

Shreeyans Paper Mills Ltd. v. The State of Punjab through the Secretary to Government, Punjab, and Others (J. V. Gupta, J.)

(iii) of the Act, as reproduced above, it is made clear that Administrative Tribunal will have jurisdiction in all service matters concerning a civilian (not being a member of All India Service or a person referred to in clause (c) appointed to any defence service or a post connected with defence. In view of the provisions of the Act, as referred to above, Civil Court has no jurisdiction to entertain the suit as allotment of Government accommodation would be a matter relating to service of a civilian though working in the military.

(4) For the reasons recorded above, this revision petition is allowed and the order of the trial Court dated September 27, 1989 is set aside. The plaint is ordered to be returned to the plaintiff for being filed in the Court of competent jurisdiction. There will be no order as to costs.

S.C.K.

Before : J. V. Gupta, J.

SHREEYANS PAPER MILLS LTD.,—*Petitioner.*

versus

THE STATE OF PUNJAB THROUGH THE SECRETARY TO GOVERNMENT, PUNJAB AND OTHERS,—*Respondents.*

Civil Writ Petition No. 788 of 1986

May 22, 1989

Punjab Municipal Act, Ss. 66, 68, 69 and 85—Limitation for filing appeal—Thirty days—Commencement of Limitation—Appeal filed within one month after publication of notice—Such appeal held within limitation.

Held. that the appeal is to prefer within one month after the publication of the notice prescribed by section 66 or section 68 or after the date of any final order under section 69 as the case may be. It is the common case of the parties that the present assessment order was passed in pursuance of the notice issued under section 65/67 of the Act. The said assessment order will be deemed to have been passed under Section 66 read with section 68 and that being so, the appeal could be preferred within one month after the publication of the notice prescribed thereunder. There is nothing to suggest that any such publication was made. The only action taken after

this assessment order was the issuance of the demand notice dated 3rd April, 1984 received by the petitioner company on 5th April, 1984. That being so the appeal filed on 3rd May, 1984 was within limitation.

(Para 6)

Civil Writ Petition under Articles 226/227 of the Constitution of India praying that :

- (i) complete records of the case be summoned;
- (ii) a Writ in the nature of Certiorari quashing the orders of Respondent No. 1 dated 28th November, 1985, Annexure P/8 communicated to the Petitioner,—vide letter dated 16th January, 1986, Annexure P/7 and the order Annexure P/3 be issued ;
- (iii) It is further prayed that during the pendency of the Writ Petition, the operation of the impugned order be stayed ;
- (iv) this Hon'ble Court may also grant any other relief deemed just and fit in the peculiar circumstances of the case ;
- (v) costs of the petition be also awarded ;
- (vi) condition regarding filing of certified copies of the Annexures be dispensed with ;
- (vii) condition regarding service of advance notice of the writ petition be dispensed with ;

O. P. Goyal, Advocate and Anil Malhotra, Advocate and S. S. Sallar, Advocate, for the Petitioner.

T. S. Doabia, Advocate, for the Respondents.

Arun Kathpalia, Advocate, for State.

JUDGMENT

J. V. Gupta, J.

(1) By way of this writ petition the petitioner is challenging the orders of the State of Punjab dated 28th November, 1985 Annexure P-8, passed under Section 237 of the Punjab Municipal Act (hereinafter referred to as the Act) and the order Annexure P-3 dated 3rd

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September, 1984 passed by the Deputy Commissioner, Sangrur, under Section 84 of the Act dismissing the appeal as barred by time.

(2) The Municipal Committee, Ahmedgarh, respondent No. 2, issued to the petitioner a notice dated 18th February, 1984 under Section 65/67 of the Act proposing an annual rental value of the land and building of the petitioner at Rs. 14,29,637 and on that basis proposing house tax for the period 1st January, 1984 to 31st March, 1984 at Rs. 56,611.38. The petitioner company objected to the proposed assessment of the house tax *inter alia* on the ground that their property was liable to exemption being newly constructed. However, on 27th March, 1984 order of assessment was passed against the petitioner. Copy of the said order has been filed with the return of the Municipal Committee as Annexure R-5. A demand notice for the recovery of the amount thus assessed dated 28th March, 1984/3rd February, 1984 was received by the petitioner company on 5th April, 1984. Within 30 days thereof, they filed the appeal against the said order of assessment as contemplated under Section 85 of the Act on 3rd May, 1984. The said appeal was dismissed as barred by time,—*vide* Annexure P-3, by the Deputy Commissioner, Sangrur. According to the learned Deputy Commissioner, from the record of the Municipal Committee, it was amply clear that the application for supply of a copy of the order was received only on 26th April, 1984 and, therefore, the present appeal was barred by limitation as it was not filed within 30 days of the order dated 27th March, 1984.

(3) Subsequent to the dismissal of the said appeal as barred by time, the petitioner company filed an appeal under Section 68-A of the Act which provides power to amend assessment list in certain cases. Copy of the said appeal is Annexure P-4. The prescribed authority under the said section allowed the said appeal of the petitioner-company,—*vide* order Annexure P-5, dated 12th June, 1985. Dissatisfied with the same the Municipal Committee, Ahmedgarh filed a further appeal as provided under sub-section 2 of Section 68-A read with Section 237 of the Act, to the State Government. The State Government,—*vide* its order dated 28th November, 1985 set aside the order of the prescribed authority i.e. that of the Deputy Director dated 18th December, 1984 passed by him under section 68-A of the Act. While passing the said order it was observed therein "On perusal of the record, I further find that the building in question is also not fit for being considered for exemption as per notification issued on 1st June, 1983 and 30th April, 1984, because the

building in question had been completed in the month of May, 1982 and February, 1983, whereas the notifications had been made effective with effect from 1st April, 1983. As such, the claim of exemption could not be entertained." As observed earlier the petitioner company has challenged both these orders i.e. the order dismissing their appeal as barred by time and the order of the State Government copy Annexure P-8 in this petition.

(4) Learned counsel for the petitioner submitted that the appeal against the assessment order dated 27th March, 1984 could not be dismissed as barred by time as the same was filed within time from the date the demand notice was issued i.e. 3rd April, 1984 and received by the petitioner company on 5th April, 1984. Thus, argued the learned counsel the appeal filed on 3rd May, 1984 was within 30 days as contemplated under Section 85 of the Act. Section 85 reads as under :—

"Limitation of appeal.—(1) No appeal shall lie in respect of a tax on any land or building unless it is preferred within one month after the publication of the notice prescribed by Section 66 or Section 68, or after the date of any final order under Section 69, as the case may be and no appeal shall lie in respect of any other tax unless it is preferred within one month from the time when the demand for the tax is made :

Provided that an appeal may be admitted after the expiration of the period prescribed therefore by this section if the appellant satisfies the officer before whom the appeal is preferred that he had sufficient cause for not presenting the appeal within that period.

(2) No appeal shall be entertained unless the appellant has paid all municipal taxes due from him to the committee upto the date of such appeal."

(5) According to the learned counsel for the respondent the appeal was to be filed within 30 days from the date of the order i.e. 27th March, 1984 but since it was filed on 3rd May, 1984, it was barred by time. He further argued that the order dated 27th March, 1984 was passed in the presence of the parties and, therefore, the subsequent issuance of the demand notice for payment dated 3rd April, 1984 was of no consequence. It was also submitted that the said order has now been confirmed by the State Government while exercising power under Section 237 of the Act and, therefore, now it was

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not open for the petitioner to challenge the same in appeal even if this Court holds that the appeal was filed within time and the same be now decided in accordance with law. In support of this contention, he referred to *Kiran Cinema Patti v. The S.D.O. (Civil) Patti and Ors.* (1), wherein it was held that orders passed under Section 84 can also be reviewed under Section 237.

(6) After hearing the learned counsel for the parties, I am of the considered view that the appeal filed on 3rd May, 1984 against the assessment order dated 27th March, 1984 could not be held to be barred by time as contemplated under Section 85 of the Act reproduced above. The appeal is to prefer within one month after the publication of the notice prescribed by section 63 or section 68 or after the date of any final order under section 69 as the case may be. It is the common case of the parties that the present assessment order was passed in pursuance of the notice issued under section 65/67 of the Act. The said assessment order will be deemed to have been passed under Section 66 read with section 68 and that being so, the appeal could be preferred within one month after the publication of the notice prescribed thereunder. There is nothing to suggest that any such publication was made. The only action taken after this assessment order was the issuance of the demand notice dated 3rd April, 1984 received by the petitioner company on 5th April, 1984. That being so the appeal filed on 3rd May, 1984 was within limitation. Reference in this behalf be made to a Division Bench judgment of this Court *Brij Mohon Mehra and Ors. v. The State of Punjab and Ors.* (2). There the question was of limitation under section 146 of the Punjab Municipal Corporation Act, and it was observed that "limitation for filing the appeal was to be considered from the date on which the demand notices were served upon the petitioners.

(7) In this view of the matter the view taken by the Deputy Commissioner dismissing the appeal as barred by time is wholly illegal. He had thus acted wrongly and illegally in the exercise of his jurisdiction and, therefore, the order Annexure P-3 is hereby quashed.

(1) 1986 L.R.S. (Punjab) Vol. I 472.

(2) 1986 L.R.S. (Punjab) Vol. I 571.

(8) Once the said order is quashed then the parties are to be relegated to the same position so that the appeal filed by them,—*vide* Annexure P-2, dated 3rd May, 1984 be decided on merits, in accordance with law. While deciding the same, the observations made by the State Government in its order dated 28th November, 1985 copy Annexure P-8 as reproduced above, will be of no consequence and will not be taken into consideration as the same were not warranted at that time.

(9) At this stage, learned counsel for the respondents pointed out that the said appeal filed by them,—*vide* Annexure P-2 was only for a period of three months i.e. from 1st January, 1984 to 31st March, 1984, but for the subsequent period the petitioner company did not file any appeals and, therefore, the company be directed to file separate appeals for the subsequent period as well. It is not disputed that no separate appeals were filed against the assessment order for the subsequent period because the basis for the subsequent, period was order dated 27th March, 1984. However, the petitioner company will now file the appeals for the subsequent period as well, if so advised, within one month of this order. In case the said appeals are filed by the end of June 1989, the respondents will not raise any objections as regard the limitation and the same will be disposed of on merits in accordance with law.

(10) The recovery of the payment of the house tax for the subsequent period was stayed by this Court from time to time. The petitioner company was allowed to deposit the amount as determined under Section 68-A of the Act which order was later on set aside by the State Government under Section 237. The same position will continue till the appeals filed by the petitioner company are decided on merits in accordance with law. The case the petitioner company is required to pay more house tax what they have already deposited, the same will be paid with 12 per cent interest from the date it had become due till payment. An undertaking to that effect will be filed by the petitioner company before the Deputy Commissioner while filing the appeals that whatever amount is determined in the appeals, the balance thereof if any, will be paid by the company with 12 per cent interest from the date it had become due within three months of the order passed in appeal. The petition is, therefore, disposed of accordingly, with no order as to costs.

S.C.K.