(1997) 11 AHC CK 0088

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 31586 of 1997

Nandu Mal Girdhari Lal a partnership Firm,through its Partner Ravindra Kumar and Another — APPELLANT

Vs

Krishi Utpadan Mandi Samiti,Navin Mandi Sthal,Muzaffarnagar,through its Secretary/President (A.D.M.) and Others — RESPONDENT

Date of Decision : 25-11-1997

Acts Referred:
Uttar Pradesh Krishi Utpadan Mandi Adhiniyam, 1964 — Section 10

Citation : (1997) 11 AHC CK 0088

Hon'ble Judges : Palok Basu, J and M.L.Singhal, J

Final Decision : Dismissed

Judgement

M.L. Siiighal, J.—These two writ petitions have been filed under Article 226 of the Constitution of India for issuance of writ of certiorari quashing the impugned Citation dated 10th September, 1997 (Annexure T) and for issuance of a writ of mandamus directing the Krishi Utpadan Mandi Samiti, Muzaffarnagar (respondent No. 1) to decide the representation moved by the petitioners. Since the facts and issues involved in the two writ petitions are same, hence both of them are disposed of together.

2. Heard the learned Counsel for the parties.

3. The dispute between the two writ petitions relates to recovery of market fee in respect of Khandsari for the period 11th October, 1973 to 12th August, 1975, by the Krishi Utpadan Mandi Samiti (hereinafter referred to as the Mandi Samiti), respondent No. 1. The U.P. Krishi Utpadan Mandi Samiti Act (Act No. 25 of 1964) was enforced in respect of sale and purchase of Khandsari through Notification dated 13th September, 1973, issued by the State Government. This Court stayed the operation of the said Notification by its order dated 11th October, 1973 and the applicability of the Act was suspended in relation to Khandsari. The result was that Mandi Samiti (respondent No. 1) did not enforce the provisions of the

said U.P. Act No. 25of 1964. Since the application of the provisions of the Act in respect of Khandsari was suspended, the petitioners did and continued to deal in Khandsari and did not obtain licence, required under the provisions of the Act. On 6th September, 1975 the said order was modified and the respondent Mandi Samiti asked the Khandsari dealers in the State of Uttar Pradesh to obtain licence and pay market fee and Mandi Samiti was directed to keep the amount realized by them in separate account.

4. The petitioners'' further allegations are that ultimately all the writ petitions were dismissed and the Mandi Samiti started demanding market fee on the transactions for the period 11101973 to 1281975. The petitioners and the Association filed Writ Petitions in the High Court on the ground that no Notification has been issued under Section 10 of the Act in respect of Khandsari and as such market fee was not leviable. All the writ petitions were dismissed by this Court, and S.L.P. filed before the Supreme Court was also dismissed, the judgment rendered by the Supreme Court in S.L.P. is reported as Mis. Nandu Mai Girdhari Lal v. State of U.P., 1992 ALJ 913. The petitioners have further contended that for the period 11101973 to 1281975 liability for payment of Mandi Samiti fee has been created, but the Mandi Samiti has never made an assessment with respect to the aforesaid period. After the decision of the Supreme Court the Mandi Samiti made arbitrary demand. The petitioner deposited Rs. 81,123.20 on 29121992 in pursuance of the demand involved in Writ Petition No. 31586 of '' 1997 and Rs. 30,231.16 in respect of the demand involved in Writ Petition No. 31588 of 1997. The petitioners paid the amounts on the basis of actual sale transaction, though in fact, no assessment whatsoever has yet been made by the Mandi Samiti in respect of the aforesaid period. Further, the amounts were paid by the petitioners in full satisfaction of the respondents'' claim. Some of the petitioners filed Civil Suit in the Court of Civil Judge, Muzaffarnagar, in which the injunction was granted in favour of the dealers, in the appeal filed by the Mandi Samiti before this Court, the Court directed the parties to file representation before the Mandi Samiti and the Mandi Samiti was directed to decide the representation. The Director of the Mandi Samiti made the assessment for the aforesaid period.

5. To the utter surprise of the petitioners, on 10th September, 1987 the Mandi Samiti has issued Recovery Citation calling the petitioner in Writ Petition No. 31586 of 1997 to pay Rs. 1,16,478.80 and the petitioner of Writ Petition No. 31588 of 1997 to pay Rs. 1,74,296.84. The aforesaid recoveries are illegal, without jurisdiction as no assessment has yet been made by the Mandi Samiti, with these allegations the petitioners invoked this Court''s jurisdiction, filed petitions, and prayed for reliefs, alluded above.

6. Both the writ petitions have been contested by the Mandi Samiti, respondent No. 1. Counteraffidavit has been filed in Writ Petition No. 31586 of 1997, and the same has been adopted by the respondents in Writ Petition No. 31588 of 1997. The defence disclosed in the counteraffidavits filed in both the petitions is the

same. It has been contended on behalf of the Mandi Samiti that the Recovery Certificates issued in both the cases are legal and perfectly valid. After the decision of the Supreme Court in the S.L.P., Mis. Nandu Mal Girdhari Lal v. State of U.P. (supra), the matter has attained finality. It is wrong to say that no assessment has been made and the amounts deposited by the petitioners were in full and final settlement of the claim for the period in dispute. The petitioners were repeatedly given opportunities to produce their accounts before the respondents, and the petitioners have not complied with the orders. The respondents have assessed the Mandi Samiti fee on the basis of the record in accordance With law.

7. it is admitted between the parties that after the respondents raised their demand for Mandi Samiti fee, initially in the year 1981, the petitioners approached this Court challenging the assessment of the fee and having failed to achieve success in this Court, approached the Supreme Court by way of Special Appeal, and the said Special Appeal Mis. Nandu Mal Girdhari Lal v. State of U.P., was decided by the Supreme Court on 341992. Aperusal of the said judgment clearly shows that the controversy between the parties has been finally adjudicated upon by the Supreme Court and now it is no more open to the petitioners to assail the demand raised by the respondents. Para 29 of the judgment of the Supreme Court relevant for the purpose, is extracted here as under:

"In the result, we hold that they are liable to pay the demands raised by the respondentSamiti against them. However, if with regard to any particular transaction it is proved that by the commission agents the purchasers had paid the market fee on such transaction the Samiti will not make them liable once again. Subject to the only qualification the appeals are hereby dismissed. However, there shall be no order as to costs."

8. as shown by the observations of the Supreme Court in aforesaid para 29 of the judgment, the petitioners are liable to pay the demands, raised by the respondent Mandi Samiti against them. However, if with regard to any particular transaction it is proved by the petitioners that they had paid the market fee of such transactions, the petitioners will not be made liable once again as directed by the Supreme Court. In the present case there is no allegation whatsoever in the representations made by the petitioners before the Mandi Samiti, nor have stated before this Court that they have paid the market fee on any particular transaction during the relevant period viz. 11101992 and 1281975, and so they are not liable to pay the market fee again on the said transaction. The only grievances of the petitioners are that the respondents have not made the assessments as yet, which as will be shown later on, are devoid of substance. In view of the judgment of the Supreme Court, it is no more open to the petitioners to assail the demands raised by the respondents with regard to the payment of Mandi Samiti fee.

9. Through letter dated 2941981 (Annexure T to C.A. in Writ Petition No. 31586

of 1997), the respondent Mandi Samiti directed the petitioners to pay the sum of Rs. 1,97,622 as Mandi Samiti fee. In this letter it is clearly stated that earlier notice No. 668 was given to the petitioner to produce the record relating to the purchase made during the period 11101973 to 1281975, but the petitioners failed to produce the record nor did also deposit the Mandi Samiti fee. Accordingly, the aforesaid sum of Rs. 1,97,622 has been determined as Mandi Samiti fee. Through this letter, however, the petitioner was given another opportunity to produce the records before the Mandi Samiti within a period of three days, on failure to do so the amount was to be realized as arrears of land revenue. Through the Office Memorandum dated 221993 (Annexure ''2'' to counteraffidavit in Writ Petition No. 31586 of 1997), the respondent Mandi Samiti directed the amount of Rs. 1,16,478.80, the balance, which came after deduction of Rs. 81,123.20 deposited by the petitioner on 29121992, to be deposited by the petitioner. But again, the petitioner did not deposit the amount nor raised any objection thereto. Again through Office Memorandum dated 14101993 (vide Annexure ''3'' to the Writ Petition No. 31586 of 1997) the petitioner was directed to deposit the sum of Rs. 1,16,478.80 as arrears of Mandi Samiti fee within a period of one week, failing which the amount was to be realized as arrears of land revenue. To the subsequent notice, on 20101993 vide Annexure ''4'' to the counteraffidavit in Writ Petition No. 31586 of 1997, the petitioner Firm wrote to the respondent Mandi Sair in that the matter was pending before the Court and the Government, and in case any amount was found due from the petitioner by the Government/Court, the said amount shall be paid by the petitioner Firm. In this reply also the petitioner did not agitate that, no such assessment has been made. Similarly, in respect of the amount involved in Writ Petition No. 31588 of 1997 the respondent Mandi Samiti on 1541981 gave notice to the petitioner that earlier on 1321981 the petitioner was directed to produce the record before the Mandi Samiti, but the petitioner failed to do so. As such, on 2731981 after the assessment was made by the Mandi Samiti the petitioner was directed to deposit the amount within a period of one week, but the petitioner did not deposit the amount. The petitioner was informed that a sum of Rs. 2,04,528 has been assessed as Mandi Samiti fee for the period 11101973 to 1281975, payable by the petitioner, the petitioner was directed to deposit the said amount within a period of one week, on failure, the amount was to be realized as arrears of land revenue. Further, through notice dated 221993 (Part of Annexure T to Writ Petition No. 31588 of 1997) the petitioners were directed to deposit the sum of Rs. 1,74,296.84, after adjusting the sum of Rs. 30,241.16 deposited by the petitioner on 29121992. Again on 14101993, the petitioner was directed to deposit the aforesaid amount within a period of one week, failing which, the amount was to be realized as arrears of land revenue. The petitioners in both the cases having not complied with the aforesaid letters of demands, the respondent Mandi Samiti had no option but to issue the Recovery Certificates under challenge, in the present writ petitions. The aforesaid documents clearly show that the petitioners'' Firms were never given opportunity to produce the records before the Mandi Samiti, relating to the disputed period and the petitioners having failed to produce the records, the Mandi Samiti has made assessment and has raised a valid demand.

10. As regards the petitioners'' contention that they have deposited the two amounts viz. Rs. 81,123.20 and Rs. 30,241.16 in full and final settlement of the respondents'' claim and so it is no more open to the respondents to raise the enhanced demand, it may be observed that after the aforesaid deposits the respondent Manai Samiti through letters directed the petitioners to deposit the balance amount. It is also observed that the amounts deposited by the petitioners were not disclosed to them by the respondent Mandi Samiti, no such figure appears in the assessment orders, the petitioner had deposited the aforesaid amounts of their own, the said deposits, therefore, cannot be said to be in full and final settlement of the claim of the respondents.

11. It has also been argued on behalf of the petitioners that other dealers filed Civil Suit in the Court of Civil Judge, Muzaffarnagar, who granted injunction restraining the recoveries. In appeal filed by the respondents, Division Bench of this Court (vide Annexure ''2'') directed the party to file representation before the Mandi Samiti and the Director, Mandi Samiti under Section 32 of the Mandi Samiti Act has determined the compensation (vide Annexure ''2''). The learned Counsel also referred to the judgment of this Court in Civil Misc. Writ Petition No. 6894 of 1991, Mis. Sukhvir Singh Pradip Kumar v. State of U.P. and others, decided on 3171991, wherein the directions were given by the Court to the dealers to produce their records before the Mandi Samiti for the purpose of assessment of Mandi Samiti fee. About this contention of the learned Counsel for the petitioners it may be stated that the petitioners were not parties to the Civil Suit and the writ petitions filed before this Court arising out of that Civil Suit and as such, the petitioners cannot derive any advantage of the orders passed by the Court in those cases.

12. In the result, the impugned Citations are valid and have been issued in accordance with law. Both the writ petitions are devoid of merit and are accordingly dismissed.

13. No order as to costs.

Petitions dismissed.

