(2009) 03 P&H CK 0096

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Municipal Corporation		APPELLANT
	Vs	
Janta Steel and Metal Co-Operative Industrial Society Limited		RESPONDENT

Date of Decision: March 17, 2009

Acts Referred:

- Limitation Act, 1963 - Section 5

Citation: (2009) 156 PLR 531 : (2009) 3 RCR(Civil) 692

Hon'ble Judges: Vinod K. Sharma, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Vinod K. Sharma, J.

CM. No. 3343-C of 2009

1. This is an application u/s 5 of the Limitation Act for condoning the delay of one day in filing the present appeal. For the reasons stated in the application, C.M. is allowed and the delay of one day in filing the appeal is ordered to be condoned.

R.S.A. No. 1145 of 2009

The regular second appeal is directed against the judgments and decree dated 26.3.2008 and 5.11.2008 passed by the learned Courts below vide which the suit filed by the plaintiff/respondent for declaration with a consequential relief of permanent and mandatory injunction stands decreed.

2. The plaintiff instituted the suit for declaration that impugned show cause notice dated 30.10.1998 and the assessment order against the plaintiff with regard to premises in question i.e. unit No. 93, 14/7, Delhi-Mathura Road, Faridabad, is

arbitrary, null and void, with consequential relief of permanent injunction restraining the appellant/defendant from recovering the house tax to the tune of Rs. 98,154/-. Prayer was also made for mandatory injunction for return of excess amount along with interest.

3. The show cause notice and assessment was challenged by the plaintiff primarily on the ground that the assessment of rental value was in violation of statutory provisions of law as well as principles of natural justice. The case set up by the plaintiff was that the assessment order was not supplied, thus, plaintiff could not avail remedy of filing the appeal. Request for supply of certified copy of order dated 5.4.2000 was also not met with, even though postal order for Rs. 20/- for obtaining certified copy was submitted to the appellant/defendant.

The assessment was challenged on the following grounds:

a. That defendant has miserably failed to follow provisions of Haryana Municipal Corporation Act, 1994 in passing the order while considering the objections filed by plaintiff.

b. By not providing the assessment order copy disclosing particulars of assessment order plaintiff has been deprived opportunity to file appeal.

c. The order is non-speaking and has not been duly signed and stereo type order has been passed to the knowledge of plaintiff.

d. That defendant has adopted wrong method of assessing house tax at a higher rate in regard to properties which are upto 150 meters in length. It is alleged that the disputed premises in question is more than 150 meters in length but the rate of house tax has been assessed on the rate applicable to premises which are upto 150 in length and thus defendant has charged Rs. 2,500/- per sq. yard for the disputed plot against Rs. 625/- per sq. yards which was applicable.

e. That the assessment order have not been passed without given an opportunity of hearing and has been passed by Zonal Taxation Officer only and is not signed by competent authority or person. It is alleged that facts that has been imposed is on the higher side and instead of 10%, 12.5% has been levied in rate of provisions of law.

f. That even assuming some notification has been issued increasing the annual rental value but same is illegal as no mandatory statutory procedure has been followed under the Haryana Municipal Corporation Act, 1994.

g. That no method, data and basis of assessment annual rental value has been mentioned in the order.

h. The disputed property is very old and is in self occupation and no addition or alternations have been carried out in the past years requiring raising of annual rental value.

i. That when annual rental value of the building can be obtained which may give assessing authority the annual rental value then no enhancement on the basis of cost of construction is permissible under law.

j. That the proposed assessment has not given benefit of depreciation as required u/s 91 of the Act of 1984.

k. That defendant has no right to levy house tax on the vacant land.

l. That defendant has failed to provide new facilities and amenities around the disputed property. Thus, on this cause of action the present has been filed.

4. The suit was contested by the appellant/defendant by raising preliminary objections that the suit was not maintainable, as the jurisdiction of the civil Court was barred. It was also the case set up that the plaintiff had, in fact, been heard through his counsel, and it was thereafter that the impugned order was passed wherein statutory remedy of appeal was available to the plaintiff and, therefore, the Civil Court had no jurisdiction to entertain the suit.

5. The learned Courts below on the pleadings and evidence on record have recorded concurrent finding of fact that the assessment of rental value was without jurisdiction being in violation of statutory provisions of law, as provisions of Section 97 of the Haryana Municipal Corporation Act, 1994 were not complied with while ordering assessment.

6. It was further held that the order was totally without jurisdiction, as it was passed by administrative officer, whereas under the Act, it was required to be passed by three - member committee. The learned Courts relied upon the judgment of the Hon''ble Supreme Court in State of Andhra Pradesh Vs. Manjeti Laxmi Kantha Rao (D) By L.rs. and Others, to hold that the Civil Court had the jurisdiction to entertain and try the suit. However, liberty was granted to the defendant/appellant to proceed afresh in accordance with law and pass fresh assessment order.

7. The learned Counsel appearing on behalf of the appellant contends that this appeal raises the following substantial questions of law:

1. Whether the civil Court had the jurisdiction to entertain and try the suit?

2. Whether the judgments and decree passed by the learned Courts below are liable to be set aside in view of the equally efficacious remedy of filing an appeal?

8. In support of the substantial questions of law, the learned Counsel for the appellant contended that u/s 141 of the Haryana Municipal Corporation Act, the jurisdiction of the civil Court is specifically barred and, therefore, the learned Courts below were not right in entertaining the suit filed by the plaintiff.

9. However, this plea cannot be accepted, as it is settled law that if authorities under the statute act in violation of principles of natural justice or in violation of statute,

then the jurisdiction of the civil Court cannot be said to barred. The learned Courts below rightly relied upon the judgment of the Hon''ble Supreme Court in State of Andhra Pradesh v. Manjeti Laxmi Kantha Rao (supra) to hold that the suit was competent.

10. The learned Counsel for the appellant contends that as the plaintiff had availed his remedy of appeal against imposing of tax, the suit filed by him was, therefore, not competent.

11. This cannot be a ground to interfere with the judgments and decree passed by the learned Courts below, specially when it is admitted case of the defendant/appellant that along with appeal, the assessed tax has not been paid, therefore, the appeal filed could not be entertained in absence of deposit of tax. The appeal filed, therefore, could not be said to be valid appeal which could be entertained to deny the plaintiff/respondent to invoke the jurisdiction of the civil Court.

12. Once it is proved that the order was totally without jurisdiction and passed by a person not competent to pass such order, the jurisdiction of Civil Court was not barred. The learned Counsel for the appellant has also challenged the finding of the learned Courts below holding that the order was without jurisdiction having not been passed by the committee constituted under the Act by invoking the provisions of Section 362 of the Haryana Municipal Corporation Act, which reads as under:

362. Proof of consent etc. of Commissioner, etc.- Whenever under this Act or any rule, regulation or byelaw made thereunder the doing or the omission to do anything or the validity of anything depends upon the approval, sanction, consent, concurrence, declaration, opinion, or satisfaction of the Commissioner, or of any Corporation officer, a written document signed by the Commissioner or officer purporting to convey or set forth, such approval, sanction, consent, concurrence, declaration, opinion, or satisfaction shall be sufficient evidence thereof.

13. However, the reading of this Section would show that it cannot be read to mean that an order which is not passed by competent authority would be deemed to have been passed by following due process of law, by way of presumption u/s 362.

14. The provisions of Section 362 only give authenticity to an order passed by following due process of law. But once it is proved on record that order is not so passed, Section 362 cannot be invoked to make it legal or as per statutory law.

15. The learned Counsel for the appellant also contends that in absence of any prejudice having been caused to the plaintiff/respondent, he had no right to challenge the impugned order. The very fact that amount of Rs. 98,157/- is being claimed from the plaintiff/respondent without following due process of law is itself prejudice to the plaintiff which entitle him to challenge the order. This contention of the learned Counsel also cannot be accepted.

16. In view of the above, the substantial questions of law framed are answered against the appellant/defendant.

Consequently, the appeal is dismissed in limine.