

The Administrator, Municipality, Yamunanagar, District Ambala v.
Messrs Saraswati Industrial Syndicate Ltd. (Pandit, J.)

LETTERS PATENT APPEAL

Before Prem Chand Pandit and Gopal Singh, JJ.

THE ADMINISTRATOR, MUNICIPALITY, YAMUNANAGAR,
DISTRICT AMBALA,—Appellant.

versus

MESSRS. SARASWATI INDUSTRIAL SYNDICATE LTD.,—Respondents.

Letters Patent Appeal No. 783 of 1970

September 2, 1971.

Punjab Municipal Act (III of 1911)—Section 85—Appeal against the levy of house-tax—Impugned tax not deposited along therewith—Such appeal—Whether entertainable.

Held, that the language of sub-section (2) of section 85 of the Punjab Municipal Act, 1911 is clear and not capable of any other interpretation except that the appeal filed under sub-section (1) of Section 85 will be entertained, but it is only in one contingency that it will not be so done, that is, if the appellant is in arrears with regard to any other municipal tax due from him to the Committee on the date of the filing of the appeal. The use of the word "other" before "municipal taxes" is significant. If the idea of the legislature was that the impugned tax had also to be deposited along with other municipal taxes, the language of the sub-section would have been different. Hence an appeal against the levy of house-tax is entertainable if the appellant has paid all other municipal taxes due from him to the Committee upto the date of such appeal and it is not necessary for him to deposit the impugned tax also along therewith. (Para 8).

Letters Patent Appeal under Clause 10 of the Letters Patent against the judgment dated the 22nd September, 1970, passed by Hon'ble Mr. Justice H. R. Sodhi, in Civil Writ No. 2549 of 1970.

Roop Chand, Advocate, for the appellant.

S. K. Jain, for respondent No. 1.

JUDGMENT

Pandit, J.—(1) As assessment list for levying the house-tax in Municipal Committee, Yamunanagar, District Ambala, was prepared.

Therein, Messrs. Saraswati Industrial Syndicate Limited, Yamunanagar, was finally assessed to a tax of Rs. 11,250.31, after disposing of the objections. An appeal against this assessment was filed by the Syndicate before the Deputy Commissioner, Ambala, under section 84 of the Punjab Municipal Act, 1911, hereinafter called the Act. When the appeal was instituted, admittedly, the impugned tax had not been paid by the appellant.

(2) A preliminary objection was taken before the Deputy Commissioner on behalf of the Administrator of the Municipality to the effect that appeal was not competent in as much as the appellant had not deposited the impugned tax along with the appeal. Under section 85(2) of the Act, it was obligatory for them to do so before filing the appeal.

(3) This preliminary objection prevailed with the Deputy Commissioner and he dismissed the appeal as incompetent. Needless to say that he did not decide the appeal on merits.

(4) This decision was challenged by the Syndicate by filing a writ petition in this Court. The said petition was accepted by the learned Single Judge on the ground that the Deputy Commissioner had not correctly interpreted the provisions of section 85(2) of the Act and it was not necessary for the appellant to deposit the impugned tax along with the appeal. This decision of the learned Judge has been challenged by means of this Letters Patent Appeal filed on behalf of the Administrator of the Municipal Committee.

(5) The sole question that arises for decision is regarding the interpretation of section 85(2) of the Act.

Section 85 reads :

“85. (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 therefor by this section:

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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 other municipal taxes due from him to the Committee upto the date of such appeal."

(6) In section 85 (1), limitation for filing the appeal has been mentioned. We are, however, concerned with sub-section (2), because it is nobody's case that the appeal by the Syndicate had not been filed within limitation.

(7) The argument raised by the appellate counsel that according to sub-section (2), no appeal could be entertained unless the respondent had paid all other municipal taxes due from him to the Committee upto the date of the filing of the appeal including the impugned tax. The contention of the Syndicate, on the other hand, is that according to this sub-section the appeal shall be entertained if the appellant has paid all *other* municipal taxes and no *other* municipal tax is due from him to the Committee upto the date of the filing of the appeal and it is not necessary that the impugned tax should also be deposited along with the institution of the appeal.

(8) In my view, the language of sub-section (2) is clear and not capable of any other interpretation except this that the appeal filed under sub-section (1) of section 85 will be entertained, but it is only in one contingency that it will not be so done, that is, if the appellant is in arrears with regard to any *other* municipal tax due from him to the Committee on the date of the filing of the appeal. The use of the word "other" before the municipal taxes is significant. If the idea of the legislature was that the impugned tax had also to be deposited along with *other* municipal taxes, the language of the sub-section would have been slightly different. For instance, it would have been said "unless the appellant has paid all other municipal taxes *as well* due from him to the Committee upto the date of such appeal"; or "unless the appellant has paid all other municipal taxes *including the one in dispute* due from him to the Committee upto the date of such appeal", but these words are missing in this sub-section. The appeal will be entertained if the appellant has paid all *other* municipal taxes due from him to the Committee upto the date of such appeal. It is common ground that the Committee

is authorised to levy a variety of taxes mentioned in section 61 of the Act and the legislature seems to be keen that the appellant should have at least paid all *other* taxes that are recoverable from him except the one which is in dispute. Since the impugned tax is already being challenged, therefore, the legislature might well have thought that it was not necessary for the appellant to deposit the same. If, later on, the appeal is rejected, he will be asked to pay it. I am, therefore, of the opinion that on the plain reading of the provisions of sub-section (2), the appellant was not bound to deposit the tax in dispute along with appeal. That being so, the decision of the learned Single Judge is, I say so with respect, in accordance with law.

(9) It is not the case of anybody that any *other* municipal taxes were due from the syndicate on the date of the filing of the appeal. Therefore, their appeal should have been decided in accordance with law by the learned Deputy Commissioner and not thrown out on the ground that the impugned tax had not been paid along with the appeal.

The learned Single Judge, while dealing with this matter, has observed :

“A plain reading of sub-section (2) makes it abundantly clear that the appeal against imposition of any tax cannot be refused to be entertained unless some tax other than the subject matter of appeal remained unpaid till filing of the appeal. A deposit of the impugned tax is thus not a condition precedent to the institution of appeal and it is only when the appellant is a defaulter in respect of other taxes payable to the Municipal Committee that he is not permitted under the Act to challenge a fresh liability for a tax. The power of taxation by a Municipal Committee extends to a variety of subjects, including lands, building, animals, vehicles, professions or callings, and many other matters. The scheme of the Act appears to be that an inhabitant of a Municipality who may have to pay several taxes but commits default in payment of all or any of them will not be allowed an unfettered right of appeal against a fresh tax when he is already a defaulter in the matter of taxes. The use of the word “other” preceding the expression “municipal taxes” in sub-section (2) is not without a meaning. It has obviously been used in

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contradistinction to the tax assessed. If the legislature intended that the amount of tax assessed should have been deposited, it would have clearly said so as we find in many other statutes. For instance, in proviso to section 20 of the Punjab General Sales Tax Act, 1948, it has been enacted that "no appeal shall be entertained by such authority unless he is satisfied that the amount of tax assessed and the penalty, if any, imposed on the dealer has been paid". Different language employed in sub-section (2) of section 85 of the Act cannot be without a purpose which appears to be that municipal dues should not accumulate in the hands of an inhabitant of the municipality and he can seek his remedy by way of an appeal, against any new or fresh tax, unhindered by any pre-conditions, if he is not a defaulter. To my mind, this is the only interpretation which is consistent. It is a fiscal matter dealing with financial implications and an interpretation beneficial to the citizen should always be placed, more so when the same is consistent with the ordinary meaning of the words used."

I am in respectful agreement with the analysis of the provisions of sub-section (2) made by the learned Judge.

(10) The result is that this appeal fails and is, accordingly, dismissed. In the circumstances of this case, however, there will be no order as to costs.

Gopal Singh, J.—I agree.

N. K. S.

APPELLATE CRIMINAL

Before R. S. Sarkaria and S. C. Mittal, JJ.

NASIB SINGH, AND OTHERS,—Appellants.

versus

THE STATE OF PUNJAB,—Respondents.

Criminal Appeal No. 848 of 1969.

September 2, 1971.

Indian Penal Code (XLV of 1860)—Sections 120-B and 415—Code of Criminal Procedure (Act V of 1898)—Sections 196-A, 239 and 537—Prosecu-