
(2007) 09 AHC CK 0170
In the Allahabad High Court

Har Dayal

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 07-09-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80

Citation : (2008) 104 RD 83

Hon'ble Judges : Poonam Srivastav, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Poonam Srivastav, J.—Heard learned counsel for the appellant.

This is plaintiffs second appeal against the judgment and decree dated 20.10.1994 passed by the IV Additional District Judge, Bareilly in civil appeal No. 60 of 1994 setting aside the judgment and decree of the trial court dated 18.3.1991.

2. Facts giving rise to the dispute are that the plaintiff had cane crusher in the name of partnership firm and he was granted license for the Session 1972-73 under the U.P. Sugar Cane (Purchase Tax) Rules 1961 hereinafter referred to as the U.P. Act No. XI of 1961. On account of some dispute between the partners, the cane crusher could only run from 15.1.1973 to 19.1.1973 and thereafter its operation was stopped. Due information by the registered post was given to the Sugar Cane Inspector on 3.2.1973. It is contended that a reminder was issued on 27.2.1973 intimating the authorities that the cane crusher could run only from 15.1.1973 to 19.1.1973. This fact was also brought to the notice of the U.P. Cane Commissioner on 3.2.1973. However, despite the aforesaid receipt, the plaintiff received a demand notice regarding sugar cane purchase tax, which was replied by the plaintiff that since cane crusher was not operative, therefore, the plaintiff is not entitled to pay any tax. Nine statutory notices u/s 80 C.P.C. were given by the plaintiff not to enforce the demand for the aforesaid tax but it failed

to yield any result. Hence an injunction suit was instituted.

3. The defendant/respondents contested the suit. They filed written statement stating therein that license was granted to the plaintiff and he had cane crusher in village Pundari, Tehsil Nauabgang, therefore, he was liable to pay sugarcane tax. Assertion of the plaintiff that the cane crusher was run only from 15.1.1973 to 19.1.1973, was specifically denied. No intimation was received by the authorities regarding closure of the crusher. A sum of Rs. 6930 was assessed as sugarcane purchase tax for the period commencing from 15.1.1973 to 2.4.1973 and consequent thereon recovery certificate was issued. The suit was instituted challenging the aforesaid recovery.

4. The stand of the defendants was that the civil court had no jurisdiction to entertain the suit as assessment and imposition of the tax was governed by U.P. Act No. XI of 1961 and also the plaintiff could challenge the assessment of tax by filing an appeal within thirty days of intimation before the Sugar Cane Commissioner or Assistant Sugar Cane Commissioner and thereafter a revision could also be filed before the State Government. Tax was recoverable as arrears of land revenue, therefore, the suit was barred under the U.P.Z.A. and L.R. Act.

5. The trial court framed as many as eight issues. Question of valuation was decided as preliminary issue by the trial court, which was made part of the judgment. Issue Nos. 2 and 3 related to the legality of the demand notice and whether sugar cane unit of the respondent ceased to work after 19.1.1973. The trial court decreed the suit coming to a conclusion that demand notice was not proper. The appellant was liable to pay tax for the period of five day commencing from 15.1.1973 to 19.1.1973. Prior intimation by the plaintiff to the State Government was accepted by the trial court. On the question of jurisdiction, the trial court has also recorded its findings in favour of the plaintiff. A decree for injunction was passed against the defendants. The State Government preferred an appeal before the learned IV Additional District Judge, which was allowed giving rise to the instant appeal. The instant appeal was admitted on the following substantial questions of law:

1. Whether the non-filing of an appeal under the Sugar Cane Purchase Tax Act will oust the jurisdiction of civil court for granting permanent injunction.
2. Whether in the present set of facts, one week prior notice before the closure was necessary when the unit itself has worked only four or five days?
3. Whether the finding that crushing unit has worked for the term of license could be recorded in absence of any monthly report of Cane Inspector that unit was still functioning?
4. Whether it could be concluded that notice had been served on appellant by refusal when the returned registered letter had not been brought on record?
5. Whether the appellate court could proceed to reverse a decree on an issue which had not been pressed before the trial court?

6. After taking into consideration the arguments of the counsel for the appellant, and going through the judgments and decree of the courts below, it is apparent that the plaintiff/appellant admitted that after receipt of demand notice for sugar cane purchase tax under the U.P. Act No. XI of 1961, he did not prefer an appeal u/s 3(5) of the Act in the prescribed manner as provided under Rules 24 of the U.P. Sugarcane (Purchase Tax) Rules 1961 but preferred to send notices u/s 80 C.P.C., which are nine in numbers. The State had examined Sri Mohan Lal Sugarcane Inspector as D.W. 1, who stated on oath that two notices were sent by the registered post and proved notices from dispatch book, which indicated that notices were in fact sent and the postal receipts were also produced before the court.

7. Assessment order was also produced in evidence and in the circumstances, the lower appellate court has rightly recorded findings that admittedly demand notice was served upon the plaintiff and no appeal was preferred against the order imposing tax u/s 3(5) of the Act, which could be entertained within thirty days. The lower appellate court was right in its conclusion that the suit was not maintainable since the statutory remedy was in the special Act itself, which was not availed. Besides, taxes are recoverable as arrears of land revenue and the bar provided under the U.P.Z.A. and L.R. Act/Rules completely bars a civil suit where a recovery is initiated. A Full Bench of this Court in the case of Union of India (UOI) Vs. Sir Shadi Lal Sugar and General Mills Ltd., held that the jurisdiction of civil court though all embracing unless it is excluded by an express provision of law or by clear intendment arising from such law. Paragraph No. 11 of the aforesaid judgment is quoted herein below:

It is well settled that the jurisdiction of the civil court is all-embracing except to the extent it is excluded by an express provision of law or by clear intendment arising from such law. In Dhulabhai and Others Vs. The State of Madhya Pradesh and Another, the Supreme Court of India had occasion to consider in detail as to in which circumstances the suit would be maintainable in the civil court and in which not. After examining the various authorities the following propositions were laid down:

(1) Where the statute gives a finality to the orders of the special tribunals the civil court's jurisdiction must be held to be excluded if there is adequate remedy to do what the civil court would normally do in a suit. Such provisions, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of juridical procedure.

2. Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court.

Whether there is no express exclusion the examination of the remedies and the

scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case, it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or a liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in civil courts are prescribed by the said statute or not.

(3) Challenge to the provisions of the particular Act as ultra vires cannot be brought before Tribunals constituted under that Act. Even the High Court cannot go into that question on a revision or reference from the decision of the Tribunals.

(4) When a provision is already declared unconstitutional or the constitutionality of any provision is to be challenged, a suit is open. A writ of certiorari may include a direction for refund if the claim is clearly within the time prescribed by the Limitation Act but it is not a compulsory remedy to replace a suit.

(5) Where the particular Act contains no machinery for refund of tax collected in excess of constitutional limits or illegally collected a suit lies.

(6) Questions of the correctness of the assessment apart from its constitutionality are for the decision of the authorities and a civil suit does not lie if the orders of the authorities are declared to be final or there is an express prohibition in the particular Act. In either case the scheme of the particular Act must be examined because it is a relevant enquiry.

(7) An exclusion of the jurisdiction of the civil, court is not readily to be inferred unless the conditions above set down apply.

8. Besides, non-maintainability of the suit, the question decided by the lower appellate court has recorded findings of fact that there is nothing on record that information alleged to have been sent by the registered post on 3.2.1973 and 27.2.1973 had been sent by the respondent to the appellants. The statement of P.W.1 was not accepted since it was not corroborated by any documentary evidence whatsoever. The learned IV Additional District Judge was also correct in his approach that the statutory duty enjoined upon the plaintiff by Rules 13A(L-A) of the U.P. Sugarcane (Purchase Tax) Rules 1961 provides for intimation in writing when he decides to close, working of the unit, shall be given under registered cover at least one week before the such date to the Sugar Cane Commissioner. So far as substantial question of law No. 1 regarding maintainability of the civil suit on the confirmed findings of the lower appellate court is concerned, the suit was not maintainable. Substantial questions of law raised at the time of admission of this appeal are concluded by findings of fact and cannot be interfered in the instant second appeal. Arguments of the counsel for the appellant is without any substance. The second appeal is dismissed with cost. Interim order dated 13.11.1996 stands discharged.