(2012) 09 P&H CK 0119

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 3584 of 2010

Union of India APPELLANT

Vs

Municipal Council, Batala RESPONDENT

Date of Decision : 20-09-2012

Acts Referred:

Constitution of India, 1950 — Article 285
Punjab Municipal Act, 1911 — Section 84

Citation : (2013) 169 PLR 117 : (2013) 2 RCR(Civil) 988

Hon'ble Judges : L.N. Mittal, J

Bench : Single Bench

Advocate : Anil Rathee, for the Appellant; Vishavjeet, for the Respondent

Final Decision : Allowed

Judgement

L.N. Mittal, J.—Plaintiff Union of India is in second appeal. Plaintiff/appellant filed suit against defendant/respondent - Municipal Council, Batala. Plaintiff is having new telephone exchange building in Batala and is paying water and sewerage charges as per consumption. However, defendant demanded service charges amounting to Rs. 1,29,572/- from the plaintiff for the said building on the basis of instructions/circulars dated 10.05.1954 and 27.03.1967 issued by Govt. of India. The plaintiff/Union of India(UOI) by filing the suit challenged the said demand alleging that in view of Article 285 of the Constitution of India, no such tax in the garb of service charges can be levied on the property of the plaintiff/UOI.

2. Defendant resisted the suit on various grounds and justified the demand of the impugned amount of service charges. Bar of jurisdiction of civil court u/s 84 of the Punjab Municipal Act, 1911 (in short, ''the Act'') was also pleaded.

3. Learned trial court vide judgment and decree dated 29.01.2002 decreed the plaintiff''s suit. However, first appeal preferred by defendant has been allowed by learned lower appellate court vide judgment and decree dated 21.05.2010 and

thereby, suit filed by plaintiff stands dismissed. Feeling aggrieved, plaintiff has filed this second appeal.

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

5. Counsel for the appellant contended that plaintiff/UOI continues to be owner of the building in question and the same has not been transferred to Bharat Sanchar Nigam Ltd. (BSNL) and consequently, observation by the learned lower appellate court that protection of Article 285 of the Constitution of India is not available to the plaintiff as BSNL is a corporation, is perverse and illegal. It was also contended that in view of Article 285 of the Constitution of India, defendant/ respondent Municipal Council cannot levy tax on the building of UOI and therefore, the disputed amount of service charge which is in the nature of tax cannot be levied. Reliance has been placed on judgment of Hon''ble Supreme Court in Municipal Corporation, Amritsar Vs. The Senior Superintendent of Post Offices, Amritsar Division and Another,

6. On the other hand, counsel for respondent pleaded bar of jurisdiction of civil suit u/s 84 of the Act which also provides for remedy of filing of appeal to the aggrieved person. It was also argued that amount of service charges had been rightly demanded from the plaintiff.

7. I have carefully considered the rival contentions. Approach of learned lower appellate court that protection of Article 285 of the Constitution of India is not available to the plaintiff because BSNL has been formed as corporation is completely and patently perverse and illegal because the building in question, to which the amount in question pertains, belongs to plaintiff/UOI and has not been transferred to BSNL, Consequently, protection of Article 285 of the Constitution of India is available to the plaintiff regarding the building in question.

8. Defendant has demanded service charges in view of circulars dated 10.05.1954 and 27.03.1967 issued by Central Govt. However, these administrative instructions or circulars cannot over ride the provision of Article 285 of the Constitution of India. According to said provision, only Parliament may by law provide for levy of any tax on the property of the UOI. The aforesaid administrative circulars or instructions cannot be equated with the law enacted by Parliament. Consequently, on the basis of said administrative circulars, impugned amount of service charges/service tax could not be levied on building of UOI. The demand is in violation of Article 285 of the Constitution of India. The instant case is fully covered by judgment of Hon''ble Supreme Court in the case of Municipal Corporation, Amritsar (supra). In that case also the Municipal Corporation demanded service charges on buildings of post offices of UOI on the basis of the same circulars. Hon''ble Supreme Court held that the demand of service charges is in the nature of tax and the same is in violation of Article 285 of the Constitution of India. It was also held that administrative circulars in question are not sufficient for the purpose of Article 285 of the Constitution of India because only Parliament may by law provide otherwise i.e. provide for levy

of tax. It was thus concluded that the tax could not be levied on building of UOI by Municipal Corporation on the basis of aforesaid administrative circulars or instructions. The instant case is thus fully covered by the ratio of law laid down in the aforesaid judgment of the Hon''ble Supreme Court.

9. Following substantial question of law arises for adjudication in this second appeal:-

Whether the finding of lower appellate court that protection of Article 285 of the Constitution of India is not available to the plaintiff for the building in question and the finding that the defendant is entitled to recover the disputed amount of service charges/tax is erroneous, perverse and illegal?

For the reasons, already recorded hereinbefore, the aforesaid substantial question of law is answer in the affirmative i.e. in favour of plaintiff/appellant. Resultantly, the instant second appeal is allowed. Impugned judgment and decree of the lower appellate court are set aside. Judgment and decree of the trial court decreeing the suit of the plaintiff are restored. The parties shall bear their respective costs throughout.