(1992) 12 AHC CK 0053

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 39866 of 1992

Raj Narayan Agarwal and Another — APPELLANT

Vs

Krishi Utpadan Mandi Samiti and Others — RESPONDENT

Date of Decision : 17-12-1992

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (1993) 3 AWC 1614

Hon'ble Judges : R.B. Mehrotra, J;A.P. Misra, J

Bench : Division Bench

Advocate : Mahesh Gautam and Vijay Gautam, for the Appellant;

Final Decision : Allowed

Judgement

A.P. Misra, J.—Heard learned Counsel for the Petitioner.

2. The Petitioner by means of this Writ Petition has sought for quashing the orders dated 24-7-1992 passed by Respondent No. 1 (Annexure-7 to the Writ Petition) and dated 10-3-1992 (Annexure-4 to the Writ Petition) as well as for quashing the recovery proceedings initiated in pursuance of the order dated 24-6-1992.

3. The main ground of attack by the Petitioner is that since the transaction in question has been done outside the Mandi Samiti, the Petitioner is not liable to pay any market fee. Earlier the Petitioner had filed a Writ Petition in this Court in which a direction was issued to Respondent-authorities wherein the said petition was- finally disposed of with a direction to comply with certain conditions mentioned therein for the purposes of disposal of certain objections raised by the Petitioner. According to the said decision, one of the conditions was that the Petitioner will file a statement before the Mandi Samiti within four months in the case of Gur and Khandesi indicating therein whether the said goods are sold by the Commission Agent or by the Petitioner- himself inside or out side the Mandi and in case the Petitioner does not file the said statement, the Mandi Samiti shall

issue notice/Letter to the Petitioner after expiry of four months to file a statement, within ten days of the receipt of the notice and thereafter they shall pass appropriate orders relating to fee. The order further mentions as one or the conditions that in case the return of the Petitioner is found to be incorrect or in case he fails to file a return despite notice/letter by the Mandi Samiti, then the Mandi Samiti shall levy market fee on the Petitioner on the aforesaid goods. In pursuance of the same, according to the learned Counsel for the Respondents, the Petitioner did not submit the same as directed by the Court. In fact, on 10-2-92 (Annexure-4 to the petition) a notice/letter was given to the Petitioner which specifically mentioned that the Petitioner did not file within the time the evidence of sale and forms which was required for the purpose of giving exemption, if at all the Petitioner is entitled. In fact, Annexure-7 to the petition is the impugned order in pursuance of which the recovery is being proceeded. Since Petitioner failed to tender evidence within the time aforesaid, the Respondent-Authority assessed the transaction in question as market fee which is subject-matter of challenge before us.

4. Learned Counsel for the Petitioner contends, when he has filed the statement in this case before the Respondent-Authority, he has also enclosed the-documentary evidence alongwith it which is the same as filed today before us by means of Supplementary Affidavit-II. On the other hand, learned Counsel for the Respondents states that affixation of forms now itself shows and contradicts in the earlier averments made by the Petitioner that the forms were not available as per statement made in the Supplementary Affidavit-I. However, the question which is up for consideration is whether if the Petitioner has filed the said documentary evidence before the said Authority then only or even if not filed, if such document exists, the levy of market fee could be justified on the facts and circumstances of this case.

5. In the present case the Petitioner claims that every transaction in question reveals it being beyond the limit of the Mandi Samiti, thus the Mandi Samiti has no jurisdiction to levy the same. This question being the question of jurisdiction whether such an Authority could levy market fee at all. When such question is raised, it goes to the root of the matter. We are further examining this matter with this background that under the Act in question there is no provision of appeal as against the impugned order and any error by the. Authority, cannot be examined by any Court or Authority, then such person has to seek remedy under Article 226 of the Constitution of India directly. It would be appropriate in our considered opinion to consider for making appropriate amendment, in the Act for effecting redress to the person affected. As we have said above the competence of Mandi Samiti assessing the transaction in question goes to the root of the matter. There are various documentary evidence filed by the Petitioner before us by means of Supplementary Affidavit-!! that the said Authority cannot impose market fee on such transactions as the transactions were made beyond the limits of Mandi Samiti concerned. The Petitioner cannot allege in this case that the impugned order was, passed by Respondent No. 1 without giving proper

opportunity to him. In fact, Mandi Samiti gave opportunity to the Petitioner and since the Petitioner did not file documents within the stipulated period it has been vehemently urged on behalf of the Respondents that no relief should be granted to the Petitioner on account of his not filing the said documents within time. Normally, we do accept this reasoning but since the impugned assessment goes to the root of the matter viz. jurisdiction to assess, in the wider interest of justice, we direct Respondent No. 1 to decide the transaction in question afresh whether the transaction in question was outside or inside the limit of the Mandi Samiti. Since we feel, the question raised is such, if found correct, then no assessment of tax could be levied under the Act, we would not limit Petitioner''s case being examined only if such document was filed before the said Authority. The documents filed before the Authority earlier and new documents even if filed before the Court, would be examined by the Authority in accordance with law in case the Petitioner moves an application within ten days from today and produces the certified copy of this judgment and files those documents, then the Respondent-Authority will examine the matter afresh and pass speaking order.

6. In view of the aforesaid observations and directions the present Writ Petition is allowed and the impugned order dated 24-7-1992 (Annexure-7 to the petition) passed by Respondent No. I is quashed. We direct Respondent No. 1 to decide the matter afresh in the light of the observations made above. We further direct that till disposal of the said matter by Respondent No. 1, the Petitioner will furnish the security to the satisfaction of Respondent No. 1 for the amount for which the recovery has been sought in pursuance of annexure-7 to the petition within a period of three weeks from today which may be other than cash and bank guarantee and such security shall be subject to the orders to be passed by'' the aforesaid Authority in pursuance of our order. Costs on parties.

