

## APPELLATE CIVIL.

*Before Young C. J. and Din Mohammad J.*  
 NAUBAHAR HUSSAIN SHAH (PLAINTIFF)

Appellant

*versus*

THE MUNICIPAL COMMITTEE, BATALA  
 (DEFENDANT) Respondent.

1934

July 9.

Civil Appeal No. 1046 of 1933.

*Punjab Municipal Act, III of 1911, Sections 84 and 86 :  
 Levy of tax by the Municipal Committee—Objection to  
 assessment — whether a Civil Court can try a suit relating  
 thereto.*

The appellant imported some tiles into the Municipal limits. The Municipal Committee levied a tax thereon under Article 57 of the Terminal Tax Schedule. On this the appellant brought the present suit in a Civil Court to restrain the Committee from recovering the tax on the ground that the assessment was wrong.

*Held*, that under Sections 84 and 86 of the Punjab Municipal Act an objection to an assessment of this nature can only be taken in the manner provided for in the Act and a Civil Court has no jurisdiction to try the question.

*Municipal Committee, Delhi, v. Mst. Moti Jan* (1), distinguished.

*Municipal Committee, Pind Dadan Khan v. Bhagwan Singh* (2), dissented from.

*Second Appeal from the decree of Mirza Abdul Rab, Senior Subordinate Judge, Gurdaspur, dated 11th February, 1933, reversing that of Sardar Harnam Singh, Subordinate Judge, 4th Class, Batala, dated 2nd November, 1932, and dismissing the plaintiff's suit.*

NAWAL KISHORE, for Appellant.

M. L. PURI and KRISHEN SWARUP, for Respondent.

(1) 1930 A. I. R. (Lah.) 824.

(2) 1924 A. I. R. (Lah.) 619.

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The judgment of the Court was delivered by—

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YOUNG C. J.—This is a second appeal against the decision of the Senior Subordinate Judge of Gurdaspur. The plaintiff imported into the Municipal limits of Batala what he alleged to be tiles worth Rs.187. The Municipal Committee levied a tax upon these at the rate of annas 8 a maund under article 57 of the Terminal Tax Schedule. The plaintiff, therefore, brought this suit praying for an injunction to restrain the defendant from recovering the assessed sum. The plaintiff alleged in the plaint that the assessment was illegal and *ultra vires*. Before the issues were framed the plaintiff amended his plea by alleging that the Committee could charge on the goods at the rate of one anna per maund under article 55 and that the assessment, therefore, under article 57 was wrong.

Several points have been raised in this appeal, but the only one which we really have to deal with is the question, whether the Civil Court had jurisdiction to entertain this claim. The lower appellate Court came to the conclusion that there was no jurisdiction in the Civil Court. The plaintiff appeals.

The relevant sections of the Punjab Municipal Act are as follows :—

“ 84. (1) An appeal against the assessment or levy of any or against the refusal to refund any tax under this Act shall lie to the Deputy Commissioner or to such other officer as may be empowered by the Local Government in this behalf.

Provided that, when the Deputy Commissioner or such other officer as aforesaid is, or was when the tax was imposed, a member of the Committee, the appeal shall lie to the Commissioner of the Division.

(2) 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.

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“ 86. (1) 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.

(2) No refund of any tax shall be claimable by any person otherwise than in accordance with the provisions of this Act and the rules thereunder.”

It will be seen that section 84 (1) provides that an appeal against an assessment shall lie to the Deputy Commissioner. Section 84 (2) enacts that the Deputy Commissioner on hearing the appeal may refer the matter to the High Court if he entertains a reasonable doubt as to the liability to, or the principle of assessment of, the tax. Section 86 (1), in our opinion, is in clear terms: It enacts that no objection may be taken to an assessment other than in the manner provided for in the Act.

Mr. Nawal Kishore has quoted to us some authorities of this Court which lay down that the provision in section 86 (1) does not apply if the assessment is illegal or *ultra vires*. One of the cases cited, *Municipal Committee, Delhi v. Mst. Moti Jan* (1),

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however, is a decision relating to section 152 of the Act which concerns the control of prostitutes. The decision in this case has clearly nothing to do with the point in dispute here. *District Board, Sialkot v. Sultan Muhammad Khan* (1) does not deal with the Municipal Act at all. It deals with the Punjab District Boards Act. *Municipal Committee, Pind Dadan Khan v. Bhagwan Singh* (2) is the only case in point. A case decided by a learned Single Judge of this Court certainly appears to be an authority in favour of the contention of Mr. Nawal Kishore.

With great respect we think the decision in *Municipal Committee, Pind Dadan Khan v. Bhagwan Singh* (2) is wrong if the learned Judge means to lay down that a tax once assessed can be disputed in any other way than that laid down in sections 84 and 86. 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. In this case counsel for the appellant is either making an "objection to an assessment" or he is not. If he is taking an objection to an assessment he certainly ought, under section 84, to have gone to the Deputy Commissioner, and section 86 enacts that he cannot proceed in any other manner. If, on the other hand he is not objecting, there is no reason for him to come to Court.

We are satisfied that this suit is definitely barred by section 84 and section 86 of the Municipal Act. The appeal, therefore, is dismissed with costs.

P. S.

*Appeal dismissed.*

(1) 1928 A. I. R. (Lah.) 53; (1928) I. L. R. 9 Lah. 340.

(2) 1924 A. I. R. (Lah.) 619.