

(1983) 04 KAR CK 0020
In the Karnataka High Court
Case No : Writ Petition No. 4794 of 1979

J.H.M. Kataria

APPELLANT

Vs

Collector of Bombay (Rst) and Another

RESPONDENT

Date of Decision : 08-04-1983

Acts Referred:

Constitution of India, 1950 — Article 226
Revenue Recovery Act, 1890 — Section 3 (1), 4

Citation : (1983) 2 KarLJ 518

Hon'ble Judges : K.S. Puttaswamy, J

Bench : Single Bench

Advocate : S.G. Shivaram, for the Appellant; M.R. Vanaja, for the Respondent

Judgement

Puttaswamy, J.—Prior to 9-2-1974, the petitioner was indisputably carrying on business in stainless steel articles in Bangalore under the name and style M/s. Kushal Enterprises. But he claims that on 9-2-1974, he sold the same to one Beeregowda as a running concern and is not doing business from that day.

2. On 29-9-1977, the Collector of Bombay, Recovery of Sales Tax, Bombay, respondent No. 1 (hereinafter referred to as the Collector) issued two Revenue Recovery Certificates (Exhibits C and D) u/s 3(1) of the Revenue Recovery Act, 1890 (Central Act 1 of 1980) (hereinafter referred to as the Act) to the collector of Bangalore who is called as Dy. Commissioner and will hereinafter be referred to as the DC to recover a sum of Rs. 5,347.60p. In the one certificate and a sum of Rs. 1,079.76 p. in the other as arrears of sales tax due from the petitioner to the State of Maharashtra.

3. On the basis of the aforesaid certificates and the orders made thereto by the DC, the Special Tahsildar of P.U.C. and Miscellaneous Recoveries, Bangalore, respondent No. 2 (hereinafter referred to as the Tahsildar) has issued a consolidated notice on 14-3-1979 (Exhibit-B) to the petitioner calling him to pay a sum of Rs. 6,427.46 p. along with a fee of Rs. 1.50 thereto as arrears of land revenue. In this petition u/Art 226 of the Constitution, the petition her

challenged the revenue recovery certificates issued by the Collector (exhibits-C and D) and the revenue recovery notice issued by the Tahsildar (Exhibit-B).

4. The petitioner has alleged that he was not a dealer in the State of Maharashtra, had not become due in any sales-tax to that State under the Sales Tax law of that State and the revenue recovery certificates issued by the Collector are void in law. He has also alleged that he had not been served with any pre-position notice, assessment order much less a notice of demand under the Sales Tax Law of the Maharashtra State to treat him as an "assessee in default" to initiate proceedings for recovery under the Act.

5. Shri S. G. Shivaram, Id. counsel for the petitioner, contends that the petitioner was not a dealer, an assessee, much an "assessee in default" under the Sales Tax Law of Maharashtra State and, therefore, the revenue recovery proceedings initiated against his client by the Collector and the Tahsildar are without jurisdiction and illegal.

6. Respondent No. 1 who has been duly served has remained absent and is unrepresented. Respondent No. 2 who is represented by Smt. M. R. Vanaja, Id. High Court Government Pleader, has produced the records and justified the recovery proceeding initiated in the Karnataka State.

7. The Act has been enacted to make better provision for recovering certain public demands or dues. The Act empowers the authorities of one State to recover the public dues due to that State from persons who are residing in another State or from the properties that are situated in another State. The Act that regulates the recoveries and the legal remedies open to a person from whom recoveries are to be made, is a complete code in itself. Sec. 4 of the Act provides for the remedy of a suit to the person from whom recoveries are to be made but who denies his liability to pay the amount specified in the revenue recovery certificates either before payment of or after payment of the amounts in an ordinary Civil Court of the area in which that Collector has issued the certificate. From this, it follows that it is open to the petitioner to challenge the very certificates issued by the Collector in an appropriate Civil Court of Bombay City on the very grounds urged in this writ petition. In the face of this effective legal remedy available to the petitioner where every one of the questions urged by him can be satisfactorily examined and decided, it would be proper for this court to decline to exercise its extraordinary jurisdiction without examining all other questions.

8. Sri Shivaram contends that the remedy u/s 4 can be availed by the petitioner only on making payment of the amounts specified in the certificates and not before and such a remedy is an onerous and is not an efficacious remedy.

9. Sec. 4 of the Act, in my view, does not prevent the petitioner from instituting a suit without making payment. The word "and" occurring in s. 4 of the Act after the words "thereof" and before the words "pays the same", in the context, has to be read as a preposition and not as a conjunction requiring the party to make

payment first and then only institute the suit for the refund of the amount paid thereto. In this view, I reject the plea of the petitioner that the remedy of a suit provided by s. 4 is an onerous and is not an effective remedy.

10. Let me assume that the construction suggested by Sri. Shivaram on s. 4 is also correct and examine his contention on that basis.

11. The remedy provided by the Act cannot and does not bar the jurisdiction of this court u/Art 226 of the Constitution is well settled. The fact that the petitioner is required to pay the amount and then only institute the suit at Bombay cannot and does make the remedy of a suit where all questions can be properly examined and decided satisfactorily an onerous and ineffective remedy. Even if payment is made, the remedy of a civil suit is an efficacious legal remedy. For these reasons, there is no merit in this contention of Sri Shivaram and I reject the same.

12. A properly authenticated revenue recovery certificate must necessarily be accepted as correct by the other State authorities and steps taken to recover the amounts in accordance with law. The Karnataka State authorities cannot examine the validity of a properly authenticated and sit in judgment on that certificate. In this view, the steps taken by the Dy. Commissioner and Tahsildar are legal and valid.

13. Whether the petitioner is a dealer, an assessee or an assessee in default and is not due in any sum to the State of Maharashtra cannot be properly examined by the Karnataka Authorities or this court also.

14. On my view of the matter, this is not a fit case in which this court should exercise its extraordinary jurisdiction in favour of the petitioner.

15. In the light of my above discussion, I hold that this writ petition is liable to be dismissed. I, therefore, dismiss this writ petition and discharge the rule issued in this case. But in the circumstances of the case, I direct the parties to bear their own costs.