

Before S. S. Sandhawalia, C.J. and S. P. Goyal, J.

ROMESH KUMAR,—Appellant.

versus

MUNICIPAL COMMITTEE and others,—Respondents.

Regular Second Appeal No. 696 of 1980.

November 3, 1980.

Punjab Municipal Act (III of 1911)—Sections 61 (1) (a), 84 and 86—Levy and assessment of house tax under section 61 (1) (a) challenged in a civil court—Jurisdiction of such court—Whether barred by sections 84 and 86.

Held, that the jurisdiction of a civil court to entertain and decide a suit challenging the levy and assessment of house tax under section 61 (1) (a) of the Punjab Municipal Act 1911 is barred by virtue of the provisions of sections 84 and 86 of the Act. (Para 7)

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OVERRULED.

Regular Second Appeal from the decree of the Court of the IInd Additional District Judge, Gurdaspur, dated the 4th day of January, 1980, affirming that of the Senior Sub-Judge, Gurdaspur, dated the 21st October, 1978, dismissing the suit of the plaintiffs with costs. The Lower Appellate Court left the parties to bear their own costs.

D. V. Sehgal with P. S. Raina and Vinod Kataria, Advocates, for the appellants.

Sri Chand Goyal with Sat Pal Jain, Advocates, for the Respondents.

JUDGMENT

S. S. Sandhawalia, C.J.

(1) Whether sections 84 and 86 of the Punjab Municipal Act would bar the jurisdiction of the Civil Courts in matters of assessment and computation of house tax under section 61 (1) (a) of the said Act is the significant question which has necessitated this reference to the Division Bench.

2. We take the view that the controversy now stands concluded by the recent decision of the final Court in *Munshi Ram and*

others v. Municipal Committee, Chheharta, (1) and it is, therefore, unnecessary to elaborate the matter on principle in any great detail.

3. The facts giving rise to the question call for a brief notice. The appellant along with Bal Krishan preferred a suit for a permanent injunction restraining the respondent-municipality from recovering the amount of Rs. 300 on account of house tax in respect of property No. 659 for the assessment year 1978-79 with the added relief of the recovery of Rs. 270 alleged to have been illegally recovered by the respondent in respect of the above-said property in the previous assessment year. It was averred that the appellants had remained in possession of the property for the last about forty years and it was for the first time in the assessment year 1976-77 that it was sought to assess the house tax at the annual letting value of Rs. 2,400. On objections being preferred by them the annual letting value was reduced to Rs. 2,000. They preferred an appeal under section 84 of the Punjab Municipal Act against the said assessment but the same was dismissed by the Additional Deputy Commissioner, Gurdaspur. Consequently the appellants deposited a sum of Rs. 270 as house tax. Later the respondent-Municipal Committee issued a notice for the year 1977-78 demanding Rs. 300 as house tax on the basis of the earlier assessment. The suit was resisted by the respondent-Municipal Committee *inter alia* on the ground that the civil Courts had no jurisdiction to try the same in view of the bar created by sections 84 and 86 of the Punjab Municipal Act. On the pleadings of the parties the following issues were framed :—

1. Whether the assessment orders for the years 1976-77 and 1977-78 are illegal, void and without jurisdiction as alleged ?
2. Whether the plaintiffs are entitled to the injunction prayed for ?
3. Whether the Civil Court has no jurisdiction to try the present suit ?
4. Relief ?

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Holding that the jurisdiction of the Civil Courts was barred, the trial Court decided all the three issues against the plaintiffs. An appeal against this judgment was carried which was heard and disposed of by the Additional District Judge, Gurdaspur. In a considered judgment the findings of the trial Court on all the three issues were affirmed.

4. At the motion stage itself some conflict of precedent was highlighted and Harbans Lal, J., referred the matter for an authoritative decision by a larger Bench and that is how the appeal is before us.

5. It is manifest that the question is pristinely a legal one and as has already been indicated at the outset now it seems to be covered in favour of the respondent-Municipal Committee by the decision in *Munshi Ram's case* (supra) which appears to us as being virtually on all fours. It, therefore, suffices to mention that in the said case the appellants had been assessed to profession tax under section 61(1) (b) of the Punjab Municipal Act. They challenged the said assessment by way of a suit on the ground that in assessing the Municipal Committee had wholly exceeded its statutory powers under the aforesaid provision. The trial Court dismissed the suit but on appeal the Additional District Judge reversed the judgment and decreed the suit. This in turn was affirmed in second appeal by the learned Single Judge but on a Letters Patent Appeal having been preferred on behalf of the Municipal Committee, the Division Bench reversed the learned Single Judge's decision on the finding that sections 84 and 86 of the Act bar the jurisdiction of the civil Court in respect of tax levied or assessment made under section 61. The case was ultimately carried by way of special leave to the Supreme Court. Affirming the judgment of the Letters Patent Bench, Sarkaria, J., speaking for the Bench, observed as follows :—

“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 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 and further

***Can the case before us be said to belong to that class of cases where the Municipal Committee in levying a tax acts beyond or in abuse of its powers under the Act? The answer to this question must be in the negative. By no stretch of imagination can it be said in the facts and circumstances of the case, that in assessing the appellants, individually, and not collectively, to the tax in question the Municipal Committee abused its powers under the Act. We have already discussed and held that in levying this tax, the Municipal Committee did not travel beyond or not contrary to the provisions of section 61 (1) (b) of the Act. In short, the present case is one where the Municipal Committee acted 'under the Act'. It follows, therefore, that the Civil Court's jurisdiction to entertain and decide the suit was barred, even if the dispute raised therein related to the principle of assessment to be followed."

6. The aforesaid enunciation of the law manifestly governs the present case as well. However, to highlight the identity it may be noticed that 'profession tax' which was the subject-matter of adjudication in the aforesaid case is leviable under section 61 (1) (b) of the Act whilst the house tax in the present case is levied and assessed under the same section by virtue of sub-clause (1) (a) thereof. The appellate provision of section 84 and the bar of section 86 apply identically to all such proceedings. It is, therefore, patent that no distinction whatsoever can be drawn in the present case from the law as laid down in *Munshi Ram's* case.

7. Equally relevant and conclusive are the observations in *Bata Shoe Co. Ltd. v. Jabalpur Corporation*, (2). What fell for construction therein was section 84(3) of the C. P. & Berar Municipalities Act. It may be pointed out that the said provision is

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absolutely in *pari materia* with section 86 of the Punjab Municipal Act. After an exhaustive discussion of the case law, Y. V. Chandrachud, J. (as his Lordship then was) held that section 84(3) of the Act barred the jurisdiction of the Civil Courts.

8. In view of the aforesaid binding precedent it is not only unnecessary but would be patently wasteful to refer to earlier decisions of the High Courts. Nevertheless it becomes obligatory to notice the reliance by the learned counsel for the appellant Romesh Kumar on the Division Bench judgment in *Municipal Corporation of Delhi v. Ganesh Das* (3). Undoubtedly the observations made therein would tend to support the case of the appellant. However, the same now appear to be directly and in headlong conflict with the aforementioned decisions of the final Court. Equally it calls for notice that the Full Bench in *Kalash Nath v. Municipal Committee, Batala* (4) had earlier categorically held that the jurisdiction of the civil Courts to entertain and decide a suit with regard to the levy and assessment of octroi under section 61(2) of the Punjab Municipal Act was barred by virtue of the provisions of sections 84 and 86 of the Punjab Municipal Act. Even this earlier judgment was not brought to the notice of the Division Bench in *Ganesh Das's case* (supra). It is thus equally evident that the ratio of the Full Bench is diametrically opposite to what was observed in the said case. It must, therefore, be held that *Ganesh Das's case* is not a good law in view of the decisions of their Lordships of the Supreme Court in *Munshi Ram's case* and *Bata Shoe Co.'s case*.

8. On binding precedent, therefore, the answer to the question formulated at the outset must be rendered in the affirmative and it is held, affirming the decision of the Courts below, that the suit of the appellant was barred by sections 84 and 86 of the Act. The appeal is hereby dismissed but in view of some divergence of judicial opinion there will be no order as to costs.

N. K. S.

(3) 1964 P.L.R. 361.

(4) A.I.R. 1968 Punjab 389.