
(1997) 06 BOM CK 0036
In the Bombay High Court
Case No : Writ Petition No. 199 of 1987

Hastimal Misrimal Katari

APPELLANT

Vs

State of Maharashtra and others

RESPONDENT

Date of Decision : 11-06-1997

Acts Referred:

Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963 — Section 57

Citation : (1997) 06 BOM CK 0036

Hon'ble Judges : V.S. Sirpurkar, J;B.H. Marlapalle, J

Bench : Division Bench

Advocate : B.N. Mohta, for the Appellant; R.R. Deshpande, Asstt. Govt Pleader, for the Respondent

Final Decision : Allowed

Judgement

V.S. Sirpurkar, J.—Present is the petition by a guarantor who stood as a guarantor for one M/s Gautam Traders the respondent No. 4 herein. The respondent No. 4 held a traders licence for doing the trading activity within the precincts and market area of Agricultural Produce Market Committee, Ralegaon. By the instant petition, the petitioner is challenging an order passed by the Tribunal constituted u/s 57 of the Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963 (hereinafter to be referred to as "the Act" for the sake of brevity). By the instant order, the Tribunal has directed that the present petitioner shall pay to the respondent No. 3 a sum of Rs. 11,756.05 with interest thereon at 12% per annum from 29-6-1981 and shall also pay Rs. 1,000/- additionally as costs of the proceedings.

2. The dispute was somewhere like this. It was claimed by the respondent No. 3 before the Tribunal that through his Adat the respondent No. 4 M/s Gautam Traders had purchased the cotton from the agriculturist. He further claimed that he had paid the whole amount to the original agriculturist. However, though he kept on demanding his amount from the purchaser respondent No. 4, the respondent No. 4 had failed to pay the amount. He, therefore, filed a civil suit

but then in the civil suit the Civil Court had held that it had no jurisdiction and the plaint came to be returned. He, therefore, lodged a claim before the Tribunal constituted u/s 57 of the Act and impleaded therein the present petitioner as a party defendant on the ground that the present petitioner was a guarantor for the original defendant and the respondent No. 4 herein M/s Gautam Traders. The Tribunal found that in spite of the repeated demands, the trader had not made any payment. It also found that the present petitioner being a guarantor of the trader respondent No. 4 was liable to make good the said payment. The objections raised by the petitioner that since the trader was dead, his guarantee also came to an end was not accepted and the order as stated above came to be passed. It is this award passed by the Tribunal which is in challenge in this petition.

3. Shri B. N. Mohta, the learned counsel for the petitioner, invites our attention to the provisions of section 57 and submits that on the correct reading of section 57 the reference itself was without any jurisdiction and the Tribunal lacked the jurisdiction to decide the said dispute. Shri Mohta points out that under the specific language of section 57(3), it is only when any question arises regarding any sum being due to the Market Committee or any agriculturist that a reference could be made to the Tribunal. He also invites our attention to the definition of the term "agriculturist" and points out that the original plaintiff had lodged his claim in his capacity not as an agriculturist but as a commission agent. He further points out that reference to the definition of the term agriculturist as defined in section 2(b) specifically excludes a commission agent. He, therefore, submits that since this was a claim regarding the sum due to a commission agent and not to an agriculturist, there could not have been any reference made nor could the Tribunal u/s 57 have any jurisdiction to decide the same.

4. Section 57 of the Act is in following terms:-

S. 57(1). Every sum due from a Market Committee to the State Government shall be recoverable as an arrear of land revenue.

(2) Any sum due to a Market Committee or account of any charge, costs, expenses, fees, rent, or on any other account under the provisions of this Act or any rule or bye-law made thereunder or any sum due to an agriculturist for any agricultural produce sold by him in the market area which is not paid to him as provided by or under this Act shall be recoverable from the person from whom such sum is due, in the same manner as an arrear of land revenue.

(3) If any question arises whether a sum is due to the Market Committee or any agriculturist within the meaning of sub-section (2), it shall be referred to a Tribunal constituted for the purpose which shall after making such enquiry as it may deem fit, and after giving to the person from whom it is alleged to be due an opportunity of being

heard, decide the question; and the decision of the Tribunal shall be final and shall not be called in question in any Court or other Authority.....

A plain look at the language and more particularly of sub-section (3) suggests that it is only when a question arises regarding the sum due to the Market Committee or an agriculturist that the dispute can be referred to the Tribunal. The word "agriculturist" has been added by an amendment by Maharashtra Act No. 32 of 1970. The transaction being of the year 1977 is covered by the amended provisions. In the first place, this was not a sum due to the Market Committee. That leaves only the sum due to an agriculturist within the terms of sub-section (3). This not being a sum due to an agriculturist, the initial reference itself was bad in law and the Tribunal u/s 57 had no jurisdiction to decide upon the same. The objection raised by the learned counsel, therefore, must be upheld.

5. Shri R. R. Deshpande, the learned Assistant Government Pleader for the respondents 1 and 2, however, points out that the plaintiff has been described as an agriculturist. We are afraid that may not be sufficient. There is a clear reference in the award that the same has been claimed not in his capacity as an agriculturist but in his capacity as an Adatiya or the commission agent. Besides that the question has been specifically raised in the petition and it has been suggested in the petition that the original plaintiff had claimed the amount not in his capacity as an agriculturist but as a commission agent. That factual assertion has not been disputed by the respondent No. 3. Unfortunately, the respondent No. 3 has not chosen to make any appearance before this Court though served.

6. In the result, the petition has to succeed. It is held that the Tribunal had no jurisdiction to decide the question referred to it. The judgment is non est. The order is set aside. The petition stands allowed with costs. Rule is made absolute in the above terms.