(1963) 11 KL CK 0012

In the High Court Of Kerala

Case No : O.P. No''s. 2673 and 2674 of 1962

Kelappan APPELLANT

Vs

State of Kerala and Others RESPONDENT

Date of Decision : 04-11-1963

Acts Referred:
States Reorganisation Act, 1956 — Section 5, 6

Citation : (1964) KLJ 789

Hon'ble Judges : C.A. Vaidialingam, J

Bench : Single Bench

Advocate : V.R. Krishna Iyer and V. Sivaraman Nair, for the Appellant;

Final Decision : Dismissed

Judgement

Vaidialingam, J.—In both these writ petitions, the common question that arises for decision is as to whether the amounts of tax, assessed as against these two petitioners, on the basis of the Madras Tobacco (Taxation of Sales and Registration) Act, 1953 (Act IV of 1953), can, after the repeal of that statute, be recovered in the manner provided u/s 6 of the said Act. It will be seen that orders of assessment, making the petitioners liable for tax for the years beginning from 1955-56 and ending with 1957-58, were pressed under the Madras Act IV of 1953 referred to above. There is no controversy that u/s 6 of the Madras Act, it is provided that all taxes, fines and other sums payable to the State Government under any of the provisions of the Act, may be recovered as if they were arrears of land revenue. The said Madras Act IV of 1953 was repealed by Section 27 (2) of the General Sales Tax Act, 1125. Section 27 of the General Sales Tax Act, 1125, deals with repeal. Section 27 (2),in particular, repeals the Madras Act IV of 1953, "as in force in the Malabar District referred to in sub-section (2) of Section 5 of the States Reorganisation Act, 1956". There is only a simple provision made under sub-section (2) of Section 27 of the General Sales Tax Act, 1125, to the effect that the particular enactment, namely the Madras Tobacco (Taxation of Sales and Registration) Act, 1953 (Act IV of 1953), along with the other enactments mentioned therein, "are hereby repealed". No doubt, there is a proviso to sub-section (2) of Section 27 of the General Sales Tax Act, 1125, which is not material for the present purpose.

2. After the repeal of the Madras Act IV of 1953, in the manner referred to above, proceedings were taken to recover amounts, assessed as against the petitioners, under the provisions of the Revenue Recovery Act. The question is whether the authorities are entitled to collect the amounts under the provisions of the Revenue Recovery Act.

3. According to Mr. V. Sivaraman Nair, learned counsel for the petitioner, there has been an absolute repeal of the Madras Act in question u/s 27 (2) of the General Sales Tax Act, 1125, without any reservation or saving, and therefore it follows that the manner of recovery provided u/s 6 of the repealed Act is no longer available to the State for recovery of any amounts, by resort to the provisions of the Revenue Recovery Act. On the other hand, according to the learned Government Pleader, the provisions of clause (c) or clause (e) of Section 4 of the Travancore-Cochin Interpretation and General Clauses Act, 1125 (Act VII of 1125) apply in full force to this matter. If that is so, according to the learned Government Pleader, the right to recover the amounts assessed under the Madras Act has been preserved in favour of the State under clause (c) of Section 4 of the Interpretation and General Clauses Act. That right, according to the learned Government Pleader, will include the right of the State Government to recover amounts in the manner provided under the Madras Act, which has no doubt been repealed. The learned Government Pleader also urged that in any event, clause (e) of the Interpretation and General Clauses Act preserves the right of the State Government to adopt the remedy in respect of the right that had been given to it under the repealed Act. Therefore, according to the learned Government Pleader, inasmuch as the right to recover the amounts is preserved under clause (c) of Section 4 of the Interpretation and General Clauses Act, the remedy available to the State for enforcing that right, provided u/s 6 of the repealed Madras Act, is also available on the basis of clause (e) of Section 4 of the Interpretation and General Clauses Act.

4. According to Mr. Sivaraman Nair, learned counsel for the petitioner, it cannot be certainly stated in this case that any right has been specially conferred on the State Government to recover the tax by virtue of the Madras Act in question under the Revenue Recovery Act. Because, according to the learned counsel, the collection of the tax and the manner of the collection enure to the Government by virtue of its being a paramount power, and it is only in cases where particular rights have been conferred by particular statute that the provisions of the Interpretation and General Clauses Act, relied upon by the learned Government Pleader, will apply.

5. In my view, the decision on this question really depends upon the construction to be placed on the expression ''right'' occurring in clause (c) of Section 4, and the expression "remedy in respect of such right" occurring in clause (e) of

Section 4 of the Interpretation and General Clauses Act. It is clear that the provisions of the Interpretation Act regarding the effect of a repeal as mentioned in Section 4 of the Act, will really come into play unless a different intention appears from the statute. So far as I could see, Mr. Sivaraman Nair, learned counsel for the petitioner, has not been able to point out that any different intention in respect of the manner of the recovery of the amounts under the Madras Act, has been indicated under the Act, which repealed it, namely the General Sales Tax Act, 1125. If that is so, the State Government is certainly entitled to fall back upon the provisions of Section 4 of the Interpretation and General Clauses Act, for the purpose of finding power in it to recover the amounts due under the Madras Act that had fallen due under the Madras Act on the basis of the remedy provided in that statute itself. It is not really necessary for this Court to consider as to whether without any specific provision like that contained in Section 6 of Madras Act IV of 1953 it would have been open to the State Government as a paramount power to collect the taxes and other sums as if they were arrears of land revenue. But in this case it is to be seen that Section 6 of the Madras Act IV of 1953 specifically provided for the taxes and other sums referred to therein being recovered as if they were arrears of land revenue. There can be no controversy that such amounts can be recovered under the provisions of the concerned Revenue Recovery Act. If that is so, by virtue of Section 6 of the Madras Act IV of 1953, it also follows that the manner of recovery of the taxes and other amounts referred to therein is by resort to the provisions of the concerned Revenue Recovery Act.

6. Whether the provisions of the Madras Interpretation and General Clauses Act or the Central Act in that regard are applied, or the provisions of the Travancore-Cochin Act are applied, the result, in my view, is the same. In this case, all the learned counsel are agreed that it is the provisions of the Travancore-Cochin Interpretation and General Clauses Act, 1125, that apply, because it is the Kerala Legislature that has repealed the Madras Act IV of 1953. If that is so, the question arises as to whether the provisions relied upon by the learned Government Pleader namely Section 4, clauses (c) and (e) will help to preserve the right of the Government to recover the amounts under the provisions of the Revenue Recovery Act. In my view, the contention of the learned Government Pleader will have to be accepted in the circumstances of this case. There can be no controversy that the right of the Government to collect the amounts assessed under the Madras Act IV of 1953 have been preserved under clause (c) of section 4 of the Travancore-Cochin Interpretation and General Clauses Act, 1125. In my view, the expression "right" occurring in clause (c) of section 4 will take in not only the right of the Government to collect the amounts as such, but also the manner in which the amounts can be collected as provided in Section 6 of the Madras Act IV of 1953. Even if the expression "right" will not include the manner or mode of recovery of the amounts, but only the right to get the amounts in whatever manner it is provided, nevertheless, as pointed out by the learned Government Pleader, clause (c) of Section 4 of the Travancore-Cochin

Interpretation and General Clauses Act clearly preserves the right of the State Government to adopt the remedy in respect of the right that is preserved under clause (c) of Section 4. Therefore, having due regard to the provisions contained in clause (c), read with clause (e), of Section 4 of the Travancore-Cochin Interpretation and General Clauses Act, it follows that the right of the State Government not only to recover the amounts assessed as against the petitioners, but also the remedy to be adopted in respect of such collection, namely that provided in Section 6 of Madras Act IV of 1953, are clearly preserved. In which case, it follows that the action taken by the State Government to recover the amounts under the Revenue Recovery Act is perfectly legal and valid. In the result, both the writ petitions fail, and are dismissed. The parties will bear their own costs.