

(1965) 05 AHC CK 0012
In the Allahabad High Court
Case No : Second Appeal No. 2229 of 1955

The Union of India (UOI)

APPELLANT

Vs

The Cantonment Board

RESPONDENT

Date of Decision : 07-05-1965

Acts Referred:

Cantonments Act, 1924 — Section 99(2)
Civil Procedure Code, 1908 (CPC) — Section 9

Citation : AIR 1967 All 301

Hon'ble Judges : D.P. Uniyal, J

Bench : Single Bench

Advocate : A. Banerji, for the Respondent

Final Decision : Allowed

Judgement

D.P. Uniyal, J.—The respondent Cantonment Board of Agra levied property tax on a building occupied and used by the General Post Office, Agra in purported exercise of its power under the Cantonments Act. The notice demanding the tax not having been complied with a distress warrant was issued by the respondent on 20-10-1953 for recovery of Rs. 1891/- as property tax from the appellant, which then instituted the present suit challenging the jurisdiction and power of the respondent Board to levy such tax and seeking an Injunction restraining the defendant from realising the same.

2. The principal ground upon which the assessment was challenged was that u/s 99(2) the Post Office building was exempt from any tax on property. The respondent Cantonment Board relied on the provisions of Section 88 which enacts that the order of an appellate authority confirming, setting aside or modifying an order in respect of any valuation or assessment, or liability to assessment or taxation, shall be final. The argument was that the Act had prescribed the procedure for making objections against the assessment; that upon the dismissal of those objections the assessee had been given a right of appeal u/s 84 (1); and the decision of the appellate authority had been made

final u/s 88. Since the appellant did not choose to pursue the remedy provided under the Act the civil Court had no jurisdiction to entertain the suit.

3. On behalf of the respondent reliance was placed on the case of Cantonment Board Vs. L. Kanhaiya Lal, . In that case a Division Bench of this Court held that the jurisdiction of the civil court is excluded in all matters relating to any valuation, assessment, liability to assessment or taxation by a Cantonment Board And if a decree is passed it is wholly without jurisdiction and ultra vires and cannot be put into execution. It may be mentioned that the assessment in the above case was according to law and was not beyond the jurisdiction of the Cantonment Board, and it was, therefore, held that the civil court had no jurisdiction to modify or revise the assessment

4. In District Board of Farrukhabad Vs. Prag Dutt and Others, their Lordships were of the view that if the assessment complained of is beyond the competence of the Board and is, therefore, an illegal Imposition the civil court will have jurisdiction to interfere.

5. The view expressed by Full Bench is in consonance with the pronouncement of the Supreme Court in Firm Seth Radha Kishan (Deceased) Represented by Hari Kishan and Others Vs. The Administrator, Municipal Committee, Ludhiana, . In that case their Lordships were called upon to consider the provisions of the Punjab Municipal Act, 1911. u/s 86 of that Act the liability of any person to be taxed could not be questioned in any manner or by any authority other than that provided in the Act. It was contended that the Act was a self-contained Code conferring a right, imposing a liability and prescribing a remedy for an aggrieved party. It was said that if the party aggrieved did not take recourse to the procedure prescribed under the Act the jurisdiction of the civil court was barred in respect of the levy imposed under the Act. After reviewing a large number of authorities the Supreme Court stated the legal position thus:

"Under Section 9 of the C. P. C. a court shall have jurisdiction to try all suits of civil nature, excepting suits of which cognizance is either expressly or impliedly barred. A statute, therefore, expressly or by necessary implication, can bar the jurisdiction of civil courts in respect of a particular matter. The mere conferment of special jurisdiction on a Tribunal in respect of the subject matter does not in itself exclude the jurisdiction of civil courts. The statute may specifically provide for ousting the jurisdiction of civil courts; even if there was no such specific exclusion if it creates a liability not existing before and gives a special or particular remedy for the aggrieved party the remedy provided by it must be followed. The same principle would apply if the statute had provided for the particular forum in which the remedy could be had. Even in such cases, the civil court's jurisdiction is not completely ousted. A suit in a civil court will always lie to question the order of a tribunal created by a statute, even if its order is expressly or by necessary implication, made final, if the said tribunal abuses its powers or does not act under the Act but in violation of its provisions."

6. The same view has been reiterated by the Supreme Court in two subsequent cases reported in *Firm and Illuri Subbayya Chetty and Sons Vs. The State of Andhra Pradesh*, and *The Provincial Government of Madras Vs. J.S. Basappa*, .

7. In the instant case there can be no doubt whatsoever that a tax on house property was exempted from buildings or lands used for any public purpose which are the property of the Central or State Government. Thus there was a complete prohibition u/s 99 (2) to impose a levy on such buildings. It follows that the respondent Board had no power or jurisdiction to impose such tax under the provisions of the Cantonment Boards Act. In this situation the civil court was competent to entertain the suit in respect of an act of the respondent which was wholly without jurisdiction. The learned Civil Judge committed a grievous error in holding that the jurisdiction of the civil court was barred.

8. The result is that this appeal must succeed. I accordingly allow the appeal, set aside the judgment and decree of the learned Civil Judge and decree the suit for an injunction restraining the defendant Cantonment Board from realising the impugned tax. Parties will bear their own costs.