(2015) 01 P&H CK 0137

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 3010 of 2014

Ujjal Singh Lamba and Others — APPELLANT

Vs

State of Punjab and Others — RESPONDENT

Date of Decision : 29-01-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Punjab Municipal Act, 1911 — Section 80, 81

Citation : (2015) 2 RCR(Civil) 554

Hon'ble Judges : Paramjeet Singh, J

Bench : Single Bench

Advocate : Manjari Joshi, for the Appellant; Deepa Singh, A.A.G Punjab, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

Paramjeet Singh, J.—The instant writ petition has been filed under Article 226 of the Constitution of India for quashing the bills (Annexures P-3/1-P3/11) whereby Municipal Council, Noormahal is alleged to have raised illegal demand against the water supply for the period 2006 to 2013 which had already been exempted by respondent No. 2. In brief, facts of the case are to the effect that the petitioners are residents of area falling within the limits of Municipal Council Noormahal. They have constructed their houses in an area about five marlas (125Sqyds.) each. Earlier they were required to pay bills for supply of water but in the year 2006 Government of Punjab issued a notification dated 11.07.2006 (Annexure P-1) whereby residential units having plot area upto 5 marlas were exempted from payment of water and sewerage charges. However respondent No. 2-Municipal Council issued bills on account of water charge vide impugned Annexures P-3/1-P3/11. It is the case of the petitioners that bills have been issued for the years from 2006 to 2013 illegally on the basis of a letter issued by the President of the Municipal Council on the basis of alleged door to door survey of houses. During the survey, it has been found that some of the houses are marginally above five Marlas and they were required to pay water and sewerage charges but due to the mistake of officials of the Municipal Council, they were exempted from payment of water bills. It is averred that recovery of the water charges beyond three years is not permissible and is barred by limitation.

2. Upon notice respondents appeared and filed written statement taking a stand that as per notification (Annexure P-l) all the houses whose plot area is up to 5 Marlas(125 Sq. Yds.) are exempted from payment of water bills. The area of the houses of the petitioners is more than five marlas and they are well liable to pay the water bills. A proclamation was made in the area of Municipal limits that only houses up to 5 Marlas are exempted from payment of water rates. The petitioners did not pay the water bills treating it as exempted, although area of their houses is more than five marlas, as such the houses of the petitioners are not exempted from payment of water bills. The resolution passed by the Municipal Council has been suspended by the Deputy Director, Local Government and affirmed by the Director, Local Government. It is also the stand of the Deputy Director in reply that as per the Revenue Department area of one Maria is equal to 272 sq. ft. whereas government has fixed an area of one Maria equal to 225 sq. ft. In view of this, houses of the petitioners are not exempted from payment of water bills.

3. Petitioners filed rejoinder to the short reply of the Municipal Council denying the averments in the short reply and reiterating the averments in the writ petition.

4. I have heard the learned counsel for the parties and perused the record.

5. Learned counsel for the petitioners vehemently contended that the bills issued for payment of water charges are from years 2006 to 2013. Learned counsel further contended that since demand raised vide impugned annexures is beyond three years, therefore, no recovery of arrears of water bills can be affected. Only legally recoverable dues can be recovered. Learned counsel further contended that the petitioners had already paid their bills for the years 2011 to 2013. In order to substantiate her contentions, learned counsel relied upon judgments of this Court in Municipal Committee Vs. Jaswant Rai and Others, (1990) 98 PLR 402 and Municipal Corporation Vs. Parmeshwari Devi, (2008) 149 PLR 384 . The only argument raised by the learned counsel for the petitioners is with regard to limitation.

6. Per contra, the learned State counsel and learned counsel for respondent No. 2 vehemently contended that recovery can be effected beyond three years as the plot area of petitioners'' houses is more than five marlas and are not exempted as per the notification issued by the Government. Door to door survey of the houses was conducted and it was found that plot area of houses of the petitioners is more than the area exempted by the Government vide notification dated 11.07.2006 (Annexure P-l). Reliance has been placed upon judgment of the Hon''ble Delhi High Court in Laxmi Chand v. Municipal Corporation Delhi, 1988(2) RRR 12.

7. I have given my anxious thoughtful consideration to the contentions raised by learned counsel for the parties.

8. It would be apposite to refer to Sections 80 and 81 of the Punjab Municipal Act, 1911 (in short ''the 1911 Act'') in vogue at the relevant time and Articles 62 and 113 of the Limitation Act, 1963 (in short, ''the 1963 Act'').

"The 1911 Act

"80. Recovery of taxes payable by owner.--(1) When any sum is due on account of a tax payable under this Act in respect of any property by the owner thereof the committee shall cause a bill for the amount, stating the property and the period for which the charge is made to be delivered to the person liable to pay the same.

(2) If the bills be not paid within ten days from the delivery thereof the committee may cause a notice of demand to be served on the person liable to pay the same, and if he does, within seven days from the service of the notice, pay the sum due, with any fee leviable for the notice, or show sufficient cause for non-payment the sum due with the fee, shall be deemed to be an arrear of tax.

(3) Any sum due or the amount of tax payable under this Act, besides being recoverable, in any other manner provided this Act; shall, subject to any claim on behalf of Government be a first charge on the property, in respect of which it is payable, and shall be recoverable; on application made in this behalf by the Committee to the Collector, as if the property were an estate assessed to land revenue and the arrears were an arrears of such revenue due thereon:

Provided that nothing in this sub-section shall authorise the arrest of a defaulter.

(4) If any tax or sum leviable under this Act from the owner is recovered from the occupier, such occupier shall, in the absence of any contract to the contrary, be entitled to recover the same from the owner and may deduct the same from the rent then or thereafter due by him to the owner.

81. Recovery of taxes etc.--(1) Any arrears of any tax, water-rate, rent, fee or any other money claimable by a committee under this Act may be recovered on application to a Magistrate having jurisdiction within the limits of the municipality, or in any other place where the person from whom the money is claimable may for the time being be resident, by the distress and sale of any movable property within the limits of his jurisdiction belonging to such person. The cost of such proceedings shall be recoverable from the defaulter in the same manner as the said arrears. (2) An application made under sub-section (1) shall be in writing and shall be signed by the president, a vice president or the secretary of the committee, but it shall not be necessary to present it in person."

The 1963 Act

"PART V-SUITS RELATING TO IMMOVABLE PROPERTY

The Division Bench in Jaswant Rai''s case (supra) after considering the above said provisions has laid down as under:

"21. In our considered view as well as from the law laid down in the precedents cited above, with which we fully agree that limitation in case of recovery of a tax other than the tax in respect of any property of the owners, will be three years as provided by Article 113of the Limitation Act. It was not refuted that there is no specific provision under the Limitation Act providing a limitation for recovery of the taxes. It was not disputed in the course of arguments and otherwise also as it cannot be disputed that in the absence of any specific provision under the Limitation Act or the statute, it would be Part X of the Schedule to the Limitation Act which provides limitation for the suits for which there is no prescribed period to govern the limitation. Undisputably, the limitation governing the arrears of tax other than the tax in the property would be governed by Article 113 of the Limitation Act, 1963, wherein a limitation of three years is provided for a suit to recover the amount of tax from the date the right to sue accrues. There is no gainsaying that right to sue with respect to tax accrued on the date the tax was imposed in terms of Sections 80 and 81 of the Municipal Act. It is undisputed that in case the Municipal Committee decides to make the recovery under Sections 80 and 81, the period of limitation would be three years. The period of limitation only gets enlarged when the arrears of tax with respect to the property on account of their nonpayment become a charge on the property. It is in the latter case only that it would be governed by Article 62 of the Limitation Act which provides limitation of twelve years for the recovery of the amount due which is a charge on the property. Our view finds support from a Full Bench decision of the Delhi High Court reported in Municipal Corporation of Delhi Vs. Palace Cinema and Another, (1972) ILR Delhi 163 We fully agree with the reasoning adopted therein and nothing more can be added.

22. There is no controversy that the appellant issued a notice under Sections 80 and 81 of the Punjab Municipal Act, 1911, with respect to the tax due for a period beyond three years. The recovery notice of arrears beyond three years without any charge having been created in accordance with methodology provided by Municipal Act would be barred by time.

23. Thus, in our considered view the answer to the question is that the period of limitation for issuance of bill for the amount as well as the demand notice would be three years and it is only after the respondents have failed to meet the demand that the arrears would become the arrears of tax on the property and would be a charge on the property. When the arrears become a charge on the property, the limitation gets enlarged and the recovery could be made within twelve years. Similarly for recovering any taxes which may include even the house tax from movable property would be three years from the time it fell due as the limitation would be governed by Article 113 of the Limitation Act."

In view of the law laid down by the Division Bench referred to above, Municipal Council cannot ignore the existing laws. If the recovery of any amount is barred by the law of limitation, it is difficult to hold that Municipal Council could still insist for recovery of such amount. Admittedly, it is not the case of the Municipal Council that the petitioners have practiced any fraud in connivance with the officials of the Municipal Council. The Municipal Council can only recover the legally recoverable water charges and it is difficult to hold that recovery of amount barred by limitation can be effected. Accordingly, I hold that those arrears sought to be recovered by Annexure P-3/1 to Annexure P- 3/11 which are beyond three years from the date of issue of demand/bill are barred by limitation whereas the arrears which are sought to be recovered within three years from the date of issue of demand/bill can be recovered by the Municipal Council in accordance with law, if not already paid by the petitioners.

Accordingly, writ petition is partly allowed to the extent that the recovery beyond three years from the date of issuance of demand/bill is barred by limitation, however, within three years is recoverable.

Costs made easy.

