

(17) For the reasons recorded above, we hold that the booklets, brouchers and annual reports printed for sale by the assessee squarely fell within the word 'books' both in the exempted item contained in the Punjab Act and the Haryana Act. Accordingly, with regard to the aforesaid three items, the question is answered in favour of the assessee and against the department and the G.S.T.R. Nos. 16 to 22 of 1983 stand disposed of.

(18) Civil Writ Petition Nos. 498 of 1983 and 3483 and 3484 of 1984 are allowed to the extent that the levy of sales tax on booklets, brouchers and annual reports printed and sold by the assessee is hereby quashed. The assessee would be entitled to refund of the tax in pursuance of this order. The parties, are however, left to bear their own costs.

H.S.B.

Before S. P. Goyal and Pritpal Singh, JJ.

MUNICIPAL COMMITTEE, BHATINDA,—Appellant.

versus

SADHU SINGH,—Respondent.

Regular Second Appeal No. 2379 of 1983.

March 31, 1986.

Punjab Municipal Executive Officers Act (II of 1931)—Section 4—Resolution of Municipal Committee authorising the filing of an appeal—No specific authorisation conferred on the executive officer to file such appeal—Appeal filed by the executive officer—Whether competent—Resolution of the Committee for filing of the appeal—Whether casts a duty on the executive officer to file an appeal—Separate specific authorisation in favour of the executive officer to file an appeal—Whether necessary.

Held, that a plain reading of Section 4 of the Punjab Municipal Executive Officers Act, 1931 would show that the function of the executive officer is to carry on the administration of the municipality. In other words, amongst other administrative functions, he has to implement the resolution passed by the Municipal Committee. The decision to file an appeal on behalf of the Municipal Committee is indeed not an administrative function and so this decision has to be taken by the Municipal Committee itself, but once the Municipal Committee decides to file an appeal, and passes a resolution in

Municipal Committee, Bhatinda v. Sadhu Singh (Pritpal Singh, J.)

respect thereof it becomes the statutory function of the Executive Officer to file the appeal. No further authorisation in favour of the executive officer by the Municipal Committee through separate resolution appears to be necessary. An appeal becomes maintainable when the resolution is passed by the Municipal Committee deciding to file the same. To say that a separate authorisation on behalf of the Municipal Committee in favour of the executive officer to file appeal is required is to ignore the provisions of Section 4. It has, therefore, to be held that since Municipal Committee decides by a resolution to file an appeal on its behalf it becomes *ipso facto* the administrative duty of the executive officer to carry out the decision taken in the resolution and it is wholly unnecessary for the Municipal Committee to confer a separate authorisation upon the executive officer to file the appeal.

(Para 3).

Garib Chand vs. Municipal Committee, Budhlada 1979 P.L.R. 527.

(Over-ruled).

Case referred by Hon'ble Mr. Justice S. P. Goyal to a Division Bench for decision of an important question of law involved in this case on 18th December, 1984. The Division Bench consisting of Hon'ble Mr. Justice S. P. Goyal and Hon'ble Mr. Justice Pritpal Singh after answering the relevant question of law, again referred the case to the Single Bench for deciding the case on merits on 31st March, 1986.

Regular Second Appeal from the order of the Court of Shri Bhagwan Singh, Additional District Judge, Bhatinda dated 27th July, 1983, affirming that of Shri Niranjana Singh PCS, Senior Sub Judge, Bhatinda, dated 9th January, 1980, decreeing the suit of the plaintiff and granting him a permanent injunction restraining the defendant from demolishing any portion of the house in dispute on the basis of the notice dated 2nd March, 1979 (Ex. P-2). The plaintiff has failed to prove the whole construction in the house in dispute as an authorised construction and the suit having succeeded on technical ground, the parties are left to bear their own costs of the suit.

Sarita Gupta, Advocate, for the Appellant.

Vinod Kataria, Advocate, for the Respondent. e

JUDGMENT

Pritpal Singh, J.

(1) In this case the correctness of the law laid down in *Garib Chand vs. Municipal Committee, Budhlada* (1), to the effect that

(1) 1979 P.L.R. 527.

an Executive Officer of a Municipal Committee would not be competent to file an appeal on behalf of the Municipal Committee till he is specifically authorised to do so even when a resolution has already been passed by the Municipal Committee to file the appeal, has been doubted by a Single Bench of this Court. The matter has, therefore, been referred to us for determination.

(2) The facts leading to this reference are thus : In a suit for permanent injunction filed by the respondent Sadhu Singh, a decree was granted restraining the appellant-Municipal Committee, Bhatinda, from demolishing any portion of the house in dispute. The appeal filed by the Municipal Committee was dismissed by the Additional District Judge, Bhatinda on the ground that the Executive Officer who signed the power of attorney in favour of the counsel was not authorised by any resolution of the Municipal Committee to file the appeal. The Municipal Committee thereupon filed the second appeal in this Court which was admitted for hearing. When it came up for hearing before a Single Bench, the learned respondent's counsel relied upon *Garib Chand's case* (supra) in support of the proposition that in addition to the resolution of the Municipal Committee to file an appeal, it was necessary for the Municipal Committee to have specifically authorised the Executive Officer to file the same. In that case it had been held that an appeal which was filed by an Advocate on authorisation of the Executive Officer on behalf of the Municipal Committee, without the resolution of the Municipal Committee authorising the Executive Officer to file the appeal, was not competent notwithstanding the Municipal Committee having resolved to file the appeal. The Single Bench hearing the second appeal was of the opinion that the rule laid down in *Garib Chand's case* (supra) did not appear to be correct and needed reconsideration.

(3) The appellant Municipal Committee is a corporate body. Its proceedings are conducted by the resolutions of its members. There is, therefore, no controversy that for filing an appeal on behalf of the Municipal Committee a conscious decision has to be taken by its members, by a resolution, to do so. In the absence of such a resolution the appeal is not competent. The point for determination is whether in addition to a resolution of the Municipal Committee deciding to file the appeal its Executive Officer has to be separately authorised to file the same. In our opinion no such necessity exists. The powers of the Executive Officer are enumerated in section 4 of the Punjab Municipal (Executive Officer) Act,

1931 (hereinafter referred to as the Act), the relevant portion of which reads as follows:—

“4. *Powers of the Executive Officer.*—In a municipality in which an Executive Officer has been appointed—(a) the executive power for the purpose of carrying on the administration of the municipality shall, subject to the provisions of this Act and of any rules made under this Act, or under the Municipal Act, vest in the Executive Officer:

* * * * *

A plain reading of the above provision would show that the function of the Executive Officer is to carry on the administration of the municipality. In other words, amongst other administrative functions, he has to implement the resolution passed by the Municipal Committee. The decision to file an appeal on behalf of the Municipal Committee is indeed not an administrative function and so this decision has to be taken by the Municipal Committee itself, but once the Municipal Committee decides to file an appeal, and passes a resolution in respect thereof, it becomes the statutory function of the Executive Officer to file the appeal. No further authorisation in his favour by the Municipal Committee through a separate resolution appears to be necessary. Evidently an appeal becomes maintainable when a resolution is passed by the Municipal Committee deciding to file the same. But to implement the resolution the Executive Officer is competent to file the appeal having been conferred statutory powers to do so by virtue of section 4 of the Act. To say that a separate authorisation on behalf of the Municipal Committee in favour of the Executive Officer to file the appeal is required is to ignore the provisions of section 4. We are, therefore, of the candid opinion that as soon as the Municipal Committee decides by a resolution to file an appeal on its behalf it becomes the administrative duty of the Executive Officer under section 4 to carry out the decision taken in the resolution and it is wholly unnecessary for the Municipal Committee to confer a separate authorisation upon the Executive Officer to carry out his administrative function which he is otherwise bound to do, clothed with the statutory powers by virtue of section 4 of the Act.

4. In coming to the conclusion that a separate resolution authorising the Executive Officer to file the appeal is required, the Single

Bench in *Garib Chand's case* (supra) relied upon a number of judgments which we are going to notice in seriatim. The first *Bawa Bhagwan Dass v. Municipal Committee, Rupar*, (1) is by a Division Bench. A perusal thereof will show that it supports our view and not the view taken by the Single Bench in *Garib Chand's case*. In that case an appeal being preferred by the Executive Officer on behalf of the Municipal Committee, its maintainability was objected to on the ground of absence of any resolution by the Municipal Committee deciding to file the appeal. This was not met by the reply that the Municipal Committee had passed a resolution to prefer an appeal. The Court observed that "had this been correct no difficulty would have arisen at all". It was, however, found that there was no such resolution. Meaning thereby that if the Municipal Committee had passed a resolution to file the appeal, its Executive Officer could have legitimately filed the same. It was then argued on behalf of the Municipal Committee that the Executive Officer was empowered to file the appeal by virtue of section 4 of the Act without the Municipal Committee passing a resolution to file the appeal. This contention was repelled by observing that the words "for the purpose of carrying on the administration of the municipality" in section 4(a) do not confer any power to file an appeal upon the Executive Officer, because the act of filing an appeal cannot be considered to be an act for carrying on the administration of the municipality. It was, therefore, ruled that the appeal becomes competent only when the Municipal Committee by a resolution decides to file the same. It is nowhere held in that judgment that after the Municipal Committee passes resolution deciding to file the appeal it has yet to pass another resolution authorising the Executive Officer to file the appeal on its behalf.

5. The second judgment is in *Punjab Agricultural University and others v. Messrs Walia Brothers*, (2). This judgment has not much relevance to the point in issue. It is not a case relating to a Municipal Committee or its Executive Officer. It pertains to the Punjab Agricultural University, Ludhiana, and the rule laid down is that under section 12(2) of the Punjab Agricultural University Act, the Vice-Chancellor is not empowered to defend any suit or appeal without specific resolution in that behalf by the Board of Management of the University. Similarly, item No. 27 in Schedule Part B does not authorise the Vice-Chancellor to institute an appeal.

(1) AIR 1943 Lahore 318.

(2) 1969 P.L.R. 257

6. The next judgment is *The Municipal Committee, Ludhiana v. Surinder Kumar*, (3) This judgment has also no direct bearing on the point involved in this case. In that case one of the points which arose for consideration was whether the Executive Officer of a Municipal Committee was invested by legal authority under section 35 of the Punjab Municipal Act to file an appeal on behalf of the Municipal Committee. The answer to this question was given in the negative and it was observed that a bare perusal of the provisions of section 35 makes it clear that the persons named therein, including the Executive Officer, are authorised by the statute to act only in a given contingency, and that is, where such persons are required to act in order to avert the occurrence or threatened occurrence of an event which is likely to do extensive damage to property or endanger human life or to put the public to grave inconvenience. It was held that non-filing of an appeal on the part of the Municipal Committee would not entail any damage to property or danger to human life or grave inconvenience to the public. Hence, section 35 does not confer any power on the Executive Officer to authorise filing of the appeal on behalf of the Municipal Committee. This view was affirmed in the Letters Patent Appeal in *The Municipal Committee, Ludhiana v. Surinder Kumar* (4).

7. Reliance was then placed on *Pat Ram, etc., v. Ekam Singh, etc.*, (5). This judgment also does not pertain to the powers of the Executive Officer of a Municipal Committee. All that has been held in this judgment is that order III rule 4 of the Code of Civil Procedure provides the manner in which a pleader can be appointed for presenting a plaint or an appeal.

8. The last judgment on which reliance has been placed is in *Municipal Committee, Karnal v. Shri Mehlo Ram* (6), in which it was held that where the Municipal Committee does not pass any resolution deciding to file an appeal the Executive Officer has no authority to file it.

9. It will thus be seen from a perusal of the aforementioned judgments that in none of them it has been laid down that besides

(3) 1970 Cur. L.J. 631.

(4) I.L.R. (1974) 1 P. and H. 420.

(5) 1971 Cur. L.J. 294.

(6) 1976 P.L.R. 453.

passing a resolution deciding to file an appeal, the Municipal Committee must necessarily pass a separate resolution vesting authority in the Executive Officer to file the same. The ratio of all these judgments is that before filing an appeal a corporate body like the Municipal Committee must pass a resolution deciding to file the same. We have no quarrel with this proposition of law.

10. For the reasons discussed above, we are unable to subscribe to the view taken by the Single Bench in *Garib Chand's case* (supra), and resultantly over-rule the same. We hold that once the Municipal Committee decides to file an appeal by passing a resolution, its Executive Officer is empowered to file the same by virtue of section 4 of the Act. This case be now placed before the Single Bench to decide the second appeal on merits.

S. P. Goyal, J.—I agree.

H.S.B.

Before D. V. Sehgal, J.

GURDIAL SINGH,—Appellant.

versus

SOHNA SINGH and others,—Respondents.

Regular Second Appeal No. 1958 of 1977.

April 1, 1986.

Code of Civil Procedure (V of 1908)—Section 11, Explanation (IV)—Punjab Security of Land Tenures Act (X of 1953)—Sections 9 and 14-A—Suit land leased out in perpetuity by unregistered document—Lessee failing to fulfil the obligations of the lease and lessor filing suit for rent as also for possession—Said suit dismissed on the ground that the lease deed being unregistered was inadmissible in evidence to prove the lease—Subsequent suit for possession filed claiming that defendant was in unauthorised possession of the suit land—Second suit—Whether barred by the principles of constructive res-judicata.

Held, that the principle of constructive *res judicata* embodied in Explanation IV to Section 11 of the Code of Civil Procedure, 1908 is not a strait jacket formula. It depends on the facts of