(1968) JLJ 646 : (1968) MPLJ 286

Madhya Pradesh High Court

Case No: S.A. No. 808 of 1965

Municipal Council Khurai,		APPELLANT
	Vs	
Agricultural, Produce Maretting Committee, Khurai, District Sagar		RESPONDENT

Date of Decision: May 3, 1966

Acts Referred:

- Madhya Pradesh Agricultural Produce Markets Act, 1960 - Section 3(3), 3(4)

Citation: (1968) JLJ 646 : (1968) MPLJ 286

Hon'ble Judges: S.P. Bhargava, J

Bench: Single Bench

Advocate: R.K. Pandey, for the Appellant; R.S. Dabir, for the Respondent

Final Decision: Dismissed

Judgement

S.P. Bhargava, J.

The Respondent, Agriculture Produce Marketing Committee, Khurai, instituted a suit against the Municipal Council, Khurai, in the Court of the First Civil Judge, Class II, Khurai, claiming the reliefs that the Defendant-Council be restrained permanently from realizing: (i) Ganj Bazar entrance fee, and (ii) registration fee on sale of cattle. The claim of the Respondent was decreed in its entirety by the trial Court. The Defendant filed an appeal in the lower appellate Court challenging the second injunction against collecting cattle registration fees from persons effecting sales of cattle in the cattle sub-market yard, Khurai. The decree granting injunction in respect of Ganj Bazar entrance fee was not challenged. The lower appellate Court dismissed the appeal. Feeling aggrieved, the Defendant-Council has filed this second appeal.

Under Section 3 (3) of the Madhya Pradesh Agricultural Produce Markets Act, 1960 (hereinafter called the Markets Act), the State Government issued a notification on 13th September 1962 establishing a market at Khurai on the area comprising the village patwari circle from Nos. 37 to 99 of Khurai tahsil for regulating the purchase and sale of agricultural produce specified in the schedule to that notification. On 18th September 1962 another notification was issued by the Government u/s 3 (4) of the Markets Act declaring certain areas as principal market yard and sub-market yards; one for cattle and another for grass and fodder. A third notification was issued on 18th September 1962 by the Government u/s 8 of the Markets Act constituting a Market Committee for the market area.

The Market Committee framed bye-laws u/s 39 of the Act in respect of the market area under its management and started functioning in the principal market yard and the sub-market yards from 6-11-1962. The case of the Plaintiff, so far as it concerns the present controversy, is that the Plaintiff was entitled to charge registration fees on sales of cattle in the cattle market sub-yard or in any other portion of the market area with effect from 6-11-1962, but the Defendant continued to release cattle registration fees even after the said date in spite of the protests made by the Plaintiff and in spite of a written notice having been sent by the Plaintiff to the Defendant to desist from realising the cattle registration fees.

The Defendant resisted the Plaintiff''s suit on the ground that it was within its rights in charging registration fees for sales and purchases of cattle from such persons as came to it for getting them registered; that the Defendant never obstructed the Plaintiff from realising any fees to which it might be entitled and therefore the Plaintiff had no cause of action to bring any suit against the Defendant and that the Plaintiff was not an aggrieved party inasmuch as the realisation of registration fees was made from the sellers and purchasers of cattle and not from the Plaintiff.

The lower appellate Court while dismissing the appeal of the Appellant in substance held that u/s 3 (4) and Section 14 (2) of the Markets Act the whole market area vested in the Plaintiff-Committee had absolute control over the cattle sub-market yard under Rule 54 (I) of the rules framed under the Markets Act and that the Defendant was not entitled to collect cattle registration fees from persons effecting sales of cattle in the cattle sub-market yard controlled by the Plaintiff. It also held that the Madhya Pradesh Agricultural Produce Markets Act being a special law prevailed over the Madhya Pradesh Municipalities Act, 196] which was a general law.

Shri It. K. Pandey, Learned Counsel for the Appellant, raised the following contentions:

(1) That the suit on behalf of the Plaintiff was not competent and the Plaintiff was only entitled to adopt the remedy specified in Section 334 of the Madhya Pradesh Municipalities Act, 1961, namely that, as in the matter in dispute both the parties were jointly interested, the dispute should have been referred to the State Government whose

decision would have been final between the parties.

(2) That the Plaintiff should have given notice u/s 319 of the Municipalities Act before instituting the suit and as that mandatory requirement has not been fulfilled, the Plaintiff''s suit is liable to be dismissed.

(3) That the Plaintiff is not an aggrieved party and the real aggrieved parties, if any, are those persons who are required to pay the registration fees on sales and purchases of cattle, and therefore the Plaintiff is not entitled to claim the relief for the grant of permanent injunction as prayed for.

(4) That there is nothing in the Agricultural Produce Markets Act, 1960 which repeals Section 127(1)(viii) of the said Municipalities Act which authorize the imposition of fees on the registration of cattle sold within the limits of the municipality and therefore it could not have been after the establishment of the market area under the Markets Act the Defendant-municipality has lost its right to impose fees on the registration of cattle sold within the limits of the Khurai Municipality. (5) That there was no conflict between the collection of the cattle registration fees by the Plaintiff and by the municipality and both could go on collecting the fees to which they were respectively entitled and therefore the decision of the Courts below restraining the Defendants from realising the cattle registration fees for cattle sold in the cattle sub-market yard, is erroneous.

I shall consider the aforesaid objections in the order stated.

Point 1:-Section 334 of the Municipalities Act, 1961, requires that in the event of any dispute arising between a council and any other local authority established under any State Act on any matter in which they are jointly interested, such dispute shall be referred to the State Government, whose decision shall be final. The matter in controversy is one in which both the parties claim to be interested and there is no doubt that the dispute is one between the Municipal Committe, Khurai, on the one hand, and a local authority established under a State Act on the other. However, it is significant that the objection u/s 334 was neither raised in the trial Court nor in the lower appellate Court. In fact, the objection does not find place even in the memo of the appeal which has been filed in this Court. u/s 46 of the Arbitration Act, the provisions of the Arbitration Act, except Sub-section (1) of Section 6 and Sections 7, 12, 36 and 37 shall apply to every arbitration under any other enactment for the time being in force, as if the arbitration were pursuant to an arbitration agreement and as if that other enactment were an arbitration agreement, except in so far as the Arbitration Act is inconsistent with that other enactment or with any rules thereunder. Section 334 enacts a rule of statutory arbitration and nothing has been urged to show that any provisions of the Arbitration Act are inconsistent with the Municipalities Act, 1961, or with any rules made thereunder. If the Defendant felt aggrieved by the institution of the suit in disregard of the provision made in Section 334, it should have made an application to the trial Court before filing the written statement or taking any other steps in the proceedings, requesting the stay of the proceedings in Court

but that was not done and the Defendant took a chance of succeeding in Court. Having taken that chance, in my opinion, it now completely precluded from raising the objection that the suit should not have been tried when it remained unsuccessful before the Court below.

Shri Dabir, Learned Counsel for the Respondent, also contended that in the registration fees of cattle the Plaintiff-Committee was not jointly interested with the Municipal Council, Khurai, and therefore the matter was not governed by Section 334. He urged that in the matter in controversy the Plaintiff claimed an exclusive right which was derogatory to claims of the Defendant and therefore the dispute between the parties could not be described to be a dispute on a matter in which "they are jointly interested". He also urged that if the said contention had been raised in the trial Court he would have been in a better position to show that the matter in dispute was not a matter in which the parties were or could be jointly interested. However, in the view that I have taken, it is not necessary for me to pronounce any concluded opinion on argument. I prefer to overrule the first contention on the ground that the objection has been raised -with undue delay in this Court and it ought to have been raised at the earliest moment in the trial Court before filing the written statement or taking any other steps in the proceedings.

Point 2:-In my opinion, this contention also has no merit. The notice u/s 319 is given for the benefit of the Defendant and there is nothing to prevent the Defendant-Council from waiving the notice or from being estopped by its conduct from pleading the want of notice. It is significant to note that no objection about the want of notice u/s 319 was raised in the written statement though this point was tried to be urged by the Defendant in the trial Court when opposing the application of the Plaintiff for the grant of ad interim injunction pending determination of the suit. A notice u/s 80 of the CPC and a notice u/s 319 of the Municipalities Act, 1961, stand on the same footing. In Dhian Singh Sabha Singh, and Anr. v. Union of India MB 1958 SC 274, Prem Lal Singhania Vs. U.P. Government, and Secretary of State for India in Council v. Sheoramjee AIR 1952 Nag. 213 : ILR 1949 Nag. 875 it has been held that where no objection is raised in the Court of first instance, the want of notice cannot be pleaded for the first time in appeal or special appeal. I, therefore, hold that the notice u/s 319 has been waived by the Defendant-appellant.

Point 3:-In my opinion, this contention also must fail for want of substance. It is true that the direct sufferers due to the cattle registration fees being charged by both the Plaintiff and the Defendant would be those persons who are required to pay this fee to two authorities, but merely on account of this fact it cannot be said that the Plaintiff has no personal interest in the matter. The preamble of the Markets Act shows that it is concerned with the establishment of markets with a view to secure better Regulation of buying and selling of agricultural produce in Madhya Pradesh. Section 3 (5) makes it clear that notwithstanding anything contained in any enactment for the time being in force no local authority or other person shall, within the market area or within such distance therefrom as may be notified in the Gazette, set up, establish, continue or use, or allow to be set up, established, continued or used, any place for the purchase or sale of any

notified agricultural produce except under a licence granted by the prescribed authority in such manner and upon such conditions including payment of fee as may be prescribed. Agricultural produce as defined in Section 2 (i) and specified in the Schedule includes cattle. The Defendant has not contended that it holds a licence from the Plaintiff for setting up, establishing, continuing or using or allowing to be set up, established, continued or used any place for the purchase or sale of any agricultural produce which has been notified. u/s 14(2) the market area absolutely vests in the Market Committee and has been held to be so in case of this Municipal Council itself in Municipal Committee, Khurai and Ors. v. Slate of Madhya Pradesh and Ors. 1965 HPLJ 45. Section 2 (vi) defines "market area" as the area for which a market is established u/s 3, and Section 2 (x) defines "principal market yard" and "sub-market yard". Rule 54, apart from providing that the Market Committee shall have absolute control over market yards, further Jays down that subject to the rules and to the general special orders of the State Government and to such control as is vested in the Collector or Director or in the local authority by these rules of the Market Committee shall manage the market yard in the best interest of the trade having regard always to the convenience of the tried in notified agricultural produce and the purposes for which the control is vested in the Market Committee. Section 39 of the Act provides for the framing of the bye-laws. Bye-law No. 5 provides that no person shall leave the sub-market yards taking with him animal or animals which he has purchased without having been registered and after having paid the prescribed fees. The same bye-law further provides that no fee on sale or purchase of cattle is prescribed other than the registration fee. The provisions enumerated above make it abundantly clear that the full control of the market yards vests in the Market Committee. The action of the Defendant amounts to an encroachment on the rights of tie Plaintiff to manage the market according to the provisions of the Markets Act and the rules and bye-laws made thereunder. There cannot be any doubt that if the sale or purchase of cattle within the market yards is subjected to payment of a second registration fees chargeable by the Defendant, it is bound to have an adverse effect on the market itself and if the Plaintiff Committee tolerates it, it would not be able to manage the market yard in the best interest of the trade having proper regard to the convenience and comfort of the persons using the market. The mischief of the act attributed to the Defendant, therefore, is not merely confined to causing loss to those persons from whom registration fees on the sale and purchase of cattle is charged, but the act of the Defendant amounts to an unreasonable and illegal violation of the Plaintiff''s rights of managing the market yards in the best interest of the trade and thus it amounts to a clear violation of Rule 54 as also a violation of Sub-section (5) of Section 3 inasmuch as the registration fee is realized by the Defendant in the cattle sub-market yard itself. The Plaintiff cannot properly be expected to watch the Defendant''s illegal levy of the registration fees helplessly as a silent spectator on the scene though it continues to shoulder the responsibility to manage the market yard exclusively and efficiently. The case is not one in which, in my opinion, it could be said that the Plaintiff has no personal interest in the matter within the meaning of Section 56 (k) of the Specific Belief Act, and on the facts of the case it must be held that the Plaintiff has sufficiently established its

rights to the relief of permanent injunction as prayed for.

In this connection I may further point out that the Defendant did not challenge the injunction decree granted against it restraining it from realising the Ganj Bazar entrance fee. This fee admittedly was similarly charged from other persons who use the market. The Defendant''s omission to challenge the injunction is significant inasmuch as the Defendant must be held to have impliedly recognized the right of the Plaintiff to secure an effective injunction against it without those persons who paid the Ganj Bazar entrance fee being required to sue.

Points 4 and 5:-Both these points are inter-related and may be considered together. The bye-law (5) and Rule 54 make it abundantly cleat that the market yard is to be controlled completely by the Plaintiff. Section 3(5) contains a non-obstinate clause which prohibits any one from setting an establishing, continuing or using any place for the purchase or sale of any notified agricultural produce except under a licence. The dual control which the Defendant seeks to have is clearly derogatory to the provisions of Sub-section (5). It could never be the intention of the Legislature that in one breath it would give exclusive and independent control to the market committee and in the same breath would leave ample scope for the Defendant-Council to interfere in the administration of the market area by imposing and realising cattle registration fee twice over, which imposition may cripple the market itself. The Madhya Pradesh Agricultural Produce Markets Act, I960, is a special Act and it is an accepted canon of interpretation that the special law overrides the general if the provisions of the two cannot be reconciled together. The mere fact that in the Municipalities Act, 1961, which is a later Act, there is a provision made in Section 127(1)(viii) which authorizes Municipal Council to impose fees on the registration of cattle sold within the limits of the Municipality, does not indicate that the non-obstante clause in Section 3(5) should not be given full effect to. I am of the view that the provision contained in Section 127(1)(viii) can be restored to by the municipal council only in those cases where no market area has been demarcated and vested in the Market Committee under the provisions of the Markets Act. It is not possible to accede to the argument that the Defendant-municipal council can fall back on the provision contained in Section 127(1)(viii) for collecting cattle registration fees in market area vesting in the Plaintiff. In my opinion, it was not contemplated by the Legislature that two registration fees on the sale and purchase of the same cattle could be charged, one by the Market Committee and the other by the Municipal Council. Nor does it appear to be the Legislature''s intent that the Municipal Council could collect registration fees on cattle in the sub-market yard of the Market Committee.

The rule of harmonious construction comes into play only when the Legislature has failed to use the non-obstante clause indicating its clear intention of overriding the provisions in one part of the statute by other provisions in the other part, or in any other legislative enactment. A fortiori it follows that when the non-obstante clause is used, it ought to be given its full effect /see Raj Krushna Bose Vs. Binod Kanungo and Others, and Ahmedabad Mill Owners'' Association Etc. Vs. The Textile Labour Association,]. In the

instant case, the meaning of the non-obstante clause is absolutely clear and in my opinion the contention which is raised that full effect should not be given to it due to the provision made in Section 127(1)(viii) of the Municipalities Act, 1961, cannot be accepted. In the result, the last two contentions also are overruled.

For all these reasons, the appeal fails and is dismissed. Counsel''s fee Rs. 100.

Leave to file Letters Patent Appeal refused.