(2000) 02 P&H CK 0005

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 3718 of 1998

Municipal Committee — APPELLANT

Vs

Bhojia Cement Services Pvt. Ltd. and Others — RESPONDENT

Date of Decision : 04-02-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Punjab Municipal Act, 1911 — Section 61, 86

Citation : (2001) 1 CivCC 4 : (2000) 126 PLR 57

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

Bench : Single Bench

Advocate : G.C. Jain, for the Appellant; D.K. Singhal, for the Respondent

Final Decision : Dismissed

Judgement

M.L. Singhal, J.—M/s Bhojia Cement Services Private Limited and two others instituted suit for permanent injunction restraining Municipal Committee, Bathinda from recovering any amount in pursuance of notice No. 239 dated 31.5.1991 issued u/s 73 of the Punjab Municipal Act, 1911 calling upon them to pay a sum of Rs. 39,936/- as octroi duty and a sum of Rs. 7,98,720/- as penalty levied on account of evasion of octroi duty to the tune of Rs. 39,936/- by them. It was alleged in the plaint that the imposition of octroi duty and penalty was illegal, arbitrary, void and violative of the provisions of the Punjab Municipal Act, 1911. They further sought mandatory injunction directing Municipal Committee, Bathinda to issue 0-2 transit passes to the plaintiffs as and when they import cement at Bathinda to be exported to Jassi Pau Wali under the name and style New Bikram Cement.

2. Plaintiff (Bhojia Cement Services Private Limited) is a private limited Company registered under the Indian Companies Act and is engaged in the sale of cement in Punjab and UT Chandigarh. It has head office at Manimajra, Chan digarh. It has its branch office at Bathinda. It has set up its own Depots throughout India for storage of cement. It has one depot at Jassi Pau Wali. Municipal Committee,

Bathinda levied octroi on the cement, which was unloaded at Railway Station, Bathinda for being kept at Jassi Pau Wali, a place which is outside the Municipal limits of Bathinda. Municipal Committee levied penalty also on account of alleged evasion of octroi duty. Plaintiffs case was that they are not liable to pay octroi or penalty on cement as Jassi Pau Wali is outside the municipal limits of Bathinda and they are not keeping cement at all at Bathinda. No part of cement was sold at Bathinda. Municipal Committee, Bathinda issued transit passes for the goods received within Municipal limits for being exported outside. Refusal to issue transit passes by Municipal Committee, Bathinda on the import of cement into Bathinda and its immediate export outside municipal limits was unwarranted, irrational and illegal.

3. Defendant Municipal Committee, Bathinda contested the suit of the plaintiffs urging that the Civil Court has no jurisdiction to entertain and try the suit being barred u/s 86 of the Punjab Municipal Act. Plaintiffs could appeal to the Deputy Commissioner u/s 86 of the Punjab Municipal Act against this levy and the refusal of the Municipal Committee to issue them transit passes. Plaintiffs had imported 42370 bags of cement during the month of March, 1991. Notice was issued to them after affording them reasonable opportunity. All the sales are effected at Bathinda i.e. within the municipal limits of Municipal Committee, Bathinda. Godown at Jassi Pau Wali is a part of business premises of the plaintiffs. Plaintiffs have manipulated godown at Jassi Pau Wali with a view to evade the payment of octroi on the import of cement at Bathinda and which is sold within the municipal limits of Bathinda.

4. On the pleadings of the parties, the following issues were framed by the trial Court :-

1. Whether the suit has been filed by duty authorised person? OPP

2. Whether the plaintiff imported 42370 bags of cement within the municipal limits of Bathinda for the purpose of consumption, sale, use and construction thereon? OPD

3. That issue No. 2 is not proved whether notice No. 240 dated 30.5.91, is illegal, and plaintiff entitled to injunction prayed for? OPP

4. Whether defendants are under obligation to issue transit passes of goods, whether merely passed? OPP

5. Whether notice u/s 49 of Punjab Municipal Act is necessary ? OPD

6. Whether the jurisdiction of civil court is barred? OPD

7. Whether the suit is not maintainable? OPD

8. Relief.

5. Subordinate Judge, Ist Class, Bathinda decreed the plaintiffs suit for permanent injunction vide order dated 26.7.94 restraining Municipal Committee.

Bathinda from recovering any amount in pursuance of notice dated 31.5.91 u/s 73 of the Punjab Municipal Act, 1911 to them in view of his findings that the said notice was illegal, against law, fact and in violation of the provisions of the Punjab Municipal Act and Municipal Committee, Bathinda was directed through mandatory injunction to issue 0-2 transit passes to the plaintiffs as and when the cement was imported at Bathinda for immediate export to Jassi Pau Wali under the name and style of New Bikram Cement". It was found that Municipal Committee, Bathinda was not entitled to charge octroi on the bags of cement, which was not meant for consumption, sale or use within the municipal limits of Bathinda as the term octroi has been defined to mean cess on the entry into municipality of goods for consumption, sale or use therein and the mere arrival of bags of cement at Railway Station, Bathinda did not attract the provisions of Punjab Municipal Act, 1911 which were for immediate export to outside. It was found that octroi had been paid on 6135 bags and no octroi was paid on 30574 bags as they had been taken straight way. Civil Court was found to have jurisdiction to set aside an order which was passed by Municipal Committee, Bathinda without any authority given to it by the Punjab Municipal Act.

6. Municipal Committee, Bathinda went in appeal against this order. In appeal, Additional District Judge, Bathinda maintained the decree granted by the Sub Judge, Ist Class, Bathinda but only modified that as Municipal limits have been extended to village Jassi Pau Wali, the mandatory injunction shall be to this effect that Municipal Committee, Bathinda shall issue transit passes on form 0-2 if cement is imported into Municipal Committee, Bathinda but is to be immediately exported to outside municipal limits of Bathinda.

7. Aggrieved from the judgments and decrees of the two courts below, Municipal Committee, Bathinda has come up in appeal to this Court and has prayed for the dismissal of the suit.

8. I have heard the learned counsel for the parties and have gone through the record.

9. Learned counsel for the appellant submitted that the plaintiff-respondents should have gone in appeal to Deputy Commissioner u/s 86 of the Punjab Municipal Act against the levy of octroi and penalty. In support of this submission, he drew my attention to Firm Seth Radha Kishan (Deceased) Represented by Hari Kishan and Others Vs. The Administrator, Municipal Committee, Ludhiana, where it was observed by their Lord ships of the Hon''ble Supreme Court that "in a case where the liability is created by a statute, party aggrieved must pursue the special remedy provided by it and he cannot pursue his remedy in a Civil Court. This principle was approved by the Judicial Committee in AIR 1940 105 (Privy Council) . u/s 9 of the Code of Civil Procedure, the Civil Court shall have jurisdiction to try all suits of civil nature excepting suits of which cognizance is either expressly or impliedly barred. A statute, therefore, expressly or by necessary implication, can bar the jurisdiction of civil Courts in respect of a particular matter. The mere conferment of special jurisdiction on a

tribunal in respect of the said matter does not in itself exclude the jurisdiction of civil Courts. The statute may specifically provide for ousting the jurisdiction of Civil Courts; even if there was no such specific exclusion, if it creates a liability not existing before and gives a special and particular remedy for the aggrieved party, the remedy provided by it must be followed. The same principle would play if the statute had provided for the particular form in which the remedy could be had. Even in such cases, the Civil Court''s jurisdiction is not completely ousted. A suit in a civil Court will always lie to question the order of a tribunal created by a statute, even if its order is, expressly or by necessary implication, made final, if the said tribunal abuses its power or does not act under the Act but in violation of its provisions. The liability to pay terminal tax is created by the Act and a remedy is given to a party aggrieved in the enforcement of that liability. As has been already indicated, against the order of the municipal committee levying terminal tax an appeal lies to the Deputy Commissioner and a reference to the High Court. Applying one of the principles stated supra, the party aggrieved can only pursue the remedy provided by the Act and; he cannot file a suit in a civil Court in that regard. Provisions of Ss. 84 and 86 of the Act exclude the jurisdiction of the Civil Court in respect of the tax levied or the assessment made under the Act."

10. Learned counsel for the respondents, on the other hand, submitted that if the impugned levy was not made under the Act but in transgression of the provisions thereof, Civil Court shall have jurisdiction. It was submitted that in this case, the question involved was whether Municipal Committee, Bathinda could impose octroi duty on cement imported at Railway Station, Bathinda to be immediately exported to a place outside the municipal limits of Bathinda. He submitted that in this case, if the levy charged is completely without authority or outside the provisions of Punjab Municipal Act, suit can be filed for its refund. Sections 84 and 86 of the Act do not bar such a suit. Where duty had been charged not on the ground that goods were imported for use, sale or consumption within the octroi limits but because they were not exported outside the octroi limits within the prescribed time, the suit for the refund was maintainable." He drew my attention to The Municipal Committee, Simla v. Messrs A.R. Pasricha & Co.(1967)69 P.L.R.D. 362. It was submitted that Civil Court had jurisdiction to entertain the suit because the very power of Municipal Committee to levy octroi duty on this cement was in issue.

11. The power to levy octroi is derived from section 61 of the Punjab Municipal Act. Octroi is not one of the taxes specified in sub-section (1) of Section 61 and is leviable by virtue of sub-section (2). In the Municipal Account Code, Chapter V, octroi has been defined for the purposes of the said chapter by sub-clause (g) of rule V.I as under:-

"Octroi means a cess on the entry into a municipality of goods for consumption, use or sale therein." Under Rule V 13 every person intending to import goods, on which octroi is leviable, is required to take such goods to one of the barriers for collection of octroi at the time of import and declare whether such goods are intended (a) for immediate export or (b) for consumption, use or sale within the octroi limits etc. Rule V.14 provides :

"When goods liable to octroi are declared to be intended for immediate export under the provisions of sub-rule (1) of Rule V.13, they shall be dealt with under the Transit Pass System. Rule V.15 prescribes the Transit Pass System."

12. It was submitted that it is the natrre of question which the municipal council was confronted with which will determine whether civil suit lay or the plaintiff-respondents should have gone in appeal to the Deputy Commissioner under Sections 84/86 of the Punjab Municipal Act. In Municipal Committee, Bhatinda v. Krishan Lal and Anr., (1986)90 P.L.R. 483 it was held that "if order was passed in violation of the statutory provisions by authority not duly constituted, it cannot be said that order was passed under the Act. Bar of Section 86 will not be attracted." In Munshi Ram and Others Vs. Municipal Committee, Chheharta, the Hon''ble Supreme Court observed that "it is well settled that where a Revenue Statute provided for a person aggrieved by an assessment thereunder, a particular remedy to be sought in a particular form, in a particular way, it must be sought in that form and in that manner, and all other forms and modes of seeking it are excluded. Construed in the light of this principle, it is clear that sections 84 and 86 of the Municipal Act bar, by inevitable implication, the jurisdiction of the civil Court where the grievance of the party relates to an assessment or the principle of as sesstnent under this Act. In adjudicating upon the jurisdiction of the Civil Court, the important point to be considered is that what was sought to be challenged was something done under the Act or otherwise where the order has been in violation of statutory provisions or the principles of natural justice, Civil Court will have jurisdiction."

13. In this case, the very jurisdiction of the Municipal Committee was in question whether to impose octroi duty on this cement or this cement was not leviable to octroi duty and, therefore, the civil Court shall have jurisdiction. Learned counsel for the respondents submitted that the Municipal Committee could not have imposed penalty and all that could be done by the Municipal Committee was to launch prosecution against the erring person, who had tried to evade the payment of octroi duty. In support of this submission, he drew my attention to Nitco Roadways v. Municipal Corpn., Ludhiana 1986 P.L.J. 774. He drew my attention to Municipal Corporation Ludhiana v. The Commissioner of Patiala Division and Anr., (1995-2)110 P.L.R. 249 (S.C.) in support of his submission that so far as the levy of octroi is concerned, there is no dispute that it can be assessed, collected and recovered by officers of the Municipal Council. So far as the imposition of penalty is concerned that the Municipal Council cannot do. Punishment of fine cannot be imposed by the officers of the Municipal Committee. The normal rule of legislative drafting is that whenever it says that a particular Act shall be punishable with fine, it contemplates its imposition by a Criminal Court only."

14. In The Municipal Committee Mukerian v. The Sub Divisional Officer (C) Dasuya, Hoshiarpur, 1987(2) Punjab Legal Reports and Statutes 196 it was held that "what is required to be seen is not as to whether any sale has taken place at the railway station and whether the goods which entered into the municipal limits for being sold, consumed or used within that limits. Respondent No. 2 is a Paper Mill running in the town of Mukerian. During the course of its business of production of paper and other allied goods, the Mill imports machinery, raw material and other goods from different places. The mill is situated in Village Chak alia baken on G.T. Road which is outside the municipal limits of town. The goods imported by the Mill are collected from the Railway Station Mukerian which is located within the municipal limits. It is the case of the Committee that inspite of the protests of the Mill the Committee has been realising octroi duty on the goods imported by the Mill. The stand on behalf of the Mill is that since the premises of their industry are not located within the municipal limits of the committee, the latter is not entitled to charge octroi duty on the goods which are collected from the Railway Station for being used in the Mill itself. Municipal Committee charged octroi. Levy of octroi was set aside by the SDO (Civil) Dasuya. In the writ petition by Municipal Committee, Mukerian, this Court held that "for the purpose of interpreting the word "sale" in regard to chargeability of octroi, all that is necessary to appreciate is whether the goods taken delivery of at the Railway Station are liable to octroi duty, even if they are just to be transported through the municipal limits to a place outside the municipal limits. The question as to whether the sale is complete at the Railway Station or not, is not relevant. Goods are neither consumed nor used within the municipal limits. Octroi is leviable only on the goods which enter into the municipal limits for the purpose of being consumed, used or sold within the said limits. In the case in hand, the goods imported through Railway Station, Mukerian are meant only for use and consumption in the factory of the Mill which is located outside the municipal limits. It was held that "committee could ask for Rahdhari (transit fee) and not octroi duty on the goods transported." It was submitted by learned counsel for the respondents on the strength of this authority that when no part of the cement was to be used, sold or consumed within the municipal limits of Bathinda and they did not have any sale point in the municipal limits of Bathinda, no octroi duty could be levied on the cement imported through railways at Bathinda to be immediately exported outside Bathinda. In Jugal Kishore and Anr. v. The Municipal Committee Jandiala Guru, 1986 Punjab Legal Reports and Statutes 462 it was observed that "where transporters are bringing goods for temporary retention within the municipal area and there is facility for re-export pass system provided by the committee and the facility is available where no trade warehouse is maintained by the committee. Resolution of committee taking away the facility of reexport system without notice as set aside."

15. In this case, the grievance of the plaintiff was that no part of the cement was to be sold or consumed at Bathinda. Cement was to be unloaded at Railway Station, Bathinda and it was to be transported out to their godown situated at

Jassi Pau Wali where it was to be sold. They don''t have any sale point at Bathinda. Octroi is a case leviable on the entry into municipality of Bathinda for use, consumption or sale therein. It means that the sale, use or consumption of the goods should take place within the municipal limits and octroi is leviable only on the goods which entered into municipal limits for the purpose of being consumed, used or sold within the said limits.

16. For the reasons given above, no exception can be taken to the view by learned courts below. As such this appeal fails and is dismissed.