

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.978 of 2011

DATE OF DECISION: SEPTEMBER 10, 2014

MUNICIPAL COUNCIL, BATHINDA

...APPELLANT

VERSUS

JASWANT RAI & OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE M. JEYAPPAUL.

1. Whether the judgement should be reported in the digest? Yes

PRESENT: MR. HARSH AGGARWAL, ADVOCATE FOR THE APPELLANT.
MR. P.S.RANA, ADVOCATE FOR THE RESPONDENTS.

M. JEYAPPAUL, J.

1. As against the concurrent judgement passed by the Courts below the Municipal Council, Bathinda who was a defendant in the suit has preferred the present appeal.

2. The suit was one for permanent injunction restraining the defendants from recovering the amount of arrears of house tax beyond the period preceding 3 years from the date of issue of the notice dated 14.11.2000 in respect of property bearing Unit No.4909.

3. The plaintiffs/respondents have contended in the plaint that the defendants/appellants issued notice dated 14.11.2000 demanding a sum of ₹32,003/- towards house tax payable for the period from 1979-80 to 31.3.2001. It was contended that the defendants could not recover any such arrears of house tax beyond the period of 3 years.

4. The defendants/appellants have contended in the written statement that demand notice was issued only in accordance with law. The

plaintiffs had not issued any notice under Section 49 of the Punjab Municipal Act, 1911 (for short 'the Act') before filing the present suit.

5. The trial Court as well as the 1st appellate Court having adverted to the evidence on record returned a finding that the defendants are not entitled to recover the amount of arrears of house tax for the period prior to 14.11.1997 as it was time barred.

6. The following substantial questions of law have arisen for determination in this appeal:-

1. Whether the suit is maintainable in view of the statutory appeal provided under Sections 84 and 86 of the Punjab Municipal Act, 1911.
2. Whether the claim of the appellants made through the demand notice dated 14.11.2000 beyond 3 years period is barred by limitation.

7. Learned counsel appearing for the appellants/defendants referring to Section 84 and 86 of the Act would vehemently contend that there is a legal bar to file an appeal challenging the assessment or levy made by the appellants.

8. *Per contra*, learned counsel appearing for the respondents/plaintiffs would submit that the respondents have rightly approached this Court challenging the demand of house tax made by the appellants beyond the period of limitation. Section 84 and 86 of the Act would not apply to the instant case, it was submitted.

9. As per Section 84 of the Act, an appeal challenging the assessment or levy made by the municipality shall lie only before the

Deputy Commissioner or before such other officer empowered by the State Government in that behalf. Section 86 of the Act reiterates that the valuation arrived at or the assessment made by the municipality can be challenged only before the authority provided in the Act.

10. In the instant case, the respondents never challenged either the valuation arrived at or the assessment/levy made by the council. The house tax claimed by the municipality beyond the period of limitation alone was challenged by the respondents. Such a challenge made by the respondents is not covered under the ambit of Section 84 or Section 86 of the Act.

11. Learned counsel appearing for the appellants submitted a decision of this Court in Municipal Corporation, Ludhiana through its Commissioner and others vs. Ragbir Kaur and another, 2010(1) RCR (Civil) 188. That was a case where the plaintiffs therein chose to challenge the house tax assessment made by the Municipal Corporation. Such a challenge made by the plaintiffs would definitely fall under the mischief of Section 84 of the Act. An appeal will have to be preferred before the Deputy Commissioner or the authority empowered by the State Government in that behalf. Therefore, the aforesaid decision would not apply to the facts and circumstances of this case.

12. Similarly, in Municipal Corporation, Amrtisar vs. Dr. (Mrs.) Prem Rai, 2012(4) RCR(Civil) 153, this Court held that challenge made by the plaintiff therein questioning the assessment made by the Municipal Corporation is appealable under the Municipal Act. The civil Court is debarred from entertaining such a suit.

13. The above decision also would not apply to the case on hand as

the respondents herein never challenged the assessment made. They have challenged the arrears of house tax claimed by the municipality beyond the period of limitation. Therefore, it is affirmatively held that the present suit filed before the civil Court is quite maintainable. The first substantial question of law is thus answered.

14. It was argued by learned counsel appearing for the appellant that no limitation has been prescribed for collection of the arrears of house tax from the defaulters under the Act. Therefore, the claim made by the appellant through the demand notice issued by them is not barred by limitation.

15. The legal issue as to whether the Municipal Committee has a right to recover the house tax under Section 81 of the Act after a lapse of 3 years from the date it fell due was taken up for consideration by a Division Bench of this Court in Municipal Committee, Bathinda vs. Jaswant Rai, 1990 Civil Court Cases 636 (P&H) and was answered as follows:-

“21. In our considered view as well as from the law laid down in the precedents cited above, with which we fully agree that limitation in case of recovery of a tax other than the tax in respect of any property of the owners, will be three years as provided by Article 113 of the Limitation Act. It was not refuted that there is no specific provision under the Limitation Act providing a limitation for recovery of the taxes. It was not disputed in the course of arguments and otherwise also as it cannot be disputed that in the absence of any specific provision under the Limitation Act or the statute, it would be Part X of

the Schedule to the Limitation Act which provides limitation for the suits for which there is no prescribed period to govern the limitation. Undisputedly, the limitation governing the arrears of tax other than the tax on the property would be governed by Article 113 of the Limitation Act, 1963, wherein a limitation of three years is provided for a suit to recover the amount of tax from the date the right to sue accrues. There is no gainsaying that right to sue with respect to tax accrued on the date the tax was imposed in terms of Sections 80 and 81 of the Municipal Act. It is undisputed that in case the Municipal Committee decides to make the recovery under Sections 80 and 81, the period of limitation would be three years. The period of limitation only gets enlarged when the arrears of tax with respect to the property on account of their non-payment become a charge on the property. It is in the latter case only that it would be governed by Article 62 of the Limitation Act which provides limitation of twelve years for the recovery of the amount due which is a charge on the property. Our view finds support from a Full Bench decision of the Delhi High Court reported in Municipal Corporation of Delhi v. M/s Palace Cinema, ILR (1972) 1 Delhi 163 : (1972) Tax LR 2042 (FB). We fully agree with the reasoning adopted therein and nothing more can be added.”

16. It is true that no limitation has been prescribed for recovery of the house tax under the Act. If the Statute concerned had not prescribed any

