

# LAHORE HIGH COURT

Municipal Committee

Vs

Sant Singh

(Din Mohammad, J.)

17.06.1940

## JUDGMENT

### **Din Mohammad, J.**

1. This case has been referred to a Full Bench in the following circumstances. The respondent, Sant Singh, was running a motor bus service known as the Nishat Bus Service. He himself owned only one lorry and the other lorries he hired from different owners. For the purpose of his business, all these lorries were kept within the limits of the Municipal Committee, Montgomery. The Committee levies a tax under Section 61(1)(c) payable by the owners on all vehicles kept within the Municipality. On 12th March 1937, the Committee served a notice of demand for ₹ 530 on Sant Singh on account of tax on all lorries used in the business of the Nishat Bus Service from August 1935 to March 1937. Sant Singh refused to meet the demand in relation to the lorries which he did not own and on 17th May 1937, instituted a suit against the Municipal Committee for a perpetual injunction to restrain the said Committee from realizing the tax demanded from him on the ground that he was not the owner of the lorries, and consequently, the demand made from him was illegal and ultra vires of the Committee. Various defenses were raised by the Municipal Committee, with some of which we are not at present concerned. The main controversy raged round the questions whether the Civil Courts could entertain a suit of that nature and, if so, whether the relief by way of injunction could be granted. The trial Court found in favor of the plaintiff on both the points and the District Judge affirmed its decision on appeal. Thereupon, the Committee preferred a second appeal from the order of the District Judge which came for hearing before Dalip Singh J. Impressed by the fact that even in this Court there was an apparent conflict of authority on the question of the jurisdiction of Civil Courts, he recommended to the Hon'ble Chief Justice that the case be laid before a larger Bench, and the Hon'ble Chief Justice has placed it before a Full Bench.

2. In order to appreciate the nature and force of the objection raised on behalf of the appellant, it will be necessary to refer to the provisions relating to taxation in the Punjab Municipal Act. They are contained in Chap. V. By Section 61(1)(c), a Committee is empowered to impose a tax,

payable by the owner, on all or any vehicles among other things kept within the Municipality. Section 62 lays down the procedure to be followed in the imposition of taxes. Section 63 deals with preparation of assessment list and Section 64 with its publication and completion. Section 65 provides for the revision of assessment list, Section 66 for its settlement and Section 67 for further amendments to be introduced in the list. Section 68 lays down that no new list need be prepared every year. Sections 69 to 86 are headed "General provisions." Section 69 enacts that no assessment and no charge or demand of 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 the tax, or of any mistake in the amount of assessment or tax, or by reason of any clerical error or other defect of form. It is also said that it shall not be necessary to name the owner or occupier of the property taxed or assessed. Sections 70 and 71 deal with exemptions and Section 72 deals with remission of taxation.

3. Section 73 provides that every person shall, on the demand of an officer duly authorized by the Committee in this behalf, furnish such information as may be necessary in order to ascertain whether such person is liable to pay any Municipal tax. Sub-section (1) of Section 74 provides that notice shall be given to the Committee of all transfers of title of person primarily liable to payment of property tax. By Sub-section (2), it is provided that a person primarily liable for the payment of a tax on any property, who transfers his title to or over such property without giving notice of such transfer to the Committee as aforesaid, shall, in addition to any other liability which he incurs through such neglect, continue liable for the payment of all such taxes payable in respect of the said property until he gives such notice or until the transfer shall have been recorded in the Committee's books. By Sub-section (3), whenever the title to or over any building or land devolves upon any person by inheritance, duty is cast upon the heir to give notice in writing of such inheritance to the Committee within three months. Sub-section (4) provides that nothing in the Section shall be held to diminish the liability of the transferee (or heir) for the said taxes or to affect the prior claims of the Committee for the recovery of the taxes due thereupon. Section 75 gives power of entry into any building for the purpose of valuation. Sections 76, 77 and 78 deal with octroi and terminal taxes. Sections 78-A, 78-B and 79 deal with some other incidental matters arising out of taxation.

4. Section 80 is headed "Recovery of taxes payable by owners." By Sub-section (1), it is enacted that when any sum is due on account of a tax payable under this Act in respect of any property by the owner thereof, the committee shall cause a bill for the amount to be delivered to the person liable to pay the same. By sub-ss. (2) and (3) it is provided that if the bill be not paid within ten days from the delivery thereof, the committee may cause a notice of demand to be served on the person liable to pay the same, and, if he does not, within seven days from the service of the notice, pay the sum due, the sum due may be deemed to be an arrear of tax and shall be a first charge on the property in respect of which it is payable and be recoverable as arrears of land revenue. Sub-section (4) lays down that if any tax leviable under the Act from the

owner is recovered from the occupier, such occupier shall, in the absence of any contract to the contrary, be entitled to recover the same from the owner and may deduct the same from the rent. Sections 81 and 81-A prescribe the mode of recovering tax from defaulter. Section 82 provides for recovery of octroi and tolls in case of non-payment or refusal. Section 83 empowers the committee to lease the collection of octroi or tolls. Section 84 is headed "Appeals against taxation." Sub-section (1) provides that an appeal against the assessment or levy of any or against the refusal to refund any tax under the Act shall lie to the Deputy Commissioner or to such other officer as may be empowered by the Provincial Government in this behalf. Sub-section (2) lays down that if on the hearing of an appeal under the Section, any question as to the liability to, or the principle of assessment of, a tax arises on which the officer hearing the appeal entertains reasonable doubt, he may, either of his own motion or on the application of any person interested, draw up a statement of the facts of the case and the point on which doubt is entertained and refer the statement with his own opinion on the point for the decision of the High Court. Sub-ss. (3) to (6) deal with subsidiary matters. Section 85 provides for limitation of appeals in certain cases. Section 86 is headed: "Taxation not to be questioned except under this Act." Sub-section (1) reads:

No objection shall be taken to any valuation or assessment nor shall the liability of any person to be assessed or taxed be questioned in any other manner or by any other authority than is provided in this Act.

5. Sub-section (2) enacts that no refund of any tax shall be claimable by any person otherwise than in accordance with the provisions of the Act and the rules thereunder. In support of the contention raised by the appellant that the Civil Courts have no jurisdiction in the matter, reliance is placed on Section 84, read with Section 86, Municipal Act. It is urged that, in the first place, the plaintiff is an owner of the lorries in respect of which the demand was made from him and consequently, he cannot contest his liability otherwise than in the manner prescribed in the Act itself. Secondly, even if it be held that the plaintiff is not an owner within the meaning of Section 61(1)(c), Municipal Act, the plaintiffs' recourse to Civil Courts is barred by the terms of Section 86, Municipal Act. Counsel for the respondent, on the other hand, urges that under Section 9, Civil Procedure Code, those suits alone are removed from the jurisdiction of the Civil Courts, of which the cognizance is either expressly or impliedly barred, that the bar contained in Sections 84 and 86, Punjab Municipal Act, relates only to those matters which are covered by that Act, that the objection raised by the plaintiff in this case relates to a matter which was not within the competence of the Municipal Committee under the Act and that, consequently, the jurisdiction of the Civil Courts was not ousted. He further contends that, on general principles, a subject cannot be deprived of his right to redress his grievance in the Civil Courts, if the authority seeking to take advantage of the bar has acted beyond its jurisdiction.

6. In my view, the contention raised by the respondent's counsel is more in consonance with law than the one raised on behalf of the appellant. The entire scheme of the Act dealing with the

subject of taxation clearly indicates that the remedy provided in Section 84 is confined to those acts only which are done under the Act, and that the bar provided in Section 86 is similarly confined to matters covered by the Act and does not extend any further. The word "liability" as used in Sub-section (1) of Section 86 refers, to that liability which arises under the foregoing Sections only and this interpretation is supported by a reference to Sub-section (2) of Section 84, where the question as to the liability to a tax is clearly envisaged to arise in an appeal against the assessment or levy of any tax under the Act. It cannot be conceived that the Legislature while enacting a bar under Section 86 contemplated any liability arising from a tax which was not permitted under the Act or any demand which was being made in contraventions of the provisions of the Act.

7. A reference to the Sections dealing with taxation as summarized above would indicate that in more places than one the words "liable" and "liability" are used and it was clearly in relation to those Sections that the word "liability" was used in Section 86. Reference in this connexion may be made to *Dwarka Nath Dutt v. Addya Sundari Mittra*<sup>1</sup> where a Division Bench, composed of Sir W.C. Petheram C.J., and Beverley J., placed a similarly restricted meaning upon the word "liability" used in similar circumstances. If therefore a demand made by a Committee is not authorized by the Act and the person affected thereby objects to the payment on the ground that in making the demand the Committee was exercising a jurisdiction not vested in it by law, it can, by no stretch of language, be said that he is objecting to his liability to be taxed under the Act. Any special piece of legislation may provide special remedies arising therefrom and may debar a subject from having recourse to any other remedies, but that bar will be confined to matters covered by the legislation and not to any extraneous matter. A corporation is the creature of a statute and is as much bound to act according to law as the constituents thereof, namely, the individuals ruled by the corporation and if the corporation does an act in disregard of its charter and intends to burden any individual with the consequences of its illegal act, an appeal by that individual to the general law of the land can in no circumstances be denied.

8. If therefore it is found that the plaintiff was not an owner of the lorries during the period in respect of which the tax is demanded from him, the demand will not be under the Act but outside the Act, inasmuch as a tax on vehicles is payable by the owners only and not by those who do not own them. Counsel for the appellant contends that the lorries used in the business of the Nishat Bus Service were running under the board of the Nishat Bus Service and that, consequently, it should be presumed that they were owned by that Company. This argument however is fallacious. The mere fact that a lorry displays the board of a certain Company does not necessarily lead to an inference that the Company is the owner thereof. The ordinary meaning of the word "owner" is "one who owns or holds something as his own; a proprietor; one who has the rightful claim or title to a thing" and nearly the same meaning attaches to this term in law. Here, it is alleged by the plaintiff and proved that he has hired certain lorries for the purpose of his business and that the ownership of those lorries vests in somebody else, and it is obvious that a hirer cannot be called an owner. It is true that certain taxes imposed by the Committee on

owners can be recovered from occupiers as visualized in Section 80(4), Municipal Act, but the very use of the word "occupier" there denotes that those taxes relate to buildings or lands and can in no way be considered to relate to vehicles, inasmuch as the hirer of a vehicle, in the manner in which the appellant has hired them, can in no wise be described as an occupier thereof. This matter can be cleared by a concrete illustration. If a person obtains a money decree against the plaintiff, will it be open to him to attach these vehicles in execution of his decree and will the real owners of these vehicles be debarred from putting in a successful claim against their attachment? The answer to these questions cannot but be in the negative. A temporary possession of

<sup>1</sup>(1894) 21 Cal 319

these vehicles, as the plaintiff has, can in no circumstances be confused with ownership, which connotes a complete dominion which one can exercise as against the whole world. It follows therefore that no demand could be made from the plaintiff within the Act and that the demand made by the Committee is in contravention of the Act.

9. For the proposition that even if the demand was not authorized by the Act, or, in other words, was ultra vires of the Committee, the plaintiff's remedy lay only under Section 84, reliance is placed on *Municipal Committee, Ambala v. Mohendar Singh*<sup>2</sup> *Cantonment Board, Agra v. Kanhaiya Lal*<sup>3</sup>, *Municipal Board, Benares v. Krishna & Co*<sup>4</sup>, and *Nanbahar Hussain Shah v. Municipal Committee Batala*<sup>5</sup> In my view, however, these authorities are either distinguishable on facts or, if I may say so with all respect, do not lay down good law, if they mean to oust the jurisdiction of the Civil Courts even in those matters where the Committee has acted in contravention of the Act. In *Municipal Committee, Ambala v. Mohendar Singh*<sup>6</sup> the plaintiffs had sued the Municipal Committee, Ambala, for a refund of the customs duty on goods exported by them. The rules made by the Local Government under Section 154(j), Punjab Municipal Act, 13 of 1884, which were maintained by the Punjab Municipal Act, 20 of 1891, provided that an appeal against an order passed under the rules would lie to the Deputy Commissioner or the Commissioner as the case may be. The plaintiffs, instead of appealing to the Commissioner, filed a suit after the President of the Municipal Committee had refused to refund the tax. Belying on some Madras judgments which laid down that when by an Act of the Legislature powers were given to any person for a public purpose, from which an individual might receive injury, if the mode of redressing the injury was pointed out by the statute, the jurisdiction of the Court was ousted and in case of injury the party could not proceed by action, a Division Bench of the Punjab Chief Court held that the suit did not lie, inasmuch as the plaintiffs were bound to exhaust the remedy by appeal before filing the suit. It would appear that it was not laid down in this judgment that no suit was at all competent, and all that it decided was that the remedies provided by the Act should be exhausted first. But if, as envisaged in this judgment, a suit is competent after the remedies provided in the Act have been exhausted, there appears to be no reason why it cannot lie if recourse is not had to the remedies provided in the Act, especially when the matter complained against does not fall under the Act. Further, even in this judgment a distinction was drawn between a suit contesting the incidence of a tax lawfully imposed and a suit to recover a sum paid on the ground that the so-called tax had no legal existence. It cannot but be admitted

that the present case falls under the second category.

10. In *Cantonment Board, Agra v. Kanhaiya Lal*<sup>7</sup>, the case arose under Sections 84 and 88, Cantonments Act (2 of 1924). The language of Sub-section (2) of Section 84, Cantonments Act, is somewhat similar to the language of Section 84, Punjab Municipal Act. Section 88, however, is differently worded and it says that the order of the appellate authority confirming, setting aside or modifying an order in respect of any valuation or assessment or

<sup>2</sup>(1911) 38 PR 1911

<sup>4</sup> AIR 1935 All 760 : 1935 AWR (H.C.) 585

<sup>3</sup> AIR 1933 All 163 : 1933 AWR (H.C.) 1830

<sup>5</sup> AIR (1935) Lah 970

<sup>6</sup>(1911) 38 PR 1911

<sup>7</sup> AIR 1933 All 163 : 1933 AWR (H.C.) 1830

liability to assessment or taxation shall be final. On a dispute arising between an assessee and the Cantonment Board, a Division Bench of the Allahabad High Court observed as follows:

We are In entire agreement with the view already taken by two Benches of this Court that the jurisdiction of the Civil Court is excluded in all matters relating to any valuation, assessment, liability to assessment or taxation by a Cantonment Board.

11. In *Municipal Board, Benares v. Krishna & Co.*, AIR 1935 Allahabad 760 : 1935 AWR (H.C.) 585(SUPRA), the plaintiffs had instituted a suit against the Municipal Board, Benares, for a refund of certain octroi duty charged from them on certain goods imported into the municipal limits. The question arose whether such a suit could lie in view of Section 164, Municipalities Act, 1916, Sub-section (1) of which was framed in terms of Sub-section (1) of Section 86, Punjab Municipal Act and Sub-section (2) of which was framed in terms of Section 88, Cantonments Act. Its marginal note ran as follows: "Bar to jurisdiction of Civil and Criminal Court in matters of taxation". Taking this note into consideration along with the wording of the Section, a Division Bench of the Allahabad High Court ruled that no suit for a refund of the octroi lay in a Civil Court on the ground that the goods were not in fact assessable or that the amount of assessment was excessive. In both these judgments the tax was lawful and the only objection that was being raised was to the details of the tax or, in other words, to matters arising under a lawful tax. It is obvious, therefore, that the point which arose there was different from the one which arises in the present case. Further, even if the marginal note to Section 86, Punjab Municipal Act, be considered synonymous with the marginal note to Section 164, viz., "Bar to jurisdiction of Civil and Criminal Court in matters of taxation," the bar applied in the Allahabad cases was properly applied, inasmuch as the matter involved there arose under the Act. The general remarks made by the learned Judges to the effect that no suit lay in any case were not necessary for the decision of the case and are merely obiter dicta, carrying no weight of authority with them.

12. In *Nanbahar Hussain Shah v. Municipal Committee Batala*<sup>8</sup> the Municipal Committee had levied a tax upon certain goods imported into the municipal limits at a certain rate under Article 57 of the Terminal Tax Schedule. The plaintiff alleging that the tax could be levied only under

Article 55 and not under Article 57 instituted a suit for an injunction to restrain the defendant from recovering the sum assessed. A Division Bench of the Lahore High Court, composed of the Hon'ble Chief Justice and myself, came to the conclusion that the suit did not lie. The Hon'ble Chief Justice, who delivered the judgment, while discussing Sections 84 and 86 of the Municipal Act observed inter alia:

It does not appear to us to matter, with reference to the terms of these two sections, whether the assessment is illegal or ultra vires or not. Even if the assessment is illegal or ultra vires, it is an assessment.

13. The case, so far as it goes, was rightly decided, inasmuch as the objection raised

<sup>8</sup> AIR (1935) Lah 970

there was to a matter of detail and no question of jurisdiction was involved. The difficulty, however, arises in connexion with the remarks quoted above, which was no doubt intended to bar suits even if the tax was illegal, but the Hon'ble Chief Justice has authorized me to say that on further consideration he has come to the conclusion that the opinion expressed by us was not necessary for the decision of the case and was in fact incorrect. There is, on the other hand, ample authority in support of the proposition that an illegal act of a committee, in spite of the special forum constituted under the Act which brings the committee into existence and of the special bar enacted to having recourse to any other authority in matters dealt with there, is liable to be interfered with by a Civil Court. In *Committee of Notified Area, Una v. Chatar Behari Narain*<sup>9</sup> Scott. Smith J. while referring to Section 86, of the Municipal Act, remarked as follows:

The power conferred by a special Act on a local authority to impose a particular tax for particular purposes in a specified manner does not oust the jurisdiction of the Civil Court to give relief against an illegality committed by that body under cover of statutory powers. I think it is clear that a Civil Court has jurisdiction to determine the question whether the imposition of a tax is illegal and ultra vires and to give relief if a tax has been levied from a person who is not liable thereto.

14. There, the action of the Municipal Committee to impose a profession tax on a Munsif was challenged, and the learned Judge holding that the Munsif could not be said to follow a profession in the popular sense of the term maintained the decree of the Court below that the tax could not be imposed on him. In *Municipal Committee, Pind Dadan Khan v. Bhagwan Singh*<sup>10</sup> Broadway J., while considering Sections 84 and 86, Municipal Act, remarked that those Sections related only to acts done under the law but did not provide a remedy for what may be done outside or in violation of that law. He further observed that these Sections did not oust the jurisdiction of the Civil Court to relieve one subject of the Crown against an illegality imposed upon him by another. It may be observed, that this judgment was expressly overruled by *Nanbahar Hussain Shah v. Municipal Committee Batala*<sup>11</sup> but as remarked before, the general observations made in the latter judgment have been found to be erroneous and the authority of

this judgment therefore remains unshaken. In *Municipal Committee, Sonapat v. Dharam Chand*<sup>12</sup> Dalip Singh and Bhide JJ. distinguished *Nanbahar Hussain Shah v. Municipal Committee Batala AIR (1935) Lah 970(SUPRA)* in the following words:

In the present case, the plaintiffs are not questioning the powers of the Municipal Committee under the Punjab Municipal Act, but are urging that in view of the terms of the sales of the sites in the mandi the Committee cannot impose the tax within the mandi limits.

15. In other words, it was indirectly held that the jurisdiction of Civil Courts was not barred, if the subject-matter of the suit did not fall under, the Act. In *Abdul Hamid v. Municipal Committee, Delhi*<sup>13</sup> Monroe J. observed that Section 84 did not include

<sup>9</sup> AIR (1919) Lah 68

<sup>11</sup> AIR (1935) Lah 970

<sup>13</sup> AIR (1935) Lah 980

<sup>10</sup> AIR (1924) Lah 619

<sup>12</sup> AIR (1935) Lah 632

suits for injunction instituted against the Municipal Committee to restrain the Committee from imposing a certain tax, and decreed the suit against the Committee on the ground that the tax had not been imposed in accordance with the provisions of the Municipal Act. In *Amrit Singh Daya Singh v. Municipal Committee, Jhelum*<sup>14</sup> Tek Chand and Dalip Singh JJ. once more questioned the correctness of the decision reported in *Nanbahar Hussain Shah v. Municipal Committee Batala AIR (1935) Lah 970(supra)*. Dalip Singh J. who delivered the judgment with which Tek Chand J. agreed, after referring to Section 86, Municipal Act, remarked:

These words appear to me clearly to imply that the word "assessment" is to be read as an "assessment under the Act," for it is clear that no "authority" would be provided for an assessment which was not under the Act. If therefore *Nanbahar Hussain Shah v. Municipal Committee Batala AIR (1935) Lah 970(supra)* intended to hold that even if an assessment which was ultra vires of the Act could not be made the subject of a civil suit, then with the greatest respect to the learned Judges who decided that case, I must humbly venture to dissent from that view.

16. In *Baghunath Sahai v. Panchayat Village Sahsai Kalirawan*<sup>15</sup> the provision of law which came for consideration was Section 39(2), Village Panchayat Act, which provides that no civil or revenue suit could lie against any panchayat in respect of any act done in the discharge of any duties imposed under the Act. Tek Chand J. held that if the resolution was ultra vires of the panchayat, the prohibitory Section did not come into operation. In *Nundo Lal Bose v. Corporation for the town of Calcutta*<sup>16</sup> the Municipal assessor had made an annual assessment on a certain basis. The owners preferred an appeal to the Commissioners against his order and questioned the principle on which the assessor had fixed the rate. The Commissioners however refused to interfere. The owners made an application to the High Court on the original side on the ground of want of jurisdiction. The matter came before a Division Bench of the Calcutta High Court composed of Sir Richard Garth, C.J. and Wilson J. Counsel for the owners contended that

inasmuch as the Act laid down one rule for houses that were let and the Municipal Committee had set up another rule for their house, it had no power to assess on the basis on which it had done and as it had acted entirely out of its jurisdiction, the Court could interfere. This contention was opposed by the Advocate-General. The learned Judges however repelled the contention of the Advocate-General and interfered with the assessment. In the course of his judgment, Garth C.J. observed:

It is of course no part of our duty to say how such valuations should be made. We have only to see that, in making them, the Commissioners act within their powers.

17. Wilson J. in a separate judgment remarked among other things:

If the error goes to jurisdiction, we can and ought to interfere by certiorari; if

<sup>14</sup> AIR (1936) Lah 972                      <sup>16</sup>(1885) 11 Cal 275

<sup>15</sup> AIR (1939) Lah 372

not, we have no power to do so.

18. In *Secretary of State v. Fahamidannissa Begum*<sup>17</sup> the question that arose for decision was whether a certain order of the Board of Revenue, purporting to be made under Act 9 of 1847, subjecting a certain land to assessment was open to objection in a Civil Court. The case went up to the Privy Council where two questions were framed for decision: (1) Whether the provisions of Act 9 of 1847 were applicable to the land involved in that suit, and (2) whether, if those provisions were not so applicable, a Civil Court had jurisdiction to review the decision of the Board of Revenue and to declare that the proceedings of the revenue authorities in assessing such land were ultra vires. Their Lordships came to the conclusion that the first question ought to be answered in the negative. In other words, it was found that the land was not covered by the Acts. Thereupon, the second question arose that if this was so, could the Civil Courts interfere with the order of the Board of Revenue which by the terms of the Act was final. In this connexion, their Lordships remarked:

The action of the revenue authorities was therefore, in their Lordships' opinion, wholly illegal and invalid. Their Lordships cannot hold that the Board of Revenue can, by purporting to exercise a jurisdiction which they did not possess, make their order upon such a matter final, and exempt themselves from the control of the Civil Court.

19. In *Navadip Chandra v. Purnanda Saha*<sup>18</sup> an assessment made by a Municipal Committee was challenged in a Civil Court. The Committee contended that by virtue of Section 116, Bengal Municipal Act (3 of 1884), no objection could be taken in any manner other than that provided in the Act. The assessee however urged that this could be so only if the assessment was not made ultra vires, but if the assessment was ultra vires, there was nothing in the Act to prevent a ratepayer from seeking a decision from a Civil Court that the action on the part of the Committee was ultra vires. This proposition was not disputed and was approved by a Division Bench

composed of Maclean, C.J. and Banerjee J. In *Chairman of Giridhi Municipality v. Suresh Chandra*<sup>19</sup> Bengal Municipal Act, came for consideration once more before a Bench composed of Stephen and Mukerjee JJ. Mookerjee J. summarized the whole law on the point and in the course of his judgment remarked at page 867:

The test is, as I have pointed out, whether the assessment is or is not in conformity with the statutory provisions. If it is not, it does not enjoy any security from collateral attack. If the assessment is open to objection on the ground of lack of jurisdiction, which, be it remembered, has to be exercised in conformity with the statute, it is open to collateral attack....If errors or irregularities are committed, they must be corrected in the mode appointed by the statute, and, if not so corrected, they become conclusive, for Courts have not the power to control the quasi-judicial authority in a matter of discretion. But when the assessment proceeding is in clear violation of the provisions of the statute, the Court has jurisdiction to afford relief.

<sup>17</sup>(1890) 17 Cal 590

<sup>19</sup>(1908) 35 Cal 859, Section 116

<sup>18</sup>(1899) 3 CWN 73

20. The learned Judge in coming to this conclusion relied among other judgments upon the dictum of their Lordships of the Judicial Committee that the Court would have jurisdiction to interfere and quash the order of the quasi-judicial authority upon the ground either of a manifest defect of jurisdiction in the tribunal that made the order or of manifest fraud in the party procuring it. Reference was further made to the principle enunciated by American Courts to the effect that all clear violations of law gave rise to jurisdictional questions. The point of distinction raised in *Municipal Board, Benares v. Krishna & Co.*, AIR 1935 Allahabad 760 : 1935 AWR (H.C.) 585(Supra) in relation to this judgment is not material, so far as the general principle of law enunciated herein is concerned. The phrase that had been omitted from the Municipal Act when this judgment was given, was intact at the time of *Dwarka Nath Dutt v. Addya Sundari Mittra* (1894) 21 Cal 319(supra), but still the decision was the same. In *G.I.R. Ry. Co. v. Amraoti Municipality*<sup>20</sup> Stanyon A.J.C., also dealt with the matter at issue at great length and observed:

The allegation here is the imposition of a tax illegally and ultra vires of Municipal authority, and I have no doubt that, to give relief against such an imposition, the Civil Court has jurisdiction notwithstanding anything contained in the Berar Municipal law.

21. It may be observed that Section 53, Berar Municipal Act, was framed in terms of Section 86, Punjab Municipal Act. Elsewhere in the same judgment, he further remarked:

The ouster of ordinary jurisdiction in favour of a special jurisdiction can obviously apply only to the cases entrusted to the latter. The grant of a jurisdiction cannot carry with it the conferral of a power to act beyond and outside of that jurisdiction.... An enactment which creates a local authority, and invests it with power to impose particular taxes for particular purposes in a specified manner, creates a jurisdiction which the ordinary Courts never had: and the power of that local authority for lawful taxation, however exclusively

reserved to it, involves no invasion of Civil Court jurisdiction. But it also usurps no fraction of the ordinary power of that Court to relieve one subject of the Crown against illegality imposed upon him by any other subject: and action, which is ultra vires of a special jurisdiction of the kind described, is an illegality which gives a cause of action in the Civil Court.

22. In *Tuticorin Municipality v. S.I. Ry. (1890) 13 Mad 78*, an assessee claimed a refund of tax and he was met with the objection that the suit could not be maintained in a Civil Court on the ground that it was provided in the Act that the adjudication of an appeal by the Municipal Council would be final. Muttusami Ayyar J. disallowed the objection remarking:

There can therefore be no doubt that a suit will lie when the provisions of the Act have not been complied with in substance and effect in regard to the assessment and levy of such tax and the tax cannot be considered to have legal sanction.

<sup>20</sup>(1912) 8 NLR 107

23. In *Fischer v. Twigg*<sup>21</sup> taxes were levied on buildings exclusively used for charitable purposes and the manager sued for a refund. A Division Bench of the Madras High Court remarked:

A tax upon such buildings and other similar buildings mentioned in the exception is not one which can be in legal existence, and therefore it cannot be said that the tax was collected under that Act.... We prefer to base our judgment on the ground that an imposition which is expressly prohibited by the Act cannot be deemed to be made under the provisions of the Act.

24. In *Kasandas v. Ankleshwar Municipality*<sup>22</sup> it was observed by Sir Lawrence Jenkins C.J. with whom Chandavarkar J. agreed.

As no breach of the prescribed rules has been committed, then in the absence of any proof of mala fides, perversity, or manifest error, we do not think we ought to interfere on the mere suggestion that the valuation is too high.

25. In other words, it was conceded that had there been a breach of the rules, interference would have been possible. In *Secy. of State v. Major J.E. Hughes*<sup>23</sup> Sir Basil Scott, C.J. and Batchelor J. interfered with the enhancement of a tax imposed on the Turf Club on the ground that the enhancement was ultra vires, remarking that the case was one in which the jurisdiction of the Civil Court was not ousted. In *Municipal Board, Benares v. Narsingh Dutt*<sup>24</sup>, Dalai J. interfered with an order of assessment on the ground that there had been no assessment at all. Reference in this connexion may also be made to a judgment of their Lordships of the Privy Council reported in *Gaekwar v. Katchar Abai*<sup>25</sup> which, though not cited at the Bar, is in my view most pertinent to the case. The defendants in that case by the negligent construction of a railway made in exercise of their powers under the Railways Act had caused the plaintiff's land to be flooded in the rainy

season and consequently damaged. The Act provides that a suit shall not lie to recover compensation for damage caused by the exercise of the powers thereby conferred, but that the amount of such compensation shall be determined in accordance with the Land Acquisition Act, 1870. In spite of this bar the plaintiff brought a suit for damages for injury alleged to have been caused to his fields. Before their Lordships it was contended inter alia that although the statutory authority of the Act of 1890 might have been abused or exceeded no suit would lie and that the respondent's only remedy was by proceeding for compensation under the Land Acquisition Act, 1870. Their Lordships observed as follows:

It would be simply a waste of time to deal seriously with such contentions as these. It has been determined over and over again that if a person or a body of persons having statutory authority for the construction of works...exceeds or abuses the powers conferred by the Legislature, the remedy of a person injured in consequence is by action or suit, and not by a proceeding for compensation under the statute which has been so transgressed.

26. I am in respectful agreement with the principles enunciated in these judgments

<sup>21</sup>(1898) 21 Mad 367

<sup>23</sup> AIR (1914) Bom 33

<sup>25</sup>(1903) 27 Bom 344

<sup>22</sup>(1902) 26 Bom 294

<sup>24</sup> AIR 1930 All 222

and would hold that the jurisdiction of the Civil Court was not ousted in this case inasmuch as the demand made from the plaintiff was not authorized by the Act. I may add that the argument advanced by the appellant that here the tax itself was lawful, and that its recovery alone was defective in so far as it was being made from a wrong person, suffers from the fallacy that firstly it makes an erroneous distinction between 'tax' and 'demand' and secondly, it treats lawful a demand which was ab initio unlawful.

27. Counsel next contends that the suit was not competent under Section 54, Specific Relief Act, as there was no breach of any obligation which existed in favour of the applicant. In support of this proposition, reliance is placed on *Ram Kissen Joydoyal v. Pooran Mull AIR (1920) Cal 239(supra)*. In my view, the proposition advanced is not legally sound, nor does the authority cited in its support serve the purpose. All that was stated in *Ram Kissen Joydoyal v. Pooran Mull AIR (1920) Cal 239(supra)* was that the precise obligation, of which there had been a breach, should be formulated before an injunction can be granted and this is an elementary principle which cannot be disputed in face of the clear terms of Section 54. The word 'obligation' as used in the Specific Relief Act is very wide in its application as appears from the definition given in Section 3. It says " 'obligation' includes every duty enforceable by law" and this evidently connotes that the term 'obligation' covers all those things which it otherwise implies in its ordinary or legal parlance. An inhabitant of a municipality has a right not to be taxed illegally and the Committee has a corresponding obligation not to impose any illegal tax. If therefore a Committee imposes a tax on a person on whom it cannot be imposed under the Act, it does commit a breach of an obligation impliedly existing in his favour, and the person aggrieved can relieve himself from harassment by invoking this mode of relief. The use of the words "by

implication" in relation to "obligation" in the opening paragraph of Section 54 is obviously intended to widen the scope of the Section and the Section does come into play whenever it can reasonably be said that such an obligation exists and that it has been broken.

28. Counsel finally urges that no injunction could be granted to the plaintiff by virtue of Section 56(i), Specific Relief Act, which says that an injunction cannot be granted when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust.

29. In this connexion he refers once more to *Ram Kissen Joydoyal v. Pooran Mull AIR (1920) Cal 239(supra)* as well as *Chuni Lal v. Surat City Municipality (1903) 27 Bom 403(Supra)*. In the Calcutta judgment a suit had been brought for a perpetual injunction to restrain arbitration proceedings and while dealing with this aspect of the case, Mookerjee J. remarked:

We are further of opinion that the injunction claimed should not be granted in view of the provisions of Clause (i) of Section 56....In the case before us the respondents allege that they did not enter into the alleged contract. If that case is well founded, the arbitration proceedings, even if they result in an award, can only terminate in an award which would be a nullity and could not possibly affect the rights of plaintiffs; if the arbitrators make an award in favor of the defendants (which itself is doubtful) the plaintiffs will have ample opportunity to protect themselves by an appropriate proceeding. We are clearly of opinion on all these grounds that the injunction claimed cannot be granted.

30. In the Bombay judgment a Division Bench composed of Crowe and Chandavarkar JJ., dismissed a suit against a Municipal Committee with the following observations:

The suit is substantially brought to restrain the Municipality from enforcing a money claim and there is neither principle nor authority for restraining by injunction one who alleges that he has a money claim against another from enforcing that claim in the manner sanctioned by law. According to Section 56, Clause (i), Specific Relief Act, an injunction cannot be granted where an equally efficacious relief can certainly be obtained by any other usual mode of proceeding. Under Section 86 of Bombay Act, 3 of 1901, it was open to the appellant to resort to the remedy provided by that Section and obtain the relief which he seeks in this suit. Instead of resorting to it he has come to a Civil Court and asks the Court to give him an injunction restraining the Municipality from enforcing its claim for the arrears of house-tax against him. He does not deny his liability to pay the tax after 1899; all he says is that he is not liable to pay the arrears due for certain years previous to 1899. It is open to him to pay the amount and then sue the Municipality for a refund; on the other hand, it is open to the Municipality to recover the amount by a redress warrant and sale. In either case it cannot be said that there exists no standard for ascertaining the actual damage likely to be caused to the appellant or that pecuniary compensation cannot

be given for invasion of the appellant's right. It is discretionary with a Civil Court to grant an injunction and that discretion must be exercised judiciously with extreme caution and only in very clear cases. The present is not a case of that kind.

31. These judgments, in my opinion, are not very helpful in determining the question now before us. It is obvious that the Calcutta judgment deals with the case of a different nature. Further, in that case the usual mode of proceeding was clear and the plaintiff could obtain an equally efficacious relief otherwise. The Bombay judgment no doubt deals with a case somewhat analogous to the present case, but with all respect it does not appear to me to be a correct exposition of the law on the subject. It would appear from the quotation reproduced above that while the learned Judges began by saying that it was open to the plaintiff to resort to the remedy laid down in the Municipal Act itself, they ended with the remark that the relief by way of injunction was merely discretionary and that in the case before them they could not judiciously exercise their discretion in the plaintiff's favour. No attempt whatever was made to explain how any other way of proceeding was available to the plaintiff and in what manner it was equally efficacious. Reference was no doubt made to the remedy provided by Section 86 of the Bombay Act and also to the ability of the plaintiff to sue for a refund.

32. But apart from the fact that neither way of proceeding could be treated as a "usual mode of proceeding" as contemplated by the Section, I am disposed to think that neither was "equally efficacious." The remedy provided in the Act as explained above applies only to those cases which arise under the Act and is not meant to meet those which are outside the Act. The prescribed remedy cannot therefore be considered as a "usual mode of proceeding" in cases where illegal taxation is objected to. So far as "efficacy" is concerned, it is evident that an aggrieved person has still a right to move the Civil Courts if he is defeated in the forum prescribed in the Municipal Act, while a decision in the Civil Courts is final, and it cannot therefore be urged that the remedy prescribed by the Act, though it may turn out to be "efficacious," is "equally" so. Similarly, the suggestion that a person may first pay an illegal tax and then sue for a refund is open to the objection that in certain cases it may turn out to be much more annoying and much more expensive than resort to Civil Courts.

33. Another objection which may be taken to the Bombay judgment is that the considerations which eventually prevailed with the learned Judges were those which are mentioned along with some other matters in para. 3 of Section 54 and as I read the Sections relating to injunctions, those matters cannot necessarily be considered under Section 56. By Section 54 of the Act, the existence or otherwise of a standard for ascertaining the actual damage and the possibility or otherwise of pecuniary compensation being allowed to redress the wrong done to the plaintiff are matters to be considered in those cases only in which the defendant invades or threatens to invade the plaintiff's right to or enjoyment, of property, and in Section 56 where those circumstances are enumerated in which an injunction cannot be granted, they are not at all referred to. In my view, the question whether an "equally efficacious relief can "certainly" be

obtained by "any other usual mode of proceeding" is a question of fact to be determined in each case on its own circumstances, and no hard and fast rule can be laid down in the matter. In the present case, I for myself am unable to conceive what "other usual mode of proceeding" was available to the plaintiff which could be considered to be "equally efficacious." I would accordingly hold that the plaintiff was not debarred under any provision of the Specific Relief Act from instituting the present suit. The result is that I would dismiss this appeal but leave the parties to bear their own costs throughout.

**Tek Chand, J.**

34. I agree with my learned brother in the conclusions reached by him on all points and have very little to add. The jurisdiction of a Civil Court to entertain a suit for adjudicating that a tax imposed by a Municipal Committee was ultra vires of the Committee can only be ousted by a clear statutory provision to this effect. The appellant contends that Section 86, Punjab Municipal Act, contains such a provision and absolutely bars the jurisdiction of Civil Courts, even in cases where the assessment is one which the Committee is not authorized to make. This contention was considered and rejected by a Division Bench, (of which I was a member), in *Amrit Singh Daya Singh v. Municipal Committee, Jhelum AIR (1936) Lah 972(supra)*, where it was held that Section 86 deals only with assessments made under the Act and that it does not bar the jurisdiction of Civil Courts to entertain suits relating to unauthorized assessment made by the Committee in excess of the powers conferred on it by the law. After hearing full argument in the present case, I am confirmed in the view expressed in that case.

35. A Municipal Committee is a creature of the statute. It is brought into existence by, or under the authority of, an express legislative enactment to have control over municipal affairs within defined local limits and can exercise such powers of legislation, taxation and regulation as are entrusted to it by the Legislature. If in the exercise of these powers the Committee makes a mistake, it will merely be a case of erroneous exercise of jurisdiction, and the aggrieved party must seek his remedy in the manner, and from the forum, provided in the statute. If however its action is in excess of, or in contravention of the powers, conferred on it by the statute, the subject has his ordinary remedy to seek relief in the Civil Courts, unless their cognizance is either expressly or impliedly barred (Section 9, Civil Procedure Code) This rule has been applied in numerous cases relating to imposition or assessment of taxes by Municipal Committees. When a suit is brought to challenge such taxation or assessment, the Civil Court has first to decide whether the Committee has acted within, or in exercise of its statutory powers. If it finds that the Committee acted within its power, the suit must be dismissed forthwith. If, however, the taxation or assessment is ultra vires, the Court must adjudicate on the merits and grant relief accordingly. The only authority to the contrary is an obiter dictum in *Nanbahar Hussain Shah v. Municipal Committee Batala AIR (1935) Lah 970(supra)*. But as my learned brother has shown in his exhaustive judgment, that dictum was too widely expressed and did not lay down the law correctly.

36. There is no doubt that in the present case, the assessment of the plaintiff-respondent by the Municipal Committee, Montgomery, was not under the Act, but was in contravention of its provisions. The plaintiff is not the owner, but is only the hirer of motor lorries, and the committee had no power to assess him under Section 61 of the Act. He, therefore, had a cause of action to sue in the Civil Courts, and the lower Court has rightly entertained the suit and held that the assessment was illegal and ultra vires. The second contention raised is that the plaintiff is not entitled to relief by way of injunction restraining the committee from realizing the tax, as under Section 54, Specific Relief Act, a perpetual injunction can only be issued to prevent "the breach of an obligation existing in favour of the appellant, whether expressly or by implication," and that in this case there has been no breach of such an obligation. In my opinion, this contention also is without force. Where a statute creates a body like the Municipal Committee and confers on it power to levy taxes of a particular kind in a particular manner, there is an implied "obligation" on the part of the committee not to tax the subject in a manner not covered by the statute, and if a committee does impose such a tax, it commits a breach of this obligation and a suit would lie for issue of a perpetual injunction restraining the Committee from imposing and collecting the tax. The law on the subject is well summed up by Kerr on Injunctions (Edn. 6, page 572) as follows:

Public bodies, incorporated by statutes for a public purpose, or the promotion of a public benefit, may not exceed the jurisdiction which has been entrusted to them by the Legislature. If, under pretence of an authority which the law does give them to a certain extent, they exceed their authority, and assume to themselves a power which the law does not give them, the Court no longer considers them as acting under the authority of their commission, but treats them as persons acting without legal authority.

37. Reference may also be made to *Frewin v. Lewis (1835) 4 My & Cr 219(supra)* where Lord Chancellor Cottenham laid down that:

If under pretence of an authority which the law does give to corporations to a certain extent, they go beyond the line of their authority, and infringe or violate the rights of others, they become, like all other individuals, amenable to the jurisdiction of this Court by injunction.

38. There are several reported cases in India in which such injunctions have been issued without objection. The latest instance in this Court will be found in *Abdul Hamid v. Municipal Committee, Delhi AIR (1935) Lah 980(supra)* (cf. also *Municipal Committee, Delhi v. Moti Jan AIR (1980) Lah 824.(supra)*) Lastly, it was argued that, in any case, injunction should not be granted in view of the provisions of Section 56(1), Specific Relief Act. To constitute a bar to an injunction under this clause, however, three circumstances must be shown to co-exist: (1) that there is available some "other usual mode of proceeding," (2) that by that proceeding equally efficacious relief is entertainable, and (3) that such relief can certainly be obtained. In a case like this it cannot be urged that the alternative suggested, namely that the plaintiff should first pay the tax which has been imposed on him by the Committee illegally and without jurisdiction, then sue

in the Court for its refund, and go on repeating this process year after year, is an 'equally efficacious relief' which can 'certainly' be obtained by 'other usual mode of proceeding.' The decision of the lower Courts is correct and I agree that this appeal should be dismissed and the parties left to bear their own costs throughout."

**Ram Lall, J.**

39. I agree.

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