

General Manager, Northern Railways, and not the Union of India. In any case, this conduct on the part of the defendant goes to prove that the mistake on the part of the plaintiff, if any, had been made in good faith, and, thus, he was entitled to the benefit of proviso to section 21 of the Limitation Act. That being so, the suit filed originally on 24th February, 1973, was within time even against the Union of India.

(6) As regards the notice under section 80, C.P.C., the trial court rightly came to the conclusion that there was substantial compliance with the provisions of section 80, C.P.C., and hence, the notice served on the General Manager was valid. Even in the Code of Civil Procedure, under section 80 the notice in the case of a suit against the Central Government, where it relates to a Railway, has to be served on the General Manager of that Railway.

(7) As regards the amount of compensation, the lower appellate court has not gone into that matter. The learned counsel for the defendants did not contest the finding of the trial court under Issue No. 2, and since the suit was dismissed on the question of limitation, the cross-objections filed by the plaintiff were not considered. However, from the reasoning given by the trial court it is quite evident that the plaintiff is entitled to a compensation of Rs. 2,500 only. Consequently, this appeal succeeds, the judgment and decree of the lower appellate court is set aside and that of the trial court restored with costs throughout. The plaintiff shall also be entitled to interest at the rate of 6 per cent p.a. on the decretal amount from the date of the decree of the trial court, i.e., from 4th November, 1975 till realisation.

R. N. R.

Before S. S. Sodhi, J.

MUNICIPAL COMMITTEE,—Petitioner.

versus

KRISHAN LAL AND ANOTHER,—Respondents.

Regular Second Appeal No. 501 of 1985.

May 9, 1986.

Punjab Municipal Act (III of 1911)—Sections 84 & 86—Punjab Municipal (Executive Officers) Act (II of 1931)—Section 4(b)(ii)—Section 4(b)(ii) of the Executive Officers Act giving authority to

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make house assessment under the Municipal Act—Order of assessment required to be made by sub-committee consisting of the Executive Officer and two other members—Order of assessment however made only by the two members and as such not valid—Said order—Whether can be said to be ‘under the Act’—Jurisdiction of the civil court—Whether barred under section 86 of the Municipal Act.

Held that the power to revise the valuation and assessment and the assessment list is to be exercised by a Sub-Committee in terms of section 4(b)(ii) of the Punjab Municipal (Executive Officers) Act, 1931 and such a committee is to consist of the Executive Officer and two members of the Municipal Committee appointed for this purpose. The impugned order bearing the signatures of only two members of the Municipal Committee and not the Executive Officer is not a valid order, not having been passed by the competent authority. In this view it cannot be said that the order was one passed ‘under the Act’. Moreover the remedy of appeal against the assessment and levy of tax as provided under section 84 of the Punjab Municipal Act, 1911, is only with regard to assessment and levy made ‘under the Act’. As such the jurisdiction of civil court is not barred under the provisions of section 86 of the Act.

(Paras 2 & 6)

Regular Second Appeal from the decree of the Court of the Distt. Judge Bhatinda, dated the 7th day of December, 1984, affirming with costs that of the Sub-Judge IIIrd Class, Bhatinda, dated the 31st day of July 1984, decreeing the suit of the plaintiff with costs and permanently restraining the defendant from recovering any house tax in pursuance of bill No. 65, dated 15th March, 1982 whereby the plaintiff No. 1 has been asked to pay the sum of Rs. 3,240 as house tax for the year 1st April, 1981 to 31st March, 1982, of property bearing No. 2089/B-2/21 owned by plaintiffs as the annual rental value declared by the defendant is illegal, void, arbitrary and against provisions of Punjab Municipal Act and Executive Officer Act.

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

R. L. Gupta, Advocate, for the Respondent.

JUDGMENT

S. S. Sodhi, J.

(1) The controversy in appeal here is with regard to the jurisdiction of the Civil Court to grant an injunction to the plaintiff

seeking to restrain the Municipal Committee from recovering house-tax, as assessed, in respect of a shop situated in Bhatinda in the context of the provisions of the Punjab Municipal Act, 1911 (hereinafter referred to as the Act). Section 86 is in the following terms:—

- “86. (1) 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.
- (2) No refund of any tax shall be claimable by any person otherwise than in accordance with the provisions of this Act and the rules thereunder.”

(2) The power to revise the valuation and assessment and the assessment list as conferred by sections 65 and 67 of the Act has in terms of section 4(b)(ii) of the Punjab Municipal (Executive Officer) Act, 1931, to be exercised by a sub-committee consisting of the Executive Officer and two members of the Municipal Committee appointed for this purpose. In the present case, the impugned order Exhibit P. 5 of March 31, 1981, admittedly bears the signatures of only two members of the Municipal Committee, but not the Executive Officer. This being so, on the face of it, it was not a valid order, not having been passed by the competent authority and the demand for house-tax thereunder was, thus, not legal.

(3) Counsel for the Municipal Committee, Mr. T. S. Doabia, however, sought to contend that by virtue of the provisions of section 84 and the bar contained in section 86 of the Act, the jurisdiction of the Civil Court stood barred and the remedy for the plaintiff thus lay only under the Act. Cited in support here was the judgment of this Court in *Romesh Kumar and others v. The Municipal Committee, Gurdaspur*, (1), where it was held that sections 84 and 86 of the Act bar the jurisdiction of the Civil Court in matters of assessment and computation of house-tax under section 61(1)(a) of the said Act.

(1) A.I.R. 1981 Pb. & Hry. 295.

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(4) A reading of *Romesh Kumar's case* (supra), would show that it was founded upon the earlier judgment of the Supreme Court in *Munshi Ram v. Municipal Committee, Chheharta*, (2), where Sarkaria, J. speaking for the Bench observed :—

“It is well-settled that where a Revenue Statute provided for a person aggrieved by an assessment thereunder, a particular remedy to be sought in a particular form, in a particular way, it must be sought in that form and in that manner, and all other forms 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.”

It was held that in making the assessment in that case, the Municipal Committee had acted “under the Act” and it followed, therefore, that the civil court’s jurisdiction to entertain and decide the suit was barred.

(5) In adjudicating upon the jurisdiction of the civil court, the important point to consider thus is whether what was sought to be challenged was something done “under the Act” or otherwise. The remedy of appeal against the assessment and levy of tax as provided under section 84 of the Act is only with regard to such assessment and levy “under the Act”. In a case like the present, where the impugned order has been passed in violation of the statutory provisions by an authority not duly constituted, it cannot be said to be an order passed “under the Act” and the bar of Section 86 of the Act cannot, therefore, stand in the way of the plaintiff seeking relief from the civil court.

(6) A similar situation arose in *Municipal Committee, Amritsar v. Bala Ishar Dass* (3), where S. P. Goyal, J. observed :—

“The law is, therefore, well-settled that the legality on merits of the order of the Municipal Committee would not

(2) A.I.R. 1979 S.C. 1250

(3) 1982 S.L.J. (Pb. & Hry.) 134.

be open to challenge in a civil suit but if the order has been passed by a person or authority not competent to do so or has been passed in violation of the provisions of the statute or of principles of natural justice then the civil court would certainly have the jurisdiction."

This was a case where the impugned order of assessment of house-tax which was required to be passed by a sub-committee consisting of two members of the Municipal Committee and the Executive Officer was in fact passed by only one member of the sub-committee. It was held that the order was void and without jurisdiction and the Civil Court had the requisite jurisdiction to grant an injunction to restrain the Municipal Committee from recovering the house-tax under that order. This authority constitutes a binding precedent here.

(7) It follows that in the circumstances as emerge in this case, the Civil Court indeed had the requisite jurisdiction to grant to the plaintiff the relief claimed. This being so, no exception can be taken to the judgment and decree of the lower appellate Court, which is hereby upheld and affirmed. It is clarified, however, that it would be open to the Municipal Committee to assess and recover house-tax even in respect of the period in question in the present suit, in accordance with the relevant provisions of the Punjab Municipal Act, 1911, if they so permit.

(8) This appeal is accordingly dismissed with costs.

R. N. R.

Before : M. M. Punchhi, J.

KAMAL DEV,—Petitioner.

versus

STATE OF HARYANA,—Respondent.

Criminal Revision No. 390 of 1986

May 14, 1986.

Prevention of Corruption Act (II of 1947)—Section 5(1)(e)—Public servant charged for criminal misconduct as possessing assets disproportionate to his known sources of income—Assets acquired while posted at a particular place—Part of assets situated at the place of office while the others situated outside—Place of office—Whether determines the jurisdiction for trial of the offence.