

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

LPA No. 533 of 2015 (O&M)

DATE OF DECISION : 04.08.02015

Municipal Council Nurmahal, District Jalandhar

.... APPELLANT

Versus

Ujjal Singh Lamba and others

.... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE SATISH KUMAR MITTAL

HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present : Mr. Harminder Singh, Advocate,
for the appellant.

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SATISH KUMAR MITTAL, J. (Oral)

Municipal Council, Nurmahal, District Jalandhar, has filed this intra-court appeal under Clause X of the Letters Patent against the order dated 29.01.2015 passed by the learned Single Judge, whereby the writ petition (CWP No. 3010 of 2014) filed by Ujjal Singh Lamba and others (respondents herein) has been partly allowed and the appellants have been restrained from recovering the water charges from the respondents beyond three years from the date of issuance of demand/bill, being barred by limitation.

Though there is delay of 25 days in filing the instant appeal, and the appellant has filed an application (CM No. 1080-LPA of 2015) for condoning the said delay, yet we have heard learned counsel for the

appellant on merits and have gone through the impugned order passed by the learned Single Judge.

The brief facts of the case are that the respondents have constructed their houses in an area of about five marlas within the Municipal area of Nurmahal. Earlier they were required to pay water charges, but in the year 2006, the 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. In view of the said notification, the appellant – Municipal Council did not issue any bill to the respondents on account of water and sewerage charges. In the year 2013, the appellant – Municipal Council issued water charges bills to the respondents for the years from 2006 to 2013, stating that in the door to door survey conducted by it, it was found that their houses were more than 5 marlas, but due to negligence of the officials of the appellant – Municipal Council, houses of the respondents were exempted from payment of water and sewerage charges and no bill was issued to them.

The respondents challenged the aforesaid bills by filing writ petition stating therein that neither any survey was conducted in their presence nor the appellant – Municipal Council could recover the water charges beyond three years from the date of issuance of the bill. It is stated that the respondents have already paid their water charges bills for the year 2011 to 2013, and are not liable to pay water charges levied for the period

beyond three years from the date of issuance of the bill, i.e. from year 2006 to 2010, as the same are barred by limitation.

The learned Single Judge, while relying upon the provisions of Sections 80 and 81 of the Punjab Municipal Act, 1911 (hereinafter referred to as 'the Act of 1911') and Article 113 of the Limitation Act, 1963 (hereinafter referred to as 'the Act of 1963'), and further relying upon a Division Bench decision of this Court in **Municipal Committee, Bhatinda vs. Jaswant Rai and others**, 1990 (2) PLR 402, vide the impugned order dated 29.01.2015 partly allowed the writ petition while holding that the appellant – Municipal Council cannot recover the water charges for the period beyond three years from the date of issuance of bill, as the same is barred by limitation.

Against the aforesaid order, the instant appeal has been filed.

Learned counsel for the appellant argued that in the instant case, instead of Article 113 of the Act of 1963, Article 62 is applicable, because as per Sections 80 and 81 of the Act of 1911, for arrears of water charges first charge is to be created on the property in respect of which the water charges are to be recovered, therefore, such cases fall under Article 62 of the Act of 1963, which provide to enforce payment of money and limitation is twelve years, and do not fall under Article 113 of the Act of 1963, where the limitation is three years.

We do not find any substance in the aforesaid argument. In the present case, at no point of time, any notice for recovery of water charges

prior to three years from the date of issuance of the impugned bills was issued, therefore, it cannot be said that the amount was recoverable and a charge has been created on the immovable property. This controversy came for consideration before a Division Bench of this Court in **Jaswant Rai's case** (supra), wherein after considering various provisions of the Act of 1911 and the Act of 1963, the following observations were made :-

“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 113 of 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 v M/s Palace Cinema, I. L. R. (1972) 1 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.”*

Learned counsel for the appellant could not cite any contrary judgment. In view of the aforesaid law, the learned Single Judge has partly

allowed the writ petition of the respondents, while observing as under :-

“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.”

We do not find any illegality in the aforesaid view taken by the learned Single Judge, which is based upon a Division Bench decision of this Court.

No merit. Dismissed.

(SATISH KUMAR MITTAL)
JUDGE

August 04, 2015
ndj

(HARINDER SINGH SIDHU)
JUDGE