

(2003) 07 P&H CK 0062

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 317 of 1983

Municipal Committee

APPELLANT

Vs

Nohar Chand and
Another

RESPONDENT

Date of Decision: July 30, 2003

Acts Referred:

- Punjab Municipal Act, 1911 - Section 84, 86

Citation: (2003) 135 PLR 437 : (2003) 4 RCR(Civil) 334

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

Bench: Single Bench

Advocate: D.B. Sharma, for the Appellant; Sandeep Khunger, for the Respondent

Judgement

M.M. Kumar, J.

By this common order both the appeals i.e., Regular Second Appeal Nos. 317 and 318 of 1983 can be disposed of together as the question involved in both the appeals is identical.

2. This is defendant's appeal filed u/s 100 of the Code of Civil Procedure, 1908 (for brevity, "the Code") against the judgment dated 23.10.1982 passed by the Additional District Judge, Bhatinda reversing the findings recorded by the trial Court holding that the suit of the plaintiff-respondents was maintainable and the availability of remedy of appeal provided by Section 84 of the Municipal Act, 1911 against the order dated 5.3.1980 passed by the defendant-appellants would not bar the jurisdiction of civil Court. The learned Additional District Judge has referred to the view taken by this Court in numerous judgments viz. Municipal Committee Amritsar v. Bala Mal Ishar Dass 1982 S.L.J. 131, Municipal Committee Ladwa v. Daryat Lal etc. 1982 S.L.J. 362 [Romesh Kumar and Others Vs. The Municipal Committee, Gurdaspur and Others](#), .

3. The motion bench noticed that the matter was referred to Division Bench in RSA No. 1710 of 1982 on account of divergence of opinion in various judgments on the question as to whether a civil suit is maintainable without availing the statutory remedy of appeal. The Division Bench in the aforementioned appeal has now taken the view that such a suit would not be maintainable and the judgment is reported as *Rama Krishna Rice Mills v. Municipal Committee, Sultanpur Lodhi* (1985)87 P.L.R. 221. The view taken by the Division Bench reads as under:-

"The question that came up for consideration before the Division Bench was whether Sections 84 and 86 of the Punjab Municipal Act barred the jurisdiction of the Civil Courts in matters of assessment and computation of house-tax u/s 61(1)(a) of the said Act. The Division Bench following the two Supreme Court decisions one reported in *Munshi Ram and Ors. v. Municipal Committee, Chheharta* 1979 RLR 419 and another reported in [Bata Shoe Co. Ltd. Vs. City of Jabalpur Corporation](#), besides the Full Bench decision of this Court reported in [Kelash Nath and Others Vs. Municipal Committee, Batala](#), answered the question in the affirmative.

In *Municipal Committee Amartisars*" case (supra) my brother Goyal, J. who was a party to the Division Bench case (*Municipal Committee, Amritsar v. Bala Mal Ishar Dass*) when dealing with the contention that Section 86 of the Punjab Municipal Act completely barred the jurisdiction of the Civil Court for which submission the reliance was placed on the Supreme Court decision of *Munshi Ram*'s case (supra) and *Ramesh Kumar*'s case (supra) observed that in *Munshi Rams*'s case the Supreme Court did not deviate from the ratio of [Firm Seth Radha Kishan \(Deceased\) Represented by Hari Kishan and Others Vs. The Administrator, Municipal Committee, Ludhiana](#), and had in fact approvingly quoted the following observations from the judgment:-

"The Court distinguished that class of cases where the Municipal Committee in levying a tax or committing an act, clearly acts outside or in abuse of its powers under Municipal Act, and explained that it is only in such cases the bar to the jurisdiction of the Civil Court would not apply."

In regard to the ratio of *Ramesh Kumar*'s case (supra) he observed that the Bench had answered the question in an abstract manner and the question was not dealt with in a detailed manner nor any argument was raised before the Bench that there was no absolute bar and a suit under certain given circumstances would be competent.

The question posed in *Ramesh Kumar*'s case would show that the Bench in *Ramesh Kumar*'s case was only concerned with the question as to whether the assessment and computation of house-tax could be challenged in the Civil Court.

There cannot be two opinions regarding the answer, which the Bench in that case had returned to that question, that assessment and computation of tax in view of the provisions of Sections 84 and 86 would be beyond the jurisdiction of Civil Court. But if the

tax payer challenged the very basis of the legality of the tax, in that, that the given tax could not be imposed under the Act or the authority that had levied the tax or had passed the order of assessment, was not authorised under the Act, then the question undoubtedly could be canvassed before the Civil Court.

Coming now to the merits of the present case, the grievance that survived for consideration before the Civil Court was that the assessment had not been made on the basis of fair rent calculated under the provisions of the East Punjab Urban Rent Restriction Act as on the contrary it had been determined on basis of theory of supply and demand.

This merely raised the legality of the assessment order and not either the legality of the levy or the jurisdiction of the assessing authority. Thus jurisdiction of the Civil Court obviously could not be invoked in this regard and a civil suit therefore was not competent."

4. Mr. Sandeep Khunger appearing for the plaintiff-respondent has argued that as the order was not signed by the Executive Officer, the very jurisdiction to impose tax would be involved and accordingly to the view taken by the Division Bench such an order would be without jurisdiction and challengeable by filing a suit. The learned counsel has further argued that in view of the divergence of opinion on the question of maintainability of the suit, he may now be permitted to file an appeal because otherwise his appeal would be time barred.

5. After hearing the learned counsel for the parties, I am of the considered view that these appeals deserved to be allowed because when the principles laid down by the Division Bench in M/s Rama Krishana Rice Mills case are applied to the facts of the present case, it becomes evident that the power of the defendant-appellant to levy, the house tax has not been challenged in the suit and the challenge is confined to the method of assessment on the ground that the same is not based on the standard or fair rent. Therefore, the view enunciated by the Division Bench would be squarely applicable to the instant appeal and the suit of the plaintiff-respondents is liable to be dismissed.

6. I do not find any substance in the argument of Mr. Khunger that the order has become without jurisdiction merely because the Executive Officer has not signed the same. It is a mere irregularity not a violation of any mandatory provision. The view taken by the Division Bench is that until and unless power of the Appellate Committee to impose tax is challenged, the suit would not be maintainable. The taxing power of the Committee has not been questioned. Therefore, the view of the Division Bench would be fully applicable and the order cannot be considered as without jurisdiction as canvassed by the counsel for the plaintiff-respondent. However, his request for filing of the appeal before competent authority merits acceptance because there was divergence of opinion on this issue in various judgments as is evident from the judgment of the Division Bench in M/s Rama Krishna Rice Mills cases (supra) Therefore, the plaintiff-respondent may avail the remedy

of appeal within a period of 30 days from today and if that is done, the objection with regard to limitation shall not be raised.

7. For the reasons recorded above, these appeal succeed and the judgment of the learned Additional Distt. Judge is set aside and the suits of the plaintiff-respondents are dismissed. Liberty to file appeal is granted in terms stated above.