$~4 & 5 *(common order)*

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 12th January, 2018

\+ CM(M) 41/2010 and CM APPL.597/2010 (stay)

\+ CM(M) 975/2010 and CM APPL.13488/2010 (stay)

MUNICIPAL CORPORATION OF DELHI & ORS.

.... Petitioners

Through: Ms. Madhu Tewatia, Advocate with Mr. Adhirath Singh, Advocate

versus

SHAMBHUJI & ORS. ..... Respondents

Through: Respondent no.1 in person.

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The first respondent admittedly is the assessee in respect of property described as flat No.73, Amit Cooperative Group Housing Society, Plot No.32, Sector 13, Rohini, Delhi-110085 for purposes of assessment and levy of municipal taxes commonly known as "property taxes". It appears that the petitioner corporation, now represented by North Delhi Municipal Corporation (after trifurcation) through its assessor and collector had held an inquiry and passed an order of assessment in its regard. Such assessment was challenged by the first respondent (the assessee), by writ petition (civil) No.4561/2005, which was disposed of by order dated 26.04.2005

whereby the matter was remitted to the assessing authority of the petitioner for passing a speaking order within the time specified, the assessee having been directed to appear before the concerned joint assessor and collector on 10.05.2005.

2. On 29.08.2005, the assessee instituted a civil suit impleading, amongst others, the petitioners herein seeking damages in the sum of Rs.1 lac for wrongful and malicious injuries on account of illegal attachment of his savings bank account and having caused defamation, harassment and torture, demanding refund of money recovered in excess of his liability. The said civil suit (Suit No.102/09/05) may hereinafter be referred to as "the first civil suit".

3. It is stated by the petitioners that in the wake of compliance with the aforesaid orders of the High Court, the joint assessor and collector (North Range) passed a fresh order of assessment on 14.10.2005 under Section 116-G of Delhi Municipal Corporation Act, 1957. It further appears that pursuant to the said assessment order, certain further steps were taken by the concerned agency of the petitioner corporation for recovery of the tax arrears. Against this backdrop, the first respondent (the assessee) instituted another civil suit on 12.04.2006 (Suit No.101/09/06) describing it again as suit for damages and compensation for injuries of defamation, mental torture, harassment and further malicious attempts to wrongfully attach his properties, praying, *inter alia*, for reliefs of declaration to the effect that the assessment order dated 14.10.2005 was not only illegal, but also *mala fide*, having been passed in collusion and conspiracy, it

amounting to contempt of court and being in the nature of a colourable exercise of power against the provisions of Delhi Municipal Corporation Act, 1957, also praying for relief of permanent injunction against any money being realized pursuant to such order and for payment of Rs.1,05,900/- as damages and compensation with interest. The said civil suit may be hereinafter referred to as "the second civil suit".

4. The petitioners moved separate applications seeking rejection of the plaints in each of the afore mentioned suits referring to the provisions contained under Order VII Rule 11 of the Code of Civil Procedure, 1908 (CPC), the prime contention pressed being that the assessment order was subject to appeal under the provisions of Sections 169 and 170 of the Delhi Municipal Corporation Act, 1957 before the tribunal created by the statute and that the same were also barred by the provisions contained in Sections 477 and 478 of the Delhi Municipal Corporation Act, 1957. Both the applications were considered by the Additional District Judge. While the application in the first civil suit was dismissed by order dated 08.09.2009, the application in the second suit was dismissed by order dated 13.05.2009, the said orders having been challenged in these petitions.

5. The prime question to be examined in the context of the prayer for rejection of a plaint in each of these two suits is as to whether there is an express or implied bar to the institution of such suits in view of the availability of the remedy of appeal against the assessment orders under Sections 169 and 170 of the Delhi Municipal Corporation Act,

1957. The trial Judge has rejected the contention of the petitioners referring to the view taken by a division bench of this court in the case reported as *Ganga Ram Hospital Trust vs. Municipal Corporation of Delhi, 2001 (60) DRJ 549.* At the hearing, the counsel for the petitioners instead primarily placed reliance on the decisions of the Supreme Court in *Dhulabhai Etc. vs. State of Madhya Pradesh & Anr., AIR 1969 SC 78; Shiv Kumar Chadha vs. Municipal Corporation of Delhi, 1993 (3) SCC 161* and *N.D.M.C. vs. Satish Chand (2003) 10 SCC 38.*

6. The learned counsel for the petitioners fairly conceded that unlike the provisions contained in Punjab Municipal Act, 1911 to which the case of *Satish Chand* (supra) pertained, the case at hand relates to the provisions contained in Delhi Municipal Corporation Act, 1957, wherein there is no provision stating that the jurisdiction of the civil court is barred in matters relating to assessment of properties for purposes of levy of property tax. Her focus, however, was on the fact that the latter statute makes the decision of the tribunal in appeal under Sections 169 and 170 of the Delhi Municipal Corporation Act, 1957 final. This, in her submission, renders the civil court divested of the jurisdiction, her argument being that there is no reason why the appeal before the tribunal under Sections 169 and 170 of the Delhi Municipal Corporation Act, 1957 cannot be treated as an appropriate or more efficacious remedy.

7. In the considered view of this court, the view taken by the division bench in *Ganga Ram Hospital Trust* (supra) governs the field

in the particular context of the provisions of Delhi Municipal Corporation Act, 1957. Even if, however, it could be construed that there is an implied bar or that it was appropriate for the first respondent to approach the tribunal in appeal under Sections 169 and 170 of the Delhi Municipal Corporation Act, 1957, to question the assessment, it cannot be ignored that his civil suits do not raise only the issue of validity or otherwise of the assessment orders. They go beyond by imputing acts of commission and omission in the nature of harassment and torture leading to defamation and demanding damages or compensation in their respect. Such part of relief, which is intertwined with his case about the illegality of the assessment order, does not concededly lie within the jurisdiction of the tribunal established to hear the appeals under Sections 169 and 170 of the Delhi Municipal Corporation Act, 1957. At the stage of consideration of prayer for rejection of the plaint, the court cannot judge the merits of the case. In these circumstances, the prayers for rejection of the plaints have been correctly repelled by the Additional District Judge by the orders which have been impugned before this court in these petitions.

8. As regards the objections under Sections 477 and 478 of the Delhi Municipal Corporation Act, 1957, it cannot be ignored that the reliefs claimed in the second suit include that of injunction. Further, it would be a mixed question of facts and law as to whether first civil suit was filed within the period of limitation after service of notice or otherwise.

9. Thus, both the petitions are dismissed. The interim orders are vacated.

10. Pending applications also stand disposed of.

R.K.GAUBA, J.

JANUARY 12, 2018
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