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to give a fresh decision on the petition under section 33(2) of the Act was passed by Grover J. both the references had come to an end. It was not, therefore, open to the Tribunal in face of that order to say that it had no jurisdiction. It was bound to carry out the order of this Court passed under article 227 of the Constitution. In this view of the matter this petition is allowed and the case is sent back to the Tribunal with the direction that it should determine the application of the management under section 33(2). There will be no order as to costs.

B.R.T.

FULL BENCH

Before S. S. Dulat, A. N. Grover and D. K. Mahajan, JJ.

KELASH NATH AND OTHERS,—*Appellants.*

versus

MUNICIPAL COMMITTEE, BATALA,—*Respondent.*

Regular Second Appeal No. 504 of 1956.

1962

February, 5th.

Punjab Municipal Act (III of 1911)—Sections 84 and 86—Suit to decide whether certain goods fell under one item or other of the Schedule under which octroi duty was chargeable by the Municipal Committee—Whether maintainable in a Civil Court.

Held, that section 84 of the Punjab Municipal Act provides for an appeal against assessment or levy of any tax. It also makes a provision for reference to the High Court. Section 86 says that no objection can be taken to any valuation or assessment, nor can the liability of any person to be assessed or taxed be questioned except as provided in the Act. This section certainly provides a bar which is confined to matters covered by the Act. When the matter for decision is whether the octroi should be levied under one item or the other of the Octroi Schedule on particular goods and the assessing authority comes to the conclusion that it is leviable under a particular item, e.g., item 122 in the present case, it cannot

possibly be said that the action of the assessing authority is in excess of or in contravention of the powers conferred on it by the statute. As, it is a clear case of mistake and as no question of jurisdiction is involved, the aggrieved party must seek his remedy under section 84 which provides the forum for appeal and reference in the matter of a wrong assessment. If the Committee persists in perpetuating that mistake, it may be open to the plaintiffs to bring that matter upto the High Court under Article 226 of the Constitution but the Civil Courts cannot entertain and decide a suit in which the main issue is whether certain goods fall under one item or the other of the Schedule under which octroi duty is chargeable by the Municipal Committee.

Case referred by Hon'ble Mr. Justice Shamsher Bahadur on 18th May, 1961 to a larger Bench for decision of the important question of law involved in the case. The Division Bench consisting of Hon'ble Mr. Justice D. Falshaw and Hon'ble Mr. Justice, A. N. Grover, further referred the case to Full Bench owing to the conflict of authority on 4th October, 1961. The Full Bench consisting of Hon'ble Mr. Justice Dulat, Hon'ble Mr. Justice Grover and Hon'ble Mr. Justice Mahajan, decided the case on 5th February, 1962.

Regular Second Appeal from the decree of Shri G. S. Bedi, Senior Sub-Judge, with Enhanced Appellate Powers, Gurdaspur, dated the 2nd March, 1956, reversing that of Shri Dev Raj Saini, Sub-Judge, 1st Class, Batala, dated the 5th August, 1955, and dismissing the plaintiffs' suit and leaving the parties to bear their own costs throughout.

H. L. SARIN, K. C. SUD AND K. K. CUCCARIA, ADVOCATES, for the Appellants.

H. R. MAHAJAN AND A. S. MAHAJAN, ADVOCATES, for the Respondent.

JUDGMENT

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GROVER, J.—The question which requires determination is whether the jurisdiction of the Civil Courts to entertain and decide a suit in

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which the main issue is whether certain goods fell under one item or the other of the Schedule under which octroi duty was chargeable by the Municipal Committee was barred by virtue of the provisions contained in sections 84 and 86 of the Punjab Municipal Act, 1911.

The plaintiffs were dealers in sports and carried on business within the Municipal limits of Municipal Committee, Batala. In the course of their business they imported what were called "lathis" (of cane). According to them, they were liable to pay octroi duty at the rate of 0-2-0 per maund either under item No. 105 or 110 of the Octroi Schedule but the Municipal Committee had assessed them under the residuary item, No. 122 which imposed a duty of Rs. 2 per maund. They, therefore, filed a suit for an injunction to restrain the defendant Committee from levying octroi duty at the rate of Rs. 2 per maund on imported cane. The defendant Committee took objection to the jurisdiction of the Court to entertain and decide a suit of this nature and further pleaded that the goods had been rightly assessed under the residuary item. The trial Court was of the view that such a suit could proceed in the Civil Courts and gave a finding that the octroi duty could be levied on the goods in question under item 105 only and that the residuary item was not applicable. The suit was consequently decreed. On appeal the learned Senior Sub-Judge held that the Civil Courts had no jurisdiction to entertain the suit and on that ground it was dismissed. When the matter came before the learned Single Judge in second appeal, he was of the opinion that in view of conflict of authority prevailing in this Court it should be referred to a Division Bench. It came before a Division Bench by which it has been referred to a Full Bench.

The relevant sections may first be reproduced—

[His Lordships *read* sections 84 and 86 and continued.]

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The entire ambit and scope of the bar created by these sections was discussed at great length and decided authoritatively in the Full Bench decision of the Lahore High Court in *Municipal Committee, Montgomery* v. *Master Sant Singh* (1). It is unnecessary to refer to the earlier decisions of the Chief Court and the Lahore High Court on the point as there is hardly any dispute between the learned counsel for the parties with regard to the correctness of the rule laid down in the Lahore case. The only difficulty that has arisen is in respect of the application of that rule to the particular facts of different cases which had to be decided subsequently. It is essential, therefore, to examine the Lahore decision with care. The facts briefly in that case were that one Sant Singh was running a motor bus service. He owned only one lorry himself and he used to hire other lorries from different owners. For the purpose of his business, all these lorries were kept within the limits of the Municipal Committee, Montgomery. The Committee levied a tax payable by the owners on all vehicles kept within the Municipality. A demand was made from Sant Singh on account of tax on all lorries used by him in his business. He refused to meet the demand on the ground that he did not own all the lorries and finally instituted a suit against the Committee for an injunction restraining it from realising the tax on the ground that he was not the owner of all the lorries, with the result that the demand made from him was illegal and *ultra vires* of the Committee. The main controversy raged round the questions whether the Civil Courts could entertain a suit of that nature and if so, whether the relief by way of injunction could be granted. Din Mohammad, J., who wrote the leading judgment, examined the entire scheme of taxation contained in the Municipal Act including the provisions of sections 84 and 86 as also the relevant case-law and he came to the conclusion that the remedy provided in section 84 is confined to those acts only which are done under the Act and that the bar

(1) A.I.R. 1940 Lah. 377

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provided in section 86 is similarly confined to matters covered by the Act and does not extend any further. To use his own words—

> "The word 'liability' as used in sub-section (1) of section 86 refers to that liability which arises under the foregoing sections only and this interpretation is supported by a reference to sub-section (2) of section 84, where the question as to the liability to a tax is clearly envisaged to arise in an appeal against the assessment or levy of any tax under the Act. It cannot be conceived that the Legislature while enacting a bar under section 86 contemplated any liability arising from a tax which was not permitted under the Act or any demand which was being made in contravention of the provisions of the Act."

According to him, therefore, if it was found that the plaintiff was not the owner of the lorries during the period in respect of which the tax was demanded from him, the demand would not be under the Act but outside it inasmuch as a tax on vehicles was payable by the owners only and not by those who did not own them. Tek Chand, J., who wrote a separate but concurring judgment, expressed the rule, if I may say so with respect, in very clear and cogent words at page 387 as follows:—

> "A Municipal Committee is a creature of the statute. It is brought into existence by, or under the authority of, an express legislative enactment to have control over municipal affairs within defined local limits and can exercise such powers of legislation, taxation and regulation as are entrusted to it by the Legislature. If in the exercise of these powers the Committee makes a mistake, it will merely be a case of erroneous exercise of jurisdiction, and the aggrieved party must seek his

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remedy in the manner, and from the forum, provided in the statute. If, however, its action is in excess of, or in contravention of the powers, conferred on it by the statute, the subject has his ordinary remedy to seek relief in the Civil Courts, unless their 'cognizance is either expressly or impliedly barred (S. 9, Civil P.C.)'."

It may be mentioned that in *Nanbahar Hussain Shah* v. *Municipal Committee, Batala* (2), the Municipal Committee had levied a tax on certain goods imported into the Municipal limits at a certain rate under Article 57 of the Terminal Tax Schedule. The plaintiff alleging that the tax could be levied only under Article 55 filed a suit for an injunction. Douglas Young, C.J., and Din Mohammad, J. came to the conclusion that the suit did not lie but the learned Chief Justice, who delivered the judgment, went on to observe *inter alia* as follows:—

> "It does not appear to us to matter, with reference to the terms of these two sections, whether the assessment is illegal or *ultra vires* or not. Even if the assessment is illegal or *ultra vires*, it is an assessment".

In the Full Bench decision Din Mohammad, J., observed with reference to the aforesaid case—

> "The case, so far as it goes, was rightly decided, inasmuch as the objection raised there was to a matter of detail and no question of jurisdiction was involved. The difficulty, however, arises in connection with the remarks quoted above, which was no doubt intended to bar suits even if the tax was illegal, but the Hon'ble Chief Justice has authorised me to say that on further consideration

(2) I.L.R. 16 Lah. 529

he has come to the conclusion that the opinion expressed by us was not necessary for the decision of the case and was in fact incorrect."

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Thus it would follow that the Lahore Full Bench approved of the decision in *Nanbahar Hussain Shah* v. *Municipal Committee, Batala* (2), which was a parallel case to the one which is before us for consideration although certain observations which were of a sweeping and wide nature were not accepted as laying down the law correctly. In *Messrs Lal Singh Amar Nath* v. *Municipal Committee, Muktsar* (3), Achhru Ram, J., had occasion to deal with a similar matter but his attention does not appear to have been invited to the decision of the Lahore Full Bench. What weighed with him was that if the Civil Courts were debarred from deciding such matters, it would amount to this that if in a particular case what was actually brass was regarded by the officials of the Municipal Committee as gold, and they decided to levy tax on its importation within the Municipal limits at the rate at which, according to the Schedule of taxes framed by it tax was leviable on gold, the Civil Courts would have no power to give relief. The only authority to the contrary which had been cited before him was a judgment of Hilton, J., in *Municipal Committee of Amritsar* v. *Firm Hukam Chand-Kanshi Ram* (4). The observations made by him were more or less obiter as the suit was held to have been rightly dismissed on the finding that the plaintiff had failed to prove his case that the oil was mineral oil as alleged by him. On the other hand, in *Municipal Committee, Batala* v. *F. Piara Lal Aggarwal and brothers* (Civil Revision No. 110 of 1955) decided on 22nd September, 1955, Bhandari, C.J., dissented from the reasoning of Achhru Ram, J., and held that it was not open to the Civil Courts to entertain and decide such a suit. In *Baddu Mal* v. *Cantonment Board, Jullundur* (5), decided by Bishan Narain and Dua,

(3) 1948 P.L.R. 102
(4) A.I.R. 1934 Lahore 200
(5) A.I.R. 1960 Punj. 561

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JJ., a suit had been instituted against the Cantonment Board restraining it from recovering the sum of Rs. 8,156-4-0 as octroi tax on the ground that this demand was unauthorised, it having been expressly asserted that the amount of duty payable had never been legally determined. The first matter that was decided was that the amount of octroi duty had not been determined by the Board. Indeed, this fact was conceded. Discussing the question of finality under the provisions contained in sections 84 to 88 of the Cantonments Act, it was observed that such finality attached only to the assessments made under the Act and if the assessment was not under the Act, then those provisions would not operate as a bar to the Civil Court granting relief. Reliance was placed on the decision of the Lahore Full Bench as also the well-known pronouncement of the Privy Council in *Secretary of State* v. *Mask and Company* (6). The decision in this case, therefore, proceeded more on its own facts, the basic finding being that octroi duty had never been determined in accordance with the provisions of the Act and the bye-laws. In *The Administrator, Municipal Committee, Ludhiana* v. *F. Seth Radha Krishan Sohan Lal* (Regular First Appeal No. 30 of 1952) decided by Falshaw, J. (as he then was) and Mehar Singh, J. on 16th April, 1959, an identical question came up for consideration. There terminal tax had been levied according to item 69 and not item 68 in the Terminal Tax Schedule. The latter item related to 'salt common' and the first item, to salt 'of all kinds other than common salt'. The rate for the first of these items was three pies per maund and for the second, ten annas per maund. After referring to the provisions of the two sections and the decision of Achhru Ram, J. in *Messrs Lal Singh Amar Nath* v. *Municipal Committee, Muktsar* (3), the Bench followed the decision of the Chief Court in *Municipal Committe, Ambala* v. *Mohander Singh and another* (7). In that case a suit had been filed for a refund of the customs duty on the goods exported by the plaintiffs. The

(6) A.I.R. 1940 P.C. 105
(7) 38 P.R. 1911

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rules made under the Punjab Municipal Act, 13 of 1884, provided that an appeal against an order passed under the rules would lie to the Deputy Commissioner or the Commissioner. The plaintiffs, instead of appealing to the Commissioner, filed a suit after the President of the Municipal Committee had refused to allow refund. The Chief Court relied on some Madras judgments and held that the suit did not lie as the plaintiffs were bound to exhaust the remedy by appeal before instituting the suit. In the judgment of the Lahore Full Bench, Din Mohammad, J., discussed this case at page 381 and observed that it had not been laid down in the aforesaid judgment that no suit was at all competent and all that it decided was that the remedies provided by the Act should be exhausted first. He proceeded to make it clear that if, as envisaged in this judgment, a suit was competent after the remedies provided in the Act had been exhausted, there appeared to be no reason why it could not lie if recourse was not had to the remedies provided in the Act, especially when the matter complained against did not fall under the Act. The learned Judge noticed the distinction drawn in this judgment between a suit contesting the incidence of a tax lawfully imposed and a suit to recover a sum paid on the ground that the so-called tax had no legal existence. Mehar Singh, J., who delivered the judgment of the Division Bench in *The Administrator, Municipal Committee, Ludhiana* v. *F. Seth Radha Krishan Sohan Lal* (R.F.A. 30 of 1952), appeared to lay a good deal of emphasis on the aspect of pursuing the remedies provided by the statute but, with respect, this would be contrary to the observations made by Din Mohammad, J. in the Lahore case and rightly so for the simple reason that a suit can be instituted as a matter of right and if a subject can pursue his remedy as of right, the question whether he has pursued certain remedies provided by the statute or not is wholly immaterial. Such a consideration is or may be relevant when some remedy has to be pursued in which the Court has discretion to grant the relief and where it can decline to exercise discretion in favour of a

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plaintiff who has not exhausted his remedies provided by the Statute. But, as will be presently seen, the ultimate conclusion of the Bench was correct even according to the rule laid down in the Lahore case in that such a matter could not be agitated in the Civil Courts.

It is necessary to refer to a few other decisions. In *Secretary of State* v. *Mask and Co.* (6), in which the question of the exclusion of the jurisdiction of the Civil Courts by provisions contained in special statutes came up for consideration. There, the respondents were a firm of merchants, who used to import betel-nuts from Java into British India. A suit was filed relating to two consignments of betel-nuts imported from Java to Pondicherry by sea and, thereafter by rail to Panruti. These consignments were imported into the Province of Madras by various instalments. According to the Assistant Collector of Customs, Madras, the betel-nuts imported were "boiled". The 1,000 bags cleared on 31st December, 1932, were assessable at 37½ per cent on a tariff valuation of Rs. 23 per cwt. and the remaining bags, if cleared, were to be liable for duty at 45 per cent on a tariff value of Rs. 16 per cwt. An appeal was taken to the Collector but that failed. A revision to the Government of India also was dismissed. The suit was for recovery of the amount alleged to have been collected in excess from the plaintiffs. According to their Lordships, it is settled law that the exclusion of the jurisdiction of the Civil Courts is not to be readily inferred, but that such exclusion must either be explicitly expressed or clearly implied. It is also well settled that even if jurisdiction is so excluded, the Civil Courts have jurisdiction to examine into cases where the provisions of the Act have not been complied with, or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure. By sections 188 and 191 a precise and self-contained code of appeal is provided in regard to obligations which are created by the statute itself, and it enables the appeal to be carried to the supreme head of the executive Government.

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Their Lordships were of the opinion that it was difficult to conceive what further challenge to the order was intended to be excluded other than a challenge in the Civil Courts. The jurisdiction of the Civil Courts was held to be excluded and it was pointed out that determination of such a question must rest on the terms of a particular statute and decisions on other statutory provisions were not of material assistance, except in so far as general principles of construction were laid down. In *Lachhman Singh* v. *Natha Singh* (8), Tek Chand, J., delivering the judgment of the Court relied on the earlier decision of the Full Bench in *Municipal Committee, Montgomery* v. *Master Sant Singh* (1), while examining the question whether a Board constituted under the Punjab Relief of Indebtedness Act, 1934, could make any orders in respect of a usufructuary mortgage treating it as a debt. It was held that since usufructuary mortgage could not be regarded to be a debt as defined in the Act the Board had no jurisdiction to make any order relating to it and the Civil Courts were competent to entertain a suit challenging the order of the Board. The same principle was reiterated at page 407 as in the previous Full Bench and reliance was placed on the observations made by their Lordships of the Privy Council in the leading case *Colonial Bank of Australasia* v. *Willian* (9), where the question was to what extent the order of a quasi-judicial authority could be agitated before the Court. According to their Lordships, it has to be seen whether the objection related "to defect of jurisdiction, founded on the character and constitution of the tribunal, the nature of the subject-matter of the enquiry or the absence of some preliminary proceeding which was necessary to give jurisdiction to it". If any of these things were established, the order was *coram non-judice* and of no effect whatever. If, however, "the objection rests solely on the ground that the tribunal has erroneously found a fact which it was competent to try, the

(8) A.I.R. 1940 Lah. 401
(9) (1874) L.R. 5 P.C. 417

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objection cannot be entertained". Another Full Bench of the same Court in *M. Qumar-ud-Din* v. *Kishan Das* (10), actually relied on the observations of their Lordships in *Secretary of State* v. *Mask and Company* (6), while deciding whether under the Punjab Relief of Indebtedness Act, 1934, the Board could make any order when the creditor refused to agree to any amicable settlement. After the refusal of the creditor to agree to any settlement the Board had no right to continue the proceedings and an order passed to discharge the debt was held to be without jurisdiction. The previous Full Bench decision in *Municipal Committee, Montgomery* v. *Master Sant Singh* (1), was in terms followed. It is apparent from *Mohammad Din and others* v. *Imam Din and another* (11), that their Lordships had no doubt that the Civil Court had power to entertain a suit in which the question was whether the executive authority had acted *ultra vires*. It was found in that case that the executive authority could not superimpose upon the grant of proprietary rights to tenant (under Colony Act, 1893) on payment of the *zar-i-milkiat* a condition that the land should not be alienated during the tenure of the grantee without the concurrence of the reversioners. As imposition of such a condition would mean granting rights which were very different, and in fact creating an estate of a kind unknown to the law, the matter having been taken to the Civil Courts, one of the issues raised there was whether the Civil Court had jurisdiction to try the suit. It was in that connection that these observations were made and actually the decision of the Courts below holding that such a suit was competent was upheld. Thus the principles laid down by the Lahore Full Bench in *Municipal Committee, Montgomery* v. *Master Sant Singh* (1), have consistently held the field and, if I may say so with respect, they embody the correct exposition of the law on the subject. Indeed, the learned counsel for the parties have not been able to refer to any decision which would

(10) A.I.R. 1945 Lah. 223
(11) A.I.R. 1948 P.C. 33

weaken or detract from the force of what has been laid down in that case.

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Section 84 of the Punjab Municipal Act provides for an appeal against assessment or levy of any tax. It also makes a provision for reference to the High Court. Section 86 says that no objection can be taken to any valuation or assessment, nor can the liability of any person to be assessed or taxed be questioned except as provided in the Act. This section certainly provides a bar which is confined to matters covered by the Act. When the matter for decision is whether the octroi should be levied under one item or the other of the Octroi Schedule on particular goods and the assessing authority comes to the conclusion that it is leviable under a particular item, e.g., item 122 in the present case, it cannot possibly be said that the action of the assessing authority is in excess of or in contravention of the powers conferred on it by the statute. As it is a clear case of mistake and as no question of jurisdiction is involved, the aggrieved party must seek his remedy under section 84 which provides the forum for appeal and reference in the matter of a wrong assessment. The assessing authority is not doing something which it is not empowered to do under the statute because it is not denied that the statute does authorise it to levy duty on particular classes and types of goods at such rates as may be fixed. In the leading case which had to be decided by the Lahore Full Bench it was found that the plaintiff was not the owner of the lorries and as the tax was leviable only on an owner, the demand was held not to be under the Act but outside it. There is no allegation in the plaint in the present case which would attract application of such a principle nor can it be held that the demand is not under the Act but is outside it. The illustration given by Achhru Ram, J. in *Messrs Lal Singh Amar Nath* v. *Municipal Committee, Muktsar* (3), is thought-provoking and shows how each case will have to be decided on its own facts. It would be certainly a glaring case if levy is made on brass treating it as gold. It is not easy to conceive that the assessing authority

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would act in that arbitrary manner. If and when that happens it may be open to argument that such an action can no longer be regarded as based on a mistake and it is a deliberate *mala fide* act, which may make the suit entertainable by the Civil Courts. But no opinion need be expressed about it as in the present case there can be no doubt that there is only a mistake being made, if at all, in levying duty under item 122 when it can be levied under item 105 but such a mistake could be got rectified in appeal under section 84 or by asking for a reference to this Court. If the Committee persists in perpetuating that mistake it may even be open to the plaintiffs to bring that matter up to this Court under Article 226 of the Constitution, but the Civil Courts cannot entertain and decide the present suit and that is the answer that must be given to the question which is before the Full Bench for determination.

The learned counsel for the parties agree that no other point arises for decision in this case, with the result that the suit shall stand dismissed, but in the circumstances there will be no order as to costs.

Dulat, J.

S. S. DULAT, J.—I agree.

Mahajan, J.

D. K. MAHAJAN, J.—I agree.

B.R.T.

FULL BENCH

Before Tek Chand, S. B. Capoor and Prem Chand Pandit, JJ.

M/s JULLUNDUR VEGETABLE SYNDICATE,—*Petitioner.*

versus

THE PUNJAB STATE,—*Respondent.*

Sales Tax Reference No. 1 of 1959.

1962

February, 6th.

East Punjab General Sales Tax Act (XLVI of 1948)—Section 11—Partnership firm registered as a dealer under the Act dissolved before the commencement of proceedings for assessment for a period during which it was in