or outside the State of Punjab, is not sustainable, and allow these petitions and direct that the assessing authority be prohibited from taking into account the gross income of an assessee earned outside the State of Punjab.

Mr. Doabia pointed out that even in the case of the present petitioners it may turn out that the gross income sought to be excluded has, in fact, arisen out of professions or trades or callings or employments within the State of Punjab, and that we should not shut out an enquiry into the matter. It is, of course, not our intention to do anything of the kind, for all we are deciding is a question of law, and every question of fact arising in the case of any particular assessee must be determined by the assessing authority.

The petitioners will get their costs in this Court.

PANDIT, J.— I agree.

Pandit, J.

B.R.T.

APPELLATE CIVIL.

Before Inder Dev Dua, J.

THE DELHI MUNICIPAL COMMITTEE,—*Appellant.*

versus

BHAGWAN DASS,—*Respondent.*

Regular Second Appeal No. 28-D of 1956.

1960

August, 25th

Code of Civil Procedure (V of 1908)—Section 9—Suit for an injunction restraining the municipal committee from realising house-tax on the ground that its levy was wholly illegal—Whether competent—Punjab Municipal Act (III of 1911)—Sections 65 and 215—Failure to serve notice—Whether vitiates the levy of tax—Bye-laws of Delhi Municipal Committee, Part II, Rules and Directions, Chapter

XIV, para 7—Effect of—Interpretation of Statutes—Taxing laws—Interpretation of.

Held, that it is well-settled that exclusion of jurisdiction of the civil Courts is not to be readily inferred but that such exclusion must either be explicitly expressed or clearly implied; and even if jurisdiction is so excluded the civil Courts have undoubtedly power and jurisdiction to examine into cases where the provisions of the Act concerned have not been complied with or where the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure. It does not matter that the *vires* of the statutory provision is not assailed nor is the tax objected to on the ground that it is outside the Act. If the essential pre-requisite of assessment has not been complied with in a material particular, then the legality of the imposition can be assailed by means of a suit because it would really amount to an imposition which is not in accordance with the statute.

Held, that section 215 of the Punjab Municipal Act prescribes the mode of serving notice and the assessment of tax without notice to the person sought to be assessed is a serious infirmity which can scarcely be ever countenanced or encouraged by our jurisprudence. Mere despatch of notice under postal certificate as prescribed by para 7, Chapter XIV, of the Bye-laws of the Delhi Municipal Committee, Part II, Rules and Directions, is not enough and does not dispense with the necessity of serving notice on the person to be taxed. Moreover in the case of a conflict between a positive and express statutory provision like section 215, Punjab Municipal Act and a rule or direction like para 7, the provisions of section 215 must prevail in preference to those of para 7. This would be all the more so because to hold otherwise would lead to the highly undesirable consequence of a tax being imposed without knowledge and behind the back of citizen. The word 'give' in section 65 of the Punjab Municipal Act has the same sense as the word 'serve' as this interpretation will promote and advance the purpose for which this provision was enacted. Absence of service of notice is not a mere defect of form; it is a much more serious infirmity and indeed it affects the very validity of the imposition.

Held, that a subject, according to our jurisprudence, cannot be taxed except in accordance with law. The

statute which imposes the obligation to be taxed must be strictly complied with in all its material particulars and where two interpretations are possible, one in favour of the citizen should, in the absence of some supervening consideration, be adopted. It is also true that in a welfare State there should be no excessive or undue interference by Courts with the collection of revenue, but where the statute imposing an obligation to be taxed prescribes safeguards for a citizen, then those safeguards must be properly enforced and Courts of this Republic cannot lightly ignore or overlook breaches of law in this respect. The plea that if the suit is decreed, the plaintiff will escape assessment altogether, will hardly be a ground for a Court to refuse to enforce the law as it is one of the important things prevailing in this Republic to put the authorities under the law.

Regular Second Appeal from the decree of Shri Hans Raj, Senior Sub-Judge, Delhi, with Enhanced Appellate Powers, dated the 7th January, 1955, affirming that of Shri Gulshan Rai Luthra, Sub-Judge 1st Class, Delhi, dated the 25th May, 1954, decreeing the plaintiff's suit but leaving the parties to bear their own costs.

BHAGWAT DAYAL, ADVOCATE, for the Appellant.

H. S. TYAGI, ADVOCATE, for the Respondent.

JUDGMENT

DUA, J.—This second appeal raises for decision a question as to the competency of the present suit for issue of a perpetual injunction restraining the Delhi Municipal Committee from realising the amount of Rs. 1,395-9-6 or any other sum on account of house-tax for the years 1951-52 and 1953 in respect of the house in dispute. Dua, J.

Shri Bhagwan Dass, respondent is admittedly the owner of House No. 9589/1, Ward 16 of Delhi Municipal Committee on Rohtak Road, Karol Bagh. A demand for Rs. 1,395-9-6 as arrears of house-tax is outstanding against him for the

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years 1951—53. For the first time house-tax on his house was assessed in 1951 for the same year. This initial assessment as well as assessment for the subsequent years 1951—53 are assailed by Bhagwan Dass to be illegal and invalid on the ground that no notice of the intended assessment was given to him under Section 65 of the Punjab Municipal Act. The Municipal Committee, however, has pleaded that a notice, copy of which is Exhibit D. 1, on the present record and is dated 1st November, 1950, was actually sent by post under postal certificate to M/s. Bhagwan Dass-Birpal Singh, owners of the house, on that date. A copy of the stamp register maintained by the Municipal Committee (Exhibit D. 2) was also produced in support of this contention.

The trial Court, holding that service by post was not sufficient compliance with law, held the assessment for the year 1951 to be invalid. On this finding, assessments for the years 1952-53 were also found to be equally invalid. As a result of these findings, the injunction prayed for was granted to the plaintiff.

On appeal the learned Senior Subordinate Judge affirmed the findings and conclusions of the Court of first instance and dismissed the appeal of the Municipal Committee. The only question which according to the learned Senior Subordinate Judge required determination in this litigation is as to whether service of notice by post can be sufficient to fix liability for payment of house-tax assessment for the year 1951. After considering the effect of Section 65 and Section 215 of the Municipal Act, the learned Judge observed that in the instant case where the owners of the property had their place of abode or business within the limits of the Municipal Committee, Delhi, Section

215 clauses (3) and (4) were not attracted. According to the learned Judge, it was Section 215 clause (1) of the Act which was applicable to the instant case and service having not been effected in accordance with this provision, assessment was bad. The Judge further remarked that the alleged notice, dated 1st November, 1950, said to have been sent to M/s. Bhagwan Dass-Birpal Singh was also not shown on the present record to have been correctly addressed to them. The address shown on the copy of the notice, Exhibit D. 1, and the certificate of posting, Exhibit D. 2, merely mentioned the addressee to be M/s. Bhagwan Dass and Birpal Singh, Dev Nagar, Block No. 10, Karol Bagh, Delhi. The house No. was not given and as the learned Senior Subordinate Judge expressly observed, the plaintiff was not questioned whether the address given in Exhibit D. 1, and Exhibit D. 2 was his or Birpal Singh's correct address. The plaintiff had denied the receipt of the said notice. The lower appellate Court after considering this circumstance came to the positive conclusion that it could not be said that the notice, Exhibit D. 1, had actually reached Bhagwan Dass or Birpal Singh. As already mentioned, the appeal was dismissed and the decree of the Court of first instance affirmed by the learned Senior Subordinate Judge.

On second appeal, Mr. Bhagwat Dayal has contended with considerable force that a notice under postal certificate was actually issued to the owners, and according to para 7, Chapter 14 of the Bye-laws of the Delhi Municipal Committee, Part II, Rules and Directions, communications had merely to be sent under Postal certificate. According to the counsel, it is not at all necessary for the Municipal Committee to send notices for claims in respect of assessment of house-tax by registered post. It is further contended that even if there was some irregularity in the manner in which the

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notice was sought to be served, it would merely afford a ground for a departmental appeal under Section 84 of the Punjab Municipal Act but no suit would be competent. Section 69 of this Act has been specifically relied upon in support of the contention that no tax is to be held invalid for defect of form. This section, so far as relevant for our purpose, lays down that no assessment or demand for any tax made under the authority of this Act shall be impeached or affected by reason of any mistake in the name, residence, place of business or occupation of any person liable to pay the tax, or in the description of any property or thing liable to tax, or by reason of any clerical error or other defect of form ; and it shall be enough in any such tax on property or any assessment of value for the purpose of any such tax if the property taxed or assessed is so described as to be generally known ; and it shall not be necessary to name the owner of occupier thereof. The counsel has, while developing his contention, made a reference to the scheme of the Act by reading the various provisions as to taxation contained in Chapter V of the Punjab Municipal Act beginning with Section 61. It was while going through these provisions that the counsel laid emphasis on the provisions of Section 69. Finally the counsel placed reliance on Section 86 of the Act, according to which no objection can be taken to any valuation or assessment or the liability of any person to be assessed or taxed in any other manner or by any other authority except as provided by the Act itself. According to the counsel, this is an express bar to the competency of a civil suit like the one in hand. While dealing with this aspect, the counsel also submitted that under Section 85, which prescribes the period of limitation for appeals, a power has been given to the appellate officer to extend the period of limitation if

sufficient cause for not presenting the appeal within the prescribed period is shown to his satisfaction.

Secretary of State v. *Allu Jagannadham* (1), has also been quoted on behalf of the Municipal Committee in support of the contention that where the liability is statutory as opposed to liability under the common law, the party must adopt the remedy given to him by the statute. That was a case dealing with a surcharge having been imposed under the Madras Local Boards Act and rule 6 of the relevant statutory rules was held impliedly to exclude the right to file a suit in respect of an improper surcharge imposed thereunder. Mr. Bhagwat Dayal contends that the ratio of the reported case is equally applicable to the case in hand. Support has further been sought from the observations of the Supreme Court in *Rai Brij Raj Krishna and another* v. *M/s. S. K. Shaw and Brothers* (2), where dealing with the Bihar Buildings (Lease, Rent and Eviction) Control Act, it was observed that the Act had entrusted the Controller with a jurisdiction which included the jurisdiction to determine whether there was non-payment of rent or not, as well as the jurisdiction, on finding that there was non-payment of rent, to order eviction of a tenant. Therefore, even if the Controller wrongly decided the question of non-payment of rent and ordered eviction of the tenant, his order could not be questioned in a civil Court.

On behalf of the respondent, however, it has been contended that the present case is one of a wholly illegal imposition, which is vitiated on account of non-compliance with an essential prerequisite, namely, valid service of the notice. In

(1) A.I.R. 1941 Mad. 530.
(2) A.I.R. 1951 S.C. 115.

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support of this contention reference has been made to *Municipal Committee, Montgomery* v. *Master Sant Singh* (1), in which a Full Bench of the Lahore High Court held that where a tax demanded under the Punjab Municipal Act is *ultra vires* a suit by such person for perpetual injunction restraining the Municipal Committee from recovering such tax is entertainable by civil Court. In *Municipal Council of Tuticorin* v. *South Indian Railway Company* (2), the Municipality at Tuticorin demanded Rs. 50 as profession tax from the South Indian Railway Company which had already paid profession tax to the Municipality at Negapatam. The Company complied with the demand under protest and sued the Municipality for a refund of the amount paid on the Small Cause Side of the District Munsif's Court. On these facts it was held by Muttusami Ayyar, J., that the Court had jurisdiction to hear and determine the suit on the reasoning that a suit would lie when the provisions of the statute have not been complied with in substance and effect, in regard to the assessment and levy of such tax and such tax could not thus be considered to have legal sanction. In *Chairman of Giridih Municipality* v. *Srish Chandra Mozumdar* (3), Section 116 of the Bengal Municipal Act, III of 1884, was held not to take away the jurisdiction of civil Courts in a case in which it was alleged and established that the assessment, the propriety of which was in controversy, was open to objection on the ground that it was *ultra vires*. There are observations to similar effect in various other decisions, e.g., *Commissioners of Arrah Municipality* v. *Jatendra Chandra Jain and others* (4), *The Borough Municipality of Amalner*

(1) A.I.R. 1940 Lahore 377.
(2) I.L.R. 13 Mad. 78.
(3) I.L.R. 35 Cal. 859.
(4) A.I.R. 1946 Patna 167.

v. *The Pratap Spinning, Weaving and Manufacturing Co. Ltd.* (1), and *The Municipal Committee, Ludhiana* v. *Siri Krishan Raghu Nandan Lal* (2). But then it has been urged that in the instant case there is no question of an imposition which is *ultra vires* or outside the statute, but this is a case where the tax is justified by the provision of a statute and it is only the manner in which it has been imposed which is challenged.

It is true that in the present case the *vires* of the statutory provision is not being assailed nor is the tax being objected to on the ground that it is outside the Act. But if the essential pre-requisite of assessment has not been complied with in a material particular, then, in my opinion, the legality of the imposition can be assailed by means of a suit because it would really amount to an imposition which is not in accordance with the statute. It is well-settled that exclusion of jurisdiction of the civil Courts is not to be readily inferred but that such exclusion must either be explicitly expressed or clearly implied ; and even if jurisdiction is so excluded the civil Courts have undoubtedly power and jurisdiction to examine into cases where the provisions of the Act concerned have not been complied with or where the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure ; *see Secretary of State* v. *Mask and Co.* (3), and *Shri Waddu Mal-Gian Chand Masand* v. *Cantonment Board, Jullundur,* (4).

In the present case Section 215 of the Punjab Municipal Act prescribes the mode of serving notices. It has in this connection to be borne in mind that assessment of tax without notice to

(1) A.I.R. 1952 Bom. 401.
(2) A.I.R. 1952 Punj. 378.
(3) LXVII Indian Appeals 222.
(4) I.L.R. (1960) 2 Punjab 589.

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the person sought to be assessed is a serious infirmity which can scarcely be ever countenanced or encouraged by our jurisprudence. As a matter of fact this position has not been seriously controverted by the counsel for the appellant. He has, on the other hand, placed his main reliance on para 7, Chapter XIV of the Bye-laws of the Municipal Committee, Part II, Rules and Directions, according to which communications have merely to be sent under postal certificates. It is argued that by virtue of this para, mere despatch of notices under postal certificate is sufficient compliance with law and actual service is not essential. Assessment made after complying with this para, though notice has not been actually served, does not nullify or invalidate the assessment so as to render its validity assailable by means of a suit. At worst, so says the counsel, it would only be an irregularity or a defect of mere form and not of substance and, therefore, the only method by which the impugned assessment in such a case can be questioned is by an appeal under the Act and not by a regular suit.

After giving due weight to the learned and able arguments advanced on behalf of the appellant, I regret my inability to uphold them. Para 7, on which reliance has been placed before me, was not even adverted to in either of the Courts below. In this Court also it has not been satisfactorily shown whether para 7, has the force of law, and if so, how; it is not even made clear as to whether it is a statutory rule or bye-law or a mere administrative direction. The compilation shown to me does not throw much light on this point. But this apart, in case of a conflict between a positive and express statutory provision like Section 215, Punjab Municipal Act, and a rule or direction like para 7, in my view the provision of Section 215 must prevail in preference to those of para 7. This

would be all the more so because to hold otherwise would lead to the highly undesirable consequence of a tax being imposed without knowledge and behind the back of a citizen. This position I do not find easy to countenance and nothing said at the Bar has induced me to permit such consequence to prevail.

The appellant's counsel then referred to section 65, of the Punjab Municipal Act and contended that service of notice according to the language of this section is not an essential prerequisite. Support for this argument is sought from the word 'give' used in it. It would be helpful at this stage to reproduce this section :—

> "65. (1) The committee shall at the time of the publication of such assessment list give public notice of a time, not less than one month therafter, when it will proceed to revise the valuation and assessment ; and in all cases in which any property is for the first time assessed, or the assessment thereof is increased, it shall also give notice thereof to the owner or occupier of the property.
>
> "(2) All objections to the valuation and assessment shall be made in writing before the time fixed in the notice, or orally or in writing at that time."

It is obvious that the word 'give' as used in this section has the same sense as the word 'serve' because the interpretation suggested on behalf of the appellant would not promote or advance the purpose for which this provision would appear to have been enacted. Absence of service of notice is not a mere defect of form ; it is a much more serious infirmity and indeed it affects the very validity of

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the imposition. The language of the relevant sections of the Punjab Municipal Act and the general principles of law clearly support this view. I thus unhesitatingly over-rule this contention.

A subject, according to our jurisprudence, cannot be taxed except in accordance with law. The statute which imposes the obligation to be taxed must be strictly complied with in all its material particulars and where two interpretations are possible ; one in favour of the citizen should, in the absence of some supervening consideration, be adopted. I am not unmindful of the view that in a welfare State there should be no excessive or undue interference by Courts with the collection of revenue, but where the statute imposing an obligation to be taxed prescribes safeguards for a citizen, then those safeguards must be properly enforced and Courts of this Republic cannot lightly ignore or overlook breaches of law in this respect. I realize that, as suggested by Mr. Bhagwat Dayal, the respondent may escape assessment altogether. I am not in a position at this stage to hold that he would so escape, but even if the learned counsel were right, that would hardly be a ground for this Court to refuse to enforce the law; one of the important things prevailing in this Republic being to put the authorities under the law. The appellant has indeed to thank itself for such a result and it is hoped that in future the appellant's employees would be careful in properly and fully complying with all the essential provisions of law in the process of imposing taxes on the citizens of this Republic.

For the reasons given above, this appeal fails and is hereby dismissed, but in the circumstances there will be no order as to costs.

B.R.T.