

Before : A. S. Nehra, J.

MUNICIPALITY RAMPURA PHUL, BHATINDA,—Appellant.

versus

HARDEV SINGH,—Respondent.

Regular Second Appeal No. 2126 of 1990.

27th February, 1992.

Punjab Municipal Act, 1911—Ss. 80 & 81—Arrears of rent due from lessee—Recovery of such arrears—Whether such arrears can be recovered under S. 81 of the Act—Scope of provisions of S. 81.

Held, that the expression “claimable under this Act” is important as it controls the operation of S. 81 of the Act. It is not just anything due to the committee that may be described as rent or fee which may be recovered under the summary procedure of this section but only those sums which are claimable by the committee under the express provisions of the Act. A mere use of the word ‘rent’ applied to a sum recoverable by the committee will not necessarily make it a rent recoverable under this Act. Under S. 81 it is only the sum which is claimable by the Committee under the express provisions of the Act that can be recovered through the Magistrate and not any sum which may become due to the Committee.

(Paras 10 & 12)

Regular Second Appeal from the order of the Court of Shri N. D. Bhatara Additional District Judge, Bathinda, dated the 28th day of July, 1990 affirming with costs that of Shri Surinder Gupta P.C.S. Sub-Judge 1st Class, Phul, dated the 2nd December, 1989 decreeing the suit of the plaintiff for permanent injunction restraining the defendant from proceeding against the plaintiff for recovery of Rs. 780 as arrears of rent under Section 81 of the Punjab Municipal Act, and leaving the parties to bear their own costs.

Claim :—Suit for permanent injunction restraining the defendant/appellant from recovering the amount of Rs. 780 from the plaintiff/respondent alleged to be the arrears of rent for the period from 1st April, 1986 to 31st March, 1987 in respect of Shop number 6 situated at Mahavir Market Chowk, Mandi Phul and from initiating proceedings against the plaintiffs/respondents under Section 81 of the Punjab Municipality Act for recovering this amount and from increasing the rent of the shop and be directed to recover the rent of the shop from the plaintiff/respondent at the rate of Rs. 435 per month and be restrained from demanding rent in excess of it.

Claim in Appeal :—For reversal of the Order of both the Court's below.

J. S. Randhawa, Advocate with A. S. Randhawa, Advocates, for the appellant.

O. P. Hoshiarpuri, Advocate with S. K. Pruthi, Advocate, for the respondent.

JUDGMENT

A. S. Nehra, J.

By this common judgment, I propose to dispose of Regular Second Appeals Nos. 2124 to 2138 of 1990, because similar points of law and fact are involved in all these appeals.

(2) These appeals are directed against the judgments and decrees dated 28th July, 1990 passed by the Additional District Judge, Bhatinda, by which the appeals filed by the Municipality, Rampur Phul, defendant-appellant, were dismissed and the judgments and decrees dated 2nd December, 1989 passed by the trial Court (decreeing the suits of the plaintiffs-respondents) were upheld.

(3) *Briefly stated, the facts of the case are as follows :—*The plaintiffs-respondents had taken on lease shop on rent from the defendant-appellant and had been regularly making payments of the rent to the Municipal Committee, under receipts. It is alleged that the notices under sections 80 and 81 of the Punjab Municipal Act, 1911 (hereinafter referred to as the Act) were served on the plaintiffs-respondents for recovery of arrears of rent. The plaintiffs-respondents replied to those notices but, without deciding their objections, the Municipal Committee started the recovery proceedings. It was further alleged by the plaintiffs-respondents that the Municipal Committee defendant-appellant had no authority or right to increase the rent by 15 per cent but still the defendant-appellant enhanced the rent illegally and arbitrarily; that the defendant-appellant now wanted to effect the recovery by resorting to the provisions of sections 80 and 81 of the Act; and that, since the defendant-appellant did not accede to the request of the plaintiffs-respondents not to enhance the rent or not to effect recovery in a summary way, the plaintiffs-respondents had to file a suit for permanent injunction.

(4) In the written statement filed by the defendant-appellant, a number of preliminary objections have been taken, alleging that the suit in the present form is not maintainable; that the Court has no jurisdiction to try the suit; that the plaintiffs-respondents have no

locus standi to file the present suit; and that the suit is barred by the principle of *res judicata*. It was further alleged by the defendant-appellant that the shop, in dispute, was given to the plaintiffs-respondents on lease in open auction for a period of 3 years; that it has every right to increase the rent; that, when the plaintiffs-respondents are in arrears of rent, the Municipal Committee is legally justified in resorting to the provisions of sections 80 and 81 of the Act; that the Municipal Committee is fully competent to increase the rent by 15 per cent in terms of the letter of the Punjab Government, dated 18th August, 1980; that earlier similar suits were also filed by the plaintiffs-respondents, which were dismissed.

(5) On the pleadings of the parties, the following issues were framed by the trial Court :—

1. Whether the defendant-committee cannot proceed against the plaintiff under section 81 of the Punjab Municipal Act?
2. Whether the suit is not maintainable in the present form ?
3. Whether this Court has no jurisdiction to try the present suit ?
4. Whether the plaintiff has no *locus standi* to file the present suit ?
5. Whether suit is barred by principle of *res judicata* ?
6. Whether the plaintiff is entitled to the injunction, as prayed for ?
7. Relief.

(6) The trial Court decided issues Nos. 1 and 6 in favour of the plaintiffs-respondents, issue No. 5 partly in their favour, issues Nos. 2, 3 and 4 against the defendant-appellant Municipal Committee, and decreed the suit of the plaintiffs-respondents.

(7) The learned counsel for the appellant, Mr. J. S. Randhawa, has contended that any arrears of any tax, water-rate, rent, fee or any other money claimable by a Committee under the Act can be recovered under section 81 of the Act; that, since section 81 of the Act covers the arrears of rent also, therefore, the Municipal Committee is fully

justified in resorting to those provisions of the Act to effect recovery by making an application to the Magistrate having the jurisdiction; that 15 per cent rent has been enhanced in view of the instructions of the State Government; that as far as the competency of the Municipal Committee to enhance the rent in terms of the Government instructions, as contained in Exhibit D-1 is concerned, the matter has already been settled by the Civil Court between the parties in an earlier litigation, as is evident from Exhibits D-2 and D-3 and that judgment and decree has become final between the parties; and that, therefore, the Municipal Committee is legally entitled to recover the rent due from the plaintiffs-respondents under section 81 of the Act.

(8) The learned counsel for the appellant has further submitted that, in case the plaintiffs-respondents had any objection that the amount is not an amount claimable under the Act, then they can file an objection before the Magistrate before whom an application under section 81 of the Act has been filed by the Municipal Committee, because the Magistrate dealing with an application under section 81 of the Act has power to decide whether the amount claimable is, in fact, an amount claimable under the Act, on objection being raised before him. In support of his argument, the learned counsel for the appellant has relied on *Uttam Singh v. Municipal Committee, Rawalpindi* (1).

(9) The learned counsel for the appellant has further referred to section 46 and sub-sections (2) and (3) of the section 47 of the Punjab Municipal Act, which read as under :—

“46. *Authority to contract.*—(1) The committee of any municipality of the first class may, subject to the provisions of this Act, delegate to one or more of its members, other than an associate member, the power of entering on its behalf into any particular contract whereof the value or amount does not exceed five hundred rupees, or into any class of such contracts.

(2) No contract by or on behalf of any committee whereof the value of amount exceeds five hundred rupees, shall be entered into until it has been sanctioned at a meeting of committee.

(1) A.I.R. 1942 Lahore 72.

47. *Mode of executing contracts and transfer of property.*—

(1) * * * * *

(2) Every transfer of immovable property belonging to any committee must be made by an instrument in writing, executed by the president or vice-president, and by at least two other members of committee, whose execution thereof shall be attested by the secretary.

(3) No contract or transfer of the description mentioned in this section executed otherwise than in conformity with the provisions of this section shall be binding on the committee.”

(10) After hearing the learned counsel for the parties, I am unable to find myself in agreement with the learned counsel for the defendant-appellant. Section 80 of the Act covers the case of tax in respect of property, which may be recovered as arrears of land revenue under section 67 of the Punjab Land Revenue Act and section 81 of the Act widens the sphere of application of section 67 of the Punjab Land Revenue Act and permits its use for the recovery of municipal dues which may be in respect of arrears of any tax, water-rate, rent, fee or any other money “claimable under the Act”. It would be seen that the expression “claimable under this Act” is important as it controls the operation of section 81 of the Act. It is not just anything due to the committee that may be described as rent or fee which may be recovered under the summary procedure of this section but only those sums which are claimable by the committee under the express provisions of the Act. A mere use of the word ‘rent’ applied to a sum recoverable by the committee will not necessarily make it a rent recoverable under this Act. To this view, I find support from *Guranditta Mal v. Emperor*, (2) *Mana Ram v. Emperor* (3), *Municipal Committee, Delhi v. Hafiz Abdullah* (4), *New Snow View Transport Company Ltd., Pathankot, and others v. Secretary, Municipal Committee, Palampur* (5), and

(2) A.I.R. 1938 Lahore 29.

(3) A.I.R. 1926 Lahore 518.

(4) A.I.R. 1934 Lahore 699.

(5) 1960 P.L.R. 928.

Dil Jan v. Municipal Committee, Peshawar (6). It has been held in *Guranditta Mal's case* (supra) as under :—

“In our opinion, the operation of the section is controlled by the words “claimable by a committee under this Act”. It is not any sum that can be described as rent or fee which can be recovered under the summary provisions of the section, but only a sum that is claimable by the committee under the express provisions of the Act. The mere use of the word ‘rent’ applied to a sum recoverable by the committee will not of necessity make that sum recoverable as rent claimable by the committee under the Act. If, for example, the sum was payable as rent under a lease, a contract made independently of the Act, that sum would clearly not be recoverable under the summary powers. Having failed to show the nature of the sum payable, the Committee were not entitled to obtain an order under section 81 of the Act and we, therefore, accept the recommendation of the learned Judge and set aside the order of the Magistrate.”

(11) In *Man Ram's case* (supra), it has been held that the Municipal Committee is not entitled to recover the debt by setting in motion the penal provisions of section 81 of the Act and that the dispute was one between a creditor and a debtor for the recovery of money due under a contract and must be determined by a Civil Court. In that case, the petitioner and another entered into a contract with the Municipal Committee, Chunian, jointly taking a lease for certain *tonga* stand within the limits of the Municipality, and agreeing to pay a certain sum as hire for the same. The Municipal Committee, on the ground that the said sum due under that contract or lease had not been paid to it, took criminal action before the Magistrate, which purported to be under section 81 of the Act. It was held in that case that the Municipal Committee is not entitled to recover the lease money under section 81 of the Act.

(12) The learned counsel for the plaintiffs-respondents has argued that operation of section 81 of the Act is controlled by the expression “claimable by a committee under this Act” and that it was not any sum that could be described as rent or fee and recovered under the summary provisions of this section. After reading

section 81 of the Act, I am of the opinion that only the sum, which is claimable by the Committee under the express provisions of the Act, can be recovered through the Magistrate and not any sum which may become due to the Committee.

(13) The learned counsel for the defendant-appellant Municipal Committee was unable to point out any provision in the Act under which the premises, in dispute, were leased by the Committee to the plaintiffs-respondents. Therefore, *prima facie* the sum, in dispute, would not appear to be claimable under the Act.

(14) In view of the above-mentioned discussion, there is no merit in these appeals and the same are dismissed with costs.

S.C.K.

Before : S. S. Sodhi & R. S. Mongia, JJ.

M/S MITTAL PIPE MANUFACTURING COMPANY, HISSAR,
-Petitioner.

versus

HARYANA STATE,—Respondent.

Civil Revision No. 1756 of 1989.

2nd April, 1992.

Constitution of India, 1950—Art. 299—Provisions of Art. 299—Such provisions mandatory—Contract with Government—Whether acceptance of tender constitutes a binding contract.

Held, that the contract with the Government must conform to the provisions of Art. 299 of the Constitution of India, which are mandatory and if there is a tender or a letter of offer containing certain terms and conditions of offer, a letter of acceptance would be sufficient to bring into existence a binding agreement or a contract. There is no requirement that a formal contract in any particular form should be entered into between the parties in order to bind the parties. The State cannot enter into an oral agreement but the terms of the contract can be negotiated by correspondence and even accepted by correspondence. A tender containing terms and conditions of tender with an Arbitration Clause accepted by the Executive Engineer or any duly authorised person by the Governor would constitute a valid arbitration agreement.

(Para 10)