(1978) 01 AHC CK 0001

In the Allahabad High Court

Case No : C.M.W. No. 268 of 1976

SMT. GAURI DEVI — APPELLANT

Vs

SALES TAX OFFICER and Others — RESPONDENT

Date of Decision : 31-01-1978

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 145, 50
Constitution of India, 1950 — Article 226, 299
Criminal Procedure Code, 1973 (CrPC) — Section 145

Citation : (1978) 7 CTR 172

Hon'ble Judges : H. N. Seth, J

Bench : Division Bench

Judgement

H. N. Seth, J. - Smt. Gauri Devi has filed this petition under Art. 226 of the Constitution praying that proceedings for attachment and sale of house No. HS 26 Kailash Colony Market New Delhi, for the realization of Sales Tax dues against one Messrs. Bagai Motor Service, Dehra Dun should be quashed.

2. Facts disclosed by various affidavits filed in this case, briefly stated, are that with a view to continue the registration certificate of Bagai Motor Service Dehra Dun under the provisions of the Sales Tax Act, Sri Basdeo Sharma, husband of the petitioner and one Sri B. L. Sibal submitted a bond before the Sales Tax Officer, Dehra Dun, offering themselves as sureties. According to the bond, the Sales Tax Officer or any person authorised by him under the Sales Tax Act, could recovery from the sureties any amount of Sales Tax upto Rs. 3,00,000/- that remained unrealised from Messrs. Bagai Motor Service and that the properties mentioned therein (including house No. HS 26 Kailash Colony Market New Delhi) belonged to the sureties and were free from all encumbrances and liabilities. The sureties further purported to bind in this connection their heirs, administrators and executors as well.

3. In due course, a recovery certificate dated 19th February 1972, for realisation of Sales Tax dues amounting to Rs. 7,87,990.29 from Messrs. Bagai Motor

Service, was sent to the revenue authorities at Delhi. The revenue authorities reported that the firm was lying closed and that its properties already stood attached for realisation of local sales tax dues. They further requested the Collector, Dehra Dun to let them know the name of the bank in which the defaulting firm had been maintaining its account and also whether proceedings for realisation of sales tax dues could be taken against partners of the firm individually. Collector Dehra Dun forwarded a copy of the letter received by him from the revenue authorities at Delhi, to the Sales Tax Officer Dehra Dun, who by his letter dated 22nd January 1972, conveyed certain information to the Assistant Collector Delhi and further requested him to recovery a sum of Rs. 1,50,000 from each of the two sureties of Messrs. Bagai Motor Service. In pursuance of the aforesaid request made by the Sales Tax Officer, the revenue authorities attached the house in dispute on 17th September 1973 for realisation of a sum of Rs. 1,50,000/- from Sri Basdeo Sharma.

4. The petitioner then filed suit No. 105 of 1974 against her husband Sri Basdeo Sharma in the court of Sub-Judge Delhi on 25-2-1974 and claimed a declaration that she was the real owner of house No. HS 26 Kailash Colony Market, New Delhi and that her husband Basdeo Sharma should be restrained from realising rent from the tenants of the house. She also filed objections before the revenue authorities at Delhi with regard to the attachment of the house in question which she claimed belonged to her.

5. Suit No. 105 of 1974, was, on the basis of statement made by counsel for both the parties, decreed on 20th March, 1974. Petitioners objections against attachment of the house were rejected by the revenue authorities on 16th July 1974. The appeal against the order of the revenue authorities dated 16th July 1974 was also dismissed by the Financial Commissioner, Delhi on 25th April 1975. The Financial Commissioner held that the decree passed in suit No. 105 of 1974 which had been obtained by the petitioner after the property in dispute had been attached was not binding on the Sales Tax Department and that the recovery proceedings were not vitiated because of any non-compliance of the provisions of Art. 299 of the Constitution.

6. In appears that in the mean time, petitioners husband died and she filed a fresh suit in the court of Sub-Judge Delhi questioning the validity of the attachment of the property in question and obtained an injunction restraining the sale of the house. She, however, conceded that the said suit was not maintainable as before filing it no notice u/s 80 of the C.P.C. had been given and also because the validity of that surety bond could not be questioned before the Delhi courts. The petitioner then filed the present petition before this Court on 6th April 1976 and prayed that proceedings for attachment and sale of house No. HS 26 Kailash Colony Market New Delhi for the realization of the Sales Tax dues of Messrs. Bagai Motor Service Dehra Dun be quashed. She also obtained an interim order restraining the sale of the attached property in the mean time.

7. In support of his petition, learned counsel for the petitioner made the

following three submissions :-

(1) The Revenue Authorities at Delhi are purporting to recover the sales tax due by attachment and sale of the property in question, under the provisions of Revenue Recovery Act 1890. Proceeding for recovery of an amount under the Revenue Recovery Act, can be taken only if it has, under some law, been made recoverable as arrears of land revenue. S. 8(8) of the U.P. Sales Tax Act merely makes any tax or other dues payable to the State Government under the Act or any amount or money or money which a person is required to pay to assessing authority under sub-S. (3) or for which he has become personally liable to the assessing authority under sub-S. (6), recoverable as arrears of land revenue. The amount sought to be recovered from the sureties, in enforcement of the bond executed by them cannot be termed as any tax or other dues payable to the State Government under the Sales Tax Act. If at all, that amount becomes due and payable under the surety bond, Such an amount is also not an amount that becomes payable to the assessing authority either under sub-S. (3) or under sub-S. (6) of S. 8 of the U.P. Sales Tax Act. Accordingly, the entire proceedings for the enforcement of the surety bond executed by Basdeo Sharma are without jurisdiction and are liable to be quashed.

(2) According to S. 5-A of the Revenue Recovery Act 1890, where any sum is recoverable as arrears of Land Revenue by any public officer other than a Collector or by any local authority and the defaulter is or has property in a district, outside U.P., the Collector of the District in which the Office of that Officer or authority is situate may, on the request of the Officer or authority, send a certificate to the Collector of the district where the defaulter is or has property who in his turn has to recovery the same as if the amount was payable to himself. As the power to forward the recovery certificate belonged to the Collector of the District where the office of the Sales Tax Officer was situate viz. the Collector Dehra Dun, the Sales Tax Officer as not competent to directly request the revenue authorities at Delhi to recover the dues from the sureties. Action of the revenue authorities at Delhi, in proceeding to attach and sell the house in dispute at the request of the Sales Tax Officer, dated 22nd January 1973, was without jurisdiction.

(3) The surety bond executed by Basdeo Sharma did not comply with the provisions of Art. 299 of the Constitution and as such the same was not enforceable.

Even if for the sake of argument it is accepted that the amount due under the surety bond executed by Basdeo Sharma was not a due payable to the State Govt. under the Act as contemplated by S. 8(8) of the U.P. Sales Tax Act, it cannot be doubted that the Sales Tax assessed against Messrs. Bagai Motor Service Dehra Dun was an amount which has payable to the State Government under the U.P. Sales Tax Act and was as such recoverable as arrears of land revenue. S. 33 of the U.P. Sales Tax Act makes further provision regarding recovery of dues under the Sales Tax Act and it runs thus :-

"33. In respect of any sum recoverable under this Act as arrears of land revenue the Assessing Authority may forward to the Collector a certificate under his signature specifying the sum due. Such certificate shall be conclusive evidence of the existence of the liability, of its amount, and of the person who is liable and the Collector on receipt of the certificate shall proceed to recover from such person the amount specified therein as if it were an arrear of land revenue :

Provided that without prejudice to the powers conferred by this section, the Collector shall, for the purposes of recovering the amount specified in the certificate, have also all the powers which -

(a) a Collector has under the Revenue Recovery Act, 1890; and

(b) a Civil Court has under the CPC 1908, for the purpose of recovery of an amount, due under a decree.

Explanation - The Expression Collector includes an additional Collector of any other Officer authorised to exercise the powers of a Collector under the law relating to land revenue for the time being in force in the States.

Main part of S. 33 empowers the assessing authority to forward to the Collector a certificate under his signature specifying the sum due and on its receipt the Collector is enjoined to recover the amount from the person mentioned therein as if the amount was an arrear of land revenue. The proviso added to the section confers upon the Collector, to whom a recovery certificate has been issued, not only the powers which a Collector has under the Revenue Recovery Act 1890 cut also the powers which a civil has, under the CPC 1908, for recovery of a sum due under a decree.

S. 145 of the CPC runs thus :-

"Where any person has become liable as surety -

(a) for the performance of any decree or any part thereof or

(b) ....

(c) ....

the decree or order may be executed against him to the extent to which he has rendered himself personally liable in the manner herein provided for the execution of decree and such person shall, for the purposes of the appeal be deemed a party within the meaning of S. 47; provided that such notice as the court in such case thinks sufficient has been given to the surety."

7. The section empowers a Civil court to execute a decree against a surety who has rendered himself personally liable for its performance or for performance of any part of it even though such a person is not a party to the decree. Accordingly as provided in clause (b) of the proviso to S. 33 of the U.P. Sales Tax Act, the Collector to whom a recovery certificate has been forwarded for execution will have, like a civil court, powers to execute it also against the surety who has

rendered himself personally liable to pay the Sales Tax that remained unrealized from the dealer, even though the recovery certificate did not directly mention his name. Of course, as laid down in S. 145 of the Code of Civil Procedure, before proceeding to enforce the recovery certificate against the surety the Collector will have to give notice to the surety concerned. In the instant case, there cannot be any doubt that under the surety bond dated 13th July 1970 (Annexure II to the petition) Sri Basdeo Sharma had rendered himself personally liable to pay the unrealized sales tax dues of Messrs. Begai Motor Service Dehra Dun upto a certain extent. The recovery certificate dated 19th February 1972 which was, at the instance of the Sales Tax Officer Dehra Dun, forwarded by the Collector Dehra Dun to the revenue authorities at Delhi, therefore, enabled the revenue authorities at Delhi to recover the unrealized sales tax dues of Begai Motor Service from Basdeo Sharma to the extent he had rendered himself personally liable under the surety bond executed by him even though his name had not been mentioned in the recovery certificate. Further, in view of the principles underlying S. 50 of the Code of Civil Procedure, the recovery certificate could after the death of Basdeo Sharma be pursued against the present petitioner to the extent to which the property of Basdeo Sharma had come in her hands and which had not been duly disposed of. In this view of the matter the first two arguments submitted by the petitioner for objecting to the attachment and sale of house No.HS 26 Kailash Colony Market New Delhi for the realisation of Sales tax dues of Messrs. Bagai Motor Service Dehra Dun cannot be countenanced.

8. So far as the third argument of the petitioner is concerned, we find that Art. 299 of the Constitution lays down that all contracts made in the exercise of executive powers of the Union or of a State shall be expressed to be made by the president or the Governor of the State as the case may be and all such contracts and all assurances of property made in the exercise of that power shall be executed on behalf of the President or the Governor by such persons and in such manner as he may direct or authorise. This article 299, in our opinion, concerns a case where the Union of India or a State enters into a contract in the exercise of its executive power. It has no application to a case where a particular statutory authority, as distinguished from the Union or the State, is in terms of a Statute required to ask for a security for the purpose specified in the statute and is enabled to accept the same. It may be that when the statutory authority requires a person to execute a surety bond and thereafter accepts it, the transaction results into a contract. Such a contract, even though it is for securing the interest of the Union or the State is not a contract which has been entered into by or on behalf of the Union or a State in the exercise of its executive powers. In the instant case S. 8-C of the U.P. Sales Tax Act empowers the assessing authority to require a dealer to furnish security for the proper realisation of the tax, penalty or other amounts due or payable under the Sales Tax Act. An offer of security and acceptance thereof made under S. 8-C of the U.P. Sales Tax Act results into a contract with the Assessing Authority for the benefits of the State Government. In such a case, the Sales Tax Officer does not enter into a contract either for or

on behalf of the Union or the State and Art. 299 of the Constitution has no application to it. In our opinion reliance placed by the petitioners on the cases Bigh Raj Jaipuria vs. Union of India, K. P. Chaudhri vs. State of Madhya Pradesh, Mulan Chand vs. State of Madhya Pradesh, is misplaced. In all these cases the observations that provisions like that of Art. 299 of the Constitution are mandatory, was made in relation to cases where contracts had actually been entered into on behalf of the State or the Union Government. They were not cases where a particular statutory authority on its own had been authorised to accept an offer made by a person to stand surety.

9. In the result we find that none of the three arguments raised by the petitioner for challenging the validity of the proceedings for attachment and sale of house No. HS 26 Kailash Colony Market, New Delhi has any substance. All the grounds of attack urged by petitioners counsel before us having failed the petition fails and is dismissed with costs.