Munshi Ram and Others Vs Municipal Committee, Chheharta

Court: Supreme Court of India

Date of Decision: March 6, 1979

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Section 9
Constitution of India, 1950 â€" Article 276(2)
Income Tax Act, 1922 â€" Section 66(2)
Partnership Act, 1932 â€" Section 4
Punjab General Clauses Act, 1898 &

Hon'ble Judges: R.S. Sarkaria, J; P.S. Kailasam, J; O. Chinnappa Reddy, J

Bench: Full Bench

Advocate: V.C. Mahajan, Urmila Kapoor and Shobha Dikshit, for the Appellant; Hardev Singh, for the Respondent

Final Decision: Dismissed

Judgement

R.S. Sarkaria, J.
This appeal by special leave is directed against a judgment, dated October 3, 1968 of the High Court of Punjab and

Haryana.

2. The facts leading to this appeal are that the Appellants are partners of a firm, Bharat Industries, Chheharta.

3. By a notification, dated May 15, 1946, the Chheharta Municipal Committee levied a profession tax u/s 61(1)(b) of the Punjab Municipal Act,

1911. Initially, the tax was Rs. 15/- per annum and was levied on all the partners of the said firm.

4. By a notification, dated July 4, 1958, the annual tax for trade, profession or calling for the owner of a factory registered under the Indian

Factories Act, was raised to Rs. 200/- per annum and each of the six partners of the said firm were assessed to annual tax of Rs. 200/- by the

Municipal Committee.

5. On October 30, 1960, the Appellants filed a suit for permanent injunction restraining the Defendant-Committee from realising the profession tax

demanded by it per letters Nos. 15 to 20, dated May 31, 1960, amounting to Rs. 1,200/-.

6. The Appellants challenged the validity of the assessment contending that construed in the light of the definition given in Section 2(40) of the

Punjab General Clauses Act, the term ""person"" occurring in Section 6(1)(b) of the Punjab Municipal Act, 1911, includes a "firm" and since the

trade carried on by the "firm" is one, the tax could be levied only on the firm, and not on the partners individually. On these premises, it was

pleaded that the Municipal Committee in levying the tax on the individual partners had exceeded its statutory powers u/s 61(1)(b) of the Municipal

Act.

7. The trial court dismissed the suit On appeal by the Plaintiffs, the Additional District Judge, Amritsar, reversed the judgment of the trial court and

decreed the suit.

8. The Municipal Committee carried a further appeal to the High Court. The learned single Judge, who heard the appeal, affirmed the judgment

and decree of the first appellate court on the reasoning which may be summed up as under:

9. The term ""person"" in Section 61(1)(b) of the Municipal Act, interpreted in the light of the definition given in Section 2(40) of the Punjab General

Clauses Act, includes a ''partnership.'' Under Clause (b) of Section 61(1) of the Municipal Act, the basis on which the liability to pay tax arises, is

the trade, profession or business; and if the trade and business is one carried on by several persons collectively in partnership, then the partnership

alone, and not the individual partners, are liable to pay the tax; that the liability on the partners will fall twice which is not contemplated by the

scheme and language of the Municipal Act, even though all the partners are jointly and severally liable to any tax for the partnership business.

10. In support of his conclusion that the tax was on trade and not on persons, the learned Judge by way of analogy, referred to Clauses (a), (c),

(d), (e) and (f) of Sub-section (1). He also referred to two Madras decisions in Municipal Commrs. of Negapatam v. Sadaya Pillai ILR (1883) 7

Mad 74 and Davies v. President of the Madras Municipal Commission ILR (1890) 14 Mad 140 and found himself in entire agreement with the

reasoning of the learned Judges in those cases.

11. Aggrieved, the Municipal Committee preferred a Letters Patent Appeal. The Appellate Bench of the High Court held that to import the

definition of the term ""person"" occurring in Section 2(40) of the Punjab General Clauses Act, into Section 61(1)(b) of the Municipal Act, will be

repugnant to the subject In the opinion of the Bench, under the scheme of the statute in question, the tax cannot be levied on a firm or factory as

such, but only on the individual owners of the factory or of the firm on this reasoning, the Bench reached the conclusion ""that u/s 61(1)(b) of the

Act, it is the individual who is to be assessed and is liable to pay the tax mentioned therein and so the assessment as well as the demand of the tax

from each of the Plaintiffs does not suffer from any legal infirmity"". The Bench further held ""that since the Committee in imposing the tax on the

Appellants herein has not acted outside the provisions of the statute,"" it would, on the basis of the judgment of the Supreme Court in Firm Seth

Radha Kishan (Deceased) represented by Hari Kishan & Ors. v. Administrator Municipal Committee, Ludhiana which also dealt with the

provisions of the Municipal Act, follow that the impugned assessment could only be questioned under the provisions of Sections 84 and 86 of the

Act, and the jurisdiction of the Civil Court in respect of tax levied or the assessment made is excluded"". In the result, the appeal was allowed and

the trial court''s decision dismissing the suit was restored.

12. Before us, Mr. V.K. Mahajan, learned Counsel for the Plaintiff-Appellants, has adopted the reasons given by the learned single Judge of the

High Court. In support of his contentions, he has relied upon the aforesaid Madras decisions. His argument is that if the interpretation placed by the

Appellate Bench of the High Court is allowed to stand, it will lead to anomalous and unconstitutional results. Mr. Mahajan concedes that the

individual partners are also ''persons'' within the meaning of Clause (b) of Section 61(1) . He, however, maintains that the firm, also, is a ''person''

within the contemplation of this provision and as such, liable to be taxed; that if in respect of the one trade, which is being carried on by the firm,

apart from each of the individual partners, the firm, also, is separately assessed to Rs. 200/- per annum, not only the incidence of the tax will fall

twice, the total liability therefor will far exceed the ceiling of Rs. 250/- per annum fixed by Article 276(2) of the Constitution. In these premises, it is

contended that an interpretation of Section 61(1)(b) , which may lead to unconstitutional or irrational results should be eschewed.

13. With regard to the question of jurisdiction, it is contended that since the Municipal Committee had in the exercise of its powers clearly acted

beyond its jurisdiction, the suit was maintainable in the Civil Court.

14. Section 61(1)(b) of the Municipal Act, so far as material for this case, reads as under:

Subject to any general or special orders which the State Government may make in this behalf, and the rules, any committee may, from time to time

for the purposes of this Act, and in the manner directed by this Act, impose in the whole or any part of the municipality any of the following taxes,

namely:--

(1) (a).....

(i) to (iii) .....

(b) a tax on persons practising any profession or art or carrying on any trade or calling in the municipality.

Explanation. -- A person in the service or person holding an office under the State Government or the Central Government or a local or other

public authority shall be deemed to be practising a profession within the meaning of this sub-section.

15. From a plain reading of the extracted provision, it is clear that a tax leviable under Clause (b) is, in terms, a tax on ""persons"". The expression

persons"" undoubtedly includes natural persons. The class of such taxable persons has been indicated by the Legislature with reference to their

occupational activity. Thus, in order to be authorised, a tax under Clause (b) of Section 61(1) must satisfy two conditions: First, it must be a tax on

persons"". Second, such persons must be practising any profession or art or carrying on any trade or calling is the municipality.

16. There can be no dispute that the Appellants are ""persons"" and, as such, satisfy the first condition. Even the learned Counsel for the Appellants

has candidly conceded that the individual partners are also ""persons"" within the meaning of the said Clause (b), Controversy thus becomes

narrowed down into the issue: Whether persons collectively doing business in partnership in the municipality, fulfil the second condition? That is to

say, do such persons ""carry on any trade or calling in the municipality"" within the contemplation of Clause (b)?

17. In our opinion, for reasons that follow, the answer to this question must be in the affirmative.

18. "Partnership" as defined in Section 4 of the Indian Partnership Act, 1932, is the relation between persons who have agreed to share the profits

of a business carried on by all or any of them for the benefit of all. The section further makes it clear that a firm or partnership is not a legal entity

separate and distinct from the partners. Firm is only a compendious description of the individuals who compose the firm. The crucial words in the

definition of "partnership" are those that have been underlined. They hold the key to the question posed above. They show that the business is

carried on by all or any of the partners. In the instant case, admittedly, all the Plaintiff-Appellants are carrying on the business in partnership. All the

six partners are sharing the profits and losses. All the partners are jointly and severally responsible for the liabilities incurred or obligations incurred

in the course of the business. Each partner is considered an agent of the other. This being the position, it is not possible to hold that each of the six

partners is not carrying on a trade or calling within the purview of Clause (b) of Section 61(1) of the Municipal Act. At the most, it can be said that

each of these six persons is severally as well as collectively carrying on a trade in the Municipality. There is nothing in the language of Section 61 or

the scheme of the Municipal Act which warrants the construction that persons who are carrying on a trade in association or partnership with each

other cannot be individually taxed under Clause (b) of Section 61(1) . On the contrary, definite indication is available in the language and the

scheme of this statute that such partners can be taxed as persons in their individual capacity. As noticed already, Clause (b) makes it clear in no

uncertain terms that this is a tax on ''persons''. Its incidence falls on individuals, who belong to a class practising any profession or art; or carrying

on a trade or calling in the municipality. To hold that persons who are collectively carrying on a trade in the municipality cannot be taxed

individually, would be to read into the statute words which are not there. There are no words in Clause (b) or elsewhere in the statute which,

expressly or by necessary implication, exclude or exempt persons carrying on a trade collectively in the municipality from being taxed as

individuals. To attract liability to a tax under this clause, it is sufficient that the person concerned is carrying on a trade in the municipality,

irrespective of whether such trade is being carried on by him individually or in partnership with others. Thus, both the conditions necessary for

levying a tax under Clause (b) of Sub-section (1) of Section 61 of the Municipal Act existed in this case. The Appellants are ""persons"" and they

are carrying on a trade in Chheharta Municipality.

19. In the view we take, we do not think it necessary to go further into the question whether the definition of ''person'' given in Section 2(40) of the

Punjab General Clauses Act, can be imported into the statute under consideration, so as to include a contractual firm, also, within the purview of

the expression ''persons'' used in Clause (b) of Section 61(1) , Indeed, the entire effort to import the definition of ''person'' given in the General

Clauses Act, into Section 61(1)(b) of the Municipal Act, is directed to find a foundation for the argument, that the construction adopted by the

High Court could lead to double taxation and even unconstitutional results. But in the instant case, nothing of this kind has happened. The firm has

not been assessed. No question of double taxation or exceeding the constitutional ceiling of Rs. 250/- fixed by Article 276(2) of the Constitution,

arises on the facts of the present case. The arguments advanced on behalf of the Appellants on this aspect of the matter are merely hypothetical

and speculative.

20. This takes us to the second question, whether the Civil Court had jurisdiction to hear and determine the suit.

21. Section 84(1) of the Punjab Municipal Act provides that ""an appeal against the assessment or levy of any ..... tax under this Act, shall lie to the

Deputy Commissioner or to such other officer as may be empowered by the State Government in this behalf."" Then, there is a proviso to this sub-

section which says that when the Deputy Commissioner or such other officer, as aforesaid, is or was, when the tax was imposed, a member of the

Committee, the appeal shall lie to the Commissioner of the Division. Sub-section (2) is important. It provides:

84 (2). If, on the hearing of an appeal under the section, any question as to the liability to, or the principle of assessment of, a tax arises, on which

the officer hearing the appeal entertains reasonable doubt, he may, either of his own motion or on the application of any person interested, draw up

a statement of the facts of the case and the point on which doubt is entertained, and refer the statement with his own opinion on the point for the

decision of the High Court.

22. Section 86 mandates that ""no objection shall be taken to any valuation or assessment, nor shall the liability of any person to be assessed or

taxed be questioned, in any other manner or by any other authority than is provided in this Act.

23. From a conjoint reading of Sections 84 and 86, it is plain that the Municipal Act, gives a special and particular remedy for the person

aggrieved by an assessment of tax under this Act, irrespective of whether the grievance relates to the rate or quantum of tax or the principles of

assessment. The Act further provides a particular forum and a specific mode of having this remedy which is analogous to that provided in Section

66(2) of the Indian income tax Act, 1922. Section 86 forbids in clear terms the person aggrieved by an assessment from seeking his remedy in any

other forum or in any other manner than that provided in the Municipal Act.

24. It is well-recognised that where a Revenue Statute provides for a person aggrieved by an assessment thereunder, a particular remedy to be

sought in a particular forum, in a particular way, it must be sought in that forum and in that manner, and all other forums and modes of seeking it are

excluded. Construed in the light of this principle, it is clear that Sections 84 and 86 of the Municipal Act bar, by inevitable implication, the

jurisdiction of the Civil Court where the grievance of the party relates to an assessment or the principle of assessment under this Act.

24-A. In the view we take, we are fortified by the decision of this Court in Firm Seth Radha Kishan v. Administrator, Municipal Committee,

Ludhiana, (supra) wherein Sections 84 and 86 of this very Punjab Municipal Act, 1911 came up for consideration. Therein, the Municipal

Committee, Ludhiana, imposed a terminal tax on Sambhar salt and assessed the Appellant, therein, to a sum of Rs. 5,893/- towards that tax at the

rate of Rs. 10/- per maund under item 69 of the Government Notification by which the terminal tax was imposed. The Assessee filed a suit against

the Municipal Committee in the Civil Court, contending that Sambhar Salt ought to have been assessed at the rate of 3 pies per maund under item

68, that he had been illegally assessed under item 69 at the higher rate, and claimed refund of the amount paid by him, with interest. The

Committee, inter alia, contended that Sambhar Salt was not common salt, and the Civil Court had no jurisdiction to entertain the suit. The trial

court held that Sambhar Salt was common salt within the meaning of item 68 of the Schedule, that the imposition of tax on it under item 69 of the

Schedule was illegal, and therefore, the Civil Court had jurisdiction to hear and determine the suit by virtue of Section 9 of the Code of Civil

Procedure.

25. On appeal, the High Court held that the Civil Court had no jurisdiction, and dismissed the suit.

26. The Assessee came in appeal to this Court by certificate granted by the High Court, and contended that since the impugned levy was not made

under the Municipal Act but in derogation thereof, the Civil Court had jurisdiction to entertain and determine the suit.

27. Delivering the judgment of the Court, Subba Rao, J. (as he then was) repelled this contention, observing that the rate of the tax to be levied

depended upon the character of the salt, and it was not possible to say that in ascertaining this fact the authorities concerned travelled outside the

provisions of the Municipal Act, even if they wrongly applied item 69 of the schedule, that the mistake in applying the wrong item of the Schedule

to the tax could be corrected only in the manner prescribed by the Act, and the aggrieved person cannot file a suit in the Civil Court in that regard,

the Civil Court"s jurisdiction having been excluded by the provisions of Sections 84 and 86 of the Act.

28. 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 the Municipal Act, and explained that it is only in such cases, the bar to the jurisdiction of the Civil Court would not

apply. Can the case before us be said to belong to that class of cases where the Municipal Committee in levying a tax acts beyond or in abuse of

its powers under the Act? The answer to this question must be in the negative. By no stretch of imagination, can it be said in the facts and

circumstances of the case, that in assessing the Appellants, individually, and not collectively, to the tax in question, the Municipal Committee

abused its powers under the Act. We have already discussed and held that in levying this tax, the Municipal Committee did not travel beyond or

act contrary to the provisions of Section 61(1)(b) of the Act, In short, the present case is one where the Municipal Committee acted "under the

Act". It fallows, therefore, that the Civil Court"s jurisdiction to entertain and decide the suit was barred, even if the dispute raised therein related to

the principle of assessment to be followed.

29. For the foregoing reasons, the appeal fails and is dismissed with costs.