IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 09.08.2017

1. RSA No.1168 of 1991 (O&M)

Notified Area Committee, Mullanpur Dakha, Ludhiana

... Appellant

Vs.

Jaswinder Singh

... Respondent

2. RSA No.215 of 1993 (O&M)

Notified Area Committee, Mullanpur, Ludhiana

... Appellant

Vs.

The Mullanpur Co-operative Marketing-cum-Processing Society Ltd.

... Respondent

3. RSA No.774 of 1996 (O&M)

Notified Area Committee, Mullanpur Dakha, Ludhiana

... Appellant

Vs.

M/s Sekhon Electric Gift House

... Respondent

4. RSA No.2752 of 1998 (O&M)

Notified Area Committee, Mullanpur Dakha, Ludhiana

... Appellant

Vs.

Ved Parkash

... Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Sumeet Abrol, Advocate
for the appellant.

Mr. H.S. Dhindsa, Advocate
for the respondent.

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<u>RAMESHWAR SINGH MALIK, J. (ORAL)</u>

These four identical regular second appeals bearing RSA No.1168 of 1991, RSA No.215 of 1993, RSA No.774 of 1996 and RSA No.2752 of 1998 are being decided together, with the consent of learned counsel for the parties, vide this common order, as all these appeals are arising out of same set of facts and raise same issue. However, for the facility of reference, facts are being culled out from RSA No.1168 of 1991 (Notified Area Committee, Mullanpur Dakha, Ludhiana Vs. Jaswinder Singh).

Brief facts of the case, as noticed by the learned first appellate Court in para 2 of its impugned judgment, are that Sh. Jaswinder Singh, plaintiff-respondent is the proprietor of M/s Sandeep Oil Traders, 56 New Grain Market, Mullanpur Mandi, District Ludhiana. The Punjab Government under the New Mandi Township (Development and Regulation) Act, 1960 (for short 'Act of 1960') established a New Mandi Township at Mullanpur Dakha. In this New Mandi Township, the plots were allotted to different persons for construction according to the layout plan. The administration of the New Mandi Township was carried under the provisions of Act of 1960. The area of the New Mandi Township known as New Grain Market was exempted/excluded from the jurisdiction of Municipal Limits of the Notified Area Committee, Dakha (NAC Mullanpur Dakha) by the Punjab Government Gazette Notification dated

17.04.1977 published under Section 17 of the Act of 1960. So the defendant NAC, Mullanpur Dakha was not competent to impose and charge Octroi from the plaintiff and other occupants of the New Grain Market. The plaintiff had purchased some goods vide bill No.917 dated 26.06.1984 from M/s Jindal Oil Traders for Rs.2160/- and had imported it into the New Grain Market. On this, the defendant NAC Mullanpur Dakha had charged Octroi of Rs.10.80 paise and a penalty of Rs.2160/-, which was illegal, malafide and arbitrary. The defendants were also charging and threatening to charge Octroi on the goods brought into the New Grain Township, Mullanpur Dakha and the goods passing through it (in transit) i.e. the transit fee. This imposition was illegal, ultra vires and beyond the competency of the defendant NAC Mullanpur Dakha. They were requested not to charge Octroi, or transit fee on the goods, but they did not accede to the request of the plaintiff. Hence he filed the suit for permanent injunction restraining the defendants, either themselves or through their agents, servants and employees from illegally and forcibly assessing/imposing, recovering or realizing any Octroi on the goods being imported into the NAC Mullanpur Dakha.

Defendant was put to notice who appeared and filed the contesting written statement, raising more than one preliminary objections. Plaintiff filed his replication. On completion of pleadings of the parties, learned trial Court framed the following issues: -

1. Whether the defendant has no right to impose or recover any Octroi duty on the goods as alleged by the plaintiff? OPP
2. Whether the plaintiffs are entitled to injunction prayed for? OPP

3. Whether the suit in the present form is not maintainable? OPD.
4. Relief.

In order to prove their respective stands taken in their pleadings, both the parties produced their documentary as well as oral evidence. After going through the evidence brought on record and hearing learned counsel for the parties, learned trial Court came to the conclusion that plaintiff has duly proved his case. Accordingly, suit of the plaintiff for permanent injunction restraining the defendant from illegally assessing/imposing recovery of any Octroi on the goods purchased by the plaintiff, was decreed by the learned trial Court, vide its impugned judgment and decree dated 07.11.1988.

Feeling aggrieved, defendant filed the first appeal, which also came to be dismissed by the learned first appellate Court, vide its impugned judgment and decree dated 01.12.1990. Hence these four identical regular second appeals at the hands of defendant. Appeal was admitted for regular hearing vide order dated 15.10.1992 passed by this Court. Other three connected regular second appeals were admitted and ordered to be heard along with this appeal bearing RSA No.1168 of 1991. That is how, this Court is seized of the matter.

Heard learned counsel for the parties.

A bare combined reading of both the impugned judgments and decrees passed by the learned Courts below will make it crystal clear that suit of the plaintiff was rightly decreed by the learned trial Court vide its impugned judgment and decree dated 07.11.1988 and it was rightly upheld by the learned first appellate Court. None of the impugned judgments have been found suffering from patent illegality or perversity. Concurrent findings of facts recorded by both the learned Courts below have been found based on sound reasons because of which the impugned judgments and decrees deserve to be upheld.

As noticed in the forgoing paragraphs, the common issue involved in all these four appeals was regarding imposition and recovery of Octroi by the appellant from the plaintiffs. Both the impugned judgments passed by the learned Courts below are based on proper appreciation of the documentary evidence, particularly the Gazette Notification dated 16.04.1980 Ex.P2 issued by State of Punjab, which was binding on the appellant as well. As per this notification Ex.P2, appellant had no authority or power to impose and recover the Octroi.

When learned counsel for the appellant was asked to point out the source of power of the appellant to impose and recover the Octroi from the plaintiffs, he had no answer and rightly so, it being a matter of record. Having said that, this Court feels no hesitation to conclude that the learned Courts below committed no error of law, while passing their respective impugned judgments and decrees and the same deserve to be upheld, for this reason also.

It has also gone undisputed before this Court that Octroi in the State of Punjab had been abolished long back. Plaintiffs, in all these four appeals, have duly proved their pleaded cases by leading cogent and convincing evidence. On the other hand, defendant-appellant could not bring on record any contrary evidence. The case of the plaintiffs, in all these four appeals, was based on the official record of the State Government, particularly the Gazette Notification Ex.P2. Neither the authenticity nor correctness of this Gazette Notification Ex.P2 has been disputed by learned counsel for the appellant. In this view of the matter, it can be safely concluded that the learned Courts below were well within their jurisdiction to pass their respective impugned judgments and decrees and the same deserve to be upheld, for this reason as well.

Before arriving at its judicious conclusion, the learned first appellate Court rightly examined, considered and appreciated true facts of the case as well as evidence brought on record, in the correct perspective. The relevant and cogent findings recorded by learned Additional District Judge in paras 16 and 17 of the impugned judgment, which deserve to be noticed here, read as under: -

> *"Coming back to the powers of the State Govt. to impose taxation within a Notified Area Committee, it may be stated that such a power is conferred on the Punjab Govt. by Section 242 of 1911 Act. Notification Ex.D3 was presumably issued under Section 242 of the 1911 Act. But by its subsequent notification Ex.P2, the Punjab Govt. directed that the powers under Sections 56, 58 and 61 to 86 and Section 96 to 102 etc. etc. of 1911 Act which are relevant to the purpose of 1960 Act shall cease to operate in such area of New Mandi Township, as mentioned in the Punjab Govt. Notification Ex.P2, reproduced above. Admittedly the shop of the plaintiff falls in said area in which the provisions of Section 68 to 86 of 1911 Act ceased to operate in view of the Punjab Govt. Gaz. Notification Ex.P2.*
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> *Now although the powers of the State Govt. to impose taxation are contained in Section 242 of 1911 Act, yet these powers are only such powers of taxation as may be imposed by the*

Municipal Committee as distinguished from the Notified Area Committee. The powers of the Municipal Committee to impose taxation and to assess and collect the same, are contained in Section 61 to 86 of the 1911 Act. But a perusal of Gaz. Notification Ex.P2 would show that the Sections 61 to 86 of 1911 Act had been ceased to operate in the New Mandi Township Area of Dakha w.e.f. 16.4.80. Therefore, the dehors the notification Ex.D3, the Section 61 to 86 of the 1911 Act had ceased to apply to New Mandi Township, Mullanpur Dakha w.e.f. 16.4.80. Therefore, the net result is that neither the Punjab Government nor the Notified Area Committee, Mullanpur Dakha had the power to impose, assess or collect the octroi for import of goods into the New Mandi Township, Mullanpur Dakha. This is the clear import implication and meaning of the Punjab Govt. Gaz. Notification Ex.P2."

During the course of hearing, learned counsel for the appellant failed to point out any jurisdictional error or patent illegality apparent on the record of the case in the impugned judgments and decrees passed by both the learned Courts below. He also failed to put into service any substantive argument, so as to convince this Court to take a different view than the one taken by the learned Courts below. Further, no question of law, much less substantial question of law has been found involved in the present case, which is sine qua non for entertaining any regular second appeal at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in **Narayanan Rajendran and another Vs.**

Lekshmy Sarojini and others, 2009 (5) SCC 264.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that all these four regular second appeals are wholly misconceived, bereft of merit and without any substance, thus, these must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, all the abovesaid four regular second appeals stand dismissed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

09.08.2017
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Whether speaking/reasoned Yes/No

Whether reportable Yes/No