
(2003) 11 MP CK 0066
In the Madhya Pradesh High Court
Case No : First Appeal No. 6 of 1994

State of M.P. and another

APPELLANT

Vs

Siyaram Verma

RESPONDENT

Date of Decision : 05-11-2003

Acts Referred:

Madhya Pradesh Land Revenue Code, 1959 — Section 257(h)

Citation : (2004) 1 MPLJ 130

Hon'ble Judges : Subhash Samvatsar, J; S.S. Jha, J

Bench : Division Bench

Advocate : K.B. Chaturvedi, for the Appellant; R.D. Jain with S.K. Jain, for the Respondent

Final Decision : Allowed

Judgement

Subhash Samvatsar, J.

This appeal is filed by the defendants challenging judgment and decree, dated 28-10-1993, passed by First Additional Judge, to the District Judge, Shivpuri in Civil Suit No. 8A/88, whereby the Court below has passed a decree for declaration that the defendants have no right to recover an amount of Rs. 2,79,000/- by way of Revenue Recovery Certificate (R.R.C. for short).

The facts of the case are that the respondent/plaintiff filed a suit for declaration that the R.R.C. issued by the defendants for recovery of an amount of Rs. 2,79,000/- is illegal and void and the said amount cannot be recovered by issuing R.R.C. The plaintiff in his plaint has alleged that the defendant No. 2 i.e. Executive Engineer, P.W.D. National High Way, Shivpuri had issued tenders for recovery of toll tax on the bridge constructed at Agra-Bombay Road known as Janjali Bridge for a period from 1-6-1987 to 31-3-1988. The off-set price for auction was fixed at Rs. 16,80,000/-. An amount of Rs. 16,800/- was paid by the plaintiff by way of earnest money. The offer of the plaintiff was for Rs. 18,80,000/- which was the highest. Respondent accepted the bid of the plaintiff.

However, due to some reasons, agreement between the parties was not entered into nor the plaintiff started the work of collecting toll tax. As the agreement was not entered by the plaintiff, an amount of earnest money was forfeited by the respondent and the work was carried out by making alternate arrangements, which caused a loss to the Government to the extent of Rs. 2,79,000/- and for recovery of the said amount R.R.C. was issued. This R.R.C. is challenged in the civil suit.

The defendants filed their written statement stating that as the plaintiff did not execute the contract in spite of acceptance of his offer. They had to go for an alternate arrangement for recovery of toll tax and in this process accrued loss of Rs. 2,79,000/-. The defendants submitted that as per the agreement, the defendants have a right to recover the said amount as arrears of land revenue and hence R.R.C. is rightly issued.

The trial Court after framing issues and recording evidence decreed the suit and declared that the defendants have no right to recover the said amount by issuing R.R.C. This judgment and decree is under challenge in the present appeal.

Shri. K.B. Chaturvedi, counsel for the State urged that the suit filed by the plaintiff is not maintainable, as the amount is recoverable as land revenue. Section 257 sub-clause (h) of M.P. Land Revenue Code, 1959 (hereinafter referred to as "the Code") bars jurisdiction of Civil Court. Sub-clause (h) of section 257 of the Code excludes jurisdiction of Civil Court in respect of any claim against the State Government connected with or arising out of, the collection of land revenue or the recovery of any sum which is recoverable as arrears of land revenue under the Code or any other enactment. He further submits that since the amount is recoverable as arrears of land revenue, the State has issued R.R.C. after issuing demand notice u/s 147 of the Code. He has also invited attention of this Court towards section 150 of the Code, which provides that if any person against whom recovery of an arrear of land revenue, a notice for arrears is issued, he may, at any time before the property is knocked down, deposit the amount claimed under protest and deliver a protest signed by himself or by his authorised agent to the Revenue Officer taking such proceedings. On filing such application the proceeding shall be stayed. Thereafter the S.D.O. will decide his objection so raised by him. This procedure is not followed by the present plaintiff. Hence, the suit is not maintainable.

For supporting his argument Shri K.B. Chaturvedi relied on the judgment of Full Bench of this Court in the case of Manoharlal Awal Vs. The State of Madhya Pradesh and Others, and urged that present civil suit is barred in view of sections 150 and 257(h) of the Code. After going through the said Full Bench decision we find that the said judgment does not support the appellants. On the other hand from reading of judgment, it appears that the Full Bench has taken view that provisions of section 150 of the Code are applicable only to a proceeding for the recovery of arrear of land revenue, but not to a proceeding for the recovery of money recoverable as an arrear of land revenue. In para 16 of the judgment in

reply to question No. 1, the Full Bench has laid down that section 150 of the Code applies to recovery of an arrear of land revenue, but not to a proceeding for the recovery of the sum of money which is recoverable as an arrear of land revenue within the meaning of section 155 of the Code, i.e. a civil suit cannot lay challenging the R.R.C. for recovery of actual land revenue but will lay challenging the R.R.C. for recovery of an amount which has taken colour of land revenue due to the deeming fiction.

Clause (b) of section 155 provides that all moneys falling due to the State Government under any grant, lease or contract which provides that they shall be recoverable in the same manner as an arrear of land revenue. By reading the said provisions, it is clear that the amount claimed by the respondent/plaintiff is an amount recoverable as arrears of land revenue u/s 155 of the Code i.e. by deeming fiction. Hence the civil suit challenging the said recovery is maintainable in the Civil Court and the remedy u/s 150 of the Code is not available to the plaintiff.

In reply to question No. 4, the Full Bench has clearly mentioned that the Full Bench does not want to express any opinion on the question whether a Civil Suit under the General Law is barred challenging recovery of an amount recoverable as a land revenue. However, the Division Bench of this Court in the case of *The State of Madhya Pradesh Vs. Sunder Lal Jaiswal*, has laid down that a Civil Suit is maintainable challenging the recovery of an amount payable as land revenue by issuing a R.R.C. on the ground that the said amount is not at all recoverable. In view of this, we hold that the present suit is maintainable.

The second contention raised by Shri K.B. Chaturvedi is that the contract executed between the parties is under Article 299 of the Constitution of India and therefore the conditions incorporated in the contract are binding on both the parties. Condition No. 8 of the contract empowers the State Government to forfeit the earnest money and recovery of damages from the contractor as arrears of land revenue. However, in the present case the contract is not on record. The plaintiff has specifically pleaded that he has not signed the contract. Hence, the terms of the contract are not binding on him.

Shri R. D. Jain, Senior Advocate for the respondent submitted that the contract is not in conformity with Article 299 of the Constitution of India. Hence, there is no contract at all which is binding the parties. According to him, there cannot be implied contracts between the Government and the contractor. For this purpose, he relied on the judgment of Apex Court in the case of *K. P. Chowdhry vs. State of M.P.*, 1966 MPLJ 1057 : 1966 J LJ 1012 in which the Apex Court has held that under Article 299 of the Constitution of India there cannot be implied contracts between the Government and other person and if such a contract is not in full compliance under Article 299, it would be no contract at all and could not be enforced at all by the Government. Article 299 rules out the implied contract between the Government and other person.

Shri K.B. Chaturvedi, Counsel for State urged that the contract between the parties is admitted. He invited attention of this Court to para 4-C of the plaint, in which the plaintiff himself has referred to the contract. He has also invited our attention to Ex. D-6, which is a letter issued by the plaintiff by which he has sought time to take charge of the bridge for recovery of toll tax. From the pleadings of the parties, it is clear that the plaintiff has offered a bid for toll tax. However, in absence of the agreement on record, the contents of the agreement cannot be looked into. As already pointed out that copy of the contract is not on record of this Court. Therefore, in absence of the said contract, this Court cannot interpret the terms of the contract. However, it is admitted position that the plaintiff has not signed the contract. In such circumstances, it cannot be held that there was a contract between the parties as per Article 299 of the Constitution of India.

The last submission made by the counsel as regards the payment of court fee, according to him the plaintiff by the said suit has claimed for relief for recovery of Rs. 2,79,000/- and paid court fee of an amount of Rs. 50/-. According to him, ad valorem court fee is payable looking to the nature of relief claimed by the plaintiff. For this purpose, he relied on the judgment of Division Bench of this Court in the case of Jagdish Tiwari Vs. State of M.P. and Others, . In the aforesaid case a suit was filed by plaintiff for declaration to avoid liability of recovery of Rs. 1,36,989/- on the ground that auction held for auctioning 3020 Khair trees may be declared as illegal as no concluded contract had come into existence. Division Bench of this Court has held that as the plaintiff wants to avoid liability he is required to pay ad valorem court fee u/s 7(iv)(c) of the Court Fees Act.

In view of this fact, we find that court fees paid by the plaintiff is insufficient and plaintiff is required to pay ad valorem court fee on amount of Rs. 2,79,000/-. However, looking to the fact that the trial Court has held that no ad valorem court fee is not payable and decreed the suit. It will not be in the interest of justice to dismiss the suit on the ground of non-payment of court fee, instead of it will be in the interest of justice to afford the plaintiff an opportunity to pay the deficit court fees, hence we direct the plaintiff to pay the deficit court fee within a month from the date of this judgment. If the plaintiff fails to deposit the court fees in the trial Court his suit shall be liable to be dismissed.

In view of the above, the judgment and decree passed by the trial Court is upheld subject to modification about the direction of payment of court fees. Appeal stands partly succeeds without any order as to costs.