

HakimuddIn and ors. Vs. Anoop Singh ors.

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Court : Rajasthan

Decided On : Jul-30-1985

Reported in : 1986(2)WLN34

Judge : Shyam Sunder Byas and; Milap Chand Jain, JJ.

Appeal No. : S.B. Civil Second Appeal No. 500 of 1974

Appellant : HakimuddIn and ors.

Respondent : Anoop Singh ors.

Advocate for Pet/Ap. : Mr. M.C. Bhandari

Disposition : Appeal allowed

Judgement :

Shyam Sunder Byas, J.

1. This civil second appeal has been preferred by the plaintiff who won his suit in the trial court but lost it in the first appellate court.

2. The deceased-plaintiff, who is now represented in this appeal by his legal representatives, instituted a suit for perpetual prohibitory injunction and the recovery of a sum of Rs. 1050/- against the defendant State and its Taxation Officer in the Court of Munsif, Udaipur on March 25, 1969. The case set-up in the

plaint is that he was the owner of a light motor vehicle (jeep) No. RJT 69. The registration of the vehicle stood in his name and he had paid a sum of Rs. 100/- as road-tax at rate of Rs. 25/-per seat for the year 1968-69. On December 26, 1969 when the jeep was coming from Nath-dwara to Udaipur, it was checked and inspected by the Transport Inspector. The jeep was then fitted with a compressure. The Inspector seized the vehicle on the ground that it was used as a private carrier. The plaintiff should have paid a sum of Rs. 1112/ per year as the tax in accordance with the provisions of Schedule IV Part I of the Rajasthan Motor Vehicles Taxation Act, 1951 (here in after to be referred as 'the Act'). The plaintiff contended before the Taxation Officer that the jeep was never used as good vehicle or a private carrier. It was, therefore, wrongly seized and handed over to the police. The contention was rejected. The plaintiff, per force, had to pay a sum of Rs. 650/- as the tax and a sum of Rs. 50/- as penalty-thus, a sum of Rs. 700/ in total to the State Government. The jeep was thereafter released. It was urged in the plaint that the collection of the amount of Rs. 700/-from him under the Act by the Taxation Officer was illegal and unauthorised. He served a notice under Section 80, CPC, on the defendants to redress his grievance, but with no success. The plaintiff, therefore, brought the suit and claimed the following reliefs:

- (1) refund of Rs. 700/- which were charged from him by the defendants;
- (2) Rs. 350/-as compensation for the illegal detention of the vehicle : and
- (3) perpetual prohibitory injunction restraining the defendants to collect the tax from him treating the jeep as a good vehicle.

The suit was resisted by the defendants. According to their defence, the plaintiff was using the jeep as a goods vehicle and private carrier. He was, therefore, required to pay tax in accordance with the provisions of Schedule IV, Part I of the Act, as it then stood in 1968-69. The jurisdiction of the Civil Court was challenged on the ground that the dispute involved was not of a civil nature. The learned Munsif framed the necessary issues and recorded the evidence of the parties. On the conclusion of the trial, the learned Munsif recorded his findings as under:

(a) that the collection of the amount of Rs. 700/- from the plaintiff by the defendants was illegal ;

(b) the seizure of the vehicle was unauthorised ;

(c) the plaintiff was not entitled to any damages; and

(d) the suit was cognizable by a civil court.

3. The suit was accordingly decided in the terms prayed for by the plaintiff except to the extent of Rs. 350/-. The defendants went in appeal which was heard and decided by the learned Civil Judge, Udaipur. The Civil Judge, by his judgment and decree dated March 16, 1974 allowed the defendants appeal and dismissed the plaintiff's suit. The learned Civil Judge took the view that the jeep was used as a goods vehicle because it was found fitted with a compressure. The plaintiff was, therefore, required to pay the tax in accordance with the provisions of Schedule IV Part I of the Act. Aggrieved against the said judgment and decree of the first appellate court, the plaintiff has come-up in appeal.

4. I have heard the learned Counsel for the parties and gone through the record carefully.

5. In assailing the judgment and decree of the lower appellate court, the first contention raised by Mr. M.C. Bhandari learned Counsel appearing for the plaintiff-appellants is that the whole approach of the learned Civil Judge was erroneous and unsustainable in law. It was argued that reliance was wrongly placed on *State of Mysore v. Sayed Ibrahim* : 1967 CriLJ1215 by the learned Civil Judge. The cases before the Supreme Court were where the motor cars were allowed to be used by the owners for hire or reward. It was urged that in the instant case, the compressure found fitted in the jeep belonged to the plaintiff himself and to none other. The law laid down in the aforesaid decision by their Lordships renders no help to the defendants. It was argued that Sub-section (3) of Section 42 of the Motor Vehicles Act, 1939 enlists a number of exceptions to the provisions of Sub-section (1) Clause (i) of Sub-section (3) of Section 42 contains an exception where a light motor vehicle carries goods but not for hire or reward. Reliance in support

of the contention was placed on *Ganesh Lal Bhanwar Lal v. RTO, Udaipur* 1966 RLW 491 and *M/s Jaipur Bottling Company v. Board of Revenue and Ors.* 1983 RLR 594. It was, on the other hand, contended by Mr. Gauri, learned Counsel appearing for the respondents that since the jeep was fitted with a compressure and the compressure was used for drilling the holes of the well, it should be taken to be a goods vehicle even though it is a light motor vehicle. Reliance in support of the contention was placed on the Supreme Court decision in *State of Mysore v. Sayed Ibrahim* (supra). I have taken the respective submissions into consideration.

6. The Motor Vehicles Act is a complete Code in itself and defines the various types of vehicles. The Rajasthan Motor Vehicles Taxation Act, 1951 was enacted to provide for the imposition of tax on Motor Vehicles throughout the State. Section 2 of the Act deals with definitions. Clause (e) of this section lays down:

(e) words and expressions used but not defined in this Act and defined in the Motor Vehicles Act, 1939 (IV of 1939) have the meanings assigned to them in that Act.

7. Therefore the words and expressions used in the Motor Vehicles Act, should be read with the meaning assigned to them in it. The Motor Vehicles Act, which is a comprehensive one, defines various types of vehicles. Clause (8) of Section 2 of the Motor Vehicles Act defines the 'goods vehicle' as under:

'goods vehicle' means any motor vehicle constructed or adapted for use for the carriage of goods or any motor vehicle not so constructed or adapted when used for the carriage of goods solely or in addition to passengers.

According to Clause (33) of Section 2, a 'transport vehicle' means a public service vehicle or a goods vehicle. The definition of goods vehicle makes it amply clear that any sort of motor vehicle, even though not constructed for carrying the goods, may be treated as 'goods vehicle' when it is used for carriage of goods solely. Therefore, a jeep which is a light motor vehicle, may come within the definition of motor vehicle if any it is used for carriage of goods solely.

8. Section 42 of the Motor Vehicles Act speaks about the necessity for permits for running a motor vehicle on the public place. Sub-Section (2) of Section 42 of the Motor Vehicles Act provides that no owner of a transport vehicle shall use or permit the use of the vehicle on any public road save in accordance with the conditions of a permit granted or counter-signed by a Regional or State Transport Officer. Sub-section (3) enumerates the various exemptions to the provisions of Sub-section (1) of Section 42 of the Act. Omitting those portions, which are not germane for our purpose, Sub-section (3) reads as under:

(3) Sub-section (1) shall not apply -

(i) to any goods which is a light motor vehicle and does not ply for hire or reward, or to any two-wheeled trailer with a registered laden weight not exceeding 800 kilograms drawn as motor car:

This exemption contained in Clause (i) of Sub-section (3) makes it abundantly clear that the provisions of Sub-section (1) of Section 42 do not apply to the goods carried in a light motor vehicles, not for hire or reward. This exemption ceases to be applicable if the goods are taken in light motor vehicle for hire or reward. The factor of 'for hire or reward' has a very important bearing. If the goods belonging to the owner of a light motor vehicle are carried in that light motor vehicle, it cannot be said by any stretch of imagination logic or reason that the goods are being carried for hire or reward.

9. A very like situation arose in the case of Ganeshi Lal Bhanwar Lal v. R.T.O., Udaipur. In that case, a light motor vehicle (jeep) No. RJY 1483 was used for bringing milk for sale from the neighbouring village to the city of Udaipur. The jeep was seized by the Transport Department on the ground that it was used as a goods vehicle and the tax was not paid for it as a goods vehicle. The matter travelled to 11 is Court by way of writ petition. Relying upon the provisions of Clause (i) of Sub-section (3) of Section 42, it was held that since the jeep was not plied for hire or reward, it fell under the exception (i). It was observed that a light motor vehicle, which is used as a delivery-van for the purpose of one's own business is not plied for hire or reward. It was further observed that the owner of the jeep was entitled to use it for the purpose of his own dairy business, without a

permit required for a goods vehicle.

10. Exactly same is the situation here. Here in the instant case, the jeep RJT 69 was found fitted with a compressure and the compressure was used for drilling holes of the wells. The compressure belonged to the owner of the jeep. Since the compressure belonged to the owner of the jeep it can be said that the jeep was plied for hire or reward. The hire or reward must come to the owner of the jeep from some other person. The plaintiff was, therefore, not required to pay the tax on the jeep as goods vehicle.

11. In the case of M/s Jaipur Bottling Co. (supra), the exception contained in Clause (i) of Sub-section (3) of Section 42 of the Moto Vehicles Act was again considered. It was held that a light motor vehicle which comes in the category of Clause (i) of Sub-section 42 of the Motor Vehicles Act, 1939 would not be governed by Section 42(1) and would not require a permit as a goods vehicle. The imposition of tax on the light motor vehicle as a goods vehicle was set aside. It was further held that Clause (i) of Sub-section (3) of Section 42 carves out an exception in the case of goods delivery vehicles which are not plied for hire or reward.

12. The decision in the case of Ganeshi Lal Bhanwar Lal (supra) was brought to the notice of the learned Civil Judge. But it was not followed by him on the ground that this decision stood impliedly reversed by the Supreme Court case of The State of Mysore (supra). The pertinent question is : whether the case of Ganeshi Lal Bhanwar Lal (supra) stood impliedly reversed by the Supreme Court decision rendered in the case of State of Mysore (supra). Now, before their Lordships there were three cases of motor cars. All these cars were plied for hire or reward. Two cars were found carrying passengers and the third was found carrying the cement bags, all for hire or reward. It was on account of this fact that the cars were plied for hire or reward, the exception contained in Clause (i) of Sub-section (3) of Section 42 was not made applicable. Their Lordships observed that the applicability of Section 42(1) of the Motor Vehicles Act is determined by the purpose for which the motor vehicle is used. It was observed that carrying passengers or goods for hire or reward renders the motor vehicle a public service

vehicle. I am lured to quote the following passage from para 8 of the judgment:

The combined effect of Section 42 (1) and the definitions of a 'motor vehicle' a 'public service vehicle' and a 'transport vehicle' is that if a motor vehicle is used as a transport vehicle, the owner who so uses it or permits it to be so used is required to obtain the necessary permit. It is the use of the motor vehicle for carrying passengers for hire or reward which determines the application of Section 42 (1). Therefore, when ever it is so used without the permit, there is an infringement of the Sub-section. If the construction of that Sub-section adapted by the High Court of Mysore were correct, it would mean that whereas an owner of a transport vehicle is required to have the permit, the owner of a motor vehicle not constructed or adapted as a transport vehicle can carry with impunity passengers for hire or reward without any permit therefore.

13. Since in the case before their Lordship the cars were plied for carrying passengers or goods for hire or reward, the exemption contained in Clause (i) of Sub-section (3) of Section 42 had no applicability. Here in the instant case, as discussed above, the plaintiff was not running the jeep, for hire or reward. The compressure beloned to him. As such, the plaintiff's case is directly covered by the exception contained in Clause (i) of Sub-section (3) of Section 42 of the Motor Vehicles Act. The imposition of higher tax on the ground of using the jeep as a goods vehicle in accordance with the provisions of Schedule IV, Part I of the Act by the defendants, was, thus, illegal and not warranted by the provisions of the Motor Vehicles Act, 1939. The case of State of Mysore (supra) renders no help to the defendants.

14. The next contention of Mr. Bhandari is that the finding of the lower appellate court that the suit was barred and the Civil Court had no jurisdiction. is erroneous. It was argued that the Taxation Officer was not authorised to impose the 'duty or tax of a goods vehicle' on the jeep of the plaintiff. Since the act of the Taxation Officer was wholly unauthorised and illegal, the dispute between the parties was essentially of a civil nature and the suit was not barred. Section 9 of the Act was wrongly relied upon by the learned Civil Judge. Reliance in support of the contention was placed on Parma Lal Sukhnandan Prassad v. Union of India and

Ors. AIR 1956 Vindhya Pradesh 26. The contention of Mr. Bhandari is not without, force.

15. Section 9 of the Code of Civil Procedure vests jurisdiction in a civil court to try all suits of a civil nature except suits of which the cognizance is either expressly or impliedly barred. Thus, the Civil Court has all embracing jurisdiction till the jurisdiction has been expressly or impliedly barred. The exclusion of jurisdiction of the Civil Court is not to be readily inferred. The exclusion must be either explicitly express or clearly implied. So far possible, the presumption should be made in favour of the jurisdiction of a civil court. Where the grievance of the citizen is that the authority under the particular statute has not acted according to the law & within the framework of that statute, such a grievance is essentially of civil nature & the suit to redress it is not barred. The civil court has jurisdiction to examine whether the provisions of a particular Act have or not been correctly applied. The civil Court has jurisdiction to examine whether the order passed by the Authority under the particular Act is or is not in contravention of the law. If the authority purports to exercise the power illegally or in excess of the power conferred upon it by the particular statute, the civil court, in such a case has jurisdiction to entertain the suit assailing that order on the ground of illegality. Illegal levy of excise duty or assessment of tax without substantial compliance of the relevant provisions of the Act directly affects the rights of a citizen and a civil suit in such a matter is not barred. The Authority empowered to act must act within the framework of the particular statute. If the authority fails and acts beyond his powers to do so, the act of the Authority can be effectively challenged in a civil court and the civil court has full jurisdiction to decide such a dispute.

16. Section 16 of the Act no doubt bars the jurisdiction of civil and Criminal courts in the matter of taxation. The grievance, of the plaintiff is that the Taxation Officer acted illegally in treating the jeep to be a goods vehicle. It is thus, the illegal act of the Taxation Officer which is being challenged in his suit by the plaintiff. The civil court has, therefore, perfect jurisdiction to see whether the imposition of higher tax or duty on the motor vehicle by the Taxation Officer is or is not illegal. The civil Court has jurisdiction to see whether the Taxation Officer had acted within the framework of the Rajasthan Motor Vehicles Taxation Act, 1951 or not. In the case

of Pannalal Sukhanandan Prasad (supra), the order levying higher rate of tax on motor vehicles was not made within the framework of the Taxation Act, 1951 and the order was assailed on the ground of its being wholly illegal. The jurisdiction of the civil court to entertain the suit for refund of the excess tax paid was held not barred and the suit was held triable by a civil court. I fully share the view taken in Pannalal's case. Here, also, in the instant case, the plaintiff has filed a suit for refund of the excess tax illegally realised from him by the Taxation Officer. The suit is, therefore, not barred and the jurisdiction of the Civil Court does not stand ousted. The view of the lower appellate court that the civil court had no jurisdiction to try the suit or that the suit was of a civil nature is not.

17. For the reasons stated above, I am unable, to maintain the judgment and decree of the learned Civil Judge, Udaipur dated March 16, 1974.

18. In the result, the appeal of the plaintiff is allowed with costs. The judgment and decree of the learned Civil Judge, Udaipur dated March 16, 1974 are set aside and those of the trial court are restored. The plaintiff's suit will stand decreed in terms it was decreed by the learned Munsif Udaipur.