

(2002) 09 P&H CK 0040

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 3112 of 2002

Sanjay Pakhtoon

APPELLANT

Vs

Municipal Corporation and
Others

RESPONDENT

Date of Decision: Sept. 11, 2002

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 39 Rule 1, Order 39 Rule 2
- State Financial Corporations Act, 1951 - Section 29

Citation: (2003) 133 PLR 471 : (2003) 1 RCR(Civil) 160

Hon'ble Judges: M.M. Kumar, J

Bench: Single Bench

Advocate: Sumeet Goel, for the Appellant;

Final Decision: Dismissed

Judgement

M.M. Kumar, J.

This revision petition filed u/s 115 of the Code of Civil Procedure, 1980 (for brevity, the Code) is directed against the order dated 3.4.2002 passed by the Additional District Judge, Faridabad allowing the appeal of the defendant-respondent No. 1 vide which the order dated 26.10.1998 was challenged. In his order dated 26.10.1998, the Civil Judge (Jr. Divn.), Faridabad had allowed an application filed under Order XXIX, Rules 1 and 2 of the Code filed by the plaintiff-petitioner restraining the defendant-respondent No. 1 from recovering the house tax demanded in its various orders by way of assessment of rent in respect of premises No. 301, Sector 24, Faridabad. The Civil Judge has also directed the plaintiff-petitioner to deposit 50% of the house tax amount out of total sum of Rs. 1,04,299.10 paise.

2. The facts in brief are that plaintiff-petitioner has filed Civil Suit No. 129 of 1998/97 on 17.12.1997 for declaration and consequent relief of permanent injunction to the

effect that the demand of house tax for an amount of Rs. 1,04,299.10 paise raised by the defendant-respondent No. 1 is illegal and unsustainable. Along with the suit, an application under Order XXXIX, Rule 1 and 2 of the Code for ad interim injunction was also filed. Plaintiff-petitioner succeeded in persuading the Civil Judge to partially accept their prayer for ad-interim injunction. However, the order passed by the Civil Judge was set aside in appeal by the Additional District Judge vide impugned order dated 3.4.2002. The order passed by the Additional District Judge read as under:-

"As per the case of the plaintiff, the premises No. 300 and 301 were owned and possessed by M/s Pe-EH Forging through Proprietor Sh. Harbhajan Pakhtoon and Harbhajan Pakhtoon was died on 27.1.1986, leaving behind his legal heirs to represent his estate who are the plaintiffs. Premises No. 3000 was sold through auction by defendant No. 3 for recovery of its dues in the year 1989 to defendant No. 3 for recovery of its dues in the year 1989 to defendant No. 2 and he became owner in possession of the premises No. 300 in the year 1989. It is also alleged that after the death of Harbhajan Pakhtoon premises No. 301 remained closed up to June, 1996 and same was occupied by M/s Uni Transmission as tenant. It is also alleged that defendant No. 1 issued notice of house tax in August 1996 of Rs. 1,04,299.10 in respect of premises No. 300 and 301. Plaintiff represented before defendant No. 1 that they are not liable to pay house-tax as premises No. 300 was owned by defendant No. 2 and premises No. 301 was lying closed since the year 1986 but no avail. So the impugned demand of house-tax of Rs. 1,04,299.10 from the plaintiffs is liable to be declared null and void.

Now question arises "whether the civil court has got jurisdiction to entertain the suit or not". The learned counsel for the respondent has placed his reliance on *Municipal Committee Bhatinda v. Krishan Lal and Anr.* 1986 P.L.J. 651. It has been observed in this case, order if passed in violation of statutory provisions by Authority not duly constituted cannot be said to be order passed under the Act and bar of Section 86 not applicable, so civil court has got jurisdiction. The law, is therefore, well settled that the legality on merits of the order of the Municipal Committee would not be open to challenge in a Civil Suit or has been passed in violation of the provisions of the statute or the principles of natural justice then the civil court would certainly have the jurisdiction. But in this case the order was passed by the Competent Officer as per the house-tax survey record for the years, 1989-90 till 1994-95 and the premises have been shown to have been rented out to M/s Ramson Mettle and presently the said premises No. 301 is rented out to M/s Uni Transmission Pvt. Ltd. @ Rs. 28,000/- per month. Plaintiffs had never made any representation to the reply of demand notice that they were not liable to pay house-tax, for the premises No. 300 which is allegedly owned by defendant No. 2 and premises No. 301 is lying closed since the year 1985. It is also found mentioned in the house-tax that the premises No. 300 was in possession of defendant No. 2 and he had purchased the said premises in the year 1989. Up to the year 1Q96-97 there is a total amount of arrears of house tax due and payable by both the premises No. 300 and 301 was

amounting to Rs. 1,26,767/- which was to be paid by the plaintiffs and defendant No. 2 in equal proportion. Hence, the plaintiffs and defendant No. 2 both were liable to make payment of the premises. It is also admitted fact that no notice was given prior to filing the present suit against the defendant-appellant, therefore, impugned demand notice issued by the defendant is legal and not liable to be declared null and void, as no notice was given to the defendant-appellant regarding the closing of the premises. Hence the ratio of the authority is not applicable on the present facts and circumstances of the case in hand and civil court has got no jurisdiction to entertain the suit."

3. The only argument raised by Mr. Sumeet Goel, learned counsel for the plaintiff-petitioner is that the premises for which the house tax is sought to be recovered was purchased by him in the year 1989 in open auction held by the Haryana Financial Corporation and the amount of house tax earlier to 1989 cannot be recovered from him.

4. The argument is absolutely misconceived because it appears to be well settled that all encumbrances on properties continues to be attached with the property irrespective of the fact who has been its owner. Therefore, even if there is change of ownership, the payment of house tax cannot be avoided on that account. I am further of the view that in matter concerning the revenue of the State, no interim directions could be issued and for that reason, the impugned order passed by the Additional Distt. Judge is consistent with the well seated principles of law laid down by the Supreme Court in the case of [Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others](#), . Therefore, the revision petition is liable to be dismissed.

For the reasons recorded above, this revision petition fails and the same is dismissed.