(2004) 08 P&H CK 0142

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 465 of 1982

The Market Committee and Another — APPELLANT

Vs

General Trade Supplies — RESPONDENT

Date of Decision : 11-08-2004

Acts Referred:

Contract Act, 1872 — Section 70
Limitation Act, 1963 — Section 15(2)
Punjab Agricultural Produce Markets Act, 1961 — Section 18, 31, 35(1)

Citation : (2004) 138 PLR 822 : (2005) 1 RCR(Civil) 19

Hon'ble Judges : Hemant Gupta, J

Bench : Single Bench

Advocate : J.K. Sibal and Sapan Dhir, for the Appellant; B.R. Mahajan, for the Respondent

Final Decision : Dismissed

Judgement

Hemant Gupta, J.—The defendants are in appeal aggrieved against the judgment and decree passed by the courts below arising out of a suit for recovery of Rs. 49,997.60P as balance price of the goods sold: Rs. 2000/- towards refund of security, Rs. 7()00/- as interest and Rs. 100/- towards notice and sundry charges.

2. The plaintiff is a partnership firm whereas the defendant is a body corporate under the provisions of the Punjab Agricultural Produce Market Act, 1961 (hereinafter referred to as the Act). The plaintiff entered into an agreement duly sealed and signed by the chairman of the Market Committee for the supply of metallic bins which was conveyed to the plaintiff vide letter dated 23.2.1997. Plaintiff delivered goods worth Rs. 3 lacs covered by the said agreement. Vide another agreement dated 31.3.1977 the plaintiff was asked to supply additional metallic bins worth Rs. 50,000/-. The goods were supplied to the defendant and accepted by it. Plaintiff has been paid a sum of Rs. 3 lacs but the price of additional metallic bins the order of which was placed by the plaintiff vide letter dated 31.3.1977 and thus the plaintiff filed suit for the recovery of Rs.

49,997.60P the actual price thereof, along with recovery of security and interest and misc. expenses. Plaintiff served statutory notice u/s 31 of the Act. Since the defendant refused to make the payment the suit was filed.

3. Defendant raised many objections and took up the stand that neither the goods worth Rs. 3 lac nor additional metallic bins worth Rs. 50,000/- were supplied. It was also pleaded that no such contract could have been placed actually and until an agreement was duly arrived at and registered into writing under the signatures of the Chairman of the Committee, vice chairman or at least 2 members of the committee.

4. On the pleadings of the parties, the following issues were framed by the trial Court:-

1. Whether the suit is within time?

2. Whether the suit is bad for non-joinder of necessary parties? OPD

3. Whether the plaintiffs supplied metallic bins of the value of Rs. 49,997.60P to the defendants? OPP

4. Whether the plaintiff is entitled to interest, if so how much and at what rate? OPP

5. Whether a valid notice u/s 31 of the Act 23 of 1961 was served on the defendant No.? OPP

6. Relief.

5. The plaintiffs produced voluminous evidence in support of their claim of the order and supply of metallic bins. It is a finding of fact recorded by the courts below that metallic bins worth Rs. 3,50,140.40P was supplied to the defendant. 1100 bins of 10 quintals and 119 bins of 5 quintals were received. The price of bin of 10 quintals was Rs. 284/- and price of 5 bins was Rs,189.60P. It was also found that the Market Committee has given order for the purchase of additional metallic bins after sanction was given by the Punjab Agricultural Marketing Board, Chandigarh on 28.3.1977.

6. In the present appeal, learned counsel for the appellants has raised three fold sub- missions. Firstly, the Market Committee was superseded by virtue to Punjab Agricultural Markets (Amendment) Ordinance 1977 (hereinafter referred to as the Ordinance) and as a consequence of supersession of Market Committee, the property of the Market Committee vested with the State Government but the State Government was not impleaded as a party in the suit and therefore, the suit was incompetent; (ii) that the plaintiff has supplied goods on 31.3.1977 whereas the suit has been filed on 21.11.1977. The suit is, thus, beyond the period of limitation prescribed u/s 31 of the Act as there is limitation of 6 months contemplated under the aforesaid provisions of law for filing of the suit, (iii) Section 22 of the Act contemplates that the agreement on behalf of contract in terms of Section 22 of the Act has not been signed and sealed, therefore, the

plaintiff is not entitled to recover the goods supplied under the said agreement. However, I am unable to agree with the contentions so raised by the learned counsel for the appellants.

7. By virtue of aforesaid ordinance Section 12-C was inserted in the Principal Act, which reads as under:

12.C. On and from the date of commencement of the Punjab Agricultural Produce Markets (Amendment) Ordinance, 1977.-

(a) all the Committees, constituted by way of nomination, whether under sub-section (4) of section 12 of Section 12-A shall stand superseded:

(b) all the members including the Chairman and the Vice Chairman of every Committee shall cease to hold office;

(e) during the period of supersession of the Committees, all powers and duties conferred and imposed upon the Committee by or under this Act shall be exercised and performed by such gazetted officer as the Governor may appoint in that behalf;

and

(d) all property, vested in each Committee shall, until these are reconstituted vest in the Government;

Provided that the Committees shall be reconstituted in accordance with the provisions of Section 12 within a period of six months from the date of supersession."

8. The Market Committee is a body corporate constituted u/s 18 of the Act which reads as under:

18. Incorporation of Committees.- Every Committee shall be a body corporate as well as a local authority by such name as the State Government may specify in the notification establishing it, shall have perpetual succession and a common seal, may sue and be sued in its corporate name, and shall subject to the provisions of Section 32 be competent to acquire and hold property, both movable and immovable to lease, sell or otherwise transfer any moveable and immovable property which may have become vested in or been acquired by it, and to contract and to do all other things necessary for the purposes for which it is established.

Provided that no Committee shall permanently transfer any immovable property except in pursuance of resolution passed at a meeting specially convened for the purpose by a majority of not less than three-fourth of the members of the Committee and with prior approval of the Chairman of the Board."

9. Section 12 of the Act provides for constitution of the Committee which contemplate that it shall consists of such number of members as contemplated therein. The effect of supersession of the Committee u/s 12-C of the aforesaid

Ordinance is that the members constituting the Committee ceases to hold office as member of the Committee and the Officers in the notification dated 13.5.1977 were empowered to perform all the powers and duties conferred and imposed upon the respective Committees by or under the Act. Said Notification reads as under:

Notification The 13th May, 1977

No.2406-RD-I-77/8224 - In pursuance of sub-section (c) of Section 12(B) of the Punjab Agricultural Produce Market Act, 1961, the President of India is pleased to appoint Shri K.S.Bains, I.A.S. Development Commissioner and Secretary to Government, Punjab, Development and Agriculture Department, enabling him to perform all the powers and duties conferred and imposed upon the Punjab State Agricultural Marketing Board by or under the Act.

No.2406/RDI-77/8230.- In pursuance of sub-section (e) of Section 12(c) of the Punjab Agricultural Produce Markets Act, 1961, the President of India is pleased to make the following appointment in the Market Committees as indicated against each Market Committee enabling them to perform all the powers and duties conferred and imposed upon the respective committee by or under the Act-

Sr. Name of Market Committee Officer appointed No. XX XX XX XX XX XX 9. Amritsar Chief Agricultural Officer, Amritsar.

10. In fact Section 35 of the Act contemplates supersession of the Committee and the consequence ensuing after the publication of the notification under sub-section (1) of Section 35 of the Act of superseding the Committee. It is made clear therein that all the members including the Chairman or Vice Chairman of the Committee cease to be member of the Committee from the date of such publication and all assets of the Committee shall vest in the Board and Board shall be liable for the liabilities of the Committee. Therefore, instead of superseding the Committee by giving a show cause notice for incompetency to perform or persistent default in performing the duties the Committee was superseded by a statute i.e. ordinance referred to above. However, the consequences are that the members of the Committee cease to be members of the committee and all the property of the Board shall be vested in the Government but the constitution of the Committee itself constituted u/s 18 of the Act was not tinkered with in any manner. Therefore, the first argument raised by the learned counsel for the appellant is not sustainable in law.

11. The second argument that the suit is barred by limitation is again devoid of merit. Suit has been filed on 21.11.1977 i.e. within 8 months after the supply of the goods on 31.3.1977. Section 31(1) of the Act contemplates that a notice of 2 months is required to be served before the suit is filed against the Market Committee. Such notice has been served upon the defendant. Since statutory notice is required to be served the period of statutory notice is to be excluded while computing the period of limitation in terms of section 15(2) of the Limitation Act, 1963. Therefore, if such period is excluded the suit filed by the

plaintiff is within the period of limitation.

12. The third argument raised by the learned counsel for the appellant that since no contract in terms of section 22 of the Act has been entered upon therefore, the plaintiff is not entitled to recover the price of the goods supplied is again devoid of merit. Such question has risen earlier as well. In State of West Bengal Vs. B.K. Mondal and Sons, a question arose regarding recovery of the goods supplied when the contract in terms of the provisions of Section 173 of the Government of India Act, 1935 was not exempted. It has been held by the Constitutional Bench that where a claim for compensation is made by one person against another u/s 70 of the Contract Act, the suit is not based upon any subsisting contract between the parties. It is on the basis of fact that something was done by the party for another and the said work so done has been voluntarily accepted by the other party. It has been held if something done in pursuance of a contract for the benefit of the Government and for their use and enjoyment and is otherwise legitimate and proper, section 70 of the Contract Act would play in and support a claim for compensation made for the contracting parties notwithstanding the fact that the contract has not been made as required by Section 175(3) of the aforesaid Act.

13. In new The New Marine Coal Co. (Bengal) Private Ltd. Vs. Union of India (UOI), the Court has considered the judgment in B.K. Mondal case (supra) and held to the following effect:

"In the Courts below, elaborate arguments were urged by the parties on the question as to whether the contract, the subject-matter of the suit, was invalid and if yes whether a claim for compensation made by the appellant could be sustained under S.70 of the Indian Contract Act. Both these questions are concluded by a recent decision of this Court in the State of West Bengal Vs. B.K. Mondal and Sons, . As a result of this decision, there can be no doubt that the contract on which the suit is based is void and unenforceable and this part of the decision is against the appellant. It is also clear under this decision that if in pursuance of the said void contract, the appellant has performed his part and the respondent has received the benefit of the performance of the contract by the appellant. S.70 would justify the claim made by the appellant against the respondent. This part of the decision is in favour of the appellant. It is, therefore, unnecessary to deal with this aspect of the matter at length."

14. In State of Kerala and Another Vs. The Gwalior Rayon Silk Manufacturing (Wvg.) Co. Ltd. etc., the Hon''ble Supreme Court held to the following effect:

"Section 70 of the Contract Act enables the person who actually supplies goods or renders some services, not intending to do so gratuitously, to claim compensation from the person who enjoys the benefit of the supply made or services rendered. It is a liability which arises on equitable grounds even though express agreement or a contract may not be proved.

15. In the present case, the plaintiff has lawfully delivered the goods to the

Market Committee. While delivering such goods, the plaintiff was not intending to act gratuitously and the Market Committee has received and used such goods. Therefore, in terms of the provisions of Section 70 of the Contract Act, the Market Committee has the liability to compensate the plaintiff with the price of the goods. In view of above, I do not find any merit in the third argument raised by the learned counsel for the appellant.

No other point was urged before me.

In view of above, I do not find any. merit in the present appeal. The same is hereby dismissed.

