
(2007) 11 UK CK 0007
In the Uttarakhand High Court

Krishi Utpadan Mandi Samiti

APPELLANT

Vs

District and Sessions Judge and Others

RESPONDENT

Date of Decision : 01-11-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 17
Constitution of India, 1950 — Article 226

Citation : (2007) 4 UC 51 : (2008) 1 UD 69

Hon'ble Judges : B.C. Kandpal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

B.C. Kandpal, J.—By way of these petitions the petitioner, who was the defendant, before Civil Judge, Roorkee in the original suits, has challenged the judgments and orders passed by the learned Civil Judge, Roorkee passed in civil suits and the judgments and orders passed by the learned District Judge passed in misc. civil appeals.

2. In W.P. No. 625/2007, the judgment and order dated 4.3.95 passed by Civil Judge Roorkee in O.S. No. 9/95 and the appellate order dated 17-4-95 passed by the District Judge Haridwar in Misc. Appeal No. 23/95, have been challenged, in W.P. No. 626/2007, the judgment and order dated 2.3.95 passed by Civil Judge Roorkee in O.S. No. 7/95 and the appellate order dated 17-4-95 passed by the District Judge Haridwar in Misc. Appeal No. 27/95, have been challenged, in W.P. No. 627/2007, the judgment and order dated 2.3.95 passed by Civil Judge, Roorkee in O.S. No. 6/95 and the appellate order dated 17-4-95 passed by the District Judge Haridwar in Misc. Appeal No. 25/95, have been challenged, in W.P. No. 628/2007, the judgment and order dated 6.3.95 passed by Civil Judge Roorkee in O.S. No. 10/95 and the appellate order dated 17-4-95 passed by the District Judge Haridwar in Misc. Appeal No. 21/95, have been challenged, in W.P. No. 629/2007, the judgment and order dated 6.3.95 passed by Civil Judge Roorkee in O.S. No. 13/95 and the appellate order dated 17-4-95 passed by the

District Judge Haridwar in Misc. Appeal No. 22/95, have been challenged, in W.P. No. 630/2007, the judgment and order dated 6.3.95 passed by Civil Judge Roorkee in O.S. No. 17/95 and the appellate order dated 17-4-95 passed by the District Judge Haridwar in Misc. Appeal No. 20/95, have been challenged, in W.P. No. 631/2007, the judgment and order dated 4.3.95 passed by Civil Judge Roorkee in O.S. No. 12/95 and the appellate order dated 17-4-95 passed by the District Judge Haridwar in Misc. Appeal No. 24/95, have been challenged, in W.P. No. 632/2007, the judgment and order dated 2.3.95 passed by Civil Judge Roorkee in O.S. No. 16/95 and the appellate order dated 17-4-95 passed by the District Judge Haridwar in Misc. Appeal No. 18/95, have been challenged, and in W.P. No. 633/2007, the judgment and order dated 2.3.95 passed by Civil Judge Roorkee in O.S. No. 8/95 and the appellate order dated 17-4-95 passed by the District Judge Haridwar in Misc. Appeal No. 26/95, have been challenged.

3. As the point for determination in all these writ petition is the same, therefore, the writ petitions are being decided by this common judgment.

4. Brief facts giving rise to these petitions, as per the record, are that suits were filed by the Cane Crushers against Krishi Utpadan Mandi Samiti for injunction restraining the Krishi Utpadan Mandi Samiti from realizing and collecting the market fee from the Cane Crushers in terms of land revenue. After the institution of the suits, applications were filed by the plaintiffs for obtaining ad-interim injunction under Order 39 Rule 1 and 2 C.P.C. The defendant/petitioner filed objections against the said applications. The trial Court after having considered the entire material available on record, allowed the applications for ad-interim injunction and restrained the Krishi Utpadan Mandi Samiti from demanding and collecting the market fee from the plaintiffs/respondents till the disposed of the suits vide impugned judgment and orders mentioned above.

5. The Krishi Mandi Utpadan Samiti preferred misc. appeals against the aforesaid orders passed by the trial Court and the appellate Court also dismissed the appeals.

6. Feeling aggrieved by the impugned judgments and orders passed by both the courts below, Krishi Utpadan Mandi Samiti has preferred the writ petitions before the Allahabad High Court, which have been transferred to this Court after creation of new State.

7. Heard Sri V.B.S. Negi, Learned Counsel for the petitioner and Sri A.K. Sharma, Learned Counsel for the respondents/Cane Crushers and perused the record.

8. Learned Counsel for the petitioner at the outset has argued that in view of the provisions of Section 32 of the Act, wherein the right to prefer revision has been given to the Cane Crushers, the trial court could not have granted any ad-interim injunctions under Order 39, Rule 1 and 2 of the C.P.C. in the civil suits. He has further submitted that if there was any grievance with the Cane Crushers against the orders passed by Krishi Utpadan Mandi Samiti for demand and collection of the market fee in terms of land revenue, the proper forum with the Cane

Crushers was available under the provisions of the Act itself, hence there was no scope with the Civil Court to grant ad-interim injunction under the provisions of Order 39, Rule 1 and 2 of C.P.C.

9. Learned Counsel for the respondents/Cane Crushers has made rival contention by submitting that it was within the power of the courts below to issue interim injunction in the matters as the prima facie case was made out by the respondents/Cane Crushers before the Courts below and the Courts below were justified in granting ad-interim injunctions in favour of the Cane Crushers.

10. I have given the thoughtful consideration to the submissions advanced by the Learned Counsel for the parties.

11. The Division Bench of Allahabad High Court in the case of Krishi Utpadan Mandi Samiti, Aligarh and Ors. v. Heinz India Limited, reported on 2002 ALL. I.J. 1654, cited before me has observed as below:

14. We are unable to accept the submission made by the Learned Counsel for the plaintiff-respondent. It is noteworthy that explanation to Section 17 of the Act was not in existence when the case of Ram Chandra Kailash Kumar and Company and Others Vs. State of U.P. and Another, was decided on 25.3.1980. This explanation was inserted by U.P. Ordinance No. 4 of 1987 w.e.f. 31.3.1987. Therefore, the Constitution Bench had no occasion at all to consider the impact of the explanation. In Mahalaxmi Sugar Works 1987 UPLBEC 957, this Court had specifically taken note of the decision of the Constitution Bench judgment in Ram Chandra Kailash Kumar and Company and Others Vs. State of U.P. and Another, . It was against the said decision that appeal was preferred by the Krishi Utpadan Mandi Samiti which was decided by the Apex Court on 2.2.1995, which matter was reconsidered in M/s Saraswati Cane Crusher by a Bench of three Hon4ble Judges. Therefore, the Bench deciding the case of M/s. Saraswati Cane Crusher was fully aware of the Constitution Bench Decision in Ram Chandra Kailash Kumar 1980 All LJ 490 (supra). The said Bench was examining the scope of the explanation appended to Section 17(iii) of the Act and taking note of the same, it was directed that if the evidence adduced by the trader is not accepted by the Mandi Samiti, the trader or dealer can be compelled to pay the market fee as demanded before issuance of gate pass. It was further observed that the assessment made by the Mandi Samiti shall be taken to be provisional making it obligatory on the trader to pay the fee before obtaining the requisite gate-pass. The contention raised by the Learned Counsel for the plaintiff-respondent has, therefore, no substance and it is the decision rendered in M/s Saraswati Cane Crusher which will govern the situation.

16. The second contention urged by Sri Madhyan that no injunction can be granted to restrain the realization of Mandi fee may also be briefly noticed. The principles on which interim injunction can be granted under Order 39, Rule 1 or 2 CPC are well established. In order to obtain an interlocutory injunction it is not enough for the plaintiff to show that he has a prima facie case. He must further

show that: (i) in the event of withholding the relief of temporary injunction he will suffer an irreparable injury; (ii) in the event of his success in the suit in establishing his alleged legal right encroachment whereof is complained against, he will not have the proper remedy in being awarded adequate damage; (iii) the plaintiff must show a clear necessity for affording immediate protection to his legal right, if any and, (iv) lastly the Court has to take into consideration the comparative mischief or inconvenience to the parties. In *Siliguri Municipality and Others Vs. Amalendu Das and Others*, , it was observed that the High Court should not, as a rule, in proceedings under Article 226 of the Constitution grant any stay of recovery of tax, save under very exceptional circumstances and the grant of stay in such matter should be an exception and not a rule. In *Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others*, , this principle was reiterated and the practice of granting interim order staying collection of public revenues seriously jeopardizing the budget to Government and local bodies was deprecated. This principle would apply with greater force in a civil suit in paragraph 7.12 of Volume 1 of the 4th Report of the National Commission to Review the Working of the Constitution⁴ it has been observed that grant of stay in taxation matter has serious impact on public exchequer. In the case in hand defendant No. 1 seeks to levy Mandi fee before issuing gate pass when it does not accept the evidence adduced by the plaintiff in rebuttal of the presumption that it is a transaction of sale within the market area. The amount realized by way of Mandi fee being an ascertained sum of money can always be returned to the plaintiff along with appropriate interest in the event the plaintiff succeeds finally. No irreparable injury would have accrued to the plaintiff in the event of refusal of the injunction order. In these circumstances, one of the essential conditions for grant of injunction order under Order 39, Rule 2 CPC was lacking and no order could be passed in favour of the plaintiff respondent.

17. For the reasons mentioned above, the appeal succeeds and is hereby allowed. The impugned order dated 24-1-2002 passed by the learned Civil Judge (Sr. Division), Aligarh, is set aside. It is ordered that the demand and collection of market fee by the appellants from the respondents will be made strictly in accordance with law and the judgment of the Supreme Court in *Krishi Utpadan Mandi Samiti v. M/s Saraswati Cane Crusher and Ors.* (supra). It is further directed that if the plaintiff challenges the final assessment order by filing revision u/s 32 of the Act, the defendants will make every endeavour for expeditious disposal of the same.

12. From a close scrutiny of the above cited paragraphs of the judgment, I come to the conclusion that the impugned judgment and orders passed by both the courts below are liable to be set aside.

13. Further, the impugned judgments and orders passed by both the courts below are contrary to the directions issued by the Hon⁴ble Apex Court in *Krishi Utpadan Mandi Samiti v. Saraswati Cane Crusher and Ors.*, decided on 25-3-1998

by the Bench of three Hon4ble Judges in Civil Appeal No. 1769-1773 of 1998, the impugned judgments and orders cannot be sustained and have to be set aside.

14. It is also noteworthy that the proviso was inserted in sub-rule (2) of Order 39, Rule -2 of the C.P.C. and in view of the aforesaid insertion of the proviso, Sub-clause (g), of sub-rule (2) of Order 39, Rule -2 C.P.C., provides that "no injunction shall be granted to stay the proceedings for the recovery of any dues recoverable as land revenue unless adequate security is furnished." Hence in view of in the aforesaid provision the Civil Court also could not grant any ad-interim injunction in favour of the Cane Crusher.

15. For the reasons stated above, I come to the conclusion that the demand and collection of market fee by the petitioner from the respondents/cane crushers is to be made strictly in accordance with law and the judgment of the Hon4ble Supreme Court in Krishi Utpadan Mandi Samiti v. Saraswati Cane Crusher and Ors. (supra). It is further directed that in case if the cane crushers/respondents challenge the final assessment order by filing the revision u/s 32 of the Krishi Utpadan Mandi Adhiniyam, the 4Board4 of Krishi Utpadan Mandi Samiti will make every endeavour for expeditious disposal of the same.

16. With the aforesaid observations, the writ petitions are allowed. The impugned judgments and orders passed by both the courts below, are set aside. The stay orders, if any, passed in these writ petitions, stand vacated.

17. Let a copy of this judgment be placed in each file of the writ petitions.