(2016) 05 RAJ CK 0014

In the Rajasthan High Court

Case No : Civil First Appeal No. 70 of 1985

Bhagwan Das APPELLANT

Vs

State of Rajasthan RESPONDENT

Date of Decision : 27-05-2016

Acts Referred:

Citation : (2016) AIRCC 2295 : (2016) 3 RLW 2556 : (2016) 3 WLN 503

Hon'ble Judges : Mr. Goverdhan Bardhar, J.

Bench : Single Bench

Advocate : Mr. Vineet Dave, Advocate, for the Appellant; Dr. P.S. Bhati, AAG assisted by Mr. S.S. Rathore, Advocate and Mr. Lekha Ram Bishnoi, Dy. Govt. Counsel, for the Respondent

Final Decision : Allowed

Judgement

Mr. Goverdhan Bardhar, J.—The present first appeal has been filed by the appellant-plaintiff against the judgment and decree passed by the learned District Judge, Balotra dated 10.04.1985 passed in Civil Original Suit No. 12/79 "Bhagwan Das v. State of Rajasthan" whereby, the suit filed by the appellant-plaintiff was partly decreed.

2. As per facts of the case, on 23.09.74, the Enforcement Inspector made an inspection of the plaintiff''s firm and found that the price and stock registers are not in prescribed forms and further found that price and stock is not shown on the price and stock board and thus contravened the provisions of Essential commodities Act, 1955 [hereinafter referred to as ''the Act of 1955'']. The Enforcement Inspector prepared a stock list and seized all the goods and thereafter, filed an application before the Collector, Barmer to confiscate the goods and vide order dated 21.01.75, the District Collector, Barmer ordered to confiscate the goods.

3. The District Collector, Barmer also constituted a committee for auctioning the seized goods and the Committee constituted for auctioning of goods estimated

the value as Rs. 25,000/-, however, the goods were auctioned for a sum of Rs. 5,125/-.

4. The appellant preferred an appeal before the court of learned Sessions Judge, Balotra against the said order of confiscation and the learned Sessions Judge vide his order dated 18.10.1976 allowed the appeal and set aside the order of District Collector, Barmer dated 21.01.75 confiscating the goods in question and directed that the goods confiscated be repaid in accordance with provisions of Section 6-C(ii).

5. The appellant preferred a writ petition before this Court being S.B. Civil Writ Petition NO. 157/1978 ''Bhagwan Dass v. State & Ors'' with the prayer that the goods were sold arbitrarily for a paltry sum of Rs. 5125/- though the goods were worth Rs. 28,000/- therefore, he is entitled to be paid the price of goods at the market rate prevalent in the locality on the date of sale as provided in Section 6-C (ii) read with Section 3(3) of the Act. This Court held that since there was disputed question of fact with regard to the market price prevalent in the locality of the seized goods on the date of sale, therefore, it was not possible to resolve the dispute without taking evidence about the market price of such goods and accordingly, the writ petition was dismissed with liberty to the petitioner to take recourse of law on the question of market price of seized goods.

6. The appellant thereafter, preferred a suit for recovery of money in the sum of Rs. 38,378/- claiming the market value of the goods to be Rs. 31,982.50 along with interest @ 9% in the total sum of Rs. 43,503/- after deducting Rs. 5,125/- received by him.

7. On the basis of pleadings of the parties and evidence on record, the learned Judge partly decreed the suit and plaintiff was held to be entitled to Rs. 5043.08.

8. Feeling aggrieved by the aforesaid judgment and decree, the appellant plaintiff has preferred the present appeal.

9. Learned counsel for the appellant submits that the learned District Judge has not considered the effect of provisions contained in Section 6-C(ii) of the Act of 1955 in proper manner and in view of the acquittal of the appellant, the appellant is entitled to the price of goods seized which is required to be calculated at the market rate prevailing in the locality at the time of seizure of the goods and it was not open to the learned District Judge to enter into extraneous considerations relating to alleged deterioration in regard to condition of battery cells. It is further argued that at the time when the goods in question including the Battery cells were seized, they were intact and in good condition and the learned trial Judge was only required to determine as to what was the prevailing market rate of the goods at the time of seizure or at the time of auction of goods and the fact that the market price of the goods was more than Rs. 25,000/- is incorporated in the order of the Collector dated 03.02.1975.

10. It is further argued that the appellant has clearly mentioned in his deposition

as also produced documentary evidence which is corroborated by the admission of Collector in order dated 03.02.1975 that the market value of the goods prevailing on the date of seizure of goods was more than Rs. 25,000/-. In support of argument, the learned counsel placed reliance on decision of Apex Court in the case of N. Nagendra Rao and Co. v. State of A.P. reported in AIR 1994 SC 2663.

11. Per contra, learned Additional Advocate General argued that the officer incharge on official duty conducted an auction of the seized goods. It is not disputed that the goods were seized and confiscated by the order of the Collector, Barmer and the price there of was later on ordered to be refunded to the appellant by the District Collector, Barmer but it is wrong to say that the goods were sold arbitrarily for a paltry sum of Rs. 5125/-. The goods were sold for a sum of Rs. 5125/- in a public auction and the price of the goods received in public auction has already been paid to the appellant and there remains nothing to be paid to the appellant. It is argued that the appellant plaintiff has failed to establish any negligence on the part of officers but the dispute is only with regard to recovery of damages.

12. Learned counsel for the respondent while referring to Section 15 of the Act of 1955 argued that no suit prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of any order made under Section 3. Section 15 of the Act of 1955 reads as under :-

"15. Protection of action taken under Act.-

(1) No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of any order made under section 3.

(2) No suit or other legal proceeding shall lie against the Government for any damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of any order made under section 3."

13. In view of aforesaid provision of law, it is argued that the auction of the seized goods was done by the officers in good faith and intended to be done in pursuance of order made under Section 3, therefore, appellant is not entitled to initiate any suit for damages.

14. Heard learned counsel for the parties and perused the record.

The learned District Judge had framed following issues on the basis of pleadings of the parties :-

(i) Whether the defendant is entitled to receive the amount of Rs. 31892.55 against his seized goods?

(ii) Whether the defendant appellant is entitled to receive the interest of the said due amount @ 9% per annum?

(iii) What was the actual price of the seized goods and whether seized batteries were outdated ?

(iv) Whether the appellant brothers are partner of the firm, if yes, what is the effect ?

(v) Whether the suit is liable to be dismissed on the ground that firm is un-registered?

(vi) Whether defendant is entitled to receive more amount than what received from auction under the principle of res judicata?

(vii) Whether the suit is time barred ?

(viii) Relief

15. Since Issue No.1 & 3 are connected, therefore, the learned District Judge has decided Issue No.1 & 3 together and while partly deciding the Issue No.1 & 3 in favour of the appellant on the basis of documents Ex. 3 & 4 held that the appellant plaintiff failed to prove that on the date when the goods were seized, the cost of the cells were Rs. 20,172.24 and during the period between the date of seizure i.e. 23.09.74 and date of auction i.e. 25.02.75, how many batteries he could have actually sold. According to the learned District Judge, the life of the batteries was 5-6 months if left unused, therefore, the batteries which were purchased about 4-5 months back lying in the shop of the plaintiff might have been expired and thus, the plaintiff at the most has suffered the loss of one fourth of the amount of cells i.e. Rs. 20172.24 which comes to Rs. 5043.06.

16. Issue no.2 with regard to interest was decided against the appellant plaintiff and it was held that the appellant is not entitled to any interest as neither the learned Sessions Judge, Balotra while acquitting the appellant has not passed any direction for interest nor the High Court has passed any order for interest, therefore, it was held that appellant is not entitled for any interest.

17. Issue no.4 was held in favour of the plaintiff and against the defendants as the defendants failed to produce any evidence in this regard.

18. Issue No.5 with regard to registration of appellant''s firm was decided in favour of the plaintiff as no evidence was produced by the respondents against the plaintiff appellant. Further with regard to Issue no.6, it was held that since the plaintiff has received the amount of goods from the date of order passed by the High Court dated 26.07.1978 and not from the date of judgment by the Sessions Judge dated 18.10.76, therefore, the principles of res judicata was held not to be applicable.

19. Issue no.7 was also held in favour of the plaintiff and against the defendants as the defendants failed to prove that the suit filed by the plaintiff was time barred since the plaintiff had filed the suit immediately after decision of the writ petition filed by the plaintiff before the High Court.

20. In this appeal, the appellant has mainly challenged the findings on Issue No.1, 2 & 3, therefore, re-appreciation of evidence on the findings on Issue No. 4 to 7 are not gone into in this appeal.

21. The case of the appellant in the present appeal is that the goods were sold arbitrarily for a paltry sum of Rs. 5125/- whereas, the goods were worth Rs. 28,000/- and according to the appellant he is entitled to be paid the price of the goods at the market rate prevalent in the locality on the date of sale as provided in Section 6-C (ii) read with Section 3(3) of the Act.

22. It is not in dispute that on 23.09.74 the entire stock of goods in the shop of the petitioner was seized which consisted mostly of shaving blades, battery cells and soaps and the same were confiscated by the order of Collector, Barmer dated 21.01.1975 and later on sold by public auction on 25.02.1975 i.e almost after five months of the seizure.

23. Admittedly, on appeal preferred by the appellant before the court of learned Sessions Judge, Balotra against the said order, the learned Sessions Judge vide his order dated 18.10.1976 allowed the appeal and set aside the order of District Collector, Barmer dated 21.01.75 confiscating the goods in question and directed that the goods confiscated be repaid in accordance with provisions of Section 6-C(2).

Section 6-C of the Act of 1955 reads as under :-

"6C Appeal. -

(1) Any person aggrieved by an order of confiscation under section 6A may, within one month from the date of the communication to him of such order, appeal to [any judicial authority appointed by the State Government concerned and the judicial authority] shall, after giving an opportunity to the appellant to be heard, pass such order as it may think fit, confirming, modifying or annulling the order appealed against.

(2) Where an order under section 6A is modified or annulled by [such judicial authority], or where in a prosecution instituted for the contravention of the order in respect of which an order of confiscation has been made under section 6A, the person concerned is acquitted, and in either case it is not possible for any reason to [return the essential commodity seized], [such persons shall, except as provided by sub-section (3) of section 6A, be paid] the price thereof [as if the essential commodity,] had been sold to the Government with reasonable interest calculated from the day of the seizure of [the essential commodity] [and such price shall be determined-

(i) in the case of foodgrains, edible oilseeds or edible oils, in accordance with the provisions of sub-section (3B) of section 3;

(ii) in the case of sugar, in accordance with the provisions of sub-section (3C) of section 3; and

(iii) in the case of any other essential commodity, in accordance with the provisions of sub-section (3) of section 3.]

24. PW/1 Bhagwan Dass, plaintiff in his statement has specifically stated that the Collector, Barmer had constituted a committee for auction which fixed the reserve price to be Rs. 25,000/-, the document of constitution of committee Ex.6 is placed on record. Further PW/1 has stated that due to keeping the goods in bad condition and unused for 5-6 months, the goods became unusable and thus the price was fixed on lower side.

25. Plaintiff witness PW/3 Jethmal in his statement stated that Estrella battery can be used for 4-6 months, however, in summer days, if batteries are not preserved with proper care, the possibility of leakage in cells cannot be ruled out and its value is diminished.

26. Respondent-defendants'' own witness DW/5 Rang Roop Mal Kothari stated that documents Ex. A/1 to A/4 & A/5 are copies of the proceedings of auction and he admitted that the looking to the quantity of the seized goods, the goods were worth approximately Rs. 25,000/- and reserve price was kept as Rs. 25,000/-. DW/3 Lalchand has admitted that the reserve price of the goods was fixed as Rs. 25,000/- however, no bid was received.

27. DW/1 Satya Narain Kalla, Enforcement officer has admitted in his statement that at the time of seizure of goods, the condition of goods was intact meaning thereby, if the condition of seized goods deteriorated between the date of seizure and date of auction, then the plaintiff appellant cannot be made to suffer the loss of price of the batteries with passing of time.

28. Thus, it is established that the auction of the goods took place after 5 months of its seizure and the commodity became useless due to negligence in keeping the goods in good condition and with proper care or inaction on the part of officers of the respondents.

29. In the case in hand, the committee constituted for auction of the seized goods headed by District Collector had fixed reserve price to be Rs. 25,000/- vide Ex.P/6. Firstly, if the quality of batteries been deteriorated or they had become useless, then the committee would not have fixed the reserve price to be Rs. 25,000/-. The committee after examining the condition & quantity of the batteries had fixed the reserve price to be Rs. 25,000/- for the purpose of auction and therefore, the plea of the respondents that since no bid was received for the batteries at said price, therefore, there was no option but to sell the batteries for Rs.5125/-, is not acceptable. Secondly, if the batteries were sold for a sum of Rs.5125/- for the reason that the batteries had become useless due passing of time or due to negligence of the officers in keeping the goods in good condition & proper care and it ceased to be an essential commodity, the appellant was well within its rights to claim price thereof prevailing in the market on the date of its seizure/auction sale, as if the essential commodity is sold to the Government since it was not possible for the authorities to return the

essential commodity seized by them. As per statements and documents produced on record, it is established that the goods lost its character due to passing of time because of reason that the authorities conducted the auction after 4-5 months of its seizure.

30. Hon''ble Supreme Court in the case of N. Nagendra Rao and Co. v. State of A.P. reported in AIR 1994 SC 2663 has held that the expression ''for any reason'' in Section 6(c)(2) of the Act should be understood in broader and larger sense as it appears from the context in which it has been sued. The inability to return, giving rise to the statutory obligation of deeming it as sale to the Government may arise for variety of reasons and extend to any failure on the part of the Government.

31. Hon''ble Supreme Court in the case of N. Nagendra Rao (Supra) while dealing with this aspect of the matter has held as under :-

"Any commodity continues to be so, so long as it retains its characteristic of being useful and serviceable. If the commodity ceased to be of any use or is rendered waste due to its deterioration or rusting, it ceases to be commodity such less essential commodity. Therefore, if the commodity of the appellant which was seized became useless due to negligence of the officers it ceased to be an essential commodity and the appellant was well within its rights to claim that since it was not possible for the authorities to return the essential commodity seized by them. It was entitled to be paid the price thereof as if the essential commodity had been sold to the Government. The fiction of sale which is Incorporated in Sub-section (2) is to protect the interest of the owner of the goods. It has to be construed liberally and in favour of the owner. The respondents were thus liable to pay the price of the fertiliser with Interest, as directed by the trial Court."

32. Thus, Sub-section (2) of Section 6C ensures that a person who has been prosecuted or whose goods have been confiscated does not suffer if the ultimate order either in appeal or in any proceeding is in his favour. It is very wide in its import as it statutorily obliges the Government to return the goods seized or to pay the value of the goods if for any reason it cannot discharge its obligation to return it. Therefore, the confiscation of the goods seized does not absolve the State from any claim for the loss or damage suffered by the owner for the goods which are directed to be released or returned. There is no evidence on record which goes to show that on the date of confiscation of the batteries, they were not in good condition or lying in the shop for returning it to the company. However, even if it is accepted that the goods might have been deteriorated or rusted in quality or quantity but the liability of the State to return the goods seized upon acquittal of the plaintiff, does not stand discharged by either offering the price of them in whatever condition it was or deducting the cost of seized articles proportionately.

33. As far as the ground of immunity taken by the respondents is concerned, the

sovereign immunity as a defence is never available where the State is involved in commercial or private undertaking nor it is available where its officers are guilty of interfering with life and liberty of a citizen not warranted by law. In both such infringements, the State is vicariously liable and bound constitutionally, legally and morally to compensate and indemnify the wronged person. Thus, if the legislature has enacted a law for compensation or damage for any act done by it or its officers in discharge of that statutory duty then a suit for it would be maintainable.

34. Thus, while deciding the Issue No.1 & 3 in favour of the appellant plaintiff, the appellant is held entitled to be paid the price of the commodity seized in the sum of Rs.25,000/- which was the reserve price fixed by the committee constituted by the District Collector, Barmer so also which was the approximate price of the commodity on the date of auction sale as per admission of DW/5 Rangroopmal Kothari and evidence on record.

35. As far as the issue no.2 with regard to interest is concerned, in para no.13 of the plaint, the plaintiff has specifically stated that plaintiff is entitled to interest @ 9% under the provisions of Essential Commodities Act. The plaintiff has produced document Ex.2 i.e judgment dated 18.10.76 passed by the learned Sessions Judge, Balotara whereby, the appeal against confiscation order dated 2101.75 has been allowed and it has been directed that the appellant Bhagwan Dass is entitled to price of the goods according to Section 6(c)(2) of the Act of 1955. Section 6(c)(2) of the Act provides that where in a prosecution instituted for the contravention of the order in respect of which an order of confiscation has been made under section 6A, the person concerned is acquitted, and in either case it is not possible for any reason to return the essential commodity seized, such persons shall, except as provided by sub-section (3) of section 6A, be paid the price thereof as if the essential commodity, had been sold to the Government with reasonable interest calculated from the day of the seizure of the essential commodity.

36. In view of above discussion and looking to the facts and circumstances of the case, the respondents are directed to pay the price of the commodity seized from the shop of the appellant in the sum of Rs. 25,000/-, inclusive of amount already paid to the appellant, along with interest @ 6% per annum upon the said amount from the date of seizure of the goods i.e. 23.09.74 till its recovery.

37. The appeal is allowed in above terms and the suit filed by the appellant plaintiff is hereby decreed with cost.

