# IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

**202** **CWP-21175-2015 (O&M)**
**Date of Decision: 26.08.2022**

**M/S GANESH RICE MILLS**

... Petitioner

Versus

**MUNICIPAL COMMITTEE AMLOH AND ANR.**

... Respondents

**CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.**

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Present: Mr. D.K. Singal, Advocate
for the petitioner.

Mr. Gurvinder Singh Sidhu, Advocate
for respondent No.1- M.C. Amloh.

Mr. Vikas Arora, Addl. A.G., Punjab.

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**VINOD S. BHARDWAJ, J. (ORAL)**

The instant petition has been filed under Articles 226/227 of the Constitution of the India seeking issuance of writ in the nature of Certiorari for quashing of the assessment order dated 11.03.1986 passed by the Administrator, SDO (Civil) (Annexure P-4) and the order dated 06.01.2015 (Annexure P-10) passed by the Divisional Commissioner, Patiala Division.

Learned counsel appearing on behalf of the petitioner has contended that the Municipal Committee assessed the property of the petitioner i.e. Ganesh Rice Mills vide order dated 18.10.1983 for the assessment year 1982-83. The annual rental value of the property was assessed as Rs.48,000/- per annum. An appeal against the aforesaid order of assessment was heard by the SDO (Civil), Nabha and upon hearing of the same, the order of assessment was set aside on 25.02.1985. Aggrieved thereof, the M.C. preferred appeal before the Divisional Commissioner, Patiala Division. The said appeal was initially dismissed in default on 17.02.1987. In the interregnum, the petitioner received a notice under Section 65/67 of the Punjab Municipal Act, 1911 pertaining to the assessment year 1986-87 whereby the proposed rental assessment was enhanced. Objections were also filed against the said proposed assessment. The same were heard by the SDO (Civil), Nabha being the Administrator of the Muncipality and vide order 11.03.1986 he rejected the said objections and confirmed the proposed annual rental value. Aggrieved of the aforesaid order, the petitioner preferred an appeal before the Divisional Commissioner, Patiala Division, which was dismissed vide order dated 24.09.1987 on the ground of maintainability.

The petitioner approached the High Court vide CWP No.1599 of 1989 raising challenge to the said orders. He contends that during the pendency of the said writ petition, the petitioner became aware of the fact the land on which the unit of the petition is situated is not within the Municipal Limits of M.C. Amloh and accordingly, he moved an application before the Assistant Collector-cum-Tehsildar, Amloh for carrying out the demarcation of the land on which the unit of the petitioner is situated to ascertain as to whether the same falls within the MC limits or not. Pursuant to the aforesaid application, a revenue official was deputed by the Assistant Collector to carry out the demarcation of the property and the report in this regard dated 18.11.2005 (Annexure P-8) was submitted as per which the area of the petitioner on which the unit was installed falls outside the Municipal Limits.

An application for amendment of the writ petition was accordingly moved and the same was allowed by the High Court. The said writ petition was disposed of vide order dated 01.07.2013 directing the respondent No.2 to examine the case on merits.

In terms of the aforesaid order passed by this Court, the matter was re-examined and after consideration of the demarcation report as well as submissions advanced by the respective parties, the appeal was dismissed again vide order dated 06.01.2015 (Annexure P-10).

Learned counsel contends that the said orders of assessment and subsequent dismissal of the appeal are bad since the demarcation report of the Kanungo dated 18.11.2005 had not been considered by the authorities. The said report categorically stated that the property in question fell outside the municipal limits. Hence, the petitioner cannot be subjected to levy of property tax and the assessment and demand made against the same is bad and unsustainable in law.

Per contra, a written statement on behalf of the respondents had been filed controverting the aforesaid facts and it was pointed out that the material facts have been concealed by the petitioner. A reference has also been made to the proceedings that had been initiated at the behest of the petitioner before the Civil Court in the form of filing a Civil Suit No.172-T of 1998 seeking the relief of Permanent Injunction to restrain the Municipal Committee, Amloh and its agents from recovering/realizing the property tax from the plaintiff (therein)/petitioner (herein). The aforesaid civil suit was dismissed by the Civil Judge (Junior Division), Amloh vide Judgment and Decree dated 01.12.2003 after holding that the land fell within the Municipal area and that by virtue of Section 84 of the Punjab Municipal Act, 1911, the jurisdiction of the Civil Court would be barred.

The Civil Court recorded a finding that the land fell within the municipal limits as per the notification Ex.P-1. He further contends that a demarcation report of PW-2, Shingara Singh, Circle Patwari was also relied upon by the petitioner/plaintiff and that the said demarcation report was disregarded by the Court after noticing discrepancies and shortcomings. The relevant extract of the aforesaid judgment of the Civil Judge (Junior Division) is reproduced hereinafter below:

> *"10. After going through the rival contentions of the ld. counsel for the parties and going through the file, I am of the considered view that arguments raised by the ld. counsel for the plaintiff have got no force as notice with regard to the house tax in-dispute 1,65,2258/- is involved in the present suit. The plaintiff firm has not filed the present suit for declaration with regard to Illegality of this notice. Rather plaintiff has filed the present suit for mere permanent injunction. Although, plaintiff firm has pleaded in the present suit that this notice is illegal, void unjust, arbitrary un-authorized, against natural justice but no finding can be given with regard to this notice in the present suit as the same is for permanent injunction. The plaintiff is seeking relief of decree of permanent injunction against defendant Municipal Committee, Amloh while alleging that defendant municipal committee may be restrained from recovering the amount of house tax Rs.1,65,258/- in dispute from plaintiff firm in illegal manner. The municipal committee is statutory body and it cannot be presumed that municipal committee is going to recover this amount illegally and forcibly. Rather the above-said evidence, brought on record, by the parties has clearly proved that municipal committee is going to recover the amount of house tax in-dispute from plaintiff in due course of law only. Apart from this plaintiff has also alleged in this case that plaintiff firm is situated outside the municipal area of Municipal Committee Amloh and the plaintiff has filed copy of notification ExPI, copy of Jamabandi ExP2, report of Halqa Patwari ExPW2/B. Although, the report ExPW2/8 has clearly proved that plaintiff firm W/s Ganesh Rice Mills is situated outside the municipal limits Amloh But the*

*<u>perusal of notification ExP1 has clearly proved that some part of area of plaintiff firm is situated within plaintiff of Municipal Committee Amloh and in these circumstances, it is hereby presumed that the plaintiff firm is situated within the area of Municipal Committee Amloh.</u> Beside this, it has come into evidence of PW1 Subash Chander, who is partner of plaintiff firm, that plaintiff firm used to pay house tax regularly to defendant prior to issuance of notice in-question. This part of testimony of PW1 Subash Chander has clearly proved that prior to this notice, plaintiff firm used to pay house tax to Municipal Committee, Amloh regularly. It has also come into evidence of PW1 Subash Chander that no appeal was filed by plaintiff firm against issuance of notice in-question. This evidence has clearly proved that plaintiff firm has approached this Court straight without filing appeal against the notice in question and this fact shows that plaintiff firm has not adopted proper procedure with regard to house tax. If it has any objection with regard to the illegality of notice in-question then it has to file appeal against the same instead of filing this suit. Moreover, the plaintiff firm has not sought declaration with regard to illegality of notice in-question. Therefore, after my abovesaid discussion. I am of the considered view that plaintiff firm has failed to prove this issue. So, this issue is hereby decided against the plaintiff and in favour of the defendant."*

***(Emphasis supplied)***

Aggrieved of the aforesaid judgment, the petitioner preferred Civil Appeal No.13 of 09.02.2004 which was dismissed vide judgment dated 20.09.2005. The relevant extract of the aforesaid judgment reads thus:

*"6. <u>On examining the material evidence on the record, this court has reached the conclusion the onus to prove that the building of plaintiff -firm falls outside the territorial jurisdiction of Municipal Committee Amloh is upon the plaintiff.</u> The plaintiff could not discharge the onus of this issue by leading satisfactory evidence on the record. The main*

*thrust of the case of the plaintiff is on the statement of PW-2 Shingara Singh, Circle Patwari on the record. The cross-examination of PW-2 Shingara Singh Circle Patwari does not help the plaintiff much in this case. In cross-examination, he admitted that on application there is no stamp of tehsildar. That there is no number of register of Tehsildar on it. He further admitted that he has not summoned the defendant at the time of the report. He further admitted that he had not found out any permanent point or demarcation on the spot. He further admitted that he prepared his report on the basis of field map by sitting in the office. He further admitted that he had not made any mention by consulting any jamabandi in his report. He further admitted that there are instructions of Financial Commissioner, Revenue, for demarcation, which must be complied with. No reliance can be placed on the statement of PW-2 Shingara Singh. He has not issued any notice to the defendant when he made report Ex.PW-2/B. He had not conducted any demarcation on the spot. Even otherwise, demarcation is conducted by a Revenue Official of the rank of Kanungo and not by circle Patwari. Instructions of Financial Commissioner Revenue, Punjab, have been adopted even in Rules and Orders of High Court and any demarcation report which is not in accordance therewith, cannot be relied upon. Firstly, he has not conducted the report in the presence of defendant. He has not visited the spot to find out as to whether building of the plaintiff is within jurisdiction of municipal area or not. The demarcation report should have been conducted on this point, but it is not so on the record. Notification Ex.P-1 dated 10.11.1981 vide which the bountries of khasra number of Bir Amloh have been brought within the jurisdiction of municipal area Amloh. Vide copy of Jamabandi Ex.P-2, the plaintif-firm is recorded in possession of khasra numbers deraribed therein. In notification Ex.P-1 Khasra no.25//5, 25//6/2, and Khasra no.25/2 have been brought within the municipal area. The demarcation should have been conducted in accordance with the instructions of the*

*Financial Commissioner, Revenue to find out whether the building of the plaintiff-firm is located within the municipal area or outside the municipal area. Since the report Ex.PW-2/B of PW-2 Shingara Singh is not in accordance with law, therefore, this court regrets its ability to place any reliance upon it. There is only statement of PW-1 Subhash Chand on the record that the building of the Plaintiff falls outside the municipal area. The plaintiff admitted as PW-1 that they had been depositing tax earlier. That he has not filed any appeal against the issuance of notice Ex.D-1. His simple statement cannot be relied upon to the effect that the Property in dispute falls outside the municipal area, more so, when plaintiff had been paying the house tax for the last many years prior to issuance of this notice to the defendant and Ex.D-3 may be referred to in this regard. The conclusion drawn by this court is that plaintiff remained un-successful in proving it on the record that the plaintiff-firm falls outside the jurisdiction of municipal area. The finding of the trial court on this point that plaintiff-firm is situated within the area of Municipal committee is affirmed in this appeal.*

*7. The next point is that plaintiff Subhash Chand himself admitted as PW-1 that plaintiff-firm had been paying house tax to the defendant of the plaintiff-firm. The plaintiff-firm never raised any objection to it. Plaintiff has not preferred any appeal as provided under section 84 and 86 of Punjab Municipal Act, 1911 against impugned notice Ex.P-1. The jurisdiction of civil court is barred in entertain this suit. On this point, this court is fortified by law laid down in* ***Vinod Kumar and others Vs Municipal Council, Ferozepur****, reported in* ***2000(2) Rvenue Law Reporter - 481.*** *Our own High Court has ruled in this authority that the person aggrieved against an order of levy of house tax, has a right of appeal to competent authority. Statute provides a particular remedy to be sought in a particular forum. Section 86 bars Jurisdiction of any other authority. Civil court has no jurisdiction to entertain the matter. Reliance was placed in* *this authority Hon'ble Supreme Court in **Munshi Ram and others Vs. Municipal Committee, Chheharata,** reported in **1979, Revenue Law Reporter - 419**, wherein Hon'ble Supreme Court has observed that by inevitable implication, the jurisdiction of the Civil Court, where the grievance of the party relates to an assessment or the principle of assessment under this Act is excluded. The submission of counsel for the plaintiff is that the assessment has not been done by the defendant in accordance with principles of East Punjab Urban Rent Restriction Act, 1949 and the impugned notice has also been challanged on this point. On this point, Division Bench of our own High Court held in **Rama Krishna Rice Mills Vs Municipal Committee, Sultanpur Lodhi**, reported in **Punjab Legal Reports and Statutes -234**, that remedy of appeal provided under section 84 an 86 of Punjab Municipal Act, 1911. Challenge made before Civil Court that assessment was not made on the basis of fair rent as provided by East Punjab Urban Urban Rent Restriction Act, 1949, but on the contrary determined on the basis of theory of supply and demand. It was held that an issue relates to legality of the assessment order and not to the legality of the assessment order and not to the legality of levy or jurisdiction of assessing authority. The jurisdiction of civil court is barred. Hon'ble Supreme Court has examined this point in **N.D.M.C. Vs. Satish Chand (Deceased) by Lr. Ram Chand** reported in **2003 (2) Apex Court Judgments – 384** that civil suit challenging assessment and levy of such tax, Provision of appeal contained in Section 84 of Punjab Municipal Act, 1911 provides a complete remedy and no other remedy is available and civil suit is held to be barred, by Hon'ble Supreme Court. In this view of the matter, the jurisdiction of civil court is barred by necessary implication under Section 84 and 86 of Punjab Municipal Act, 1911 because there is efficacious remedy available under the Act, to file the appeal before the competent authority to the aggrieved person. No illegality or infirmity has been brought to the notice of this court by*

> *counsel for the plaintiff in the impugned judgment and decree of the court below and as such the same are liable to be affirmed in this appeal because the suit of the plaintiff is not maintainable before civil court."*

**(Emphasis supplied)**

Placing reliance upon the aforesaid, learned counsel appearing on behalf of the respondents contends that the prayer for grant of injunction was declined by the Civil Court after consideration of the evidence and upon noticing that the demarcation report of PW-2 Shingara Singh, Circle Patwari was of no help and further that there was no evidence brought on record to substantiate that the notification Ex.P-1 did not extend to the area of the petitioner. He contends that the petitioner, having failed to establish that the property which was subject matter of assessment to property tax fell outside the limits of Municipal Committee, Amloh and that the aforesaid judgments passed by the both Civil Courts below have not been modified or set aside. He thus contends that the finding recorded by the Civil Court as regards the property is binding and that the petitioner cannot be permitted to contend that on account of the suit having been dismissed on the ground of maintainability, the findings so recorded by the Civil Court would not be binding or applicable to the petitioner.

While controverting the aforesaid submission, learned counsel appearing on behalf of the petitioner argues that as the suit of the petitioner was dismissed on account of maintainability, the finding recorded has no evidentiary value and is not binding against the petitioner and that the subsequent demarcation report of the Tehsildar ought to have been taken into consideration.

I have heard the learned counsel for the respective parties and have gone through the evidence produced on their part.

I find myself in disagreement with the learned counsel for the petitioner and find force in the arguments advanced on behalf of the respondent M.C., Amloh.

In its judgment, the Civil Court had specifically considered the situs of the property and as to whether the same fell within the municipal limits or not. The dismissal of the suit on account of maintainability was after recording a finding regarding the property falling within the municipal limit. The said finding would operate against the petitioner and it would not be open to the petitioner to dispel the said finding on account of dismissal of the suit itself.

Furthermore, there was no prohibition against the petitioner in raising a challenge to the judgment passed by the Civil Court and to move additional evidence to prove the subsequent demarcation report after affording an opportunity to the other parties. A finding of fact concurrently recorded by the Civil Court cannot be sought to the dispelled by placing reliance on a document that has not been proved or exhibited in accordance with law. It would not be appropriate for this Court to disregard a specific finding concurrently recorded by the Civil Court by placing reliance on the demarcation report Annexure P-8 that has not been proved by the petitioner.

This Court while exercising its writ jurisdiction would not overlook the finding of fact recorded by the Civil Court only on the basis of disputed demarcation report. Unless, it is brought to the notice of the Writ Court that the finding of fact recorded by the Court is perverse or is unsustainable. On the meaningful reading and interpretation of evidence, such fact or the finding cannot be ignored. The evidence has to be unimpeachable to upset any such finding.

In view of the above, having not found any illegality in the orders passed by the authorities below, the present petition is dismissed.

**(VINOD S. BHARDWAJ)**
**JUDGE**

**26.08.2022**
***rajender***

*Whether speaking/reasoned : Yes/No*
*Whether reportable : Yes/No*