(2006) 01 MAD CK 0222

In the Madras High Court

Case No : S.A. No. 45 of 1995

K. Pichai Pillai — APPELLANT

Vs

The Government of Tamil Nadu — RESPONDENT

Date of Decision : 06-01-2006

Acts Referred:

Madras Prohibition Act, 1937 — Section 56A, 56B
Madras Revenue Recovery Act, 1864 — Section 52

Citation : (2006) 1 LW 756 : (2006) 1 MLJ 310

Hon'ble Judges : P. Jyothimani, J

Bench : Single Bench

Advocate : P. Valliappan, for the Appellant; A.G.P. (CS), for the Respondent

Final Decision : Dismissed

Judgement

1. The plaintiff in the Suit is the appellant in the Second Appeal.

2. The suit was filed by the plaintiff for permanent injunction against the defendants from proceeding with revenue recovery proceedings. The case of the plaintiff is that he was successful auctioner of toddy shop for the year 1983-84. Due to default of kist from September 1983, the licence was cancelled and the defendants have re-auctioned the shop in which process they have sustained damages to the extent of Rs. 11,500/-. The said auction was taken by the defendants under the provisions of the Tamil Nadu Prohibition Act and the Rules framed thereunder. The second defendant has passed an order on 15.06.1984 marked as Ex.B.12, demanding the recovery of the said amount of Rs. 11,500/-, as a loss of revenue caused to the Government due to the conduct of the plaintiff. Thereafter, a notice under Form IV was sent on 20.01.1986 under Ex.B15 and these notices were sent under the provisions of the Tamil Nadu Prohibition Act and the Rules framed thereunder. Ultimately, since the amount was not paid, the second defendant has issued a notice under the Revenue Recovery Act on 14.09.1987 marked as Ex.A.1, which has resulted in filing of the suit for permanent injunction.

3. It was the case of the defendants that the notices were issued for sale of the shop as per Rule 21 of the Tamil Nadu Toddy and Arrack Shops (Disposal in Auction) Rules, 1981, which reads as follows:

21. Resale of shop:- On the failure of any person to make a deposit or apply for a licence or to comply with any requisition or to execute any deed or agreement under these Rules, the shop may be resold under the Orders of the Collector or an report from the Assistant Commissioner, the sale officer, the Collector may otherwise dispose of the shop. Resales under this rule shall be at the risk of the defaulting bidder, who shall forfeit all gain if any, that may secure by the resale and in the event of a loss by resale, the defaulting bidder shall be required to make good the deficiency between the total amount payable for the whole period under the terms of the original sale and by the total amount payable by the successful bidder at the resale. In the latter case, the deposits already made by defaulting bidder, excluding the amount of earnest money deposit if any forfeited to the State Government under Rule 15, shall be forfeited and deducted from the loss arising from the resale and the balance of the loss, if any shall be recoverable in the same manner as if it were an arrear of a land revenue. Should however the deposits be greater than the loss by resale only such part of the deposits as it is necessary to cover loss by resale shall be forfeited and the balance refunded to the defaulter. The defaulting bidder shall be similarly liable if the shop is disposed of otherwise than by resale and such disposal results in loss to the State Government as compared with the original sale.

4. It was ultimately due to the reason that the amount was not paid, Revenue Recovery Act was invoked, which was well within the power of the second defendant. It is also the specific case of the defendants that since the auction was taken under the Tamil Nadu Prohibition Act and the Rules framed thereunder, the Tamil Nadu Prohibition Act, 1937 prohibits the grant of any injunction by any Civil Court u/s 56-A. Section 56-B of the said Act also bars the jurisdiction of the Civil Court in respect of any auction taken under the Act. Therefore, according to the defendants, the Suit is not maintainbale. The trial Court has decreed the suit as against which the defendants have filed the first appeal.

5. The first appellate Court, after appreciating the entire fact that the matter was relating to the Tamil Nadu Prohibition Act and therefore there is a bar of Civil Court jurisdiction, has set aside the judgment of the trial court and ultimately dismissed the suit. Aggrieved by the said judgment of the first appellae Court, the plaintiff has filed the present second appeal.

6. The substantial question of law that was framed was ''whether the second respondent is justified in law in invoking the Revenue Recovery proceedings u/s 52 of the Tamil Nadu Revenue Recovery Act, especially when the appellant disputes the liability ascertained by the second respondent and repudiates the same''.

7. I have heard the learned counsel for the appellant as well as the respondents.

8. The learned counsel for the appellant relies upon the judgment of this Court rendered in G. Ramanathan Vs. The State of Tamil Nadu, . In the said judgment, this Court has analysed the pros and cons of the Tamil Nadu Prohibition Act, including implications of Sections 56-A and 56-B of the Tamil Nadu Prohibition Act, categorically holding that when there is a specific bar of suit under the said Act, there was no question of any Civil Court interfering and granting order of injunction or any such order. Therefore, the law is very well settled that there is absolutely no basis for the plaintiff to lay the suit.

9. There is one more aspect in this case. Even though the learned counsel for the appellant would urge that in this proceedings, he was only questioning the auction of the defendants, invoking the Revenue Recovery Act and therefore it cannot be said that the bar, imposed under the Tamil Nadu Prohibition Act or the Rules framed thereunder, will be applicable in this case. I do not agree with the said contention. Even for argument sake if it is accepted, the point to be remembered is that the real reason for the plaintiff to come forward with the present suit is not merely notices issued for the purpose of invoking the Revenue Recovery Act for bringing the properties under the sale, but the real cause of action is Ex.B.12 dated 15.06.1984 under which the second defendant has made a specific demand of Rs. 11,500/- being the loss of revenue incurred by the Government by the conduct of the plaintiff. When that order remains unchallenged, what is given under the Revenue Recovery Act for bringing the property into auction is only a consequential one.

10. Therefore in my view, even otherwise, the suit for injunction cannot be maintained and for all these reasons, the second appeal fails and the same is dismissed with costs, more so, when there is no substantial question of law involved in this case.