

In Re: the State of Madras

In Re: the State of Madras

SooperKanoon Citation : sooperkanoon.com/805205

Court : Chennai

Decided On : Nov-15-1957

Reported in : (1958)IMLJ206; [1958]9STC169(Mad)

Judge : Balakrishna Ayyar, J.

Appeal No. : O.S. No. 20 of 1955 and Second Appeal No. 874 of 1957

Appellant : In Re: the State of Madras

Advocate for Pet/Ap. : Government Pleader

Disposition : Appeal dismissed

Judgement :

Balakrishna Ayyar, J.

1. In 1946 the proprietors of some hotels in the town and taluk of Sirkali constituted themselves into an association called the Sirkali Taluk Hotel Keepers' Association, with the object of setting up an organisation that would inter alia effectively represent their grievances to the authorities. The Association was registered under the Societies Registration Act. Subramania Ayyar the plaintiff was the first elected President of the Association till some time in 1951, when he resigned. While the plaintiff was the President of the Association it purchased various commodities necessary for the business which its members were carrying

on and distributed the articles among them. In respect of such purchases and sales the Association was assessed to tax under the Madras General Sales Tax Act for the years 1950-51 and 1951-52. The officers of the department were unable to collect the tax from the Association. The Assistant Commercial Tax Officer then wrote to the second defendant who was the Special Deputy Tahsildar to collect the arrears of tax from the Association.

2. On 26th August, 1954, defendants 2, 3 and 4 went to the premises of the plaintiff, attached a cash box which contained a sum of Rs. 283-11-0 and took it away. The money and the box were the separate property of the plaintiff. The plaintiff complained to the Collector of Tanjore that the attachment was illegal, but he got no redress from that officer and so he filed a suit for damages against defendants 1 to 4. Of these the first defendant is the State of Madras represented by the Collector of Tanjore ; the second defendant is the Deputy Tahsildar who effected the attachment; the third defendant is a person who accompanied the second defendant and the fourth defendant is the local village munsif. The District Munsif dismissed the suit.

3. On appeal the learned Subordinate Judge allowed the appeal and granted a declaration that the attachment made on 26th August, 1954, is illegal and improper. He also gave a decree in favour of the plaintiff directing the first defendant to return the attached property. He also awarded a sum of Rs. 25 as damages against, the second defendant. The rest of the claim as against defendants 3 and 4 was dismissed.

4. Defendants 1, 2 and 3 have preferred this appeal.

5. I may at once dispose of a question of fact which was mentioned to me. It was suggested that the plaintiff handed over the cash voluntarily, and, in support of that suggestion, I was referred to the evidence of D.W. 1, But reading the evidence as a whole I do not get that impression at all. No doubt the plaintiff voluntarily produced the box and opened it, but it is perfectly clear that he objected to the attachment. The evidence of the witness is that the officer advised the plaintiff to avoid distraint by paying the tax. But the plaintiff said that he would do no such thing and in effect dared him to go on with the attachment; far from surrendering

the property voluntarily he had in fact entered an indignant protest to the entire proceedings.

6. The learned Government Pleader argued that the objects of the Sirkali Taluk Hotel Keepers' Association do not come within the scope of Section 20 of the Societies Registration Act, that in consequence the Association could not have been registered under the Act, that as a further consequence it became a partnership consisting of all its members and that by reason of this consequence the properties of the plaintiff who was a member of the Association could be attached to realise a debt due from the Association. I shall assume for the moment that the Association could not have been registered under the Societies Registration Act. But, granting that, I am not able to follow by what legal process the Society became a partnership and its members partners of one another. Leaving out the case of minors and junior members of a joint family, a partnership is created by a conscious contract between the parties. A partnership can be created only by an agreement the object of which is 'to share the profits of a business carried on by all or any of them acting for all.' (Vide Section 4 of the Partnership Act). The very circumstance that the Society was registered under the Societies Registration Act is inconsistent with any agreement or intention to share its profits. I am not therefore prepared to agree that because the registration under the Societies Act was invalid or improper, it had the effect of constituting the members of the society into a partnership. From this, it follows that the attachment was illegal; Government are in wrongful possession of the property of the plaintiff and they must give it back to him.

7. It was next argued that in any case the suit is bad by reason of Section 17(2) of the Madras General Sales Tax Act. The argument of the learned Government Pleader is that this section confers complete and comprehensive protection on the defendants in this case. It seems to me that the argument extends the scope of the protection conferred by Section 17 beyond all reasonable and legitimate limits. Human activities are various and diverse. Doubts frequently arise whether any part of the Act applies to particular situations, and, if so, to what extent. Officers of Government who have got to administer the Act may proceed in the belief that certain facts exist, but later on it might turn out that the facts were different. They

may also be acting under an erroneous view as to the scope of the law. The section is intended to confer protection in such and similar cases and cannot be invoked in cases of reckless exercise of authority when there is a total want of bona fides. If the argument of the learned Government Pleader were right, it would be open to the officers of the Sales Tax Department arbitrarily to take away the property of 'A' to realise arrears of sales tax due from 'B', and 'A' cannot have the protection of the Courts. I enquired of the learned Government Pleader whether in this particular case the second defendant had acted under the advice of the local Government Pleader and I was told that he had not. The evidence of D.W. 1 which the learned Government Pleader placed before me suggests that the plaintiff was angry and protested angrily. In effect, he dared the second defendant to attach his property and the second defendant dared. He must have been perfectly aware that he had no authority to do what he did.

8. In the circumstances, I am not prepared to hold that Section 17 applies to the facts of this case. The second appeal is dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com