(1955) 09 BOM CK 0061

In the Bombay High Court

Case No : A.F.O. No. 87 of 1954

Borough Municipality, Chalisgaon — APPELLANT

Vs

Chalisgaon Shree Laxminarayan Mills Co. Ltd. and Another — RESPONDENT

Date of Decision : 12-09-1955

Acts Referred:

Bombay District Municipal Act, 1901 — Section 167, 46, 60, 86
Specific Relief Act, 1877 — Section 54, 56

Citation : AIR 1956 Bom 646

Hon'ble Judges : Shah, J

Bench : Single Bench

Advocate : R.B. Kotwal, G.R. Samant and V.V. Divekar, for the Appellant; Y.V. Chandrachud, for the Respondent

Judgement

1. The Borough Municipality of Chalisgaon issued a bill for Rs. 1493-6-0 against the Challsgaon Shri Laxminarayan Mills Company, Limited for recovery of consolidated property tax. Instead of paying the amount, the Mills filed suit No. 308 of 1951 in the Court of the Civil Judge Junior Division. Chalisgaon for a declaration that the bill sent by the defendant to the plaintiff was not legal and for a declaration that the defendant Municipality had no right to recover the amount of the bill and for a permanent injunction restraining the defendant Municipality from recovering the amount of the bill.

Alternatively, it was prayed that if it was held that the rules framed by the Municipality were legal, the plaintiff claimed a declaration that the Municipality had no right to levy such part of the taxes as had been increased and for a permanent injunction restraining them from recovering such increased part of the taxes''.

2. The defendant Municipality resisted the suit and contended inter alia that the suit for a declaration that the bill was illegal and for an injunction restraining the Municipality from re-covering the tax could not lie in view of the provisions of Section 56 of the Specific Belief Act.

3. The learned Trial Judge raised a preliminary issue whether the suit filed in the form in which it was filed was maintainable, and he held that the suit was not maintainable and dismissed the plaintiff''s suit. Against the decree dismissing the plaintiff''s suit, the plaintiff preferred an appeal to the District Court.

On appeal to the District Court, the learned District Judge held that the suit as filed was maintainable. The learned Judge accordingly reversed the decree passed by the trial Court and remanded the suit for disposal according to law on merits. Against the order of remand the Municipality has come to this Court in appeal from order.

4. Now, substantially the suit filed by the plaintiff is a suit for a declaration that the rules framed by the Municipality are illegal and for an injunction seeking to restrain the Municipality from recovering either the full amount of the tax as claimed or the amount of the tax in excess of the amount which could be recovered from the Mills.

The suit is not merely a suit seeking to restrain the Municipality from recovering the amount of the tax under the bill, but a suit for a declaration as to the illegality of the rules. Section 56(i) of the Specific Relief Act provides that an injunction cannot be granted when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust.

Now, it is true that if the plaintiff had an equally efficacious relief by any other mode of proceeding, the Court would not grant an injunction. Mr. Kotwal who appears on behalf of the Municipality has suggested that the plaintiff had another remedy which would have been equally efficacious, & that remedy was first to pay the amount of tax and then to file a suit for recovery of the amount, claiming that the tax was illegal on the ground mentioned.

In my judgment, such a remedy cannot be regarded as equally efficacious. The plaintiff desired to obtain a declaration that the rules framed by the Municipality were illegal, and on that footing he denied the claim made by the Municipality. The remedy suggested by Mr. Kotwal of paying the tax and claiming a refund cannot be regarded as an equally efficacious relief.

5. Mr. Kotwal relied upon the judgment in Chunilal v. Surat City Municipality 27 Bom 403 (A), in support of the contention that where the Municipality has issued a notice of demand for recovery of a tax, a suit restraining the municipality from recovering the tax would not lie. But it appears that in that case the legality of the rules which permitted the recovery of the house tax, recovery of which was sought to be resisted was not challenged.

On certain grounds it was sought to be contended that the tax in respect of a period before the date of the suit could not be recovered, and the Court held that in such a case the plaintiff should have paid the tax and should have claimed refund. It also appears that in that case the plff. had the remedy of filing an appeal under Bombay Act III of 1901 and that remedy was not resorted to by the plaintiff.

The Court held that Section 86 was permissive and it did not make it incumbent in every case upon a party complaining of an illegal levy of a tax by a Municipality to appeal against the action of the Municipality to a Magistrate before suing in a civil Court. But it confirmed the decree of the trial Court dismissing the plaintiff''s suit on the ground that Section 86 did give a remedy to the plaintiff which was equally efficacious.

The Court held that it was discretionary for a Court to grant an injunction & that discretion must be exercised judicially and with extreme caution and only in very clear cases. In that case, the trial and the First Appellate Court had refused to grant an injunction, and the High Court confirmed the decree of the Courts below. The High Court was of the view that an equally efficacious remedy which the plaintiff had was of appealing to a Magistrate instead of going to a Civil Court.

It was not held that the remedy of paying the monies and then filing a suit was an equally efficacious remedy. It is true that in that case the Court observed that there existed a standard for ascertaining the actual damage likely to be caused to the plaintiff and hence also injunction was not a proper relief. But where a question as to the legality of a recurring liability is raised there would be no adequate standard for ascertaining actual damage.

6. It is true that injunction is an equitable relief, and the Court will not grant that relief it damages could, in the circumstances of the case, be an adequate relief. But, as already stated, the substantial relief claimed by the plaintiff is as to the declaration of invalidity of the claim.

7. On that view, the appeal fails and Is dismissed with costs.

8. Appeal dismissed.

