(2010) 10 MP CK 0059

In the Madhya Pradesh High Court

Case No : Writ Appeal No. 792 of 2010

S. Goyanka Lime and Chemicals — APPELLANT

Vs

Nagar Panchayat — RESPONDENT

Date of Decision : 25-10-2010

Acts Referred:
Madhya Pradesh Municipalities Act, 1961 — Section 131, 132, 164, 172, 322

Citation : (2011) ILR (MP) 358 : (2011) 1 MPHT 522 : (2011) 2 MPLJ 219

Hon'ble Judges : S.R. Alam, C.J;Alok Aradhe, J

Bench : Division Bench

Judgement

Heard on the question of admission.

This intra Court appeal has been preferred against the order dated 1-7-2010 passed by the learned Single Judge by which the writ petition preferred by the Respondent No. 1 has been allowed.

Facts giving rise to filing of the writ appeal briefly stated are that the Appellant was served with a bill dated 23-1-1998 issued u/s 164 of the Madhya Pradesh Municipalities Act, 1961 (hereinafter referred to as ''the Act'') by which the Appellant was asked to make payment of export tax. Thereafter, the Appellant was served with another notice dated 6-6-1998 asking the Appellant to pay export tax for the period from 1-10-1993 to 31-3-1998 which was quantified at Rs. 2.04,083/-. The Appellant being aggrieved by the aforesaid notice dated 6-6-1998, preferred an application u/s 131 read with Section 132 of the Act (Annexure P-15) before the Collector. The Collector vide order dated 3-11-1999 Annexure P-16, set aside the notice issued by the Respondent No. 1. The aforesaid order was challenged by Respondent No. 1 in the writ petition. Learned Single Judge vide order dated 1-7-2010 allowed the writ petition preferred by Respondent No. 1, inter alia, holding that the Collector, under the provisions of Section 131 of the Act, has no authority to set aside the bill/notice issued u/s 164 of the Act. Being aggrieved by the aforesaid order, the Appellant preferred the instant appeal.

We have heard learned Counsel for both the sides.

Learned Counsel for the Appellant submitted that Respondent No. 1-Municipal Council has no authority in law to levy the export tax. The imposition of tax is absolutely without jurisdiction. It was further submitted that u/s 323 of the Act, the Collector has power to set aside an order passed by Municipality.

On the other hand, Shri Trivedi, learned Senior Counsel for Respondent No. 1 has submitted that the Collector has no jurisdiction to set aside the bill for payment of tax which was issued u/s 164 of the Act. It was further pointed out that in fact, the Appellant could have challenged the validity of the notice issued u/s 164 of the Act as provided u/s 172 of the Act before the Civil Judge, by filing an appeal. Therefore, learned Single Judge has rightly set aside the order passed by the Collector.

We have considered the submissions made by learned Counsel for the parties. The Madhya Pradesh Municipalities Act, 1961 is an Act to consolidate and amend the law relating to Municipalities and to make better provision for the organisation and administration of Municipalities in Madhya Pradesh. Before proceeding to decide the controversy involved in the appeal is apt to take note of relevant provisions of Madhya Pradesh Municipalities Act, 1961. Sections 131 and 132 of the Act read as under:

Power of State Government in regard to relief in taxes.- If on a complaint made to it or otherwise, it appears to the State Government that any tax levied by a Council is unfair in its incidence or that such levy or any part thereof is obnoxious to the interest of the inhabitants of the Municipality, it may, by an order, require the Council to remove the objections to any such tax within such time as may be specified therein and on the failure of Council to comply with the order within the time so specified, to the satisfaction of the Stale Government the State Government may, by Notification and subject to such conditions or restrictions as may be specified therein, abolish, suspend or reduce the amount of rate of any tax.

Power of State Government to grant exemption from taxes.- The State Government may, on its own motion or otherwise after giving the Council an opportunity of expressing its views in the matter, by order, exempt from payment of any tax in whole or in part any person or class of persons or any property or description of properties for the purpose of granting protection to any industry or for any other purpose in public interest subject to such condition as may be specified in such order.

Section 164 of the Act which is relevant for the purpose of controversy involved in the appeal reads as under:

Presentation of bills for taxes, rent and other claims.- (1) When they amount-

(a) which, by or under any provisions of this Act, is declared to be recoverable in the manner provided by this Chapter; or

(b) which, not being leviable under Sub-section (1) of Section 157 or payable on demand on account of an octroi or a toll, is climbable as an amount or instalment on account, of any other tax which is being imposed or may hereafter be imposed in any Municipality; or

(c) which, on account of rent of any Municipal land, buildings, shops, gumtis or any other property,

shall have become due, the Chief Municipal Officer shall, with the least practicable delay, cause to be presented to the person liable for the payment thereof a bill for the sums claimed as due,

(2) Every such bill shall specify-

(a) the period for which; and

(b) the property, occupation or thing in respect of which the sum is claimed,

and shall also give notice of-

(i) the liability incurred in default of payment; and

(ii) the time within which an appeal may be preferred as hereinafter provided against such claim.

(3) If the person to whom a bill has been presented as aforesaid does not, within 15 days from the presentation thereof either-

(a) pay the sum claimed as due in the bill; or

(b) show-cause to the satisfaction of the Chief Municipal Officer or of such officer as the Council may appoint in this behalf, why he should not pay the same; or

(c) prefer an appeal in accordance with the provisions of Section 172 against the claims,

the Chief Municipal Officer may cause to be served upon the person liable for the payment of the said sum a notice of demand in the form prescribed by rules.

(4) The sum claimed as due in the bill shall carry interest at the rate of 6-1/4 per centum per annum till the date it is paid and shall be recoverable along with the bail.

Section 172 of the Act which provides for an appeal is reproduced below for the facility of ready reference:

Appeal to Civil Judge.- (1) Appeals, against any claim included in a bill presented in accordance with the provisions of this Act, or the rules made thereunder, be made to the Civil Judge, Class I, having jurisdiction over the Municipal area and if there be no Civil Judge, Class I, at the headquarters of the Municipality the Civil Judge, Class II having jurisdiction at such headquarters if there be no such Civil Judge Class II at the headquarters to the Civil Judge, Class II having jurisdiction and in case of more than one such Civil Judges at the headquarters having jurisdiction, as the case may be, to such one of them as the District Judge may specify.

(2) No such appeal shall be heard and determined unless:

(a) the appeal is brought within 15 days next after presentation of the bill complained of;

(b) an application, in writing, stating the ground on which the claim of Council is disputed, has been made to the Council in the case of a rate on building or land within the time fixed in the notice given in accordance with the provisions of the Act or the rules made thereunder or of the assessment or alteration thereof, according to which the bill is prepared;

(c) the amount claimed from the Appellant has been deposited by him in the Municipal office.

(3) The decision of the Civil Judge in an appeal made under Sub-section (1) shall, subject to the decision in revision by the Court to which appeals against the decision of such Civil Judge ordinarily lie, be final.

Section 322 of the Act reads as under:

Power of inspection and supervision.- The Divisional Commissioner, Collector or any Officer authorised by the State Government in this behalf by general or special order may-

(a) enter on and inspect or authorise any other person to enter on an inspect any immovable property occupied by Council or any of its committees or any institution under its control or management or any work in progress under its direction;

(b) call for or inspect any record or extract from the proceedings of any meeting of the Council or of any of its committees and any book or document in the possession of or under the control of a Council;

(c) call for any return, statement, account or report which he may think fit to require such Council to furnish;

(d) require a Council to take into its consideration any objection which appears to him to exist to the doing of anything which is about to be done or is being done by or on behalf of such Council or any information which it is able to furnish and which appears to him to necessitate the doing of a certain thing by the Council and, to make a written reply to him within a reasonable time stating its reason for not desisting from doing, or for not doing such thing.

After having noticed, the relevant provisions of the Madhya Pradesh Municipalities Act, 1961, it is graphically clear that Section 164(3)(c) provides a remedy of appeal against the bill which is issued in exercise of power u/s 164 of the Act. Section 172 of the Act provides that an appeal would lie before the Civil

Judge. Section 164 of the Act is a special provision which provides for specific remedy of an appeal. Section 322 of the Act is the general provision of law. It is well settled in law that if the special provision is made on a certain matter, that matter is excluded from the general provision. In this connection, reference be made to the decisions of Supreme Court in Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others, State of Bihar Vs. Dr. Yogendra Singh Col (Retired) and Others, and Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others, . Thus, in view of well settled legal principles, Section 322 of the Madhya Pradesh Municipalities Act, 1961 has no application to the facts and circumstances of the case.

We may now examine whether the Collector u/s 131 of the Act has the authority to set aside the notice issued in exercise of powers u/s 164 of the Act. Section 131 deals with power of the State Government with regard to relief in taxes. Similarly, Section 132 of the Act empowers the State Government to grant exemption from taxes. The powers under Sections 131 and 132 of the Act are exercisable by the State Government and have not been delegated to the Collector. Therefore, the Collector had absolutely no authority in law to quash the demand notice issued in exercise of powers under Sections 131 and 132 of the Act. Thus, for the aforementioned reasons, we do not find any ground to differ with the view taken by learned Single Judge.

At this stage, learned Counsel for the Appellant submitted that she may be permitted to prefer an appeal before the Civil Judge.

In view of the aforesaid prayer, the instant writ appeal is dismissed with liberty to the Appellant to take recourse of such remedy as may be available to the Appellant under the law.