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

RSA-3766-2012 (O&M)

Date of decision : 02.03.2016

Indian Tankers (P) Ltd.

...Appellant

Versus

Municipal Corporation, Jalandhar

...Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Kanwal Goyal, Advocate
for the appellant.

Mr. H.K. Aurora, Advocate
for the respondent.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

AMIT RAWAL, J. (ORAL)

The appellant-plaintiff is aggrieved of the concurrent findings of fact, whereby the suit simpliciter for permanent injunction without claiming declaration, is maintainable or not and therefore, whether the respondent-defendant can be enjoined from recovering and levying the amount of penalty imposed by the office of Municipal Corporation, in view of the provisions of Section 116 of the Punjab Municipal Corporation Act, 1976 (hereinafter called 'the 1976 Act'). This Court, while issuing the notice of motion, passed the following order on 23.02.2015:-

“Learned counsel appearing for the appellant, inter-alia, contends that as per Section 116 of the Punjab Municipal

*Corporation Act, 1976, penalty of twenty five times the value of such octroi or to fifty rupees, whichever may be greater is to be levied for evasion of octroi and that power is only with the criminal court and not with the authorities of the Municipal Corporation. She further submits that no such order of assessment has ever been served upon the appellant-plaintiff while impounding the truck and during the pendency of the suit, the appellant-plaintiff had forgone the relief of declaration and mandatory injunction, but continued with the relief of permanent injunction. On an application filed under Order 39 Rule 1 & 2 CPC and on deposit of ₹ 30,000/- and furnishing of bank guarantee, the truck was released. She further contends that the Courts below have committed an illegality and perversity in not granting the relief of permanent injunction on the premise that the appellant-plaintiff has forgone the main relief of declaration and mandatory injunction. In support of her aforementioned contention, relies upon the judgment of the Hon'ble Supreme Court in **“Baddu Mal v. Contonment Board, Jullundur”, AIR 1960 (Punjab) 561** to contend that only the criminal court has no jurisdiction and relief of permanent injunction can be entertained. Notice of motion for 13.8.2015.*

In the meantime, the direction given to the Municipal Corporation to encash the bank guarantee shall remain stayed.”

Mr. Kanwal Goyal, learned counsel appearing on behalf of the appellant submits that as per ratio culled out by the Hon'ble Supreme Court rendered in **“Municipal Corporation Ludhiana V/s Commissioner of Patiala Division, Patiala” 1995(1) RRR 659**, it has been held that the power to invoke the penalty, vests with the Criminal Court and not by an Officer of the Municipal Corporation, and as per the Division Bench judgment of this Court rendered in **“Baddu Mal v. Contonment Board, Jullundur”, AIR 1960 (Punjab) 561**, the

suit simpliciter for permanent injunction, is maintainable and thus, urges to this Court to formulate the following substantial questions of law:-

1. Whether in view of the ratio decidendi culled out by the Division Bench judgment of this Court rendered in “Baddu Mal's case (supra), the suit for permanent injunction is maintainable or not?
2. Whether, the action of the Municipal Corporation lacks jurisdiction in levying and recovering the penalty as envisaged under Section 116 of the 1976 Act?

Mr. H.K. Aurora, learned counsel appearing on behalf of the respondent-Corporation submits that the driver of the truck, in the affidavit, opted for compounding of the offence, and therefore, the suit is not maintainable. There is no illegality and perversity in the judgment and decree of both the Courts below. There is no dispute to the ratio decidendi culled out by Hon'ble Supreme Court in “Municipal Corporation, Ludhiana's case (supra). In view of the peculiar facts and circumstances of the case, the suit has rightly been dismissed.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is a substance in the aforementioned submissions of Mr. Kanwal Goyal, for the reason that Section 116 of the 1976 Act, envisages the imposition of the penalty 25 times the value of such octroi or to fifty rupees, whichever is greater and power vests with the Criminal Court and not with the Officer of the Corporation. Section 116 of the 1976 Act reads thus:

" 116. Penalty for evasion of octroi.- If animals or articles passing the octroi limits of a corporation are liable to the payment of octroi then every person who causes or abets the introduction of, or himself introduces or attempts to introduce within the said

octroi limits any such animals or articles upon which payment of the octroi due on such introduction has neither been made nor tendered, shall be punishable with fine which may extend either to twenty times the value of such octroi or to fifty rupees, whichever may be greater. "

This fact has already been noticed by the Hon'ble Supreme Court in **"Municipal Corporation, Ludhiana's case"** (supra), the operative part of the judgment reads thus:-

"4. Section 113 to 116 occur in Chapter-VII dealing with 'Taxes'. Indeed there are other provisions in the Act which provide punishment for certain offences created by the Act. Reference may be made to Section 388 which says that whoever contravenes the provisions specified therein "shall be punishable - (1) with fine which may extend to the amount, or with imprisonment for a term which may extend to the period, specified in that behalf"

Section 394-A says:

"394-A. Prosecutions.- Save as otherwise provided in this Act, no Court shall try any offence made punishable by or under this Act or nay rule or any bye-law made thereunder, except on the complaint of or upon information received from the commissioner, the Executive Officer the Medical Officer of Health, the Municipal Engineer (Electricity) or any other officer of the Corporation authorised by it in this behalf."

- 5. It appears that the Punjab and Haryana High Court has consistently taken the view that the imposition of fine under Section 116 (and the corresponding provision in the preceding enactments) can be only by a Criminal Court vide **Nitco Roadways Private Limited v. Municipal corporation of Ludhiana (C.W.P. No.1804 of 1977)** disposed of on Act September, 1965 and **Gian Chand v. The State (1958 Punjab Law Reporter 539)**.*

We are of the opinion that the said view is correct in law. The normal rule of legislative drafting is that wherever it says that a particular Act shall be "punishable with fine". it contemplates its imposition by a Criminal Court only. Be that as it may, both Section 116 and 380 speak of "punishable with fine". Section 388 provides not only for fine but also for imprisonment. It cannot be suggested that the punishment of imprisonment contemplated by Section 388 can be awarded by the Officer of the Corporation. If so, the punishment of fine can also not be imposed by them. The same logic applies to Section 116 as well. We, therefore, agree with the High Court that punishment of fine provided by Section 116 can be imposed only by the Criminal Court and cannot be imposed by the Officer of the Corporation.

6. The appeal accordingly fails and is dismissed. No costs.

In such a situation, even if, the appellant-plaintiff did not press the relief of declaration, the suit simpliciter for permanent injunction, would be maintainable as per the ratio decidendi culled out in the judgment of this Court in **"Baddu Mal's case"** (supra) and para 10 of the judgment reads thus:-

*"(10) It may be observed that the finality under these provisions attached only to the assessments made under the Act and, if the assessment is not under the Act, then obviously these provisions would not operate as a bar to a citizen coming to a civil Court to obtain relief, to which he may be found otherwise entitled. Under section 9, Code of Civil Procedure, the Courts have jurisdiction to try all suits of a civil nature excepting those of which their cognizance is either expressly or impliedly barred. It is agreed that in the present case the jurisdiction of the civil courts is not expressly barred. As observed by **Lord Thankerton in Secy. of State v. Mask and Co., 67 Ind App 222: (AIR 1940 PC 105)** the exclusion of the jurisdiction of the civil Courts is not to be readily inferred but that such exclusion must either by*

explicitly expressed or clearly implied.

It is also well stated that even if jurisdiction is so excluded, the civil courts have jurisdiction to examine into cases where the provisions of the Act have not been complied with, or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure. In my opinion, the octroi duty in the instant case was never determined in accordance with the provisions of the Cantonments Act and bye-law No. 15 of the Octroi Bye-laws. Not only was the duty never determined according to the statute, but even with respect to its recovery the provisions of section 90, 91 and 92 were not complied with. It is admitted that a bill for the amount due was never presented to the appellant for the payment thereof.

The conclusion is, therefore, irresistible that the imposition in question and its recovery are, both un-authorised and in violation of or at least not in accordance with, the essential statutory provisions. In view of the legal position and the facts stated above, it is difficult for me to conclude that the civil courts have no jurisdiction to entertain the present suit. The importance of jealously scrutinizing the jurisdiction conferred on executive or administrative bodies and of giving no wider interpretation that is necessary to any limitation of power of the Civil Court cannot be minimized.”

In view of what has been noticed above, the judgment and decree of both the Courts below are hereby set aside and accordingly, substantial questions of law noticed above are answered in favour of the appellant-plaintiff and against the respondents-defendants. The suit viz-a-viz, the permanent injunction is decreed. The respondents are restrained from recovering and levying the penalty as per Section 116 of the 1976 Act. Decree sheet be prepared.

The amount deposited is also ordered to be refunded to the appellant-plaintiff.

However, it is made clear that it will not preclude the Municipal Corporation from initiating the recovery of the amount of penalty, if permissible, in accordance with law.

RSA is accordingly allowed.

02.03.2016
yogesh

(AMIT RAWAL)
JUDGE