

(1988) 05 OHC CK 0023
In the Orissa High Court
Case No : Second Appeal No. 143 of 1980

Kailash Chandra Behera

APPELLANT

Vs

Collector and Others

RESPONDENT

Date of Decision : 02-05-1988

Acts Referred:

Bihar and Orissa Motor Vehicles Taxation Act, 1930 — Section 12A, 9A(1)
Specific Relief Act, 1963 — Section 34, 41

Citation : (1988) 66 CLT 275

Hon'ble Judges : S.C. Mohapatra, J

Bench : Single Bench

Advocate : A.K. Mohapatra, N. Mukherjee, B.S. Mohapatra, for the Appellant;
Addl. Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

S.C. Mohapatra, J.—Short point for consideration in this Second Appeal is the maintainability of the suit for declaration that the Plaintiff is not liable to pay tax for the period between 1-7-1970 and 31-12-1970 in respect of his vehicle ORB 724 and for injunction against the Defendants, State of Orissa, Regional Transport Officer, Balasore and the Special Certificate Officer, Bhadrak from taking steps for realisation of the amount.

2. Plaintiff having intended not to use his vehicle for the aforesaid period intimated the fact to the Taxing Officer (Defendant No. 2) with an undertaking as required u/s 9-A (1) of the Bihar and Orissa Motor Vehicles (Taxation Act, 1930 (hereinafter referred to as "the Taxing Act") specifying the place where the vehicle was to be kept. On that basis, the fact was entered in the certificate of registration (Ext. 1). Receiving a report from the Motor Vehicles Inspector that the vehicle was not at the place where it was specified to be kept, the Taxing Officer acted to exercise of the power u/s 12-A of the aforesaid Act and imposed penalty on the Plaintiff and demanded them to pay the tax and penalty for the period. When the amount was not paid Defendant No. 2 sent a requisition to the

Defendant No. 3 for realisation of the tax as arrear of land revenue under the Orissa Public Demands Recovery Act, 1962, (in short "the Recovery Act") as provided in Section 13-B of the Taxing Act. The certificate officer being satisfied that the demand is recoverable, signed the certificate and caused the same to be filed in his office u/s 5 of the Recovery Act. Thereupon, notice was served on the Plaintiff and the Plaintiff filed petition before Defendant No. 3 denying his liability" u/s 8 of the Act. The same having been rejected," distress warrant and body warrant were issued. This has given the cause of action to the Plaintiff to file this suit. Trial Court held that the Defendants have not been able to prove that thus vehicle was not at the place specified in the intimation u/s 9-A of the Taxation Act and accordingly, decreed the suit. In appeal by the Defendants, the learned Subordinate Judge held that the Plaintiff has not been able to prove that the vehicle was at the place where it was specified and dismissed the suit. Hence this appeal by the Plaintiff.

3. Certificate officer is a Court as has been decided in the decision reported in K. C. Nanda v. Certificate Officer, Boudh 36 (1970) C.L.T. 1282. It is not subordinate to the Court of Munsif where the suit was filed. Accordingly, no injunction can be granted to restrain the Defendants from initiating or prosecuting the recovery proceeding before the Certificate Court as provided in Section 41 (b) of the Act. Until cancelled or modified, the certificate proceeding is to culminate in recovery. Accordingly, there is no scope for a mere declaration that the Plaintiff is not liable to pay the tax in view of proviso to Section 34 of the Specific Relief Act. The suit as framed is, thus, not maintainable.

4. Mr. A. K. Mohapatra, the learned Counsel for the Appellant submitted that in effect the suit is one for cancellation of the certificate as provided u/s 42 of the Recovery Act. Under suction 45, a general bar is provided for a civil suit except on the allegation of fraud. It reads as follows:

45 General bar to jurisdiction of Civil Courts, save where fraud alleged:

Except as otherwise expressly provided in this Act, every question arising between the certificate-holder and the certificate debtor, or their representatives, relating to the making, execution, discharge or satisfaction of a certificate duly filed under this Act, or relating to the confirmation or setting aside by an order under this Act of a sale held" in execution of such certificate shall be determined, not by suit but by order of the certificate officer before whom such question arises, or of such other certificate Officer as he may determine:

Provided that a suit may be brought in a Civil Court in respect of any such question upon the ground of fraud.

A plain reading of this section indicates that every question arising between the certificate-holder and the certificate debtor relating to the making, execution, discharge and satisfaction of a certificate duly filed under the Act shall be determined not by suit but by order of the certificate officer before whom the question arises except as otherwise expressly provided in the Act. There is no

allegation of fraud against any of the Defendants. It is also not alleged that the certificate has not been duly filed. Thus, bar u/s 45 is attracted. Section 42 which gives a right to certificate-debtor to bring a suit in the Civil Court to have the certificate cancelled and for any further consequential relief to which he may be entitled is to be read along with Section 45 which saves the suits filed thereunder. However, Section 42 is subject to the provisions of any other law for the time being in force. "[he relevant portion of Section 42 reads as follows:

42 Suit is Civil Court to have certificate cancelled or modified:

The certificate-debtor may subject to the provisions of any other law for the time being in force, at any time within six months (1) xxx xxx xxx (2) xxx xxx xxx (3) xxx xxx xxx Provided that no such sum shall be entertained (a) xxx xxx xxx (b) if the certificate-debtor has not paid all amounts due under the certificate to the certificate officer whether or not under protest made in writing at the time of payment.

Provided also...

The grounds for cancellation have been provided u/s 43 One of the grounds as provided u/s 43 (1) (b) is that no part of the amount in the certificate was due on the certificate-debtor to the certificate-holder. It was expressed by one of the Honourable Judges in the Division Bench decision of this Court reported in Liquidator of Dhabaleshwar Co-operative Society Vs. Hadibandhu Behera and Another, , construing a similar provision in another Recovery Act that the question that no part of the amount due is within the exclusive jurisdiction of the liquidator in the case and no suit lies in the Civil Court.

5. u/s 8 of the Act, a certificate-debtor can deny the liability by filing a petition on the ground that the certificate dues have been duly or partly paid or on whom the certificate has been made is nor the person as certificate debtor in the certificate. If a certificate debtor can challenge the liability on any ground in a civil Court he can also take the same as a ground in the application denying liability. He cannot however, take those grounds if denial of liability is not open to be challenged in the civil Court in view of the law under which the same is demanded.

6. Sections 8, 42, 43 and 45 of the Recovery Act read together make it clear that normally the questions arising between the certificate holder and the certificate debtor are to be decided by the certificate officer and no suit would lie excepting on the allegation of fraud. Section 42 is subject to the provision of any other law in force. The law in force in the present suit is the Taxation Act which u/s 13-C provides as follows:

13-C: Legal proceeding:

No prosecution, suit or other legal proceeding shall lie against any person for anything in good faith done or intended to be done under this Act.

A suit u/s 42 would, thus, be subject to Section 13-C as quoted above.

7. In the aforesaid view of the matter, it is to be examined whether the demand of tax and imposition of penalty are actions in good faith by the Regional Transport Officer (Defendant No. 2). On the plaint assertion itself it is clear that on the basis of report of the Motor Vehicles Inspector, the penalty was imposed u/s 12A of the Act. In case there would have been allegation in the plaint that the procedure laid down u/s 12-A for imposition of penalty has not been followed, the question of good faith of Defendant No. 2 would have been a subject for consideration. Section 12A (2) provides that the proposed penalty can be imposed only after opportunity is given to the person liable to show cause. An appeal is also provided for. There is no assertion in the plaint that no such opportunity was given or the appeal as provided was filed unsuccessfully. In the plaint itself it has been asserted that penalty has been imposed on the basis of report of the Motor Vehicles Inspector." Thus, it cannot be said that the imposition of penalty has no basis at all to draw an inference of absence of good faith.

8. The proceeding for imposition of penalty by the authority empowered u/s 12-A is not governed by the technicalities of the Evidence Act. Thus, there being admittedly a report that the vehicle was not at the place as specified by the Plaintiff acceptance of such report and imposition of penalty on that basis cannot lead an inference of absence of good faith unless it is proved that with the knowledge of incorrectness of such report, penalty was imposed. Elaborate provisions were made u/s 12-A (2) for questioning the correctness of the report before the authority and right of appeal was also provided for. Without availing such opportunity, it is not open to the Plaintiff to allege in a suit that the report is a false report. The falsity of a report is an action of the Inspector of Motor Vehicles and not of Defendant No. 2. Absence of good faith if any may be attributed to the Inspector. If his action was challenged, he ought to have been made a party. A conclusion of absence of good faith of the Inspector, without giving him opportunity to explain his conduct would be unfair.

Thus, the limited scope within which a suit would have been filed u/s 13-C of the Taxation Act is not available to the Plaintiff in absence of allegation and proof of the same.

Let me now consider if the Plaintiff has been able to prove either that the vehicle was at the place where it was specified to be kept during the period of being afforded and that Inspector without making enquiry gave a report which is false. It is the specific case of, the Plaintiff that he gave the intimation that the vehicle was in the house of Kangali Das of Basudebpur which is denied by the Defendants in the written statement. In such circumstance, Plaintiff is required to prove the same. It can be proved by evidence or even by presumption in favour of, the plea un rebutted. Plaintiff has examined p.w. 1 in support of his plea that the vehicle was in the house of Kangali Das who has been disbelieved by the appellate Court on the ground that he is illiterate and is a Mesan. Appreciation of

evidence, however, wrong cannot be a subject of scrutiny in Second Appeal unless the same is unreasonable. Thus, there is no evidence that the vehicle was in the house of Kangali Das. Plaintiff could have examined Kangali Das to prove that the vehicle was in his house although the period between 1-7-1970 and 31-12-1970. No explanation has been offered by the Plaintiff why he was not examined. There being admittedly a report that the vehicle was not at the place specified and Plaintiff not having proved that the report was incorrect, his allegation in the plaint that the report is false is without material. It is true that for imposition of penalty the authority is to be satisfied that the preconditions exists. Precondition is that the vehicle was found to be used during the period of being absence at the place shall be deemed to have been used as provided u/s 9-A. It is not the case of either party that the vehicle was found to be used. . The deeming provisions in Section 9-A is attracted, for demand of tax and imposition of penalty.

10. Before concluding, I cannot but observe that the suit has not been defended properly. Whenever, the action of statutory authorities are challenged, they should open all records before the Court so that their conduct remains above board. They should not remain satisfied with technical obstructions. Keeping the same in view, government pleaders have been given greater scope to represent them. I have no doubt that in future, in such litigations the public officer shall put forth all the documents before the Court 5.0 that a citizen does not have a grievance that State and its officers behave as common litigants.

11. In conclusion:

(a) Plaintiff's suit for declaration that he is not liable to pay the tax for the period the vehicle was declared off road and for injunction not to realise the tax is not maintainable.

(b) Suit for cancellation of certificate u/s 42 of the Recovery Act is subject to Section 13-C of the Taxing Act;

(c) Plaintiff has failed to prove absence of good faith in demand of tax and imposition of penalty.

12. In the result, second Appeal is dismissed. In the circumstances, parties shall bear their own costs throughout.