light of those statutes. With the advent of a 'Welfare State', it was realised that enactments creating liabilities in respect of payment of taxes, obligations after vesting of estates and conferring rights on a class of citizens, should be complete codes by themselves. With that object in view, forums were created under the Acts themselves where grievances could be entertained on behalf of the persons aggrieved. Shiv Kumar Chadha Etc. Etc v. Municipal Corporation of Delhi (1993) 3 SCC 161.

11. Wherever a right or liability, not pre-existing in common law is created by a statute and that statute itself provides a machinery for enforcement of such right or liability, both the right/liability and the remedy having been created uno flatu and a finality is intended to the result of the statutory proceedings, then, even in the absence of an exclusionary provision the jurisdiction of the civil court is impliedly barred. Raja Ram Kumar Bhargava (Dead) By LRs v. Union of India (1988) 1 SCC 681.

12. We find that a liability for payment of tax is created by the Delhi Municipal Corporation Act, 1957. Further, a remedy by way of an appeal against an order of assessment, before an appropriate forum or authority, has been provided by the same statute.

13. As to various issues on the correctness of a return itself, or whether or not a return is correct; whether or not transactions which are not mentioned in the

return, but about which the appropriate authority has knowledge, fall within the mischief of the charging section; what is the true or real extent of the transactions which are assessable; all these and other allied questions have to be determined by the appropriate authorities themselves. An assessment, based even on an erroneous finding about the character of the transaction, is an assessment made well within jurisdiction and cannot be said to be outside the purview of the Act [Kamala Mills Ltd v. State of Bombay (1966) 1 SCR 64]. In a case arising out of the Madras General Sales Tax Act, this Court observed that the expression "any assessment made under this act" is wide enough to cover all assessments made by the appropriate authority under the Act, whether the said assessments are correct or not. [Firm of Illuri Subbaya Chetty and Sons v. State of Andhra Pradesh, AIR 1964 SC 322] If the appropriate authority has been given the jurisdiction to determine the nature of the transaction and proceed to levy a tax in accordance with its decision, even if such issue is erroneously determined by the authority, the tax levied by it in accordance with its decision cannot be said to be 'without jurisdiction'. See (Kamla Mills - supra).

14. Applying the criteria mentioned in Dhulabhai (supra), we are of the opinion that the Civil Court's jurisdiction is impliedly barred for the following reasons:

(i) There is no pre-existing liability of tax under Common Law. The liability has been created by Delhi Municipal Corporation Act along with a remedy by way of an appeal to the Municipal Taxation Tribunal. Necessarily, where a party aggrieved by the decision of the authorities has to resort to the remedy provided under the Statute, civil courts' jurisdiction is barred. See (In Firm Seth Radha Kishan v. Administrator, Municipal Committee, Ludhiana AIR 1963 SC 1547, Firm of Illuri Subbaya and In Ram Swarup and Ors. v. Shikar Chand AIR 1966 SC 893.

(ii) Section 171 of the Act gives finality to orders passed by Municipal Taxation Tribunal, which shows the intendment of the legislature to exclude jurisdiction of civil courts.

(iii) The remedy provided by Section 169 of the Act is an adequate and effective remedy. We are not in agreement with the High Court that an appeal provided by the Statute against orders of assessments, containing an 'onerous' pre-condition of deposit of the entire amount in dispute, is not an effective remedy.

15. We seek support for these views from a judgement of this Court in Srikant K. Jituri v. Corporation of the City of Belgaum (1994) 6 SCC 572. The question that arose for consideration of this Court in the said judgment was regarding the jurisdiction the civil courts being barred by Rule 25 contained in Part-I of Schedule-III of the Karnataka Municipal Corporations Act, 1976. Resolving the dispute about the maintainability of a civil suit against the order passed by the revisional authority, this Court held that the suit was not maintainable. In the said case, the submission on behalf of the Assessee was that the right to second appeal to the District Court as per the provisions of the Act was coupled with an

onerous condition i.e. deposit of the entire amount of property tax. Hence, it was pleaded that the remedy provided under the Act was not adequate. This Court rejected the said submission by holding that the alternate remedy provided by a statute not being an adequate or efficacious remedy, is not a ground for maintaining a civil suit. However, this Court was of the opinion that a Writ Petition under Article 226 is maintainable if the remedy provided in the statute is not efficacious.

16. We have examined the plaint filed by the Respondents carefully. We do not see any allegation made regarding the violation of any provisions of the statute. There is also no pleading with regard to non-compliance of any fundamental provisions of the statute. It is settled law that jurisdiction of the civil courts cannot be completely taken away in spite of either an express or implied bar. The civil courts shall have jurisdiction to examine a matter in which there is an allegation of non-compliance of the provisions of the statute or any of the fundamental principles of judicial procedure. A plain reading of the plaint would suggest that the order impugned in the suit is at the most an erroneous order. No jurisdictional error is pleaded in the plaint. Therefore, the question of maintainability of the suit does not arise. In the absence of any pleadings in the plaint, the High Court ought not to have remanded the matter back to the learned Single Judge.

17. For the aforementioned reasons, judgement of the Division Bench of the High Court is set aside and the appeals are allowed.