

(1955) 11 AHC CK 0011

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 670 of 1955

Devi Dayal and Others

APPELLANT

Vs

The Sales Tax Officer and Others

RESPONDENT

Date of Decision : 04-11-1955

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1956) 7 STC 145

Hon'ble Judges : Chaturvedi, J

Bench : Single Bench

Advocate : S.B.L. Gaur, for the Appellant; The Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

Chaturvedi, J.—This is a petition under Article 226 of the Constitution.

2. There was a rolling mill by the name of Sri Lachhman Rolling Mills and it was working in Kanpur. It was owned and possessed by one Smt. Maina Sundari Jain. Smt. Maina Sundari fell into financial difficulties and she sold the rolling mills to the petitioners under a sale deed, dated 12th January, 1955, free of all encumbrances, for, a sum of Rs. 50,000. Smt. Maina Sundari it appears had not paid sales tax on the turnover for the periods 1949 to 1954. -But the- petitioners were not aware of this liability of Smt. Maina Sundari to pay the sales tax. After the purchase the petitioners put the mill in order and started working it. After the petitioners had started working the mill, they received a notice from the Tahsildar, Sales Tax, Kanpur, demanding the sales tax of the previous five years amounting to Rs. 13,710-12-0. The petitioners filed objections and submitted that they were not liable for the payment of the tax and it was Smt. Maina Sundari who was liable for its payment. It is not known whether the objections were decided or not. But the Additional District Magistrate passed an order on the 9th July, 1955, directing the attachment of the machinery and the building of the mills in connection with the recovery of the sales tax mentioned above. The

petitioners apprehend that under the above order passed by the Additional District Magistrate their property may be attached and their business may be interfered with. The present petition was filed on the 5th August, 1955, and the prayers contained in the petition are that a writ of certiorari be issued quashing the proceedings for the realization of the sales tax from the petitioners and that a writ of mandamus be issued restraining the respondents from realizing the same from them. "

3. No counter affidavit has been filed in the case, though time was once taken to file it; and the facts mentioned above, therefore, must be taken to be proved.

4. The only question for consideration is whether the petitioners, who are the transferees of the mills, are liable to pay sales tax which was levied on their transferor during the period the transferor was working the mills. The liability to pay the sales tax under this Act is on the dealer. "Dealer" is defined in Section 2, Sub-section (c), as meaning any person or association of persons carrying on the business of buying or selling goods in Uttar Pradesh. Section 3 is the charging section and Sub-section (1) of that section contains a provision that every dealer shall in each assessment year be taxed at a certain rate on the turnover of the previous year and the tax shall be determined in such manner as may be prescribed. The liability for the payment of the tax has thus been imposed on the dealer.

5. Section 7 makes it obligatory for every dealer who is liable to pay the tax to submit such return or returns of his turnover of the previous year or the assessment year, as the case may be, and in such form as may be prescribed. Sub-section (2) says that if the assessing authority is satisfied that the returns submitted under Sub-section (1) are correct and complete he shall assess the tax on the basis of the returns. According to Sub-section (3) if no return is submitted or the return submitted is found to be incorrect or incomplete, the assessing authority can determine the turnover of the dealer to the best of his judgment and assess the tax on the basis thereof.

6. Section 8 lays down that this tax shall be paid in such manner and in such instalments and within such time as may be specified in the notice. In default of such payment, the whole of the amount then remaining due shall become recoverable as arrears of land revenue. It is obvious that in default of payment of the tax the whole amount shall be recoverable as arrears of land revenue from the person who is liable to pay the same and against whom the assessment has been made. A new provision has been added in Section 7(c) for the recovery of the tax from the assets of a deceased assessee. But there is no provision anywhere for the recovery of any tax from a transferee of the property belonging to a dealer. The liability obviously is of the dealer on whom an assessment of sales tax should be made and the money can be recovered from him or from his assets in case of his death. The Sales Tax Act does not provide for the recovery of the amount from any person other than the assessee or the dealer. The learned junior standing counsel contended that the assessee in this case must be

taken to be the machinery of the rolling mills. I do not think it is possible to agree with him. The dealer is a person and it is the dealer who is liable to pay the sales tax. The machinery or property of a factory or a mill cannot be said to be the dealer, nor is there any provision in this Act making the tax a charge on the machinery and other property.

7. The petitioners are business men who are carrying on their trade by means of this machinery and the Collector of Kanpur is trying to recover money from them which they are not liable to pay. The demand of this amount is likely to interfere with the fundamental right of the petitioners to carry on their trade. If the sales tax department for some reason which has not been disclosed in this case thinks that the sale deed is invalid, it may bring a suit for setting aside the sale deed. So long as the sale deed stands it is obvious that the sales tax assessed on the previous owner cannot be recovered from the petitioners. The validity of the sale deed has not been challenged in the present proceedings.

8. For the above reasons, this petition is allowed and a writ of mandamus shall be issued to the respondents Nos. 1 and 2 restraining them from recovering the amount of the sales tax for the years 1949 to 1954 from the petitioners as long as they do not succeed in getting the sale deed in favour of the petitioners set aside by some Court or competent authority. The petitioners will be entitled to get their costs of this petition from respondent No. 1.