HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

APPEAL SUIT No.285 OF 2008

JUDGMENT:

The present appeal, under Section 96 of Code of Civil Procedure 1908 (for short 'CPC'), is preferred by defendant Nos.1 and 2 viz., The State of Andhra Pradesh, represented by its Collector, East Godavari District, Kakinada and the Mandal Revenue Officer, Rajahmundry, respectively, against the judgment and decree dated 21.01.2002 in O.S. No.85 of 1995 passed by the learned Additional Senior Civil Judge, Rajahmundry, on the main grounds that:

(a) The Court below, in fact, overlooked the fact that respondent - plaintiff questioned the very legislative competence of the State itself in enacting and enforcing the provisions of The Andhra Pradesh Non-Agricultural Lands Assessment Act, 1963 (for short 'NALA Act'), in respect of the activity undertaken by the plaintiff, respondent herein, viz., Oil and Natural Gas Corporation Limited, represented by its General Manager (Coordination) KG Project, Rajahmundry, contending that the State has no power and under these circumstances, the trial Court should not have been entertained the suit as the trial Court has no jurisdiction to decide such a dispute relating to the competency and power of the State to enact the law.

(b) Further ground agitated is the finding recorded by the Court below that the notice issued by the Mandal Revenue Officer can be treated as a final order without any right of appeal and as such, the plaintiff can approach the Civil Court is totally contrary to the NALA Act and without any basis.

(c) Of course, it is also agitated by the appellants that the inference drawn by the trial Court that the operation relating to extraction of mineral oil from the land does not include the definition of Section 2(d) of NALA Act is baseless and erroneous.

(d) Yet another ground raised is that the finding recorded by the trial Court in respect of issue No.1, the State cannot levy non-agricultural land assessment on the plaintiff's activity and issuance of notice is illegal, inoperative and is contrary to law.

(e) These have been the substantial grounds raised in the present first appeal.

2. Heard the learned Assistant Government Pleader for Appeals for the appellants - defendants, and Sri D.V. Sitaramamurthy, learned Senior Counsel appearing for the respondent - plaintiff, and perused the material on record.

3. For convenience sake, the parties herein are hereinafter referred to as they were arrayed in the trial Court.

4. The learned Assistant Government Pleader has raised contentions based on the grounds agitated herein, and, therefore, there is no need to advert to them elaborately.

5. Learned counsel for the respondent - plaintiff, of course, would submit that the Civil Court's jurisdiction is not ousted to entertain the relief claimed by the respondent. His contention is based on a particular feature, that being issue of notice was by the Mandal Revenue Officer, but not by the Mandal Revenue Inspector which is contrary to the provisions of Section 5 of NALA Act and, thus, supports the decree passed by the trial Court.

6. A perusal of the reliefs claimed by the plaintiff would show that it has sought for following reliefs:

1. To declare that notices dated 20.02.1995, 04.03.1995 and 02.04.1995 issued by defendant No.2 i.e., the Mandal Revenue Officer, Rajahmundry to the plaintiff calling upon to pay non-agricultural land assessment tax as illegal, inoperative, unconstitutional, void and arbitrary for vital lapses.

2. For a permanent injunction restraining the defendants and their officials from collecting any tax under NALA Act from the plaintiff and, of course, for costs of the suit.

7. The suit was valued for the relief of declaration and injunction at Rs.9,63,640/- and relevant Court fee was paid.

8. The reliefs are projected herein with a view to examine whether any such reliefs can be maintained by way of a civil suit.

9. Turning to the demand made by the defendants, more particularly, defendant No.2 in the notices issued referred to hereinabove, it was enhanced tax on account of amendment to Section 2(d) of the NALA Act by Amendment Act 28 of 1974.

10. Now turning to what has been contended by the defendants before the trial Court in their written statement, is that suit itself is not maintainable and the plaintiff cannot question the validity and legality of the notices unless it exhausts its remedies before the domestic tribunal under the Act. So far as effect of the amendment made to Section 2 (d) of the Act is concerned, according to the defendants, extraction of mineral oil is also included.

11. Based on the said pleadings, the Court below has settled the following five issues:

> "1. Whether the notices dt.20/2/95, 4/3/95 and 2/4/95 issued by 2nd defendant are illegal, inoperative, unconstitutional and void ?
>
> 2. Whether the plaintiff is entitled for permanent injunction as prayed ?
>
> 3. Whether this Court has no jurisdiction to entertain the suit ?
>
> 4. Whether the value of the suit is not correct ?
>
> 5. To what relief ?"

12. In fact, before the trial Court, no oral evidence was let in by either party. Only Exs.A-1 to A-6 were marked which are the notices under challenge marked as Exs.A-1, A-3 and A-5 and copies of reply notices marked as Exs.A-2, A-4 and A-6 respectively.

13. The Court below, on issue No.1, having elaborately dealt with the provisions of Section 2(d) of the NALA Act, in the light of the contentions raised by both sides and referring to the ruling in **S.V. Cements Ltd. v. Revenue Divisional Office, Nandyala** [1993 (2) ALT FB] rendered by this Court, extracted Clause (d) of Section 2 of the NALA Act, and then travelling to Article 246 of the Constitution of India, in regard to powers of the State Legislature and Central Legislature in enacting laws, in respect of the matters enumerated in Schedule - VII of Constitution and referring to the Entries - 53 and 54 in List - 1 of Schedule - VII, and attempting to explain them, interpreted Entry 53 of List - 1, and arrived at the conclusion that the mining operations in respect of extraction of mineral oil is different from other mining operations. Thereafter, referring to the ruling in **Mahabaleswarappa v. Commissioner of Land Revenue** [1996 (4) ALD 1163], holds that even if NALA Act is permissible in respect of the land in which the plaintiff carrying operations, it can be levied only if the lease deed provides the levy of such assessment and finding that such a clause is not contained, recorded finding against the defendants and in favour of the plaintiff. That has been the finding recorded so far as issue No.1 is concerned.

14. On issue No.3, as to whether the Civil Court has no jurisdiction to try the suit, referring to the provisions of Sections 5 and 6 of the NALA Act and the procedure contemplated by the said provisions, arrived at the finding that the Tahsildar was incompetent to issue said notice being the appellate authority under Section 5 of the NALA Act and he stepped into the shoes of the Mandal Revenue Inspector which he ought not to have done and, thus, finding fault with defendant No.2 in issuing such notices, somehow, viewed that the plaintiff can approach the civil Court under such circumstances. Though, not directly, but indirectly, it appears that the learned trial Court arrived at the view that the jurisdiction of the Civil Court is not ousted. Consequential findings were tendered on issue Nos.4 and 2 granting permanent injunction besides striking down the very notices.

15. Now turning to the submissions made by the learned counsel for both sides and from the grounds agitated in the Memorandum of Grounds, following two points would arise for consideration:

1) Whether the Civil Court has jurisdiction to entertain the suit?

2) Whether the findings recorded by the Court below on each of the issues cannot be sustained?

3) To what other relief, if any, to which the appellants is entitled?

<u>POINT Nos.1 and 2</u>:

16. There is no need or necessity to again extract Section 5 and 6 of the NALA Act and even Section 2 (d) of the NALA Act which defines ‘industrial purpose’ and an explanation is also appended thereto, explaining the term ‘power’.

17. For the reason that the NALA Act itself is a self-contained Code which, thus, by necessary implication mandates that the procedure provided thereunder, invariably has to be resorted to, when notices were sought to be issued under the provisions of the NALA Act, be it, whether the notices were for collection of non-agricultural tax or whether for enhanced tax on account of the amendment being introduced to Section 2(d) of the Act, by way of Amendment Act 28 of 1974. When a procedure provided by a special law is available, certainly, a party cannot approach civil Court, more particularly, to declare the notice issued under the provisions of the Special Act as unconstitutional, which relief, in fact, is governed by writ jurisdiction.

18. It is no doubt true, the Mandal Revenue Officer has issued notices, but not the Mandal Revenue Inspector, as Section 4 of the NALA Act deals with determination of assessment and issue of demand notice by the Mandal Revenue Inspector but the aggrieved party has to approach the appellate authority that being the Tahsildar as the Mandal Revenue Officer, as the case may be, and, in case, further aggrieved, the revision lies to the Revenue Divisional Officer

under Section 6 of the NALA Act. Therefore, it is said that the Act itself is a self-contained Code and the party aggrieved over by the notice issued, has to approach the appropriate authority as provided under the NALA Act.

19. The moot question that arises for consideration, therefore, is, merely because notice was issued by the Tahsildar, can a civil Curt exercise the jurisdiction overlooking the provisions of the NALA Act. The answer is invariably 'NO'. If the party is really aggrieved, remedy lies elsewhere, but not under Section 9 of CPC. It is no doubt true, there is no exclusion Clause occurring in the NALA Act, barring jurisdiction of Civil Court. But, when a special statute provides remedy for redressal of grievance, by circumventing the same, a party cannot resort to relief under CPC. This aspect, somehow, was totally ignored or overlooked or side-lined by the trial Court. In fact, at one stage, the trial Court has even commented that a constitutional right is being included by the party, but, somehow, again giving a go-bye, to such an observation made by it, still, granted the relief under issue No.1 by tendering finding in favour of the plaintiff which ought not to have done and the same lead to tendering findings on other issues.

20. Thus, the trial Court misdirected itself in according the relief sought for by the plaintiff though, incompetent to do so. Thus, the findings recorded by the Court below are to be held perverse and warrants interference.

21. Thus, point Nos.1 and 2 are held in favour of the appellants - defendants and against the respondent - plaintiff and accordingly, the judgment and decree under challenge passed by the trial Court are hereby set aside. It is, however, open to the plaintiff to avail appropriate remedy, if it so chooses.

22. Accordingly, the Appeal Suit is allowed. There shall be no order as to costs.

As a sequel thereto, Miscellaneous Applications, if any, pending in the present appeal suit are closed.

A. SHANKAR NARAYANA, J

March 7, 2018.
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