

(2001) 08 P&H CK 0202

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 2302 of 1980

Municipal Corporation, Amritsar

APPELLANT

Vs

Gagan Cinema, Batala Road,
Amritsar

RESPONDENT

Date of Decision: Aug. 20, 2001

Acts Referred:

- Punjab Municipal Act, 1911 - Section 195
- Punjab Municipal Corporation Act, 1976 - Section 394, 408(2)

Citation: (2001) 4 RCR(Civil) 740

Hon'ble Judges: Adarsh Kumar Goel, J

Bench: Single Bench

Advocate: Harinder Singh, for the Appellant; Suvir Sehgal, for the Respondent

Final Decision: Allowed

Judgement

Adarsh Kumar Goel, J.

This appeal has been filed by the Municipal Corporation, Amritsar - defendant against the decree restraining it from recovering a sum of Rs. 20,115/- as penalty under the proviso to Section 195 of the Punjab Municipal Act, 1911. Appeal filed by the appellant-defendant before the lower appellate court has been dismissed without going into the merits, on the only ground that no formal decision for filing the appeal had been taken by the Commissioner of the Corporation.

2. Learned counsel for the appellant submitted that the lower appellate court has committed an illegality in holding that the appeal filed by the Corporation was not maintainable. He pointed out that in para 10 of the lower appellate court judgment, it was clearly observed that Yogesh Chander who filed the appeal was duly authorised by the Commissioner, by way of delegating his power u/s 408(2) of the Punjab Municipal Corporation Act, 1976 (for short 1976 Act). The Commissioner had delegated the powers vested in him u/s 394(e) and (h) of the Act and acting on the

said authority, Yogesh Chander had signed the memorandum of appeal, no further resolution was required. The relevant observations of the lower appellate court are reproduced below :-

"There is no doubt that in this case, Shri Yogesh Chander duly authorised by the Commissioner by way of delegating his powers under sub-section (2) of Section 408 of the Punjab Municipal Corporation Act, to exercise the powers conferred on the Commissioner u/s 394(e) and (h) of the Act and acting on behalf of the Commissioner, Shri Yogesh Chander signed the memorandum of appeal, but there is no documentary evidence on record to show that the Commissioner ever decided to institute the present appeal."

Provisions of Section 408(2) and Section 394(e) and (h) of the 1976 Act are reproduced below :-

"408. Delegation, -(1) xxx xxx

(2) The Commissioner may by order direct that any power conferred or any duty imposed on him by or under this Act shall, in such circumstances and under such conditions, if any, as may be specified in the order, be exercised and performed also by any Corporation Officer or other Corporation employee specified in the order."

394. Power to institute etc., legal proceedings and obtain legal advice. -

The Commissioner may-

xxx xxx xxx xxx

(e) defend any suit or other legal proceeding brought against the Corporation or against the Commissioner or a Corporation officer or other Corporation employee in respect of anything done or omitted to be done by any one of them in his official capacity;

(h) institute and prosecute any suit or other legal proceeding or with the approval of the Corporation withdraw from or compromise any suit or any claim for any sum not exceeding five hundred rupees which has been instituted or made in the name of the Corporation or of the Commissioner."

A perusal of the above provisions clearly shows that no separate resolution was required to be passed before filing of the appeal, Power had been statutorily conferred on the Commissioner to file appeal and the said power could be and had been duly delegated to Yogesh Chander as found by the lower appellate court itself. In this view of the matter, lower appellate court was not justified in non-suiting the Municipal Corporation without deciding the appeal on merits. Decisions relied upon by the lower appellate court, namely, Grih Chand v. Municipal Committee, Budhlada, 1979 P.L.R. 527 and Bawa Bhagwan Dass v. Municipal Committee and Ors., AIR 1943 Lah 318 have no application to the present case.

In view of the above, this appeal is allowed, decree of the lower appellate court is set aside and the case is remanded to the lower appellate court for decision on merits in accordance with law. The parties through their counsel are directed to appear before the lower appellate court on 19.11.2001 for further proceedings. There will be no order as to costs,

3. Appeal allowed.