

(1962) 01 P&H CK 0009
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 213 of 1961

Firm Adarsh Industrial Corporation

APPELLANT

Vs

Market Committee, Karnal

RESPONDENT

Date of Decision : 29-01-1962

Acts Referred:

Administration of Evacuee Property Act, 1950 — Section 48
Constitution of India, 1950 — Article 148
Income Tax Act, 1961 — Section 67
Punjab Agricultural Produce Markets (Amendment) Act, 1961 — Section 41, 41(2)
Punjab Agricultural Produce Markets Act, 1939 — Section 23, 27(1), 27(2), 30, 31
Punjab Agricultural Produce Markets Rules, 1940 — Rule 19
Punjab Land Revenue Act, 1887 — Section 158, 158(2), 67
Punjab Municipal Act, 1911 — Section 193(2), 225
Wheat Act, 1932 — Section 5(1)

Citation : AIR 1962 P&H 426 : (1962) 2 ILR (P&H) 333

Hon'ble Judges : Tek Chand, J; S.B. Kapoor, J

Bench : Division Bench

Judgement

Tek Chand, J.

(1) This matter has come up before this Bench on a reference made by a learned Single Judge as he considered that the questions arising in this case are such as should be disposed of by a larger Bench.

(2) These are two cases which can conveniently be disposed of by a single judgment as the questions to which they give rise are identical. In Civil Revision No. 213 of 1961 the plaintiff is styled as Adarsh Industrial Corporation and in Civil Revision No. 214 of 1961 the plaintiff is firm Jhandu Mal Tara Chand of Karnal. The defendant in both the cases is the Market Committee, Karnal.

(3) Adarsh Industrial Corporation has instituted a suit for a permanent injunction alleging that the defendant-committee by its resolution dated 9th March, 1960 had levied a sum of Rs. 959-59 nP. as market fee against the plaintiff in connection with the alleged purchase of paddy from 6th October, 1959 to 3rd

January, 1960. After the above amount had been levied, the defendant-committee applied to the Collector, Karnal, to recover the said amount from the plaintiff as arrears of land revenue. The plaintiff claimed that the purchase of the paddy had been made from pehowa which was outside the notified market area of Karnal and that no purchase of paddy had been made within the notified market area and, therefore, no fees could be legally levied on such a purchase. It was denied that any transaction or bargain was struck within the notified market area. The contention of the plaintiff is that the levy of the fees by the defendant is illegal, ultra vires, and the fee cannot, therefore, be legally recovered. On these allegations the plaintiff prayed for a decree for permanent injunction restraining the defendant from recovering the amount of Rs. 959-59 nP. as the market fee from the plaintiff.

(4) In the other suit instituted by Jhandu Mal Tara Chand the allegations and the prayer are similar. In their case the defendant-committee had levied an amount of Rs. 524.30 nP. as market fee in connection with the alleged purchase of paddy. The contention of the plaintiff was that the paddy had been purchased from Kurukshetra, Mathlauta and Pehowa, which were places, outside the notified market area of Karnal.

(5) In both the cases, the defendant-committee admitted the levy of the fee, but maintained that the civil Court had no jurisdiction to question the powers of the Collector under the provisions of the Punjab Land Revenue Act. It was asserted that the purchase of paddy was liable to payment of market fee at Karnal as it was "contracted for, bought, weighed and delivered within the jurisdiction of Market Committee of Karnal". It was also maintained by the defendant that the order levying market fee was an appellate order and as no appeal had been filed against that order, it has become final and could not be challenged in the civil Court.

(6) In each case, five issues were framed by the trial Court, but we are concerned with the first issue, which is as under-

"Whether the civil Court has got jurisdiction to entertain this suit?"

(7) The trial Court expressed the view that a fee due to the Market Committee was recoverable as arrears of land revenue through the Collector under Rule 51 of the Punjab Agricultural Produce Markets Rules and the fees levied by the Market Committee were recoverable as arrears of land revenue. It also expressed the view that under S. 78 the proceedings were taken might deny his liability for the arrears or any part thereof and after making a protest in writing at the time of payment he could institute a suit in a civil Court for the recovery of the amount so paid. The plaintiff had, therefore, to pay the amount of the fee under protest first, and then, instituted a suit for its recovery. Reference was also made to Section 158, clause (14) of that Act which barred the jurisdiction of the civil Court. Consequently, the plaint was returned to the plaintiff. This order was challenged but the Senior Sub-Judge dismissed the appeal.

(8) The matter was then taken up in revision in this Court and the learned Single Judge has referred the question arising in this case for hearing before a Division Bench.

(9) Before dealing with the arguments, it will be convenient to refer to the relevant provisions of the Punjab Agricultural Produce Markets Act (5 of 1939) and the Rules made thereunder. Section 19 authorises the Market Committee to levy fees on agricultural produce, brought or sold by licensees in the notified area. Section 23 requires two months' notice for instituting suit against any Market Committee or any member or employee thereof, etc., and the suit has to be instituted within six months from the date of accrual of the cause of action.

Section 27(1) confers power on the Government to make Rules consistent with the Act for carrying out all or any of the purposes thereof. Sub-section (2) of this section specifies items with respect to which Rules may be made as, for instance, item (vii), which refers to maximum fees which may be levied by the Market Committee in respect of agricultural produce bought or sold by the licensees in the notified market area and the recovery and disposal of such fees, and item (xxiv) refers to the realisation or disposal of fees recoverable under the Act or under the Rule of by laws. Section 30 provides appeals in cases in which power u/s 6 has been exercised by a gazetted officer especially empowered in this behalf. Appeal lies to the Government. Section 6 deals with application for licenses and fees to be paid and cancellation or suspension of licences. Sections 6 and 30 taken together do not refer to an appeal from the decision of the Committee in a case like the present. Section 31 provides:

"All sums due from a Market Committee to the Government may be recovered in the same manner as arrears of land revenue."

This section is in marked contrast with the provisions of Section 41 of the Punjab Agricultural Produce Markets Act (23 of 1961) which came into force on 26th May, 1961. Both parties are agreed that the latter Act does not apply to this case as the dues which are being claimed by the Market Committee are for an earlier period, that is, from 6th October, 1959, to 3rd January, 1960 prior to the enforcement of the latter Act. Section 41 of the Punjab Act 23 of 1961 runs as under:

"41. Recover of sum due to State Government from Committee.-

(1) Every sum due from a Committee to the State Government or the Board shall be recoverable as an arrear or land revenue.

(2) Every sum due to a Committee from any person shall be recoverable as an arrear of land revenue.."

Under the provisions of Section 31 of the earlier Act, (Act 5 of 1939), recovery of sums as arrears of land revenue was confined to the amounts which were due from a Market Committee to the Government and did not include the cases of sums due to a Committee from any person. For the first time, a sum due to a

Committee from any person was made recoverable as arrears of land revenue by Section 41(2) of Punjab Act 23 of 1961. This distinction is material for examining the force of the argument based on the principle inclusion-unius est exclusio alterius-the inclusion of one is the exclusion of other.

(10) I may now refer to the relevant provisions of the Punjab Agricultural Produce Market Rules, 1940. Rule 19-A provides appeals against Market Committee's decision. An order passed by a Market Committee under the Act or the rules is made appealable at the instance of the aggrieved party to a gazetted officer not below the rank of a Magistrate of the first class. Under sub-rule (4) the order passed by the appellate authority has been made final and conclusive. Rule 51 requires.

"a fee due to a Market Committee under the Act or these Rules or its by-laws shall, notwithstanding any penalty imposed under Rule 52 be recoverable as arrears of land revenue through the Collector of the district within the boundaries of which the person liable to pay resides or within the boundaries of which the notified market area is situated."

(11) The processes for recovery of arrears of land revenue are of a drastic character as will be seen from the provisions of Section 67 of the Punjab Land Revenue Act and include arrest and detention of the defaulter; and distress and sale of his movable property. u/s 158 of the Punjab Land Revenue Act, a civil Court shall not exercise jurisdiction, inter alia, over any claim connected with or arising out of the collection by the Government or the enforcement by the Government of any process for the recovery of land revenue or any sum recoverable as arrear of land revenue. The last mentioned provision, though referred to by the learned counsel for the respondent, does not appear to have any bearing in this case as it refers to exclusion of civil Courts' jurisdiction in a case connected with or arising out of the collection by the Government and not by any other body like the Market Committee.

(12) I may now deal with the arguments addressed at the Bar. The Punjab Agricultural Produce Markets Act (5 of 1939) nowhere bars the jurisdiction of the civil Court. Section 23 of the Act contemplates institution of a suit, but merely requires that two months' notice must precede such an institution and the suit should be filed within six months of the accrual of the cause of action. The jurisdiction of a civil Court, subject to the conditions specified in this section, is recognised. Regarding recovery of sums as arrears of land revenue, Section 31 confines the process to sum due from a Market Committee to the Government. Thus, from the jurisdiction of the civil Court been taken away not the recovery as arrears of land revenue extends to "realisation of the fee by the Committee from this licensee." This omission has been supplied by Section 41, sub-section (2) of Punjab Act No. 23 of 1961, the provisions of which do not apply to this case.

(13) It was next urged that the jurisdiction of the civil Court is impliedly barred by the Punjab Agricultural Produce Markets Rules, 1940. It is argued that Rule 51

provides a procedure for recovery of fee due to a Market Committee as arrears of land revenue through the Collector of the district and therefore u/s 158(2)(xiv) of the Punjab Land Revenue Act, a civil Court is prohibited from exercising jurisdiction over any claim, connected with or arising out of the collection by the Government, or, the enforcement by the Government of any process for the recovery of land revenue or any sum recoverable as arrear of land revenue.

This argument is unconvincing as the provisions which exclude the jurisdiction of a civil Court in respect of collections or realisations made by Government as arrears of land revenue cannot apply to recoveries of fees made by the Committee. This argument is also assailable on the ground that Rule 51 goes beyond the scope of the Act and is inconsistent with the provisions of Section 31 which confines itself to recovery as arrears of land revenue, in respect of sums due from a Market Committee to the Government. Of course, if the provisions of Section 41(2) of Punjab Act 23 of 1961 were to apply, this contention could not have prevailed, but admittedly the provisions of that Act do not cover this case. If a subject is to be deprived of his right to resort to ordinary Courts of law of his country, it must be so stated in the Act. Exclusion of the jurisdiction of the civil Courts is not to be inferred by a process of ratiocination resting on any statutory rules. It is a firmly established principle that the subject cannot be deprived of his right to resort to the Courts of law of his country except by express enactment. There are no words expressed in the Punjab Agricultural Produce Markets Act (5 of 1939) ousting the jurisdiction of the civil Courts.

This principle was applied by the House of Lords in *R. and W. Paul Limited v. Wheat Commission* 1937 AC 139. In the case before the House of Lords it was provided by Section 5(1) of Wheat Act, 1932, that the Wheat Commission were empowered to make bylaws for giving effect to the provisions of the Act, and without prejudice to the generality of the power conferred by sub-section (1), the bylaws shall in particular provide..... "(m) for the final determination by arbitration of disputes arising as to such matter as may be specified in the bylaws" Pursuant to these powers, the Wheat Commission made a bylaw, No. 20, providing that a dispute arising between the Wheat Commission and any other person as to whether any substance is flour shall be referred to arbitration. After mentioning this, there was a provision to the effect that the Arbitration Act, 1889, shall not apply. Lord Macmillan, referring to this provision in the bylaw said.

"I reach my conclusion that bylaw 20 is ultra vires..... I find first that there are no express words in the Act ousting the jurisdiction of the Court, but only a power to make by-laws for the final determination by arbitration of disputes arising as to such matters as may be specified in the by-laws. I next find that the by-law in question not only specifies as a matter to be determined by arbitration "any dispute..... as to whether any substance is flour" but goes on to provide that to such arbitration the Arbitration Act, 1889, shall not apply. The Arbitration Act is a statute of general application and it confers a valuable and important right of resort to the Courts of law. To exclude its

operation from an arbitration is to deprive the parties to the arbitration of the rights which the Act confers. When a public general statute provides for the reference of disputes to arbitration, it is to be presumed that it intends them to be referred to arbitration in accordance with the general law as to arbitrations, with all the attendant rights which the general law confers. I do not think that when parliament enacts by one statute that disputes under it are to be referred to arbitration it can be presumed to have empowered by implication the abrogation of another statute which it has enacted for the conduct of arbitrations. Rather the contrary. If this is intended, express words to that effect are in my opinion essential, and there are here no such express words. I am according of opinion that the Wheat Commission exceeded their powers when they made a bylaw that every dispute as to whether any substance is flour should be determined by an arbitration to which the Arbitration Act should not apply. I have only to add that the by-law must, in my opinion, be condemned as a whole and that it cannot be saved by the excision of the objectionable provision, which is not a severable but a vital part of the by-law."

In *Stevens v. Chown* (1901) 1 Ch. 894 (904). Farwell J., observed:

"There is nothing, even when a statute creates an entirely new right and gives a special remedy to prevent a Court having equitable jurisdiction from granting an injunction to restrain the infringement of a newly created statutory right. unless the Act of Parliament creating the right provides a remedy which it enacts shall be the only remedy, subject only to this, that the right so created is such a right as the Court under its original jurisdiction would take cognizance of" AIR 1940 105 (Privy Council) said:

"It is a settled law that the exclusion of the jurisdiction of the civil Courts is not to be readily inferred, but that such exclusion must either be explicitly expressed or clearly implied. It is also well settled that even if jurisdiction is so excluded, the civil Courts have jurisdiction to examine into cases where the provisions of the Act have not been complied with, if the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure."

(14) The Act has not committed to the rule making authority, or to the executive, the discretion of deciding whether the jurisdiction of the civil Courts is to be taken away. It is within the purview of the Courts to see that the power which a particular statutory body claims to exercise is one which falls within the four corners of the powers given by the Legislature. It is also the function of the Courts to see that the powers are exercised in good faith.

(15) Section 48 of the Administration of Evacuee Property Act (31 of 1950) is in the following terms:

"(1) Any sum due to the State Government or to the Custodian under the provisions of this Act, may be recovered as if it were an arrear of land revenue.

(2) For the purposes of sub-section (1) the decision of the Custodian as to the

sum payable to the State Government or to the Custodian shall be final."

It was held by a Letters Patent Bench of this Court in the Custodian General of Evacuee Property, New Delhi and Others Vs. Harnam Singh, that the summary remedy provided by section 48 must be restricted to the sums legally recoverable, that is, sums which were admitted or approved, to be due, and could not be extended to sums which were alleged or claimed to be due.

(16) Mr. Harbans Singh Doabia for the respondents advanced an argument which does not appear to be founded either on the Act or on the statutory rules that the statutory tribunal, in this case the Market Committee, had the jurisdiction to determine if the matter fell within its jurisdiction or outside. He referred to certain cases which are distinguishable as there the jurisdiction of civil Courts was expressly barred under the statutes. One of such cases relied upon by Rai Brij Raj Krishna and Another Vs. S.K. Shaw and Brothers, , in which the language of section 11 of the Bihar (Lease, Rent and Eviction) Control Act (3 of 1947) was examined. Fazl Ali J., said-

"The Act empowers the controller alone to decide whether or not there is non-payment of rent and his decision on that question is essential before an order can be passed by him u/s 11. Such being the provisions of the Act, we have to see whether it is at all possible to question the decision of the controller on a matter which the Act clearly empowers him to decide."

On the facts of the present case, this decision lends no assistance to the respondent. On similar grounds, the decision of Andhra Pradesh High Court in Kalwa Devadattam v. Union of India AIR 1958 AP 131, is distinguishable. In that case, the assessee had defaulted in making the payment, and on this, the Income Tax Officer forwarded to the District Collector a certificate specifying the amount of arrears due from the assessee. The Collector then proceeded to recover from the assessee the amount specified under the Revenue Recovery Act and in the process of realisation of the arrears the properties of the assessee were brought to sale. The plaintiffs, with a view to avoid the sale, brought an action in a Civil Court on the contention that the assessments were illegal and, therefore, did not bind them, and that their properties could not be sold for the realisation of arrears of tax. Referring to Section 67 of the Income Tax Act, it was observed that the assessment were made under the Act, and a challenge to the assessments in a Civil Court was intended to be excluded. Neither the decision nor the facts on which it was based provides any analogy for entertaining the respondents contention in this case.

(17) The mode of recovery as arrears of land revenue is a matter of legislative policy and the Legislature alone lays it down as part of the statute wherever it thinks it fit to provide such a mode of realisation. In this case, such a mode is contemplated by the Legislature, but is restricted by section 31 to the recoveries of sums due from the Market Committee to the Government. It is not for the rule-making body to extend the scope of section 31 and to include matters falling

outside its purview. The provisions of Rule 51 seems to go beyond the rule making power in so far as they are contrary to section 31 which by implication, excludes recovery of fees payable to the Market Committee. It is a well recognised principle of interpretation that if the statutory rules or bylaws are in excess of the provisions of the statute or, are in excess of or inconsistent with such provisions then these provisions must be regarded as ultra vires the statute and cannot be given effect to: vide *Barisal Co-operative Central Bank Ltd. Vs. Benoy Bhusan Gupta and Another*, .

(18) It was then urged that the rules provide for appeals, and Rule 19-A(4) gives finality to the appellate decision. It was, therefore, argued on behalf of the respondent that exclusion of jurisdiction of the Civil Court is necessarily implied. But power of exclusion of jurisdiction can only be exercised by the Legislature and not by the rule making authority. The Act does not provide for exclusion of the jurisdiction of the Civil Courts. A bare mention in Rule 19-A(4) that the order passed by the appellate authority shall be final and conclusive, cannot be interpreted to mean that the jurisdiction of the Civil Court has been put an end to. If the assessment is not under the Act, then the rules will not apply and no adverse consequences can follow.

(19) It is for the Civil Courts to see whether the statutory tribunal has acted within or de hors the Act. The tribunal cannot arrogate to itself a jurisdiction which it does not possess, unless the statute expressly confers the power on the tribunal to determine whether a matter falls within its jurisdiction or not. Section 225 of the Punjab Municipal Act (3 of 1911) illustrates this; it provides a remedy by way of appeal in certain cases to such an officer as the State Government may appoint or to the Deputy Commissioner and then proceeds to expressly exclude any other remedy except by way of such an appeal. It is also provided that the order of the appellate authority shall be final. It was held by a Division Bench of the Lahore High Court in *Administrator, Lahore Municipality v. Munir-ud-Din Sheikh* AIR 1941 Lah 200, that the Civil Courts, in spite of section 225 of Punjab Municipal Act, could interfere with the discretionary orders of the Municipal Committee u/s 193(2) of the Punjab Municipal Act if those orders were an abuse of the power vested in the Municipal Committee. The Civil Courts could, u/s 55 of Specific Relief Act, issue instructions to the Municipal Committee even in cases where section 45 of that Act did not apply.

(20) Respondent's counsel has relied upon *Madurai Municipality v. Jagannatha Ayyar* (1958) 1 Mad LJ 73, which is clearly distinguishable. There, section 354, sub-section (2) of the Madras District Municipalities Act clearly provided that no suit would lie against the Chairman and the Council of the Municipality when they had proceeded in the matter of assessment in accordance with the Act. It was held that a dispute as to the correct rental value in which an assessment could be made was not a matter within the civil Court's jurisdiction; and an erroneous assessment by a Municipality would not in itself amount to arbitrary exercise of the statutory power, if in fact that enquiry as contemplated by the Act was held

before the actual assessment. The distinguishing feature of the case is that the bar to the jurisdiction of the civil Court is expressly provided in the statute.

(21) The rule-making power which is delegated to the State Government u/s 27 of the Punjab Agricultural Produce Markets Act (5 of 1939) is with a view to carry out all or any of the purposes of the Act, and the rules have, therefore, to be consistent with the Act. The power to legislate on policy or principle cannot be delegated to the State Government as that is the peculiar function of the Legislature. This matter was exhaustively discussed by the Supreme Court in the case *In Re Art. 148, Constitution of India and Delhi Laws Act, 1912*. AIR 1951 SC 332, and that decision was further explained by the Supreme Court in *Rajnarin Singh Vs. The Chairman, Patna Administration Committee, Patna and Another, Bose J.*, referring to the *Delhi Laws Act case* AIR 1951 SC 332, said-

"In our opinion, the majority view was that an executive authority can be authorised to modify either existing or future laws but not in any essential feature cannot be enunciated in general terms, and there was some divergence of view above this in the former case, but this much is clear from the opinions set out above; it cannot include a change of policy."

(22) Fortified by these observations, I am of the view that Rule 51, which provides that a fee due to a Market Committee under the Act or the rules or its by-laws being made recoverable as arrears of land revenue through the Collector of the district, is inconsistent with section 31 of Punjab Agricultural Produce Markets Act (5 of 1939). The policy of the Act as clearly indicated by section 31 is that the recovery of sums as arrears of land revenue should be confined to dues payable to the Government from a Market Committee and not to sums payable to the latter by any person. It is significant that in the later enactment, Punjab Agricultural Produce Markets Act (23 of 1961), sub-section (2) of section 41 enacted that besides sums due from a Committee to the State Government "every sum due to a Committee from any person shall be recovered as arrears of land revenue". The lacuna in the former Punjab Act, 5 of 1939, which governs this case, was noticed and made up in the subsequent Act. There are a number of Acts expressly providing recovery of rates, taxes, cesses and fees, etc., as arrears of land revenue. For illustration reference may be made to section 29 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (50 of 1948), section 10 of the Utilization of Lands Act (East Punjab Act 38 of 1949) section 12 of Punjab Betterment Charges and Acreage Act (2 of 1952), section 85 of the Punjab Gram Panchayat Act, 1952 (4 of 1953), section 76 of the Punjab Panchayat Samitis and Zila Parishads Act (3 of 1961), and section 47 of the Indian Post Office Act (6 of 1898).

Learned counsel for the parties, despite opportunity having been given, have not been able to draw our attention to any provision where recovery as arrears of land revenue may be provided in statutory rules thought not by the Act. Section 31 allows recovery of those sums as arrears of land revenue which are due from a Market Committee to the Government, but is silent regarding sums due to a

Market Committee from the licensees, and to a situation like this the doctrine of expression unius est exclusio alterius-the express prevention of the one thing implies the exclusion of another-and expressum facit cessare tacitum-what is expressed makes what is silent to cease-is attracted. Willes, J., in *North Stafford Steel, Iron and Coal Co. v. Ward* (1868) 3 Ex 172 at p. 177, referring to this rule remarked that

"if authority is given expressly, though by affirmative words, upon a defined condition, the expression of that condition, excludes the doing of the act authorised under other circumstances than those so defined: expressio unius est exclusio alterius."

(23) The result of the applicability of this principle of statutory construction is that if a statute enumerates the things upon which it is to operate, the things left unmentioned are excluded from its operation and effect; this may be illustrated by cases in which the matters over which the Court has jurisdiction are enumerated and those that are not included are deemed to have been excluded. Similarly, where an enactment forbids performance of certain things, only those matters which are expressly mentioned are treated as forbidden. Same is true where there is a direction in the Act that certain acts are to be done in a specified manner; any other unspecified mode of performance is impliedly prohibited. Courts have to be circumspect in applying the maxim the principle of which rests on the probable intention of the Legislature which may not have been clearly expressed. Where the law makers' intention is clearly revealed, the principle mentioned above cannot be resorted to as there cannot be an implied exclusion in the face of the plain language. The Courts turn to this principle in cases where the legislative intent is dubiously indicated. I am also impressed by the fact that the recovery of a sum as land revenue is a drastic remedy involving the person owing the amount to grave consequences in case of default. The Legislature when drafting section 31 in its wisdom confined this remedy to a specific situation and did not apply this vigorous mode of realisation to all kinds of recoveries under the Act. It was open to the Legislature to use a similar language as has been employed in section 41(2) of the latter Act, Punjab Act 23 of 1961, so as to include realisation by this process of sums due to a Committee from any person. The above language of the Legislature can be construed to indicate that the Legislature can be construed to indicate that the legislative policy was to confine and restrict this special mode of recovery to the conditions specified in the particular provision. A statutory enactment like section 31 although expressed in affirmative language, has to be interpreted as implying a corresponding negative. A statute which requires the manner of realisation of dues to the Government from a Market Committee as arrears of land revenue impliedly negatives such as exceptional and extraordinary mode of recovery in other case not covered by the provision.

(24) For reasons stated above, Rule 51 in the instant case is inconsistent with the legislative intention as can be gathered from the provisions of section 31 of

the Act. Rule 51 provides for an operation excluded by section 31 and must, therefore, be struck down as ultra vires.

(25) The result of the above discussion is that the contention of the petitioners prevails and the petition must be allowed. The issue, whether the Civil Court has got jurisdiction to entertain this suit, is answered in the affirmative and the case is remanded to the trial Court for decision on the remaining issues.

(26) The costs of these proceedings will abide the event.

S.B. Capoor, J.

(27) I agree.

(28) Case remanded.