(1961) 09 MP CK 0044

In the Madhya Pradesh High Court

Case No : S.A. No. 54 of 1960

Jaindas APPELLANT

Vs

Nagarpalika Bhind RESPONDENT

Date of Decision : 27-09-1961

Acts Referred:
Madhya Bharat Municipalities Act, 1954 — Section 200, 69(1)

Citation : (1962) JLJ 89

Hon'ble Judges : P.R. Sharma, J

Bench : Single Bench

Advocate : B.D. Gupta, for the Appellant; G.P. Patankar, for the Respondent

Final Decision : Dismissed

Judgement

P.R. Sharma, J.—This second appeal has been preferred by the Plaintiff whose suit for a declaration and refund of a certain amount of octroi-tax alleged to have been illegally realised by the Municipal Committee Bhind, has been dismissed by both lower Courts.

2. The facts giving rise to the suit are that the Plaintiff runs a retail cloth shop at Shriganj Bazzar Bhind and for the purpose of his business imports cloth from outside. The Municipality Bhind realised a sum of Rs. 97-13-9 by way of octroi duty from the Plaintiff for cloth imported during the period from the 19th of October. 1955 to the 21st of April, 1957. The Plaintiff contends that this levy of tax was illegal on the following grounds -(1) that according to Sub-clause (4) of Sub-section (1) of S: 69 of the Madhya Bharat Municipalities Act. 1954 (No. 1 of 1954) the Municipality could impose an octroi tax only on "the goods brought within the limits of the Municipality for consumption or use therein." The contention of the Plaintiff is that on the cloth imported within the limits of the Bhind Municipality for the purpose of sale no octroi duty could have been levied, (2) that the Bhind Nagar Palika Octroi Rules and sub-rules 1955 were framed by the Municipality without following the procedure prescribed by Ss. 70, 71 and 72 of the M B. Municipalities Act, 1954 and were, therefore, invalid and without legal

effect.

3. The Defendant in its written-statement contended shat the octroi duty levied on the Plaintiff was in accordance with law and that the suit was barred by limitation. Section 200 of the Madhya Bharat Municipalities Act, 1954 (hereinafter referred to as the Act) runs as under:

No person shall commence any suit against any Municipality or against any officer or servant of Municipality or any person acting under the orders of a Municipality for anything done or purporting to have been done in pursuance of this Act, without giving to such Municipality, officer, servant or person two months previous notice in writing of the intended suit and of the cause thereof, nor after six months from the date of the act complained of, and in the case of any such suit for damages, if tender of sufficient amount shall have been made before the action was brought the Plaintiff shall not recover more than the amount so tendered, and shall pay all costs incurred by the Defendant after such tender.

4. The receipts for payment of octroi-duty paid by the Plaintiff of which details have been given in para 3 of the plaint would show that the last item was realised on 20-4-1957. The present suit was filed on 23-6-1958-that is to say one year, two months and three days after the date on which the last recovery was made from the Plaintiff.

5. The question which, therefore, falls to be considered in the present case is whether in recovering the octroi duty in question the Bhind Municipality purported to act in pursuance of the provisions of the Madhya Bharat Municipalities Act, 1954. The word "purport" was interpreted by their Lordships of the Supreme Court in Azimunissa v. Deputy Custodian E. P. (AIR 1961 SC 265). Their Lordships observed in para 20 of their judgment as under: -

It means fictitious, what appears on the face of the instrument, the apparent and not the legal import and therefore any act which purports to be done in exercise of a power is to be deemed to be done within that power notwithstanding that the power is not exercisable, Dicker v. Angerstein, 3 Ch. D 600 at p. 603 Purporting is therefore indicative of what appears on the face of it or is apparent even though in law it may not be so.

6. In the case of Kale Khan v. Municipal Committee Sagar (1962 JLJ SN 28) the suit was for recovery of penalty (double the octroi duty) alleged to have been illegally realised by the Municipal Committee Sagar under Rule 17 (b) of the Rules framed u/s 150(2)(a) of the C. P. Municipalities Act. It was held that the refusal by the Committee to refund the penalty arose in an activity which had its origin in the provisions of the C. P. Municipalities Act and was, therefore, a thing under the Act or purported to have been done under the Act. The suit was held to be governed by the special period of limitation prescribed by S. 48 of the C. P. Municipalities Act.

In The Municipality of Chopda Vs. Motilal Manekchand and Another, the Plaintiff challenged the validity of the provision whereby cotton manufacturing tax was levied by the Municipality with the sanction of the local Government and called upon the Municipality to refund it. It was held that the Municipality levied and collected the tax in execution or intended execution of the Bombay District Municipal Act and even if the Municipality acted beyond its authority a suit for refund of the tax would be governed by the special period of limitation prescribed by S. 167 (a) of the Act.

In Jalgaon Borough Municipality v. Khandesh Spinning and Weaving Mills Co. Ltd., (55 Bom. L.R. 65) it was held by a Division Bench of the Bombay. High Court that a levy of octroi duty on fuel oil or furnace oil under the rules and bye-laws framed with the sanction of the local Government by the Jalgaon Municipality could not be ordered to be refunded in a suit filed more than six months after the date on which the cause of action accrued, even if the Court held that under the rules the Municipality was not competent to levy octroi duty on fuel oil or furnace oil.

7. I am in respectful agreement with the principle laid down in the decisions aforesaid I would, therefore, hold that the suit in the present case is governed by the provisions of S. 200 of the M. B. Municipalities Act, 1954 and it laving been filed more than six months after the date on which the last amount of octroi duty was recovered from the Plaintiff is barred by limitation,

8. In view of my decision on the question of limitation it is not necessary to decide the other questions raised on this appeal.

9. The result is that this appeal is dismissed with costs.