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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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Date of Decision: 03.04.2025

National Fertilizer Limited**... Appellant****V/S****Municipality Bathinda****.... Respondent****CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL**

Present: Mr. Ashwani Talwar, Advocate for the appellant.

Mr. Sanjeev Soni, Advocate and
Ms. Tara Dutt, Advocate for the respondent.

SUVIR SEHGAL, J. (ORAL)

1. Assailing concurrent findings recorded by two courts, appellant-plaintiff is in second appeal before this Court.
2. Brief facts leading to the filing of the appeal are that plaintiff, a Government of India Undertaking, is in the business of manufacturing fertilizer at its factory premises located within the municipal limit of Bathinda. It was importing low sulfur heavy stocks (LSHS)/petroleum stock, which was one of the essential items for manufacture of fertilizer. By letters dated 25.04.1988 and 13.05.1988, respondent raised additional bills stating that the octroi on LSHS was chargeable @ 2% ad valorem as per schedule which came into force w.e.f. 01.01.1984, but it was being charged at 1%. Matter remained in correspondence between the parties and the defendant started recovery



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proceedings under Section 81 of the Punjab Municipal Act, 1911 (for short 'the Act'). An application was filed before the Executive Magistrate, Bathinda for recovery of an amount of Rs.79,32,857.32/- and upon receiving notice, plaintiff filed objections, which were rejected. Plaintiff was ordered to pay the said amount within a period of one month. Plaintiff claims to have filed an application for obtaining the certified copy of the order, but it was declined on 27.10.1988, resulting in the institution of a suit for declaration and permanent injunction on 01.12.1988.

3. Upon being served, defendant appeared and contested the suit by filing a written statement, wherein various preliminary objections were taken including an objection as to the maintainability of the suit. It was averred that the plaintiff has an alternate remedy under the Act, instead, present suit has been filed, which is not maintainable. On merits, it was stated that the fact that the LSHS was being imported by the plaintiff from 01.01.1984 which came to the notice of the defendant in February, 1988 and upon discovering the mistake, notices for recovery of balance octroi were issued. A categorical stand was taken that the factory premises were located within the municipal limits of Bathinda and the plaintiff was bound to pay the octroi. Plaintiff filed replication to the written statement reiterating its stand. Trial Court framed issues on the basis of the pleadings of the parties, who led evidence in support of their respective case. By judgment and decree dated 31.03.1990, Trial Court dismissed the suit, while holding that the civil court had the jurisdiction to entertain the suit. Plaintiff remained unsuccessful in the first appeal, which was dismissed by the learned District Judge, Bathinda, vide



judgment dated 12.09.1991, resulting in the institution of the present appeal.

4. I have heard counsel for the parties and considered their respective submissions, besides examining the record with their able assistance.

5. At the outset, counsel for the respondent has raised an objection that the civil suit is not maintainable. He has invited the attention of the Court to Sections 84 and 86 of the Act, which came up for consideration before a Full Bench of this Court in **Kelash Nath and others Versus Municipal Committee, Batala, 1962(2) ILR Punjab, 133.**

Noticing the provisions of the Act as well as judicial precedents, this Court has observed as under:-

“Section 84 of the Punjab Municipal Act provides for an appeal against assessment or levy of any tax. It also makes a provision for reference to the High Court. Section 86 says that no objection can be taken to any valuation or assessment, nor can the liability of any person to be assessed or taxed be questioned except as provided in the Act. This section certainly provides a bar which is confined to matters covered by the Act. When the matter for decision is whether the octroi should be levied under one item or the other of the Octroi Schedule on particular goods and the assessing authority comes to the conclusion that it is leviable under a particular item, e.g., item 122 in the present case, it cannot possibly be said that action of the assessing authority is in excess of or in contravention of the powers conferred on it by the statute. As it is a clear case of mistake and as no question of jurisdiction is involved, the aggrieved party must seek his remedy



under Section 84 which provides the forum for appeal and reference in the matter of a wrong assessment. The assessing authority is not doing something which it is not empowered to do under the statute because it is not denied that the statute does authorize it to levy duty on particular classes and types of goods at such rates as may be fixed..... ”

6. Concededly, proceedings for the recovery of the balance octroi have been initiated by the defendant by filing a petition under Section 81 of the Act, which culminated in the passing of an order by the Executive Magistrate. The remedy available with the appellant is to challenge the order in accordance with the provisions of the Act. It cannot be disputed that the appellant has an efficacious remedy under the statute, which it has not availed of.

7. Although under issue No. 5, trial Court has held that the civil suit is maintainable, but in view of the legal position as settled by a Full Bench of this Court in *Kelash Nath's* case (supra), which was not brought to the notice of the courts below, finding recorded by the Trial Court deserves to be reversed. This power can be exercised by the Appellate Court under Order 41 Rule 33 CPC in order to do full and complete justice between the parties, even though defendant has not challenged the findings returned by the Trial Court under issue No.5. As a consequence of the above, the civil suit filed by the plaintiff is held to be barred in view of Section 86 of the Act.

8. For the foregoing reasons, judgments and decrees passed by the courts below are set aside. Suit filed by the appellant-plaintiff is dismissed leaving the parties to bear their own costs. Appellant-plaintiff

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will be at liberty to avail the remedy available to it under the Act. It will be open to the appellant to move an appropriate application for the exemption of the period spent by it before the Civil Court till the decision of this appeal.

9. Appeal is disposed off.

03.04.2025
pooja saini

(SUVIR SEHGAL)
JUDGE

<i>Whether Speaking/Reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>