
(2003) 03 AP CK 0133
In the Andhra Pradesh High Court
Case No : AS No. 3398 of 1987

Bonala Krishna Rao and Another

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 10-03-2003

Acts Referred:

Andhra Pradesh Revenue Recovery Act, 1864 — Section 25
Board of Revenue Act, 1358F — Section 6
Hyderabad Abkari Act, 1316 — Section 3(3)

Citation : (2003) 4 ALD 313 : (2004) 1 ALT 72

Hon'ble Judges : B.S.A. Swamy, J; B. Seshasayana Reddy, J

Bench : Division Bench

Advocate : P.M. Gopal Rao, for the Appellant; Government Pleader for Appeals, for the Respondent

Final Decision : Partly Allowed

Judgement

1. Aggrieved by the judgment and decree in O.S. No. 42 of 1981 on the file of the learned Subordinate Judge, Jagtial, Karimnagar District, wherein the suit filed by the plaintiff was dismissed, the plaintiff preferred the present appeal.

2. The parties are referred as they are arrayed in the suit. The facts leading to the filing of the case are that the plaintiffs father by name Enugu Kochagiri Rao (hereinafter referred to as the lessee) and one Nagabhushanam are the Abkari contractors in respect of a group of sendhi shops, Siricilla during the period 1357 and 1358F (the parties hereinafter referred to as arrayed in the suit). He was also the contractor during the period 1356 to 1359F, which was the turbulent period due to Razakar movement followed by police action in the erstwhile Nizam State. It is also the case of the plaintiff that most of the contractors were unwilling to take the shops on lease and the departmental officials requested them to take the shops on lease; by offering various concessions, and they have not even insisted for a regular contract to be entered into as required under the Hyderabad Abkari Act 1 of 1316F. Acting upon the promise made by the

departmental officials during 1358F, the lessee has taken the group of shops on a monthly rental of Rs. 38,972/-. Since police action was going on at that point of time the shops remained closed for the months of Azur and Dai, and the lessee could not do any business. Consequently the rentals due to the Government could not be paid at that point of time. It is also the case of the plaintiff that his late father, the lessee, along with several other similarly placed contractors submitted an application seeking remission of rentals for those months. Though the Collector rejected their request, on an appeal filed by his late father the senior member of the Board of Revenue, in exercise of the powers u/s 3(3)(o) of the Hyderabad Abkari Act read with Section 6 of the Board of Revenue Act, 1358F by his order dated 8-1-1951 in file No. 51/87/50 recommended to the Government to grant remission of monthly rents for these two months. Thereafter some correspondence was going on between the Government and the lessee in respect of recovery of excise arrears for the period 1356F to 1361F and the lessee was making representations to the officials seeking remission of the amount as per the policy of the Government with regard to the Abkari lease during the turbulent period. Those details were not brought before the Court in clear terms. But in Ex.A-2, dated 8-6-1966, the Collector (Excise), Karimnagar in his proceedings Rc.No. 5749/Ex/58/D1 gave the details of the amounts payable by giving year wise break up of the arrears by the lessee. The relevant portion of Ex.A-2, dated 8-6-1966 reads as follows:

Name of Fasli Name of the defaulter Amount due

1356 Kochagiri Rao 154-30

1357 -do- 14,507-51

1358 Kochagiri Rao and Nagabhushanam 88,378-66

1359 -do- 4,945-35

1361 Nagabhushanam (surety Kochagiri Rao) 11,717-35

Total 1,19,703-17

Of this, remission was granted by the Government in respect of the following years.

1357 Kochagiri Rao 4,818-66

1358 Kochagiri Rao and Nagabhushanam 23,253,42

Total 28,072-08

Balance due from Kochagiri Rao : Rs. 91,631-07

3. From the above it is seen that the substantial arrears claimed by the Government relates to the two months, Azur and Dai of 1358F. In this letter, the Collector recommended to the Government to write off the arrears keeping in view the fact that the son of the lessee, Capt. Vijaya Raghunandan Rao, laid

down his life while defending the borders of the country during the Indo-Pak war, on sympathetic grounds. The said recommendation of the Collector was turned down by the Government in Memo No. T/5236/59-11, dated 29-3-1962, perhaps having come to know of this, on the same date another representation was made by the lessee to the Government, wherein he categorically brought to the notice of the Court that the senior member of the Board on 8-1-1961 requested the Government to reconsider the issue. The said representation was rejected by the Government under Ex.B-9, dated 23-3-1962 in Memo No. T/1029/62-2. On a further representation made by the lessee, the Collector in his proceedings dated 2-7-1970 deducted the sale proceeds the pronotes held by the Government i.e., Rs. 30,000/- and fixed the arrears payable as Rs. 61,631-07 for the period 1358F. Ultimately the Collector issued a notification to bring the immovable properties held by the lessee to auction as if the lessee is in arrears of land revenue u/s 36 of the A.P. Revenue Recovery Act, 1864. Questioning the said notification the lessee filed the present suit in O.S. No. 42/81 seeking rendition of accounts on the claim of the defendants in respect of sendhi contracts for the years 1356F to 1361F and for a direction to the defendant to pay the plaintiff the amount that may be found due and for permanent injunction restraining the defendant and his subordinates for taking coercive action for recovery of Rs. 61,631-07 as arrears under the sendhi contract. The defendant filed the written statement as per their version claiming the amounts. On the above pleadings the Court below initially by order dated 23-6-1981 framed the following issues:

1. Whether the Government of A.P. granted remission of 2 months rental for 1358F as per the order of Board of Revenue dated 8-1-1951 in File No. 51/81/50 and whether the defendant is bound by it?
2. Whether the plaintiff is entitled to claim return of penalties imposed on him by virtue of his having been acquitted by Criminal Court by charge of illegal tapping?
3. Whether the tree tax collected for 2 months for which remission is alleged to have been granted is liable to be returned to the plaintiff or adjusted?
4. Whether there are reciprocal claims and counter-claims between the plaintiff the defendant and whether there is a need for taking accounts to arrive at the alleged dues recoverable from the plaintiff?
5. Whether the defendant is entitled to recover the suit amount from the plaintiff?
6. To what relief?

4. Subsequently on 12-6-1987 the Trial Court framed the following additional issue:

5. Whether the plaintiff No. 1 stood surety for Nagabhushanam Abkari Contractor towards his Excise Contract of Tippapoor Village, for the year 1361F and whether the alleged surety bond and the solvency certificate papers are true, genuine and binding the plaintiff as pleaded by the defendant?

6. During the pendency of the suit the lessee died and his son and granddaughter has come on record as the legal representatives. Plaintiff No. 2 was examined as P.W.1, and as many as 27 documents, Exs.A-1 to A-27, were marked in support of his case. The Excise Inspector, Huzurabad was examined as D.W.1 and Exs.B-1 to B-16 were marked. The Court on appraisal of the entire evidence by judgment and decree dated 31-8-1987 dismissed the suit by holding against the plaintiff. Hence the present appeal.

7. When the matter came up before the learned Single Judge, a reference was made to place the matter before a Division Bench by order dated 10-12-2002 framing the following issues to be decided by the Division Bench:

1. Whether Ex.A-1 is only recommendatory or mandatory?
2. Whether the respondent Government is bound by Ex.A-1 or not?
3. Can it be said that the subsequent rejection orders by the Government override Ex.A-1?
4. Whether Ex.B-16 was proved in accordance with law in the facts and circumstances of the case?
5. Whether the demand made is in accordance with the provisions of the Revenue Recovery Act?

8. Before going into the aspects we would like to look into the extract of the accounts filed by the defendants, which was marked as Ex.B-10. Firstly the entries in Ex.B-10 were not proved by producing the original books of accounts. Secondly in Ex.B-10 the department has given the arrears for year wise. As far as 1356F is concerned the arrears are only Rs. 154-30, perhaps this figure relates to the rentals for trees. This amount appears to be tree tax paid by all the lessees. For Fasli 1357 it is shown that the lessee has to pay rentals. It is to be seen whether the lessees have to pay the rentals for several months including the penalties levied. The amount was modified as Rs. 3,302-36. But note is appended stating that as per the Collector's letter in Memo No. 1029/T2/62-2, Revenue, dated 23-4-1962, this amount and another amount of Rs. 1,516-30 were given as remission. In all Rs. 4,818-66 was given as remission. Under what circumstances this remission was given has not seen the light of the day. Ultimately the department arrived at a figure of Rs. 9,843-15 including the penalties levied for 1357F. For the period 1358F also the arrears of rentals for shop wise, which were taken on lease by the lessee were shown and the total amount due including the penalties was arrived at Rs. 88,378-66. Again we noticed that an amount of Rs. 23,253-42 was given remission as per the orders of the Collector (Excise) in Lr.No. 59/10, dated 28-7-1959. After deducting that amount the net recoverable amount was shown as Rs. 65,125-24. For the year 1361F it was shown that Nagabhushanam as a lessee was in arrears of 11,717-33. For the year 1359F an amount of Rs. 1,199-59 was shown as due towards tree tax. In this it is also shown that some penalties levied, remained

unpaid. Lastly for the year 1359 F the amount due was shown as 4,945-35. Ultimately the total was arrived at Rs. 91,885-77 for all these years. But no evidence whatsoever was forthcoming as to how the remissions were given reflecting the true account. Be that as it may, as referred supra, on a further representations made by the lessee by order dated 2-7-1970 in Ex.A-3 an amount of Rs. 30,000/- was given credit to by the Government towards sale proceeds of the pronotes given by the lessee. Ultimately total arrears payable were arrived at Rs. 61,631-07 for the year 1358F.

9. It is also on record that the Government in G.O. Ms. No. 1438, Revenue (T) Department, dated 21-7-1959, which is marked as Ex.A-13, granted remission for the relevant periods i.e., 1357F and 1358F in Telangana area as per the decision of the Government for the years 1357F and 1358F amounting to Rs. 7,75,560-20. In this order under item No. 2 an amount of Rs. 76,129/- was given towards remission for Karimnagar District. The case of the plaintiff is that the remission given under this G.O. relates to the rentals due from him. It is true that an amount of Rs. 76,129/- representing the rentals payable by the lessee for two months in question was given remission for Karimnagar District. But no evidence was placed before the Court in this aspect.

10. It is also interesting to note the senior member of the Board of Revenue dated 8-1-1951 to give remission for two months that no reference was made on the recommendation of the senior member of the Board of Revenue to grant remission to the lessee. The case of the defendants is that since the order of the Board is only recommendatory, the plaintiff cannot seek remission on that ground.

11. One of the terms of references is whether Ex.A-1 is only recommendatory or mandatory. It is not in dispute that the Hyderabad Abkari Act (Act No. 1 of 1316F) enables the Government to nominate the appellate authorities against the orders passed by the original authorities u/s 3(3Xo), which reads as follows:

"declaring in what cases or class of cases and to what authorities appeals shall lie from orders whether original or appellate, passed under this Act or under any rule made thereunder, or by what authorities such orders may be reviewed or revised, and prescribing the time and manner of presenting appeals, review and revision petitions and the procedure for dealing therewith."

12. From the above provision it is seen that the orders passed by various authorities are subjected to appeals and thereafter revision. Ex.A-1 shows that the senior member passed a Judicial Order but not in exercise of executive power. The very order stated that the appeal was filed against the orders of the Excise Commissioner, dated 12-7-1950. In the top of the order it is shown as "judgment of the Board of Revenue" and it is also shown file No. 51/87/50 (Excise Appeals).

13. From this it is seen that the mode of recommendation to the Government, perhaps as per the practice prevailing then. But the action taken on the

recommendation has not seen the light of the day. On that ground the order cannot be treated as an order without legal sanctity. The order is fully couched in the judicial language and the learned Counsel for the respondent could not persuade us to take any different view than that of the one that it is a judicial order. When once it is a judicial order, if any party i.e., Excise Commissioner or the lessee, are aggrieved by misorder they have to prefer a revision before the Government or an appeal before the authorities concerned. That was not done in this case. Hence the order of the senior member of the Board of Revenue has to be interpreted as a mandatory order, but not as a recommendatory one as contended by the respondent. Assuming for argument sake that the order is recommendatory one, the Government did not pass any order either accepting or rejecting the recommendation. There is no iota evidence placed before the Court as to the action taken by the Government on the order of the senior member. The very silence on the part of the Government gives us an impression, that they have no objection for the recommendation made by the senior member. Next, it is not in dispute that during these two months there was unrest due to the police action resorted to, by the erstwhile Nizam. In fact the lessee in this case and several others could not run the business due to the disturbances. When once the Government granted remission to various other lessees no reason whatsoever was forthcoming in rejecting the claim of the lessee in this case. Since the file relating to G.O. Ms. No. 1438 found to be missing, a doubt is lingering in our mind that the remission of rentals given to Karimnagar District may relate to Siricilla group of shops for two months, as the remission was given for Karimnagar District. Be that as it may since we have held that Ex.A-1 is an order and unless it is set aside by a competent forum it has to be given effect to and the Government cannot refuse to grant remission for these two months without passing any order to that effect.

14. The third issue remained for consideration is - can it be said that the subsequent rejection orders of the Government override Ex.A.1. We have already referred to circumstances from 1966 onwards. Nowhere reference was made to Ex.A-1 order and the Government rejected the request of the lessee without reference to Ex.A-1 order. In fact when the recommendation of the Collector that the arrears may be written off on humanitarian ground i.e., on the ground of death of the son of the lessee while defending the borders of the country, paid deaf ear in the representation of even date the lessee categorically stated in para-3 that the recommendations for remissions recommended by the original authorities are not just and adequate and quite disproportionate, the petitioner filed an appeal before the Board of Revenue and the senior member of the Board of Revenue after considering the case of the petitioner recommended to the Government to give the remission of rentals due for these two months period. In paragraph-4 it is categorically stated that in the course of the enquiry it was revealed that both the orders were not communicated to the Government for consideration or otherwise. Though the lessee stated that the order of the Board of Revenue was not communicated to the Government the respondent did not

place their case on that count. They only stated that the order in Ex.A-1 was only recommendatory and it cannot be considered. Be that as it may, when it was brought to the notice of the Government we feel that the Government is duty bound to get the matter examined thoroughly and give a decision whether the order passed by the Board of Revenue is a valid one or not, more so in the light of the orders issued in G.O. Ms. No. 1438. Accordingly we hold that Ex.A-13 the orders passed by the Government as well as other authorities refusing to give remission to the lessee for the two months cannot override the order passed by the Board of Revenue in Ex.A-1, since it is a Judicial Order.

15. Coming to issue No. 4 (i.e.,) whether Ex.B-16 said to have been executed by late Kochagiri Rao undertaking to pay the amount not exceeding Rs. 16,000/- for the amounts payable by his partner Nagabhushanam, was proved in accordance with law. A cursory look at the bond gives us an impression that the bond might have been executed in Court proceedings and cannot be treated as surety bond for payment of arrears. Secondly the amount of Rs. 16,000/- is the amount payable towards fine. Admittedly this cannot be treated as a surety bond for payment of arrears of rental. A reading of the bond shows that it was executed on 19-11-1951, but surprisingly the Superintendent made an endorsement on 9-11-1951. It is not known as to how the Superintendent made the endorsement much earlier to the execution. Further the bond is said to have been executed in the erstwhile Hyderabad State. As per Article 299 of the Constitution of India every agreement has to be entered into in the name of Raj Pramukh and that therefore Ex.B.16 cannot be treated as security bond. Hence we hold that Ex.B.16 is not proved in accordance with law.

16. Accordingly, coming to issue No. 5 whether notification bringing the immovable properties of the lessee to sale is in accordance with the provisions of the Revenue Recovery Act. Admittedly, the procedure prescribed under the Act to bring the properties for sale was not followed by the respondent. u/s 25 of the A.P. Revenue Recovery Act, a demand notice to be served prior to attachment of land. Before a Collector, proceeds to attach the land of the defaulter, or buildings thereon, he shall cause a written demand to be served upon the defaulter, specifying the amount due, the estate or lands in respect of which it is claimed, the name of the party in arrear, the batta due to the person who shall serve the demand and the time allowed for payment, etc. Admittedly, before invoking the provisions of the A.P. Revenue Recovery Act the lessee was not given a notice as contemplated u/s 25 of the Act. On this ground also the impugned notification suffers.

17. It is also on record that as per in Ex.A-11 dated 2-2-1958, that all excise arrears as accrued up to 1-10-1956 in respect of compounding fees, penalties for illicit tapping and for infringement of other rules were be written off. Since we have held that the plaintiff is entitled for remission for two months and the present order of the Government relates to tree tax only we need not go into that question at this belated stage.

18. In the light of the foregoing discussion we hold that the plaintiff is entitled to get remission for two months period. Since the Government is now claiming only Rs. 61,631-07 as arrears, we need not go into the other aspects since there is no proper evidence on this aspect.

19. It is made clear that the defendant cannot recover even a single paisa from the plaintiffs on any count. In fact defendant has to pay the amounts after deducting the amounts claimed by it after giving remission, but, since there is no relief sought for in the suit, we are not inclined to grant any relief seeking refund of the balance amount payable to the plaintiffs.

20. For the foregoing reasons the judgment and decree in OS No. 42/1981 on the file of the learned Subordinate Judge, Jagtial under appeal is set aside and the suit is allowed to the extent indicated above.