
(2003) 04 P&H CK 0091

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 1845 of 1982

The Municipal Committee

APPELLANT

Vs

The Ambala Bus Syndicate (P) Ltd.

RESPONDENT

Date of Decision : 03-04-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Punjab Municipal Act, 1911 — Section 84, 86

Citation : (2003) 135 PLR 423 : (2003) 4 RCR(Civil) 392

Hon'ble Judges : Hemant Gupta, J

Bench : Single Bench

Advocate : M.L. Sarin and Harsh Rekha, for the Appellant;

Final Decision : Dismissed

Judgement

Hemant Gupta, J.—This judgment shall dispose of RSA Nos. 1845 of 1982 and 1864 of 1982 as both the appeals are based on similar facts and arise out of the common order passed by the Courts below.

2. The defendant has filed the present second appeal challenging judgment and decree on the ground that the jurisdiction of the Civil Court in the matter of assessment and computation of the house tax is barred under Sections 84 and 86 of the Punjab Municipal Act. The following substantial question of law arises in the present appeal:-

"Whether the learned Courts below have erred in law by deciding the Civil Suit especially when a suit of present nature is specifically barred by Section 84 and 86 of Punjab Municipal Act?"

3. The plaintiff-respondent has filed the suit for permanent injunction restraining the Municipal Committee for realising the amount of tax from the property. Initially, the house tax was assessed by the Municipal Committee wrongly and the said assessment was set aside by the Deputy Commissioner, Rup Nagar in an appeal filed by the plaintiff. The Municipal Committee again made an

assessment. The said assessment was challenged on the ground that it is void ab initio and is liable to be set aside on the ground that no proper procedure was followed while assessing the house tax. The house tax was assessed in disregard of the rules, regulations and provisions of the Punjab Municipal Act, 1911. It is the case of the plaintiff that the Municipal Committee has served notice upon the plaintiff u/s 65 of the Punjab Municipal Act and objections filed by him were dismissed by the Municipal Committee. The plaintiff has sought to impugn the demand notice calling upon him to pay house tax assessed on the said property. The challenge was on the ground that the Municipal Committee did not arrive at fair rent of the property keeping in view the provisions of East Punjab Urban Rent Restriction Act, 1949.

4. The Municipal Committee has contested the suit and raised an objection that the jurisdiction of the Civil Court is barred. The learned trial Court has framed issue No. 3 whether the Civil Court has no jurisdiction to entertain the suit. However, both the courts have returned a finding against the defendant-appellant and held that the Civil Court has jurisdiction to entertain the suit. In the present second appeal, the appellant has relied upon the division Bench judgment of this Court in Romesh Kumar and Others Vs. The Municipal Committee, Gurdaspur and Others, wherein it has been held that in the matter of assessment and computation of house tax u/s 61(1) (a), the jurisdiction of the Civil Court is barred. The reliance was also placed on the judgment of the Supreme Court in Munshi Ram and Others Vs. Municipal Committee, Chheharta, .

5. The Division Bench has considered the earlier Full Bench in Kelash Nath and Others Vs. Municipal Committee, Batala, wherein it was held that the jurisdiction of the Civil Court to entertain and decide a suit with regard to the levy and assessment of octroi u/s 61(2) of the Punjab Municipal Act was barred by virtue of the provisions of Section 84 and 86 of the said Act. It was found that the earlier Full Bench judgment was not brought to the notice of the Division Bench in Ganesh Das's case i.e. Municipal Corporation of Delhi v. Ganesh Das (1964)66 P.L.R. 361 which is diametrically opposite to what was observed in the said case. Para 8 of the judgment is relevant to be reproduced:-

"In view of the aforesaid binding precedent it is not only unnecessary but would be patently wasteful to refer to earlier decisions of the High Courts. Nevertheless it becomes obligatory to notice the reliance by the learned counsel for the appellant Romesh Kumar on the Division Bench judgment in Municipal Corporation of Delhi v. Ganesh Das (1964)66 P.L.R. 361.

Undoubtedly the observations made therein would tend to support the case of the appellant. However, the same now appear to be directly and in headlong conflict with the aforementioned decisions of the trial Court. Equally it calls for notice that the Full Bench in Kelash Nath and Others Vs. Municipal Committee, Batala, had earlier categorically held that the jurisdiction of the Civil Courts to entertain and decide a suit with regard to the levy and assessment of octroi u/s 61(2) of the Punjab Municipal Act was barred by virtue of the provisions of

Sections 84 and 86 of the Punjab Municipal Act. Even this earlier judgment was not brought to the notice of the Division Bench in Ganesh Das's case (supra). It is, thus, equally evident that the ratio of the Full Bench is diametrically opposite to what was observed in the said case. It must, therefore, be held that the decisions of their Lordships of the Supreme Court in Munshi Ram's case AIR 1970 S.C. 1250 and Bata Shoe Co. Ltd. Vs. City of Jabalpur Corporation, ".

6. Since the challenge is to the valuation of the property being in contravention of East Punjab Rent Restriction Act, therefore, such valuation could be challenged by the plaintiff before the authorities constituted under the Act and not by way of civil suit. The plaintiff knowing well has earlier availed remedy of appeal before the Deputy Commissioner. The plaintiff was aware of the rights. Therefore, the judgment and decree of the Courts below is clearly erroneous and not sustainable under law and is set aside. Therefore, it is held that the jurisdiction of the Civil Court is barred in view of the provisions of the Municipal Act as held by the Division Bench in Romesh Kumar's case (supra).

7. Consequently, the appeal is accepted and the judgment and decree is set aside and the suit is dismissed.