(2008) 09 AHC CK 0069

In the Allahabad High Court

Bharat Timber Stores/House APPELLANT

Vs

Director, Rajya Krishi Utpadan Mandi Parishad and Others RESPONDENT

Date of Decision : 15-09-2008

Acts Referred:

Uttar Pradesh Krishi Utpadan Mandi Adhiniyam, 1964 — Section 17, 20(1), 9

Citation : (2008) 4 AWC 3747 : (2008) 105 RD 530

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Tarun Agarwala, J.—Heard Sri Saghir Ahmad, the learned Counsel for the petitioner and Sri Sri B.D. Mandhyan, the learned senior Counsel assisted by Sri Sattsh Mandhyan, the learned Counsel for the respondents.

2. It transpires that the Secretary of the Mandi Samiti issued a notice dated 6.1.2007 alleging that the petitioner had violated the terms and conditions of the licence granted to him u/s 9 of the U.P. Krishi Utpadan Mandi Adhiniyam, 1964 by selling the wood without paying the Mandi fee and development cess and consequently directed the petitioner to deposit the said fee and cess within 15 days from the date of the receipt of the notice, failing which, proceedings u/s 20(1) of the U.P. Krishi Utpadan Mandi Adhiniyam, 1964 would be initiated for recovery of the amount as arrears of land revenue.

3. The petitioner, on receipt of the said notice, filed an objection before the Secretary, Mandi Samiti stating therein that the petitioner had not violated any condition of the licence. The Secretary, Mandi Samiti rejected the objection of the petitioner, by an order dated 24.2.2007, holding that the notice dated 6.1.2007 was in fact an assessment order u/s 17 of the Act and that it was open to the petitioner to prefer a revision before the Director, Mandi Parishad u/s 32 of the Act. The Secretary, Mandi Samiti further submitted that the petitioner was effecting the sale of the wood in the market area, and as such, was liable to pay

the Mandi fee and development cess. The petitioner, being aggrieved by the said order, filed a revision which was also dismissed by an order dated 4.2.2008. The revisional authority submitted that no proof was filed by the petitioner by way of documents to show that the wood brought in the market area was converted and sold by way of furniture and in the absence of any document, the presumption was, that the wood brought into the market yard was sold in the same form, and, therefore, mandi fee and development cess was payable by the petitioner. The petitioner, being aggrieved by the said order, has filed the present writ petition.

4. The learned Counsel for the petitioner invited my attention to paragraph Nos. 21 and 22 of the writ petition, wherein a specific allegation was made by the petitioner, namely, that no such direction was ever made by the revisional authority to the effect that the petitioner was required to produce the record relating to the conversion of the wood into furniture and, in this regard, the petitioner also applied for a certified copy of the order sheet which was also not given to the petitioner. These specific allegations has not been denied by the respondents in paragraph Nos. 19 and 20 of the counter-affidavit. Consequently, the finding of the revisional authority that the petitioner failed to produce the relevant documents is not supported by any proof especially in the light of the allegations made by the petitioner in paragraph Nos. 21 and 22 of the writ petition which has not been denied by the respondents.

5. Quite apart from this, I find that the entire demand raised by the respondents, was patently erroneous and against the procedure existing under the U.P. Krishi Utpadan Mandi Adhiniyam, 1964 as on date. Mandi fee can be levied and collected under the provision of Section 17 of the Act. No proceedings, under this provision has been initiated by the Mandi Samiti against the petitioner for the levy of Mandi fee for wood brought by the petitioner in the market yard and sold by him thereafter. The finding of the Mandi Samiti that the notice dated 6.1.2007, Annexure-3 to the writ petition was in fact an assessment order, is patently erroneous. The said notice, does not appear to be an order passed u/s 17 of the Act.

6. A bare perusal of the order/notice dated 6.1.2007 clearly Indicates that it is only a notice alleging violation of the licence of the petitioner u/s 9 of the U.P. Krishi Utpadan Mandi Adhiniyam, 1964 and is not an assessment order contemplated u/s 17 of the Act. Consequently, the demand of Mandi fee and development cess made by the respondents pursuant to the order dated 6.1.2007 is ex facie, illegal and without jurisdiction.

7. In view of the aforesaid, the impugned order/notice dated 6.1.2007, the consequential order rejecting the objection of the petitioner by the Mandi Samiti by an order dated 24.2.2007 and the revisional order dated 4.2.2008 all are quashed. The writ petition is allowed.

8. It would be open to the Mandi Samiti to initiate assessment proceeding u/s 17

of the U.P. Krishi Utpadan Mandi Adhiniyam, 1964, if so advised and if permissible under law.

