(2000) 01 P&H CK 0018

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 1101 of 1980

Commissioner, Municipal Corporation and Others	APPELLANT
Vs	
Kashmiri Lal	RESPONDENT

Date of Decision : 13-01-2000

Acts Referred:
Punjab Municipal Corporation Act, 1976 — Section 149

Citation : (2000) 125 PLR 743 : (2000) 3 RCR(Civil) 442

Hon'ble Judges : R.L. Anand, J

Bench : Single Bench

Advocate : Harsh Aggarwal, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

R.L. Anand, J.—Commissioner, Municipal Corporation, Ludhiana and others filed the present Regular Second Appeal and it has been directed against the judgment and decree dated 14.5.1979 passed by Additional District Judge, Ludhiana, who dismissed the appeal of the defendant-appellants by affirming the judgment and decree dated 5.10.1978 passed by Sub Judge, 1st Class, Ludhiana, who decreed the suit of the plaintiff-respondent Kashmiri Lal, proprietor of M/s Prem Mart, Meena Bazar, Ludhiana and granted an injunction in favour of the plaintiff-respondent against the defendant-appellants and restrained them from recovering Rs. 6,000/- by way of penalty.

2. The facts of the case are as follows:-

Kashmiri Lal filed a suit for permanent injunction against the defendants seeking injunction that the defendants be restrained from realising a sum of Rs. 6,000/- by way of penalty from him. The case set up by the plaintiff was that the employees of the Municipal Corporation, Ludhiana seized truck No. DHG-437, which was carrying some articles. As per the employees of the Corporation, the driver of the truck/owner of the goods was supposed to pay octroi charges amounting to Rs. 300/- to the Corporation before entering the municipal limits of the Corporation. Since the octroi charges amounting to Rs. 300/- have not been paid, therefore, the driver of the truck or owner of the goods is liable to pay penalty amounting to Rs. 6,000/-. The truck contained a consignment of 400 packages of paper weighing 100 quintals. These packages were despatched by M/s Adarsh Paper and Board Manufacturing Company, Shamli road, Muzzafarnagar, U.P. The said goods were booked vide truck No. DHG 437 to Ludhiana on 5.5.1977. The driver of the truck was Bhajan Singh. A newly set up octroi post was installed on G.T. Road and the driver of the truck was not aware of the new barrier. There was no signal or warning light on the road to warn any incoming truck towards the Octroi barrier. The truck driver crossed the barrier followed by a jeep. The jeep was stopped and the driver of the truck enquired to ascertain the location of the octroi post. The driver thereafter returned the truck but the occupants of the jeep stopped the truck and told the truck driver to follow the jeep. Thereafter the truck was seized and the driver of the truck was required to pay Rs. 300/- towards octroi and a sum of Rs. 6,000/- as penalty. Despite the explanation offered by the driver of the truck, the Municipal staff insisted that the truck would not be released unless a sum of Rs. 6,300/- is not paid. The case set up by the plaintiff is that the defendants are not entitled to this amount as there was no mala fide intention on the part of the plaintiff or the driver of the truck to deprive the Corporation of the octroi charges.

3. The suit was contested by the Corporation on the ground that the plaintiff had intentionally tried to avoid the payment of the octroi tax. The staff had detected the evasion of octroi tax on special raid organised on 5.5.1977. The driver of the truck admitted vide his statement dated 5.5.1977 that he had imported the goods without the payment of octroi tax. The Corporation also raised the plea that the Civil Court has no jurisdiction to try the suit which is barred u/s 149 of the Municipal Corporation Act. It was also pleaded that the suit is bad for want of notice u/s 396 of the Municipal Corporation Act. On merits, the stand of the Corporation was that the octroi barrier exists on the G.T. Road and a notice board of the octroi post has been displayed on the road side. With above broad defence, the defendant-Corporation prayed for the dismissal of the suit.

4. From the pleadings of the parties, the trial Court framed the following issues:-

1. Whether this Court has no jurisdiction to try the present suit? OPD

2. Whether the suit is not maintainable as no notice u/s 396 of the Punjab Municipal Corporation Act has been served on the defendant? OPD

3. Whether any cause of action has accrued to the plaintiff? OPP

4. Whether the plaintiff is entitled to the injunction as claimed in the suit? OPP

5. Relief.

5. The parties led evidence in support of their respective cases and all the issues were decided in favour of the plaintiff and against the defendants and finally the suit was decreed.

6. Aggrieved by the judgment and decree of the trial Court, the defendant-Corporation filed the appeal before the first Appellate Court i.e. Additional District Judge, Ludhiana, who for the reasons given in paras 4 to 8 of the judgment dated 14.5.1979, which read as under, dismissed the appeal.

"4. The findings of the learned trial Court

*** *** *** [Paras 4 to 8 omitted - Editor]

7. Again aggrieved by the judgment and decree of the courts below, the Corporation has come in the present appeal.

8. I have heard Mr. Harsh Aggarwal, Advocate on behalf of the appellants and with his assistance I have gone through the records of this case.

9. The principal argument which was raised by the learned counsel for the appellants is that the suit of the plaintiff was barred u/s 149 of the Punjab Municipal Corporation Act, 1976 and that the Civil Court had no jurisdiction to entertain the suit. In order to appreciate the contention raised by the learned counsel for the appellants, it will be proper for me to incorporate the wording of Section 149, which lays down as follows:-

"149. Taxation not be questioned except under this Act.- (1) No objection shall be taken to any valuation or assessment, nor shall the liability of any person to be assessed or taxed be questioned, in any other manner or by any other authority than is provided in this Act.

(2) No refund of any tax shall be claimable by any person otherwise than in accordance with the provisions of this Act and the rules thereunder."

10. Now it is to be seen whether the provision of Section 149 is applicable to the facts in hand or not. A reading of the above section would show that the jurisdiction of the civil court has been barred only with regard to the imposition of any tax or with regard to the order of assessment or with regard to any valuation. The word ''tax'' has to be interpreted differently from the ''octroi charges''. We all know that the Corporation has the power to impose tax like the State Government. It has also the power to make assessment with regard to a duty chargeable on a particular item. When the goods are brought within the Municipal limits of the Corporation, the statute of the law gives powers to that Corporation to claim octroi charges. Such charges are in the nature of imposition of an amount because the importer of the goods want to sell the same within the Municipal limits of the Corporation. The law has always made a clear distinction between the ''tax'' and the ''octroi charges''. A reading of the section would show that it does not prohibit any person to challenge the imposition of any penalty. In the present case the plea of the Corporation is that since the octroi charges of Rs. 300/- have not been paid, therefore, a penalty of Rs. 6,000/- should be imposed upon the driver of the truck or the owner of the goods when he failed to pay the octroi charges and thus an amount of Rs. 6,300/- should be paid. If a penalty is going to be imposed on a person, he can certainly challenge the same

by saying that it has been imposed or likely to be imposed in an illegal manner and that the procedure as required under the law has not been followed. I do not dispute with the powers of the Corporation that it has no power to impose the penalty but before imposing the penalty it has to be shown prima facie that there was a wilful intention or that there was a mala fide intention on the part of the driver or the owner of the goods to deprive the Corporation of the income which is going to be realised or supplemented in the shape of octroi charges. If it is not established that the driver attempted to introduce or tried to introduce dutiable article with the intention to defraud the Corporation or the Committee, in such a situation the penalty cannot be imposed. There can be an honest mistake on the part of a driver of a vehicle. In this case the driver of the vehicle is not going to gain anything. He was not the owner of the goods. The owner of the goods was not even in the vehicle from which it can be inferred that he might have prompted the driver to take the vehicle inside the limits of the Corporation. The stand of the driver was that he rather enquired about the location of the octroi post which was newly installed. It is evident from the record that the new octroi barrier was set up and prior to that the octroi post was near by pass at Ludhiana. He did not cross the old octroi post. He had hardly gone few yards from the new octroi post which was set up by extending the jurisdiction. It has been held in Gian Chand v. The State (1958)60 P.L.R. 539 that in order to constitute an offence u/s 78 of the Punjab Municipal Act, 1911, the Municipality has to prove that the accused attempted to introduce or introduced dutiable articles into the octroi limits with intent to defraud the Municipality of the octroi payable to it. Unless the intention is there, mere introduction of goods into octroi limits without payment of the octroi would not constitute an offence punishable under this section. The present case is, at par with the provisions of Section 78 of the, Punjab Municipal Act, 1911 which has given place to the Punjab Municipal Corporation Act, 1976. It is settled principle of law that when the authorities of the Corporation exceeds its powers or make an abuse of the powers or try to impose the penalty in an arbitrary manner, the Civil Court would have the jurisdiction to, entertain the suit. It has been rightly said by the first Appellate Court that mere entry of the truck in the limits of the Corporation would not confer the power to the Corporation to impose the penalty unless it is further shown that the driver crossed the municipal limits with a view to evade the payment of the tax.

11. No other point was raised before me.

Resultantly, I do not see any merit in this appeal and dismiss the same with no order as to costs.

