446

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 86 of 1994 (O&M)
DATE OF DECISION : 20.03.2023

Municipal Committee, Bathinda …Appellant

Versus

Madhok Hotels Private Limited …Respondent

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Ms. Kavita Arora, Advocate,
For the appellant.

None for the respondent.

<u>ARUN MONGA, J (ORAL)</u>

For convenience, parties herein are described as per recitals before learned trial Court.

2. Having suffered adverse concurrent findings by the two Courts below, defendant/appellant herein is in second appeal against the judgment and decree dated 02.04.1991 passed by learned trial Court, as upheld by learned First Appellate Court vide its judgment and decree dated 14.05.1993, decreeing the suit filed by respondent herein for permanent injunction restraining defendant/appellant herein from raising demand of Rs.8100/- as house tax for the year 1986-87 on the basis of notice under Section 67 of Punjab Municipal Act, 1911 (hereinafter referred to as "the Act").

3. Briefly stated, facts as noticed by learned Courts below are that premises occupied by plaintiff are assessed to house tax since 30.03.1978. Defendant was paying house tax regularly. On 26.11.1986,

notice under Section 67 of Act proposing to enhance the annual rental value from Rs,17,328/- to Rs.68,615/- was received. After receipt of said notice, plaintiff filed representation to the effect that enhancement of annual rental value was not justified as it had not made any material addition or alterations in the premises but the same was not heeded to. Hence the suit.

4. Upon notice, respondent/appellant herein appeared and filed written statement taking legal objections that suit is bad for want of notice under Section 49 of the Act; that State of Punjab is a necessary party and civil Court has no jurisdiction to entertain the present suit.

4.1 On merits, it was stated that requisite notice was served and objections were invited to the proposed amendment and therefore, demand was legal and valid.

5. Based on the rival pleadings, following issues were framed:

> *"(1). Whether the demand of Rs.8100/- as house tax for the year 1986-87 from the plaintiff by the defendant is valid, illegal for the reasons mentioned in the plaint ? OPP*
>
> *(2) Whether plaintiff is entitled to the injunction prayed for? OPP*
>
> *(3) Whether jurisdiction of this Court is barred ? OPD*
>
> *(4) Whether Punjab State is a necessary party to the suit ? OPD*
>
> *(5) Whether the suit is not maintainable for want of notice under Section 49 of the Punjab Municipal Act ? OPD*
>
> *(6) Relief."*

6. The parties to suit adduced their oral as well as documentary evidence in support of their pleadings and to discharge their respective onus as per the issues, *ibid*.

7. On appraisal of evidence vis-à-vis pleadings, issues No.1 and 2 were decided by learned trial Court in favour of plaintiff. Issues NO.3 to 5 were decided against defendant/appellant herein. Consequently, suit of plaintiff/respondent was decreed vide impugned judgment and decree dated 02.04.1991.

8. Feeling aggrieved, defendant/appellant went in appeal which was dismissed by learned First Appellate Court, resulting in instant Regular Second Appeal by defendant before this Court.

9. I have heard learned counsel for appellant and perused the judgments of both the Courts below.

10. This regular second appeal raises the following substantial question of law :

> *Whether civil Court jurisdiction to entertain the suit is barred under Section 84 and 86 of the Act*?

11. On a Court query, learned counsel for appellant submits that respondent/plaintiff is not appearing as there is nothing much left for it to contest the instant appeal in view of the fact that entire arrears *qua* house tax have already been paid to appellant-Committee and suit filed by respondent/plaintiff is liable to be dismissed.

12. Learned counsel for appellant has placed implicit reliance upon Apex Court judgment rendered in "*NDMC v. Satish Chand (deceased) by Lr Ram Chand"* reported in *2003 AIR (SC) 3187*, as well as judgment rendered by learned Single Bench of this Court, reported as "*Municipal Committee Bhatinda v. Ravinder Kumar" 2007 (10) RCR (Civil) 452* and a Division Bench judgment of this Court rendered in "*Romesh Kumar v. Municipal Committee, Gurdaspur"* reported in *1981 AIR (P&H) 295*, wherein question of maintainability of civil suit was

decided and same was held to be barred by Sections 84 and 86 of the Act, which controversy is no more *res integra*.

13. I have gone through the aforesaid judgments. The view taken by Vinod K Sharma, J. (as he then was) in Municipal Committee, Banthinda's case (supra), is as below:

> *"xxx*
>
> *7. In view of the authoritative pronouncement of the Hon'ble Supreme Court the substantial question of law has to be answered in favour of the appellant. Consequently, it is held that the civil Court has no jurisdiction to entertain and try the suit filed by the plaintiff respondents to challenge the assessment or imposition of house tax in view of the availability of remedy for appeal as provided under the statute.*
>
> *Consequently this appeal is allowed and the judgments and decrees passed by the learned Courts below are set* aside."

14. Justice S.S. Sandhawalia, J. (as he then was), while speaking for this Court in Romesh Kumar's case (supra), opined as below :

> "*xxx*
> *6. The aforesaid enunciation of the law manifestly governs the present case as well. However, to highlight the identity it may be noticed that 'profession tax' which was the subject matter of adjudication in the aforesaid case is leviable under Section 61 (1)(b) of the Act whilst the house tax in the present case is levied and assessed under the same section by virtue of sub-clause (1) (a) thereof. The appellate provision of section 84 and the bar of section 86 apply identically to all such proceedings. It is, therefore, patent that no distinction whatsoever can be drawn in the present case from the law as laid down in Munshi Ram's case.*
>
> *7. Equally relevant and conclusive are the observations in Bata Shoe Co. Ltd. V. Jabalpur Corporation AIR 1977 Supreme Court 955. What fell for construction therein was section 84 (3) of the C.P & Berar Municipalities Act. It may be pointed out that the said provision is absolutely in pari materia with section 86 of the Punjab Municipal Act. After an exhaustive discussion of the case law, Y.V. Chandrachud, J. (as his Lordship then was) held that section 84 (3) of the Act barred the jurisdiction of the Civil Courts.*

. *8. In view of the aforesaid binding precedent it is not only unnecessary but would be patently wasteful to refer to earlier decisions of the High Courts. Nevertheless it becomes obligatory to notice the reliance by the learned counsel for the appellant Romesh Kumar on the Division Bench judgment in Municipal Corporation of Delhi v. Ganesh Das, 1964 P.L.R 361. Undoubtedly the observations made therein would tend to support the case of the appellant. Howver, the same now appear to be directly and in headlong conflict with the afore-mentioned decisions of the final Court. Equally it calls for notice that the Full Bench in Kelash Nath v. Municipal Committee, Batala, AIR 1962 Punjab 389, had earlier categorically held that he jurisdiction of the civil Courts to entertain and decide a suit with regard to the levy and assessment of octroi under section 61 (2) of the Punjab Municipal Act was barred by virtue of the provisions of Section 84 and 86 of the Punjab Municipal Act. Even this earlier judgment was not brought to the notice of the Division Bench in Ganesh Das's case (supra). It is thus equally evident that the ratio of the Full Bench is diametrically opposite to what was observed in the said case. It must, therefore, be held that Ganesh Das's case is not a good law in view of the decision of their Lordships of the Supreme Court in Munshi Ram's case and Bata Shoe Co.'s case.*

9. On binding precedent, therefore, the answer to the question formulated at the outset must be rendered in the affirmative and it is held, affirming the decision of the Courts below, that the suit of the appellant was barred by sections 84-->.84 and 86 of the Act. The appeal is hereby dismissed but in view of some divergence of judicial opinion there will be no order as to costs.
Appeal dismissed."

15. I am in respectful agreement with the aforesaid consistent view taken in the judgments *ibid*. It follows thus that the findings of learned Courts below on issue No.3 against the appellant cannot be sustained. Both the learned Courts below committed manifest error in holding that jurisdiction of the Civil Court is not barred. The statute provides a special remedy of appeal against the order of assessment and imposition of tax. Paras no.6 and 9 of Apex Court judgment rendered in NDMC's case (supra), also being relevant, are reproduced herein below, for ready reference:

"xxx

6. *It will be noticed from the provisions contained in Section 9 of the Civil Procedure Code that a bar to file a civil suit may be express or implied. An express bar is where a Statute itself contains a provision that the jurisdiction of a civil Court is barred e.g., the bar contained in Section 293 of the Income Tax Act, 1961. An implied bar may arise when a Statute provides a special remedy to an aggrieved party like a right of appeal as contained in the Punjab Municipal Act which is the subject matter of the present case. Section 86 of the Act restrains a party from challenging assessment and levy of tax in any manner other than as provided under the Act. A provision like this is the implied bar envisaged in Section 9 CPC against filing a civil suit. In Raja Ram Kumar Bhargava (dead) by LRs v. Union of India (AIR 1988 Supreme Court 752) this Court observed :*

> *"Generally speaking, the broad guiding considerations are that wherever a right, not pre-existing, in common-law, is created by a statute and that statute itself provided a machinery for the enforcement of the right, both the right and the remedy having been created uno flatu and a finality is intended to the result of the statutory proceedings, then, even in the absence of an exclusionary provision the Civil Courts' jurisdiction is impliedly barred. If, however, a right pre-existing in common law is recognized by the Statute and a new statutory remedy for its enforcement provided, without expressly excluding the Civil Court's jurisdiction then both the Common-law and the statutory remedies might become concurrent remedies leaving upon an element of election to the person of inherence. To what extent, and on what areas and under what circumstances and conditions, the Civil Court's jurisdiction is preserved even where there is an express clause excluding their jurisdiction are considered in Dhulabhai's case."*

Xxx

9. *A Division Bench of the Delhi High Court in* ***Sobha Singh and Sons (P) Ltd. V. New Delhi Municipal Committee [34 (1988) Delhi Law Times 91]*** *had an occasion to consider the question of maintainability of a civil suit challenging the assessment and levy of property tax by the NDMC. Sections 84 and 86 of the Act came in for consideration. It was held that the provisions of appeal contained in section 84 (1) of the Act provided a complete remedy to a party aggrieved against the assessment and levy of tax. Section 86 provides that the remedy of appeal is the only remedy to a party to challenge assessment for purposes of property tax. No other remedy was available to a party in*

such circumstances. It follows that the remedy of civil suit is barred."

16. In view of the authoritative pronouncement of Apex Court, suit filed by respondent/plaintiff ought not to have been entertained in view of the remedy of appeal available under the statute barring jurisdiction of civil Court.

17. In the premise, the substantial question of law is answered in favour of appellant. Consequently, instant appeal is allowed. Judgments and decrees rendered by both the Courts below are hereby set-aside, with consequences to follow.

18. No order as to costs.

19. Pending application(s), if any, shall also stand disposed of.

MARCH 20, 2023 **(ARUN MONGA)**
Shalini **JUDGE**

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