

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of Decision: 04.10.2013

+ W.P.(C) 3551 of 2012

PRIME SERVICES A PARTNERSHIP FIRM Petitioner

Through: Ms. Shreya Mukerjee, Adv.

versus

AGRICULTURAL PRODUCE

MARKETING COMMITTEE & ANR. Respondents

Through: Mr. S.C. Sharma, Adv. for R-1.
Mr. Md. Moinuddin, Adv. for
Mr. H.S. Sachdeva, Adv. for R-2.

CORAM:

HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J. (ORAL)

The petitioner before this Court was engaged in the business of providing sanitation services to the New Fruit Market at Azadpur Mandi, Delhi. A building known as Kissan Bhawan was constructed by respondent No.1/Agricultural Produce Marketing Committee (for short 'APMC'), which it is using as a guest house. The respondent No.1 awarded the work for managing the said guest house to one M/s. Acme Enterprises (for short 'ACME') which agreed to pay Rs.56,200/- per month to respondent No.1. The contract with ACME was terminated by respondent No.1 vide order dated 17.9.2007, on the ground that the said agency had failed to pay the contract amount of Rs.56,200/- per month and had also failed to maintain the guest house in a clean and hygienic condition. Vide communication dated 18.9.2007, the aforesaid work was

offered by respondent No.1 to the petitioner on the same terms & conditions on which it was awarded to ACME for a period of three (3) months or till the new contract was awarded. The petitioner, however, did not execute a formal agreement with respondent No.1 in terms of the communication dated 18.9.2007.

2. Vide letter dated 10.2.2008 the petitioner referring to their earlier letter dated 9.1.2008 and the communication of respondent No.1 dated 2.2.2008, requested respondent No.1 to take back the charge of the guest house on the ground that they were not interested in carrying on the work at the old rates as they had already incurred huge loss in running the guest house at the old rates. This was followed by a letter dated 28.3.2008, again requesting respondent No.1 to take back the charge of the guest house from the management of the petitioner. Another communication dated 29.3.2008 was sent by the petitioner to respondent No.1 requesting it to take back the charge of the guest house since they were not interested in running the same at the old rates. Vide letter dated 14.4.2008 the petitioner again reminded the respondent No.1 that their contract to run the guest house was valid only up to 18.12.2007 and they were being forced to maintain the guest house without they being willing for the same. This communication was sent on receipt of a notice from respondent No.1, requiring the petitioner to pay dues @ Rs.52,600/- per month along with electricity bill, water charges and property tax. Vide communication dated 4.6.2008, the petitioner requested respondent No.1 to take back the charge of the guest house and also referred to its earlier letter dated 14.4.2008 demanding a sum of Rs.75,000/- per month for managing the guest house w.e.f. 18.12.2007. Vide letter dated 16.6.2008, the petitioner again informed respondent No.1 that it was not in a position to maintain the guest house since it was incurring huge losses on running the same. The

respondent No.1 was requested to take back the charge of the guest house by 30.6.2008. Vide letter dated 8.7.2008 the petitioner deposited the keys of the guest house with respondent No.1.

3. Vide notice dated 1.8.2008 respondent No.1 required the petitioner to deposit a sum of Rs.7,39,739/- towards licence fee up to 17.5.2008, electricity bill amounting to Rs.1,57,627/- up to 17.5.2008, water bill amounting to Rs.2,22,936/- up to 31.5.2008 and property tax amounting to Rs.21,975/-. This was followed by a notice dated 22.12.2008 and subsequent notice dated 10.1.2012.

Vide response dated 17.1.2012 the petitioner informed respondent No.1 that they were awarded contract only for a period of three (3) months which they had executed, thereafter they did not wish to continue the service and had repeatedly requested respondent No.1 to take back the charge of the guest house.

4. It appears that since the amount claimed by respondent No.1 from the petitioner was not being paid, a recovery notice was issued by the Assistant Collector-I to the petitioner requiring it to deposit a sum of Rs.9,85,151/- on account of miscellaneous charges for Kissan Bhawan. It was stated in the said notice that the aforesaid amount was recoverable from the petitioner as arrears of land revenue. Being aggrieved from the aforesaid notice, the petitioner is before this Court seeking the following reliefs:

“a. Issue a writ of certiorari calling for the records leading to the raising of illegal demand of Rs.7,50,000/- by respondent No.1 and the reference for recovery sent by respondent No.1 to respondent No.2;

b. Issue a writ in the nature of certiorari or any other writ quashing and/or setting aside the illegal demand of the respondent No.1 claimed in the notices dated 29.03.08, 01.08.08, 22.12.08, 10.01.12 and the recovery proceedings initiated by respondent

No.2 in relation to the said illegal demand, by calling upon the Petitioner to make payment of Rs.9,50,000/- on 31.5.2012 (or any other amount or on any other date);

c. Issue a writ in the nature of mandamus directing respondent No.1 to pay a sum of Rs.4,88,000/- to the petitioner in relation to the services rendered in the period from January 2008 to June 2008.

d. Hold that the amount if any referred by respondent No.1 to respondent No.2 is not an “arrear of land revenue” and hence not recoverable in the manner proposed by respondent No.2;”

5. The first question which arises for consideration in this case is as to whether the amount being claimed by respondent No.1 from the petitioner can be recovered as arrears of land revenue or not. Section 113 of the Delhi Agricultural Produce Marketing (Regulation) Act, 1998 (hereinafter referred to as ‘the Act’) on which reliance is placed by the learned counsel for respondent No.1, reads as under:

“113. Recovery of sums due to Government Board Marketing Committee and others –

(1) Every sum due from the Board or a Marketing Committee to the government shall be recoverable as an arrear of land revenue.

(2) Subject to the provisions of sub-section (3) of section 116 any sum due to the Board or a Marketing Committee on account of any charge, cost, expense, fee, rent or on any other account under the provisions of this act, or any rule, regulation or bye-laws made there-under or any sum due to an agriculturist for any agricultural produce, specified under sub-section (1) of section 61, sold by him in the market area and which is not paid to him as provided by or under this Act, shall be recoverable from the person from whom such sum is due, in the same manner as if it were an arrear of land revenue.

(3) If any dispute arises as to whether a sum is due to an agriculturist within the meaning sub-section (3) of section 116, it

shall be decided in the same manner as is specified in section 83 and for that purpose all the provisions of section 83 and the rules, regulations or the bye-laws made there-under shall, so far as may be, apply accordingly for purposes of settlement of dispute under this sub-section.”

According to the learned counsel for respondent No.1, the amount being claimed by respondent No.1 falls in sub-section (2) of Section 113 of the Act. However, a careful analysis of the aforesaid sub-section does not support the contention of the learned counsel for respondent No.1. Use of the words ‘under the provisions of this Act or any rules, regulations or bye-laws made thereunder qualify the words charge, cost, expense, fee, rent or any other account used in the said sub-section, meaning thereby that it is only a sum due on account of any charge, cost, expense, fee, rent, etc. payable under the provisions of the Act or any rule, regulation or bye-laws made under the Act or any sum due to an agriculturist for any agricultural produce, which can be recovered as arrears of land revenue in terms of sub-section (2) of Section 113 of the Act. If the amount in question is not payable on account of any charge, cost or any other account under the provisions of the rules or bye-laws made thereunder or is not a sum due to an agriculturist for the agricultural produce sold by him in the market area cannot be claimed as arrears of land revenue unless the said amount comes within the purview of sub-section (1) of Section 113 of the Act which refers to the sums due from the Board and a market and therefore clearly does not apply.

6. The amount which respondent No.1 is claiming from the petitioner towards maintenance of the guest house pursuant to the work which it had awarded to the petitioner is not a sum due on account of any charge, cost, expense, fee, rent, etc. under the provisions of the aforesaid Act or any rule, regulation, bye-laws made thereunder. This was a purely contractual

obligation, not governed by the provisions of the Act or any rule, regulation or bye-laws made thereunder. Therefore, the aforesaid amount even if due to respondent No.1 cannot be recovered as arrears of land revenue.

7. The case of the petitioner is that it had accepted the contract to manage the guest house only for a period of three (3) months and thereafter it was not obliged to maintain it since it was running huge losses in maintain the guest house at the rate at which the maintenance work was awarded to ACME. The petitioner has been writing to respondent No.1 from time to time asking it to take back the possession of the guest house. The petitioner had expressed its unwillingness to continue with the management of the guest house in terms which were quite clear and unequivocal. Despite that, respondent No.1 did not bother to take back the charge of the guest house from the petitioner. It would be pertinent to note here that the petitioner never entered into any formal agreement with respondent No.1 and never agreed to maintain the guest house for an indefinite period or for a period more than three (3) months. Therefore, respondent No.1, instead of compelling the petitioner to continue to manage the guest house should have taken back the management of the guest house from it and awarded it to some other agency. The learned counsel for the petitioner states that they are disputing the liability to pay electricity, water charges since the library of respondent No.1 as well its office are also situated in the same building. The learned counsel for respondent No.1 submits that since the petitioner continued to manage the guest house before the keys were deposited with respondent No.1 on 8.7.2008 it is liable to pay to respondent No.1 at the agreed rate along with electricity charges, water charges and property tax.

The question as to whether the petitioner is at all liable to pay any amount to respondent No.1 and if so what that amount would be, considering the correspondence exchanged between the parties and clear unwillingness of the petitioner to continue with the management of the guest house are disputed questions of fact, which cannot be gone into in a writ petition. However, what is material for the purpose of the present writ petition is that the aforesaid amount cannot be recovered as arrears of land revenue. If respondent No.1 is aggrieved on account of the amount which it claims from the petitioner it can avail such other remedies as are open to it in law to recover the same but recovery as arrears of land revenue is certainly not an option available to respondent No.1.

8. For the reasons stated hereinabove the impugned notice dated 1.8.2008 issued by the Assistant Collector-I is hereby quashed. It is, however, made clear that quashing of the said notice does not come in the way of respondent No.1 availing such other remedies, if any, as are open to it in law to recover the amount which it claims from the petitioner. If and when such a remedy is availed, it will be open to the petitioner to take such defence as is available to it in law.

OCTOBER 04, 2013

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V.K. JAIN, J.