(1999) 11 P&H CK 0101

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 996 of 1980

The Market Committee — APPELLANT

Vs

Amar Nath Surinder Mohan — RESPONDENT

Date of Decision : 05-11-1999

Acts Referred:

Punjab Agricultural Produce Markets Act, 1961 — Section 31

Citation : (2000) 124 PLR 782 : (2000) 1 RCR(Civil) 326

Hon'ble Judges : R.L. Anand, J

Bench : Single Bench

Advocate : Ajay Tiwari, for the Appellant;

Final Decision : Allowed

Judgement

R.L. Anand, J.—This is a defendant''s appeal and has been directed against the judgment and decree dated 17.12.1979 passed by Additional District Judge, Ludhiana, who affirmed the judgment and decree dated 28.12.1978 passed by Senior Sub Judge, Ludhiana, who granted a money decree for a sum of Rs. 14,400.73 in favour of plaintiff M/s Amar Nath Surinder Mohan.

2. The facts of the case are that plaintiff firm carries on business in Doraha notified market area within the jurisdiction of the defendant-Committee and has licence for the sale and purchase of agricultural produce and other merchandise. The plaintiff-firm has to pay market fee as prescribed by the defendant-Committee. The fee prescribed by the defendant Committee was Rs. 1.50 per hundred rupees on the purchase of the agricultural produce within the market area. But by an unauthorised amendment in the Act vide amendment Act No. 13 of 1974, the defendant-Committee raised the scale of fee from Rs. 1.50 to Rs. 2.25 per hundred rupees w.e.f. 30.4.1974. The notification and the resultant amended Act No. 13 of. 1974 were struck down as illegal being beyond the jurisdiction of the legislature for the State of Punjab to enact such an Act by the Hon''ble High Court in Civil Writ Petition No. 3274 of 1974 and Civil Misc. No. 9010 of 1974 vide order dated 8.11.1974. The plaintiff-firm thereafter sued for

the refund of the excess amount and the interest there upon from the Market Committee.

3. The suit was contested by the defendant-committee and it was pleaded that the money in dispute was recovered from the purchasers and not from the. plaintiff, that the plaintiff recovered the money from the purchasers and handed over to the defendants and, therefore, the plaintiff had no locus standi; that the suit was time barred; that no noticed u/s 31 of the Punjab Agricultural Produce Markets Act, 1961 had been served and, therefore, the suit was liable to be dismissed with costs.

4. From the above pleadings of the parties, the learned trial Court framed the following issues:-

1. Whether the suit is within limitation? OPP

2. Whether the plaintiff has locus standi to file the present suit? OPP

3. Whether a valid notice has been served on the defendant? OPP

4. Whether the plaintiff-firm is a Joint Hindu Family firm and Amar Nath is the Karta of the family? OPP

5. Whether the amount of market fee paid by the plaintiff in question is unwarranted by law and the plaintiff is entitled to its refund? OPP

6. Relief.

5. The parties led oral and documentary evidence in support of their respective cases and on the conclusion of the trial, the suit of the plaintiff was decreed.

6. Aggrieved by the judgment and decree of the trial Court, the defendant-Committee filed the first appeal before the Court of Additional District Judge, Ludhiana, which vide impugned judgment and decree dated 17.12.1979 dismissed the appeal for the reasons given in para Nos. 8 to 18 of the judgment, which are quoted as under:

"8. The learned counsel for the defendant-appellants has vehemently urged that the suit was barred by limitation.

9. Under Rule 33 of the Punjab Agricultural Produce Markets (General) Rules, 1962, if any market fee has been recovered in excess of the amount actually due or any amount has been paid by mistake, the Chairman of the Board of the Committee, as the case may be, has refund such money on a written application being made within 6 months of the payment. u/s 31(2) of the Punjab Agricultural Produce Markets Act, 1961, a suit against the Market Committee for anything done or purporting to be done under this Act has to be filed within 6 months from the date of accrual of cause of action. The learned counsel for the appellants has, therefore, pressed into service Section 31(2) of the Punjab Agricultural Produce Markets Act (hereinafter referred to as Act) and Rule 33(c) and (e) of the Punjab Agricultural Produce Markets (General) Rules, 1962, in

support of his argument that the suit was time barred. To appreciate the arguments raised on behalf of the appellants. I deem it necessary to reproduce Section 31 of the Act and Rule 33 of the Punjab Agricultural Produce Markets (General) Rules, 1962:-

"31(2) Every such suit shall be dismissed unless, it is instituted within six months from the date of the accrual of cause of action."

"33. Refund of certain amounts:

(1) When

(a).............

(b).............

(c) any market fee has been recovered in excess of the amount actually due; or

(d).............

(e) any amount has been paid by mistake, the Chairman of the Board of the Committee, as the case may be, shall, on a written application being made within six months of such deposit and after such enquiry as he or it may consider necessary, order the refund of the appropriate amount, which shall be repaid to the person concerned, after preparing a refund bill, out of the Marketing Development Fund according as it was credited in the first instance to the Market Committee Fund.

(2).............

(3).............

10. The Provincial Government of Madras Vs. J.S. Basappa, is complete answer to the argument raised by the learned counsel for the appellants. In the case reported in this authority Section 18 of the Madras General State Tax Act was pleaded as a bar of limitation to a suit filed after 6 months. Section 18 of the said Act reads as under:-

"No suit shall be instituted against the Government and no suit, prosecution or other proceeding shall be instituted against any officer or servant of the State Government in respect of any act done or purporting to be done under this act, unless the suit, prosecution or other proceeding, is instituted within six months from the date of the act complained of."

11. Hon''ble Mr. Justice Hidayatullah, as His Lordship then was, was pleased to observe in para No. 7 at page 1876, column 1, as under:-

"This section applies to suits for damages and compensation in respect of acts under the Act. It is worded in familiar language by Which authorities, including Government are protected and indemnified in respect of bona fide acts done or purporting to be done under powers conferred by the statute. The period of limitation prescribed in the Section does not apply to the kind of suits which were filed by Basappa. This point has no substance and was not even pressed in the High Court."

12. In this case J.S. Basappa was assessed to Sales Tax amount to Rs. 12983-2-2 for the year 1944-45 of which, according to him, a sum of Rs. 1,594-1-5 only represented sales within the province. He claimed that the remaining sales took place outside the province of Madras. He claimed that these sales could not be included in his turnover and sales-tax was wrongly demanded from him. In respect of this assessment he filed a suit in the Court of Sub Judge, Kurnool for the refund of Rs. 11389-0-9. In respect of the year 1945-46 Basappa filed a suit claiming a refund of Rs. 8356/- on similar grounds and in respect of 1946-47 he filed a suit for declaration that the levy of Rs. 9,233.6-7 was illegal and without jurisdiction and for a permanent injunction to restrain the taxing authority from collecting the tax. All these suits were contested by the Madras State Government. In the first two suits one of the pleas was that suits were barred by time not having been filed within 6 months from the date of the act complained of as required by Section 19 of the Sales-Tax Act or within one year as required by Article 16 of the Indian Limitation Act. The first two suits were held to be time barred by the learned Sub Judge. Basappa filed the appeal and the appeals were accepted by the Hon''ble High Court and the suits were decreed. The Provincial Government of Madras then filed the appeals before their Lordships of the Supreme Court. Their Lordships of the Supreme Court were pleased to hold that Section 18 applies to suits for damages and compensation in respect of acts under the Act. The period of limitation prescribed in section did not apply to the kind of suits which has been filed by Basappa. The appeals were, consequently, dismissed. Section 31(2) of the Punjab Agricultural Produce Market Act, 1961, relates to the suit against the committee for anything done or purporting to be done under this Act and, therefore, suits falling u/s 31(1) only are to be filed within 6 months, as provided u/s 31(2). Section 18 of Madras General Sales Tax Act also prescribed limitation of 6 months for suits in respect of any Act done or purporting to be done under the said Act. Section 18 of Madras General Sales Tax Act has been interpreted / by Their Lordships in the above mentioned authority and it has been held that it does not apply to the refund of taxes, which are illegally recovered.

13. In the present case the fee was recovered under the Ordinance No. 4 of 1974 and under Act No. 13 of 1974. The Ordinance and the Act were struck down by Hon''ble High Court of Punjab and Haryana on 8.11.1974. Consequently, it cannot be said that the enhanced amount had been recovered under the Act, as is required u/s 31(1) of the Act, as to attract the bar of limitation contained in Section 31(2) of the Act.

14. In K.S. Venkataraman and Co. Vs. State of Madras, , a suit for refund of Sales Tax assessed under the provisions which were declared to the ultra vires, was filed. It was held by Their Lordships of the Supreme Court that the sale tax

authorities had acted outside the act and not under it in making assessment on the basis of the relevant part of the charging section which was declared to be ultra vires by the Supreme Court. In that case the plaintiff had urged that the case was covered under Article 96 of the Limitation Act, which prescribed a period of limitation of 3 years for relief under the ground of mistake when the mistake became known to the plaintiff. The plaintiff had alleged that the mistake came to be known when the relevant provision was declared ultra vires on 5.4.1954. The suit has been filed on 23.3.1955, which was within 3 years from the date of the said knowledge. The suit, therefore, was held to be clearly within time under Article 96 of the Limitation Act.

15. In the present case also the plaintiff had paid the fee under a mistaken belief that in law fee was payable. The provision with regard to enhancement of fee was struck down by the Hon''ble High Court on 8.11.1997. Present suit was filed on 5.11.1977. Thus, it is clear that the suit had been filed within 3 years from the date when the mistake came to be known on 8.11.1974, the date of pronouncement of the order of the Hon''ble High Court vide which the levy of the enhanced fee was struck down.

16. Section 40 of the Central Excise and Salt Act, 1944 reads as under :-

"(1) No suit shall lie against the Central Government or against any office of the Government in respect of any order passed in good faith or any act in good faith done or ordered to be done under this Act.

(2) No suit, prosecution or other legal proceeding shall be instituted for anything done or ordered to be done under this Act after the expiration of six months from the accrual of the cause of action or from the date of act or order complained of."

17. Relying upon, The Provincial Government of Madras Vs. J.S. Basappa, , Hon''ble Mr. Justice Jaganmohan Reddy, who spoke for the Court in Bommidala Poornaish Vs. The Union of India, , was pleased to observe in para No. 13, at page 343, column No. 1, as under:-

"It is, therefore, manifest not only from a plain reading of the section of Act, but also on a consideration of the authorities that only suits of a tortuous nature, for compensation or damages are barred by Section 40. The question of collection of illegal taxes or orders imposing a tax, duty or penalty are not dealt with by the said provision."

18. In the present case the refund of the fee, which had been paid under Ordinance No. 4 of 1974 and Act No. 13 of 1974, which were struck down by the Hon''ble High Court of Punjab and Haryana at Chandigarh vide its judgment dated 8.11.1974, has been claimed. It, therefore, cannot be said that the suit is in respect of any thing done or purporting to be done under Punjab Agricultural Produce Markets Act, 1961, and therefore, section 31(2A) of the said Act cannot be pleaded as a bar of limitation as the suit had been filed within 3 years from the date of the order vide which the provisions relating to enhancement of fee

were struck down. I am, therefore, of the opinion that the suit was within limitation."

7. I have heard the counsel for the appellant. Nobody appeared on behalf of the respondent. With the assistance rendered by the learned counsel for the appellant, I have also been able to go through the records of this case.

8. The point for determination would be whether the plaintiff has the locus standi to file the suit or not. In this regard we have to see the activity of the plaintiff-firm. The plaintiff-firm is a commission agent which is called as Arhtias and they are running a shop of commission agents in grain market, Doraha within the jurisdiction of Market Committee. Under the Punjab Agricultural Produce Market Act the Committee used to charge fee from the Arhtias @ Rs. 1.50 against a transaction of Rs. 100/-. Subsequently, it was decided by the Committee to charge Rs. 2.25. The amendment was made in the Act which was challenged in the High Court on the ground that the Punjab State has no jurisdiction to pass the amendment in the Parent Act. The writ was allowed on 8.11.1974. The Pacca Arhtia only procures the produce and then further sells to the shopkeepers, who further sell the commodity to the consumers. If the plaintiff has paid any excess amount, it must have charged the same from its buyers and the buyers must have charged it from the consumers. In that eventuality it was the consumer ultimately who was affected by the excess market fee which was collected by the Committee, though the plaintiff-firm was the first person, who paid the enhanced market fee to the Committee. In such a situation, the cause of action, if any, arose to the consumer and not to the plaintiff-firm. By granting a decree in favour of the plaintiff-firm, it will make it unnecessary rich because the plaintiff-firm have received that amount from the buyer of the goods and further the buyer must have realised the same from its buyers, who are the ultimate consumers. The Courts below have decreed the suit mainly on the ground on this issue that the assessed amount has been deposited by the plaintiff-firm and, therefore, it is the responsibility of the Committee to refund the enhanced market fee to the plaintiff. The reasons advanced by the Courts below cannot be sustained for the reason that if the plaintiff-firm is to be considered as a "person concerned", it would mean that the plaintiff-firm had not suffered any loss with the payment of the enhanced market fee and still the same is being awarded the amount. In this view of the matter, I hold under issue No. 1 that the plaintiff has no locus standi to file the present suit and it is also estopped to file the present suit in the competent Court of jurisdiction.

9. No other point was urged before me.

In this view of the matter, I allow this appeal set aside the judgments and decree of the Courts below and dismiss the suit of the plaintiff-respondent with no order as to costs.

