(1993) 10 AHC CK 0049

In the Allahabad High Court

Case No : First Appeal No. 275 of 1993

Kisan Rice Mill Karhal APPELLANT

Vs

Erishi Utpadan Mandi Samiti and Others RESPONDENT

Date of Decision : 04-10-1993

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 14 Rule 2, Order 14 Rule 5
Uttar Pradesh Krishi Utpadan Mandi Adhiniyam, 1964 — Section 16, 17

Citation : (1994) 1 AWC 120

Hon'ble Judges : M.L. Bhat, J

Bench : Single Bench

Advocate : M.D. Singh, for the Appellant;

Final Decision : Dismissed

Judgement

M.L. Bhat, J.—These two first appeals No. 275 of 1993 and 279 of 1993 are being decided by this common judgement.

2. The Court below has dismissed the two suits filed by the Appellants on the ground that the suits are not maintainable. The Appellants have challenged the findings of the Court below in these two appeals.

3. It appears that the Appellants had filed the two civil suits in the Court below in which they had prayed for a relief of perpetual Injunction restraining the Respondents from levying and collecting any fees u/s 17 of the U.P. Krishi Utpadan Mandi Adhiniyam, 1964 (hereinafter called the ''Act''), on the ground that the Respondents have failed to provide the amenities and discharge their duties as imposed on them u/s 16 of the Act. Written statement was filed by the Respondents in both the suits. The Court below had framed Issues also. However, on subsequent dat?, the Court below framed two additional issues with regard to the maintainability of the suit and after hearing the learned counsel for the parties it held that the civil suits were not maintainable in the present form.

4. It is borne out from the record that the Petitioners had filed writ petitions

before this Court in which they bad challenged the levy and collection of fees u/s 17 of the Act but the said writ petitions ?mse dismissed by this Court oh 26-11-1987 with the following observations.

After having perused the writ petition we are of the opinion that as ate controversy involved in the case Would require evidence for being resolved. We are not in a position to do so under Article 226 of the Constitution. The Petitioners may file a civil suit, if advised for the purpose of getting the relief prayed for. The writ petition is dismissed. There shall be no order as to costs.

5. The learned counsel for the Appellants has submitted that he filed the civil''suit in pursuance of the aforesaid observation of the High Court in its judgement dated 26-11-1987. The High Court has refused to grant relief because they did not consider it proper to go into the disputed questions of fact which required recording of evidence and for the relief prayed for in the writ petition, the High Court had granted liberty to the Petitioners to file civil suits. Therefore, Court below could not have dismissed-the suit as not maintainable.

6. Learned counsel for the Appellants also submitted that under Order 14 Rule 2 of CPC trial Court was bound to pronounce judgement on all the? issues. The trial Court has not decided any issue as preliminary issue. The trial Court framed all the issues and decided to take evidence on all the issues including on the plea of non-maintainability of suit raised by the Defendants. Thereafter, trial Court could not frame additional issues and dismissed the suit on those issues which could not be treated as preliminary issues.

7. It is also submitted by the learned counsel for the Appellants that his suit was maintainable and there was not defect in the suit. He was to pay the levy/fees u/s 17 of the Act which would enable the Respondents to provide certain facilities and amenities to the Plaintiffs u/s 16 of the Act. Despite collection and levy of fees if no amenity is provided, Plaintiff could challenge the authority of the Respondents to collect the fees for not discharging their corresponding obligations u/s 16 of the Act.

8. It is true that High Court in its writ jurisdiction did not consider it proper to go into the disputed question of fact and granted liberty to the Plaintiff to resort to civil suit, if so advised. This would not mean that Plaintiffs were permitted to file a suit before a civil Court which would not be maintainable under law. The observations of the High Court in its order dated 26-11-1987 would apply to the suit which was maintainable under law. By making observations, it cannot be said that the High Court in its writ jurisdiction had permitted the Appellants to file civil suit irrespective of the condition of maintainability of such suit. The observations of the High Court could apply only to such a civil suit which was maintainable before the Court of law. The observation was made to allow the Plaintiffs to resort to proper remedy and get the disputed questions solved by a civil Court. If the writ was dismissed and this observation was not made, the Appellants could not file a civil suit, therefore, observations of the High Court

were made to enable the Plaintiffs to file a civil suit which would lie in civil Court and which would be maintainable in civil Court. Therefore, it has to be seen whether suits of the Plaintiffs were maintainable or not. This was to be judged by the civil Court and civil Court was not precluded from pronouncing about the maintainability of the suit.

9. Civil Court under Order 14 Rule 5 of CPC has power to amend, frame and strike out issues. Rule 5 of Order 14 reads as under :

Power to amend and strike out, issues:

(1) The Court may at any time before passing a decree, amend the issues. er frame additional issues a such terms as it thinks fit, and all such amendments or additional issues as may be necessary for determining the matters in controversy between the parties shall be so made or framed.

(2) The Court may also, at any time before passing a decree, strike out any Issues that appear to it to be wrongly framed or introduced.

10. In exercise of powers given, to the Court below under Rule ,5 of Order 14 additional issues about the maintainability of the suit were framed. This could be done by the civil Court. Once the additional issues are framed touching the jurisdiction of the Court to entertain or to decide the suit, the Court could pronounce on these issues by treating them as preliminary issues. So if the additional issues are taken as preliminary issues and decided by the Court which entails in dismissal of the suit of the Plaintiff no ''fault can be found with the procedure adopted by the Court below. Once the Court had framed the additional issues regarding its jurisdiction or regarding maintainability of the suit it could decide the said issue at any time without referring to the evidence, if reference to the evidence was not necessary for disposal of the additional issues. Therefore, it was not necessary for the Court below to decide the whole case and pronounce its judgement on all issues. The judgement by the trial Court on preliminary issues though framed subsequently would not detract the trial Court from its authority to decide the whole suit on the preliminary issues. The contention raised by the learned counsel for the Appellants is, therefore, over-ruled on this point.

11. I have perused the Ramdayal Umraomal Vs. Pannalal Jagannathji, , referred by the learned counsel for the Appellants. The principle laid down in the said authority, in respect of the issues relating to the jurisdiction, if they depend on facts and law cannot be decided as preliminary issues are not disputed. If the evidence is required to be recorded for deciding the question of jurisdiction or lack of jurisdiction of trial Court then that question should be decided on evidence. This authority does not help the learned counsel fop the Appellants because while deciding the preliminary issues in this case no evidence ,was required to be recorded by the trial Court.

12. It is further to be seen on merits whether the judgment given on preliminary

issues by the trial Court is proper and whether same can be sustained.

13. Maintainability of the plaintiffs'' suit has to be judged from the telief prayed for by the Plaintiffs. The Plaintiffs have prayed for the following relief :

(A) For a decree of perpetual injunction to restrain the Defendants from realising the illegally imposed market fees on the past transactions of paddy (i.e. market fees and future transactions of paddy done by the Plaintiffs directly or through commission, agents OP through trader in the area covered under the sub-market yard, Karhal till all the services and facilities provided under the U.P. Krishi Utpadan Mandi Adhiniyam, 1964 are provided to the Plaintiffs by the Defendants.

(B) Costs of" the suit be awarded to the Plaintiff.

(C) That any other relief appropriate in the circumstances be also awarded to the Plaintiff.

14. Prayer for these reliefs is grounded on number of paras of the plaint. The reading of the plaint would reveal that Plaintiffs case was that they were not bound to pay any fees on past transactions or on future transactions nor were defendant''s authorised to collect any fees or levy fot past or future transactions without providing facilities mentioned u/s 16 of the Act. In fact Plaintiffs had avered that certain amount was imposed on them as market fees illegally on the past transactions of paeiy.

15. Learned counsel for the Appellants has referred to Sections 17 and 16 and submitted that these two Sections are to be read together. There is a corresponding obligation on the Respondents to provide facilities to the Plaintiffs and if they fail to do that Plaintiffs cannot be compelled to pay any fees.

16. Learned counsel for the parties have placed reliance on Ram Chandra Kailash Kumar and Company and Others Vs. State of U.P. and Another, . Bunch of appeals were decided by the Supreme Court in this judgement and it was observed that levy of market fees to be collected under the Act at a particular raie was not bad. The resolution of market fees as per the guidelines given in the judgement was held to be valid. A machinery for adjudication for disputes was to be provided under rules for proper functioning of the market community. Fees were charged first for the functioning of the said committee which was not formed as yet. Supreme Court observes that it was not correct to say that in the absence of such machinery no market fees can be levied or collected. Collection and levying of market fees was different than the functioning of the committee.

17. In Sreenivasa General Traders and Others Vs. State of Andhra Pradesh and Others, it was held that enhancement of fee from 50 paise charged in 1972 to Rs. 1.00 per Rs. hundred of price of notified agricultural produce was not valid on the ground of absence of qutd pro quo. In para 3 of the judgement it was observed as under.

The traditional view that there must be actual quid pro quo for a fee has undergone a sea change in the subsequent decisions. The distinction between a tax and a fee lies primarily in the fact that a tax is levied ?as part of a common burden, while a fee is for payment of a specific benefit or privilege although the special advantage is secondary to the primary motive of regulation in public interest. If the element of revenue for general perpose of the State predominates, the levy becomes a tax. In regard to fees there is," and must always be, correlation between the fee collected and the service intended to be rendered, In determining whether a lavy is a fee, the true test must be whether its primary and essential purpose is to render specific services to , a specified area or class; it may be of no consequence that state may ultimately and indirectly be benefited by it. The power of any legislature to levy a fee is conditioned by the fact that it must be "by and large" a quid pro quo for the services rendered. However, correlationship between the levy and the services rendered expected is one of general character and mot of mathematical exactitude. All that is necessary is that there should be a ''reasonable relationship'' between the levy of the fee and the services rendered.

18. In M/s. Bharat Rice Mills v. State of U.P., 1991 ALJ 1000 it was held by a Division Bench of this Court that --

It cannot be postulated that before Mamdi Samiti is entitled to levy and collect any market fee, it ought to acquire and provide all the requisite paraphernalia to render the services ,which it is contemplated ?to provide by the Act. To be more precise, it is not expected of the Market Committee to acruire land, construct buildings, recruit all the necessary staff, purchage all instruments, etc. and start rendering services before it can levy and collect the market fee. No such pre-condition can be stipulated or contemplated.

19. Though the obligations and duties of Mandi Samiti are given in Section 16 of the Act but rendering of these services is not condition precedent for levying or collecting any fees under the Act. Therefore, suit of the Plaintiff to declare the levy and collection on the past and future transaction illegal unless services are rendered by the Mandi Samiti to the Plaintiffs is not maintainable. Levy of fee is authorised by the Act and it cannot be made dependent on the performance, functions and duties of the Committee. Of course, Mandi Samiti is obliged to render services and it can be compelled to render service and discharge its duties u/s 16 if it fails to do so but it cannot be restrained to collect the fee or levy any fee u/s 17 of the Act. If such an, injunction is passed against the Mandi Samiti that may render Section 17 of the Act as redundant and. make an enactment passed by the legislature ineffective, therefore, the relief calimed in the suit whereby, provision of Section 17 are sought to be obliterated or diluted cannot be granted by the civil Court and suit for doing any violence to provisions of Section 17 of the Act will not be maintainable.

20. u/s 19 of the Act a fund called the Market Committee Fund is to be established to which shall be credited all the moneys received by it including all loans raised by it, and advances and grants made to it and all expenses which

are incurred by the Committee are to be incurred by the Market Committee Fund. u/s 19 (B) Market Development Fund is to be established for the development work of the Mandi Samiti. The funds established u/s 19 & 19 (B) cannot be utilised by the Mandi Samiti for any other purpose expect the purposes which are mentioned in the two Sections. So the Mandi Samiti can be compelled to Utilise the funds which are estabished under the statute for the purpose for which it is established under the Act.

21. Mandi Samiti has to discharge certain duties, and functions u/s 16 of the Act. If it refuses to perform any of the'' duties it can be compelled to perform such duties but the performance of duties is not condition precedent for levy and collection of fees u/s 17 of the said Act.

22. The levy of fees and its collection u/s 17 has an object and the amount collected is to be spent in a particular manner as prescribed in the Act. Mandi Samiti is not accountable to each individual cases as to why it collects the amount u/s 17 of the Act. If is only accountable for spending the amount of fees/ levy in accordance with the mandate of the provisions of the Act. It is also obliged to discharge certain, functions and duties under. Section 16 of the Act but it cannot be prevented from collecting the fees or leyy the fees unless it renders service to the Plaintiffs. Its authority u/s 17 to collect and levy fees for certain purposes mentioned u/s 17 is not to be interfered with by a civil Court because the statute empowers it to collect and levy the fees. The trial Court, therefore, was right in dismissing the suit for perpetual injunction and refused to restrain the Respondents to collect or levy the fees u/s 17 of the Act. The present suits are not for performance of positive acts by the Respondents which they are obliged to perform. The relief in the suits is prohibitory in nature which impinged on" the '' authority of the Respondents , given to it by Section 17 of the Act and makes the provision of Section 17 redundant, ''therefore, civil Court was right in dismissing- the suit as not maintainable in the present form.

23. For the reasons stated above, I find no force , in these two appeals which are dismissed by this judgement. However, there will be no order as to costs.

