(1990) 08 MP CK 0031

In the Madhya Pradesh High Court

Case No : M.A. No. 38 of 1980

Krishi Upaj Mandi Samiti and Another — APPELLANT

Vs

Ramjilal Harnarayan and Others — RESPONDENT

Date of Decision : 27-08-1990

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Madhya Pradesh Krishi Upaj Mandi Adhiniyam, 1972 — Section 61, 61(2)

Citation : (1991) MPJR 333 : (1991) 36 MPLJ 231 : (1991) MPLJ 231

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

Bench : Single Bench

Advocate : K.N. Gupta, for the Appellant; K.K. Lahoti, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Dubey, J.

Krishi Upaj Mandi Samiti, Shivpuri and its Chief Executive Officer have preferred this appeal Under Order 43, Rule l(u), Civil Procedure Code, against the judgment and decree dated 6-12-1979, passed by Additional District Judge, Shivpuri, in Misc. Appeal No. 10/1979, which was against the judgment and decree dated 18-1-1979, passed by Civil Judge, Class II, Shivpuri, C.S. No. 29-A/1977, whereby the suit of the plaintiffs for declaration and permanent injunction in relation to the recovery of market fee was dismissed.

Brief facts leading to this appeal are that the plaintiffs instituted a suit for declaration and permanent injunction against the appellants that the Krishi Upaj Mandi Samiti, Shivpuri (for short, the ''Samiti'') has no right or competence to collect and levy the market fee on the allegation that the levy of market fee of Rs. 2,434.24 p. by order dated 22-12-1976 is without jurisdiction, as the agricultural produce Was not purchased in the Mandi nor was Brought for sale. It was averred that the action of the Samiti is not only arbitrary but the order of the Samiti is null and void and the recovery is against the provisions of law. The appellants filed their written statement and raised several pleas including bar of jurisdiction of the Civil Court in view of Section 61of the Madhya Pradesh Krishi Upaj Mandi Adhiniyam, 1973 (for short, the ''Adhiniyam''). The trial Court in view of Section 61 held that the dispute between the plaintiffs and the defendants is in relation to any sum due, which, in the present case, relates to fees, and the question arises whether a sum is due under Sub-section (1) of Section 61, which ought to have been referred to the Director, whose decision after making an enquiry under Sub-section (2) of Section 61 is final which cannot be called in question in any Court of law; as a specific machinery and a special forum are provided for dealing with the question of liability of a person in the matter of payment of fee, the jurisdiction of the Civil Court is barred and, as such, the suit was dismissed. The plaintiffs preferred an appeal. The lower appellate Court held that as the basic right of recovery has been challenged and that the defendants have taken part in the proceedings, the suit cannot be dismissed; hence, the suit was remitted to the trial Court for trying the same on merits. Against this order of remand the appellants have come up in appeal.

Shri K. N. Gupta, learned counsel for the appellants, referred to the Scheme of the Adhiniyam and Section 61 and placing reliance on a Single Bench decision of this Court in Krishi Upaj Mandi Samiti, Shivpuri v. Shri Govind Oil Mills, Shivpuri 1980 MPLJ 687 : 1981 LLJ 313, contended that the lower appellate Court committed an illegality in holding that the Civil Court has jurisdiction to entertain the suit.

Shri K. K. Lahoti, learned counsel for the plaintiffs/respondents, contended that it was not merely a dispute or a question in relation to the recovery of tax or refund of tax, but the jurisdiction of the Samiti was challenged to recover the market fee; the action was wholly ultra vires, arbitrary and the order of recovery is null and void. Moreover, there is no specific exclusion in the Adhiniyam of the Civil Court''s jurisdiction; therefore, the lower appellate Court rightly held that the Civil Court has jurisdiction to entertain the suit. Learned counsel placed reliance on Dhulabhai and Others Vs. The State of Madhya Pradesh and Another, ; Firm and Illuri Subbayya Chetty and Sons Vs. The State of Andhra Pradesh, Goyindprasad v. Pawankumar AIR 1952 Nag. 278 and Tilakraj Taneja v. State of M. P. 1979 (2) MPWN 255.

It is true that in case of Shri Govind Oil Mills (supra), J. P. Bajpai, J., after considering the Scheme, the provisions of Section 61 of the Act and Rules 56(4) and 57 of the M. P. Agricultural Produce Market Rules, 1968, has held that if a party questions its liability towards payment of market fees, it has to refer the dispute to the Director, and according to the provisions of Sub-section (2) of Section 61, the Director has to decide the dispute after due notice and opportunity to the parties; the law has made further clear that the decision of the Director would be binding on the parties and it also excludes the jurisdiction of all Courts by saying that such a decision shall be. final and shall not be called in question in any Court of law. It was held that a specific machinery and a special forum for dealing with the question of liability of a person in the matter of payment of tax, etc., was made; therefore, the plaintiff cannot maintain and prosecute a suit before the Civil Court disputing his liability to tax, instead of taking recourse to the specific machinery and special forum provided in the Act. Bata Shoe Co. Ltd. Vs. City of Jabalpur Corporation, was relied on. In that case the suit was framed on the allegation that certain amount was illegally recovered as market fees and, hence, refund of the same was claimed; it was contended that the defendant Krishi Upaj Mandi Samiti be restrained by a permanent injunction from recovering in future such market fees on the agricultural produce outside the Mandi area for the purpose of consumption and manufacture of edible oil. In para 8 it has been observed that there is no allegation that the market fee so levied was wholly illegal and without jurisdiction so as to entitle the plaintiff for a refund. Therefore, from the facts stated in the judgment, it is apparent that the question related to the liability of a person in the matter of payment of fee only, which clearly fell within the jurisdiction of the specified authority u/s 61(2)i.e., the Director, who has to decide the same after giving due notice and opportunity of hearing to parties and whose decision according to Section 61(2) cannot be called in question in any Court of law.

Chapter XI of the Adhiniyam deals with miscellaneous provisions. Section 60 falling in this Chapter relates to the power of the. State Government to amend Schedule. Section 61 which relates to recovery of sum due to market committee, reads as under : -

"61. Recovery of sum due to market committee.-(1) Any sum due to market committee or the Board on account of any charge, costs, expenses, fees, rent or any other account under the provisions of this Act or any Rule or byelaw made thereunder shall be recoverable in the same manner as an arrear of land revenue.

(1.A) Any sum due from a market committee to the Board or to the State Government, as the case may be, shall be recoverable in the same manner as an arrear of land revenue.

(2) If any question arises whether a sum is due under Sub-section (1) it shall be referred to the Director and he shall after making such enquiry as he deems fit and after giving to the person from whom the sum is alleged to be due an opportunity of being heard, decide the question and his decision shall be final and shall not be called in question in any Court of law.''

Sections 62, 63, 64 and 65 are not relevant for the purpose of this case, but Sections 66 and 67 are relevant, which are reproduced hereunder :-

"66. Bar of Civil Suit. - No suit in respect of anything in good faith done or intended to be done under this Act or Rules or byelaws made thereunder, shall lie against the Director or any officer of the State Government or against the Board or any market committee or against any officer or servant of Board or any market committee or against any person acting under and in accordance with the directions of the Director, such officer, or such committee.

Bar of suit in absence of notice.- No suit shall be instituted against the Board or any market committee until the expiration of two months next after notice in writing stating the cause of action, name and place of abode of the intending plaintiff, and the relief which he claims has been delivered or left at its office. Even such suit shall be dismissed unless it is instituted within six months from the date of accrual of the alleged cause of action."

A bare reading of Section 66 will show that no suit will lie in respect of anything done or intended to be done in good faith under this Act, or Rules, or byelaws made thereunder, against the Director or any officer of the State Government, or against the Board or any market committee, or against any officer or servant of the Board or any market committee. Therefore, the dispute in this case does not come within the ambit of this section.

Section 67 provides that no suit shall be instituted against the Board or any market committee until the expiration of two months next after notice in writing stating the cause of action, name and place of abode of the intending plaintiff and the relief which he claims, has been delivered or left at its office. It further lays down that every such suit shall be dismissed unless it is instituted within six months from the date of the accrual of the alleged cause of action.

A division bench of this court in the case of Krishna Oil Mills v. State of M. P. 1980 LLJ 49 had an occasion to consider the provisions of Section 67 of the Adhiniyam. It was observed by the Division Bench that the petitioners having failed to avail of the remedy by filing a suit within six months from the date of the accrual of the alleged cause of action, which accrued to them when the amount of market fee was illegally recovered from them the suit was barred by limitation and, therefore, they were not entitled for any relief in the writ petition, which was dismissed.

On going through the various provisions of the Adhiniyam, in my opinion, there is no clear-cut exclusion of jurisdiction of the Civil Court. It is well-settled that the exclusion of jurisdiction of Civil Court is to be strictly construed. The existence of jurisdiction of Civil Court to decide questions of civil nature being the general rule and exclusion being an exception, inclusion of the jurisdiction of the Civil Court is to be readily inferred, which is based on the theory that the Civil Courts are Courts of general jurisdiction and the people have a right to approach the Civil Court, unless expressly or impliedly barred. The mere fact that a special statute provides for certain remedies may not be itself necessarily exclude the jurisdiction of the Civil Court to deal with a case brought before it in respect of any matter covered by the said statute. This question has been dealt with by the apex Court in several pronouncements. In case of Dhulabhai (supra) the apex Court summarised the law and laid down the principles regarding exclusion of jurisdiction of Civil Courts. In case of Raja Ram Kumar Bhargava (Dead) by Lrs. Vs. Union of India (UOI), the apex Court while considering the exclusionary clause in a taxing statute, after considering several pronouncements, held that every case is to be judged independently, and to what extent, and on what areas and under what circumstances and conditions, the civil Court''s jurisdiction is preserved even when there is an exclusionary clause in the statute, are to be considered and decided according to the principles laid down by the apex Court in Dhulabhai''s case (supra).

Applying the principles laid down in Dhulabhai''s case (supra), a civil suit challenging an assessment or recovery of market fee will certainly not lie if the challenge is merely on the ground that the assessment or recovery is erroneous or incorrect. In that case the decision of the Director u/s 61(2) shall be final and shall not be called in question in any Court of law. But, if the assessment or recovery is made by assuming jurisdiction to impose fee/tax on a produce, which is not taxable at all, and if the right of assessment or recovery is challenged, then certainly a civil suit will lie. A civil suit will also lie if the special Tribunal or the Authority, to whom the jurisdiction has been invested, without applying its mind to the provisions of the Adhiniyam and without observing the fundamental principles of judicial procedure, proceeds to make assessment or recovery.

A provision in Section 67 has been made for instituting suits against the board or any market committee on the expiration of two months next after notice in writing and within six months from the date of accrual of the alleged cause of action. In case of Krishna Oil Mills (supra) though the Division Bench has not considered this question relating to exclusion of Civil Court''s jurisdiction, the Division Bench has observed that a civil suit will lie when the allegation ,is that the amount of market fee is illegally recovered, and before institution of the suit two months'' notice is given and the suit is instituted within six months from the date of accrual of the alleged cause of action. The facts in Shri Govind Oil Mills (supra) are distinguishable from the facts of the present case, as in that case there was no challenge of jurisdiction, ultra vires or competency of the authority, which is clear from the facts narrated in para 1 and observation made in para 8 of the judgment. Moreover, in that case neither the earlier decision of the Division Bench in Krishna Oil Mills (supra) nor the provisions of Sections 66 and 67 were considered.

As I have held above that the plaintiffs came with a case about the competency of the Samiti, and the arbitrariness and jurisdiction, having been challenged to recover the fees on a produce, which, according to the plaintiffs, is not taxable, certainly the civil Court has jurisdiction to entertain the suit on applying the principles laid down in Dhulabhai''s case (supra).

In the result, this appeal has no merit and is dismissed with no order as to costs. Let the records of the Courts below be sent immediately so as to reach the same on or before 20th September 1990. Parties are directed through their counsel to appear before the trial Court on the said date, for which no fresh notice need be issued by the trial Court.

