

CASE NO.:
Appeal (civil) 2700 of 1997

PETITIONER:
N.D.M.C.

RESPONDENT:
Satish Chand(deceased) by LR Ram Chand

DATE OF JUDGMENT: 11/09/2003

BENCH:
Brijesh Kumar & Arun Kumar.

JUDGMENT:
JUDGMENT

ARUN KUMAR, J.

The question for consideration in this appeal is regarding maintainability of a civil suit to challenge assessment and levy of property tax on a property owned by Respondent. Respondent owns a basement in Property No.33, Prithvi Raj Road, New Delhi. The appellant is a statutory body responsible for discharging civic functions in specified areas in the city of Delhi. To generate revenue for itself the appellant is authorized to levy taxes including property tax. The said property was assessed to property tax by the appellant. According to respondent the basement cannot be put to use because it gets filled up with sub-soil water. For this reason the respondent claimed that the basement could not be said to be having any annual rateable value and therefore it could not be assessed to property tax and no tax could be levied. In spite of this, the appellant assessed the said property to property tax. It was further alleged by the respondent that objections filed by him against the assessment of the said property to property tax had been rejected by the appellant and a notice of demand had been sent regarding arrears of property tax. This demand included arrears for certain earlier period even though the same had been stayed by civil court in separate proceedings. Respondent filed a suit for permanent injunction stating that the action of the appellant in assessment of the said property to property tax and demanding arrears of tax amounting to Rs.4,293.35 (Rupees Four thousand two hundred ninety three and paise thirty five) on this account was illegal and without jurisdiction. He made a prayer for a permanent injunction restraining the appellant from recovering the said amount.

The appellant took a preliminary objection against the maintainability of the said suit. The objection is based on Sections 84 and 86 of the Punjab Municipal Act, 1911 (hereinafter referred to as "the Act"). The NDMC at the relevant time was constituted under the said Act and assessment and levy of property tax was a function carried on by NDMC in accordance with the provision of the said Act. Sections 84 and 86 of the said Act are reproduced as under:

"84. Appeals against taxation-(1) An appeal against the assessment or levy of any or against the refusal to refund 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:

Provided 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.

(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.

(3) On a reference being made under sub-section (2), the subsequent proceedings in this case shall be, as nearly as may be, in conformity with the rules relating to references to the High Court contained in Section 113 and Order XLVI of the Code of Civil Procedure.

(4) In every appeal the costs shall be in the discretion of the officer deciding the appeal.

(5) Costs awarded under this section to the committee shall be recoverable by the committee as though they were arrears of a tax due from the appellant.

(6) If the committee fail to pay any costs awarded to an appellant within ten days after the date of the order for payment thereof, the officer awarding the costs may order the person having the custody of the balance of the municipal fund to pay the amount.

86. Taxation not to be questioned except under this Act-(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."

Section 84 contains a provision regarding appeals against assessment and levy of taxes which means that a remedy of a statutory appeal is provided to a party aggrieved of assessment and levy of tax under the Act. When a Statute provides a remedy of appeal it is a remedy governed by the Statute and has to be exercised strictly in accordance with the statutory provisions. Section 86 contains a bar against challenge to any valuation or assessment for purposes of tax including property tax except in accordance with remedy contained in the Act itself. Section 86 further debar any person from questioning the liability towards tax based on assessment by the authorities under the Act by any manner other than what is provided in the Act itself. Thus Section 86 of the Act contains a total bar against availing any remedy

against assessment and or levy of tax except as per the provision of the Act itself. On the basis of these provisions contained in the Act it was pleaded on behalf of the appellant that the suit was not maintainable and was therefore liable to be dismissed. The trial court upheld the objection regarding maintainability of the suit and the suit was accordingly dismissed. However, appeal against said judgment was allowed by the Senior Civil Judge. On the question of maintainability of the suit, the lower appellate court by distinguishing the relevant judicial pronouncements on the issue, came to a conclusion that the suit was maintainable. The High Court dismissed the second appeal in limine. This has led to filing of the present appeal.

We have heard the learned counsel for the parties at length. In our view the legal position on the question of maintainability of civil suits in such matters is fairly well settled. Section 9 of the Code of Civil Procedure contains a provision regarding right of a party to file a civil suit. The same is reproduced as under:

"9. Courts to try all civil suits unless barred- The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

Explanation I - A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.

Explanation II - For the purposes of this section, it is immaterial whether or not any fees are attached to the office referred to in Explanation I or whether or not such office is attached to a particular place."

The opening words of the section give a very wide jurisdiction to the civil courts to try all suits of a civil nature however, this wide power is qualified by providing an exception i.e. "excepting suits of which their cognizance is either expressly or impliedly barred." *Dhulabhai etc. vs. State of Madhya Pradesh & Others* [AIR 1969 SC 78] is a celebrated judgment on the point which still holds the field. It lays down the following principles:

"(1) Where the Statute gives a finality to the orders of the special tribunals the Civil Courts' jurisdiction must be held to be excluded if there is adequate remedy to do what the civil court would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

(2) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court. Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intent becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if

the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in civil courts are prescribed by the said statute or not.

(3) Challenge to the provisions of the particular Act as ultra vires cannot be brought before Tribunals constituted under that Act. Even the High Court cannot go into that question on a revision or reference from the decision of the Tribunals.

(4) When a provision is already declared unconstitutional or the constitutionality of any provision is to be challenged, a suit is open. A writ of certiorari may include a direction for refund if the claim is clearly within the time prescribed by the Limitation Act but it is not a compulsory remedy to replace a suit.

(5) Where the particular Act contains no machinery for refund of tax collected in excess of constitutional limits or illegally collected, a suit lies.

(6) Questions of the correctness of the assessment apart from its constitutionality are for the decision of the authorities and a civil suit does not lie if the orders of the authorities are declared to be final or there is an express prohibition in the particular Act. In either case the scheme of the particular Act must be examined because it is a relevant enquiry.

(7) An exclusion of the jurisdiction of the Civil Court is not readily to be inferred unless the conditions above set down apply."

It will be noticed from the provisions contained in Section 9 of the Code of Civil Procedure that a bar to file a civil suit may be express or implied. An express bar is where a Statute itself contains a provision that the jurisdiction of a civil court is barred e.g., the bar contained in Section 293 of the Income Tax Act, 1961. An implied bar may arise when a Statute provide a special remedy to an aggrieved party like a right of appeal as contained in the Punjab Municipal Act which is the subject matter of the present case. Section 86 of the Act restrains a party from challenging assessment and levy of tax in any manner other than as provided under the Act. A provision like this is the implied bar envisaged in Section 9 C.P.C. against filing a civil suit. In *Raja Ram Kumar Bhargava (dead) by LRs vs. Union of India* [AIR 1988 SC 752] this Court observed: "Generally speaking, the broad guiding considerations are that wherever a right, not pre-existing, in common-law, is created by a statute and that statute itself provided a machinery for the enforcement of the right, both the right and the remedy having been created uno flatu and a finality is intended to the result of the statutory proceedings, then, even in the absence of an exclusionary provision the Civil Courts' jurisdiction is impliedly barred. If, however, a right pre-existing in common law is recognised by the Statute and a new statutory remedy for its enforcement provided,

without expressly excluding the Civil Court's jurisdiction, then both the common-law and the statutory remedies might become concurrent remedies leaving upon an element of election to the persons of inherence. To what extent, and on what areas and under what circumstances and conditions, the Civil Courts' jurisdiction is preserved even where there is an express clause excluding their jurisdiction, are considered in Dhulabhai's case."

Munshi Ram and Others vs. Municipal Committee, Chheharta [1979 (3) SCR 463] was a case under the Punjab Municipal Act itself. The Court was considering the question of bar created under Sections 84 and 86 of the Act regarding hearing and determination of objections to levy of provisional tax under the Act. In this connection it was observed:

"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 the Act, irrespective of whether the grievance relates to the rate or quantum of tax or the principle of assessment. The Act further provides a particular forum and a specific mode of having this remedy which 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.

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."

The Court upheld the objection regarding maintainability of the civil suit.

A Division Bench of the Delhi High Court in Sobha Singh & sons (P) Ltd. vs. New Delhi Municipal Committee [34 (1988) Delhi Law Times 91] had an occasion to consider the question of maintainability of a civil suit challenging the assessment and levy of property tax by the NDMC. Sections 84 and 86 of the Act came in for consideration. It was held that the provision of appeal contained in Section 84(1) of the Act provided a complete remedy to a party aggrieved against the assessment and levy of tax. Section 86 provides that the remedy of appeal is the only remedy to a party to challenge assessment for purposes of property tax. No other remedy was available to a party in such circumstances. It follows that the remedy of civil suit is barred.

In view of the aforesaid position in law, we are of the considered view that the civil suit filed by respondent challenging the assessment and demand of property tax by

the appellant was clearly barred. The judgments of the lower appellate court and the High Court are, therefore, set aside and the judgment of the trial court is hereby restored. The civil suit filed by respondent is dismissed as not maintainable. The appeal is allowed. There will be no order as to costs.

JUDIS