

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

RSA-225-1995

Date of decision : 06.08.2018

The State of Punjab and another

... Appellants

Versus

M/s Patiala Bus High Ways Pvt. Limited, Patiala

... Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Ms. Akshita Chauhan, AAG, Punjab.

Mr. Baldev Kapoor, Advocate
for the respondent.

AMOL RATTAN SINGH, J.(ORAL)

This is the second appeal of the State of Punjab after the suit of the respondent-plaintiff, seeking a declaration that the demand made by the State from it, for an amount of Rs.1,47,500/-, be declared to be null and void and the defendant-State be restrained from using any coercive measures to recover it.

2. As per the case of the plaintiff company, it was the registered owner of a bus bearing registration no.PUV-9440, which it had sold to one Noor Mohd. of Delhi, on 23.03.1978.

The said transfer had been reported to the District Transport Officer, Patiala, i.e. defendant no.2 in the suit (presently appellant no.2). However, a registered letter dated 18.01.1984 is stated to have been received by the plaintiff from appellant no.2, stating therein that the plaintiff was plying the aforesaid bus and therefore it was liable to pay token tax for

3. The respondent-plaintiff is stated to have replied thereto, denying its liability in view of the sale of the bus, but, as contended, without holding any further enquiry into the matter, appellant no.2 sent the impugned order of demand dated 18.06.1984, with a bus also stated to have been seized.

As per the case of the appellant-State, the seized bus, bearing registration no.PUV-9440, had been operated by the respondent herein (plaintiff) under a fictitious number, i.e. PBV-8625. However, as per the plaintiff, the said allegation was wholly false because bus bearing registration no.PUV-9440 was a “59 seater”, whereas the bus seized was a “64 seater”, with the chassis number and engine number not tallying with the bus registered with the number PUV-9440, that had been sold to the aforementioned Noor Mohd.

4. The plaintiff had further stated in its plaint that the bus was admitted, by appellant no.2, to have been seized from the premises of M/s Leyland Service, with the plaintiff having nothing to do with the said service station.

Yet further, the plaintiff had contended that even if the name board of the plaintiff was found written on the seized bus, that did not mean that the plaintiff was actually operating the bus and in fact, it was a case of mischief.

5. Still further, as per the plaintiff, even the District Transport Officer, Ludhiana, had fixed the liability of M/s Zimindara Transport Company for payment of the token tax of the bus and a sum of Rs.91,000/- had been realised from the said firm, for the period in dispute, in the year 1984.

6. It had been next contended in the plaint that when the bus was transferred by the plaintiff to Noor Mohd., Sections 29-A and 31(1) of the Motor Vehicles Act, 1939 were not applicable, the said provisions having come into force w.e.f. 26.12.1980, the contention therefore being that a “No Objection Certificate” was not required to be obtained in 1978, when the bus had been sold by the plaintiff company to Noor Mohd. and in fact, it was the duty of the transferee to inform appellant no.2 (defendant no.2) which was also duly done, with the said appellant (District Transport Officer, Patiala) also having issued a certificate to that effect.

7. It was next contended by the respondent-plaintiff in its suit that the bus was never impounded from the premises of the plaintiff and even the photographs thereof were taken in the police station, with the plaintiff never having plied it after its sale. In fact, it was further contended, that M/s Zimindara Transport Company was even *challaned* five times during the course of operation of the bus.

It was also contended by the respondent-plaintiff in its suit that the permit issued in respect of the said bus was utilized by the plaintiff “against their other buses” with the permission of the Regional Transport Authority, obtained in 1979.

Lastly, it was contended that the suit had also been filed without serving a notice under Section 80 of the CPC, after duly seeking leave of the Court in terms of Section 80 (2) thereof.

8. In reply to the aforesaid contentions, in the written statement filed, the appellants herein (defendants in the suit) firstly took up a preliminary objection of jurisdiction on the basis of Sections 12 and 14 of the Punjab Motor Vehicles Taxation Act, 1924, with only the appellate

authority under that Act having jurisdiction to decide such matters and not the civil Court.

Other than that, the usual preliminary objections with regard to non-joinder of necessary parties etc. were also taken, with it contended on merits that though the bus in question was originally in the name of the plaintiff, which had also informed appellant-respondent no.2 that it had been sold to Noor Mohd. on 23.03.1978 and a letter regarding verification of the transfer had also been produced by the plaintiff company, issued by the registration authority at Delhi, upon an enquiry from Delhi, it came to light that the verification letter was actually fictitious. Hence, it was contended that the bus was never transferred by the plaintiff to Noor Mohd. and the said verification was only obtained to evade payment of taxes from 01.04.1978 to 31.03.1984.

Thereafter, the plaintiff company, as per the case of the appellants-defendants, continued to ply the bus in the name of M/s Zimindara Transport registered at Ludhiana, “which is a sister concern of the plaintiff”, with it liable to pay the taxes claimed.

The bus was detected plying in violation of the Motor Vehicles Act, 1939 and therefore the District Transport Officer, Ludhiana, had “*challaned* it on 28.05.1981, 27.06.1981, 15.12.1980, 08.01.1981 and 17.03.1982”, with it later plied by the plaintiff on a fictitious number plate, bearing registration no.PBV-8625.

It was found plying on the Grand Trunk Road at Khanna and again *challaned* on 09.11.1983 but with the offence compounded for Rs.250/- by the District Transport Officer, Ludhiana, which was paid by the plaintiff company on the spot.

9. It was further the case of the appellant-plaintiff that ultimately the bus was found at the premises of the plaintiff by the District Transport Officer on 05.01.1984, at the time of checking traffic, with it bearing registration no.PBV-8625, and that “The registration No.PBV-8625 tallied with the particulars of bus bearing registration no.PUV-9440”. Therefore, a criminal case was also registered at a police station in Patiala.

10. Hence, as per the case of the appellants-defendants, it was clear that the plaintiff company continued to ply the bus after its alleged sale and consequently, it was liable to pay token tax even in terms of Section 4(3) of the Punjab Motor Vehicles Taxation Act, 1924.

11. It was next contended in the written statement that the plaintiff was given complete opportunity of showing cause as to why the demand raised be not realised from it, by issuing letters dated 18.01.1984, 25.04.1984 and 18.06.1984, with the reply filed thereto not being found satisfactory, leading to the passing of the impugned order.

However, the appellants-defendants admitted that a sum of Rs.91,000/- was ordered to be recovered as tax of the bus from M/s Zimindara Transport Company by the District Transport Officer, Ludhiana, with the said amount paid in installments by one Ujjagar Singh, (allegedly on behalf of the plaintiff company as per the appellant-State, M/s Zimindara Transport Company being a “sister concern” of the plaintiff company).

12. A replication was also filed by the plaintiff controverting the aforesaid stand of the present appellants, specifically denying any connection with the M/s Zimindara Transport, further contending that the appellants-defendants were estopped from making a demand from the plaintiff as the M/s Zimindara Transport had been held liable to pay the tax,

with a large amount already connected from that firm.

13. It was also reiterated in the replication that the plaintiff utilized the permit of the bus (PUV-9440) 'against another bus' with the sanction of the competent authority, after the sale of the bus to Noor Mohd.

In fact, in its replication, the respondent-plaintiff denied having even produced any verification letter of the Licensing Authority, Delhi, before the District Transport Officer, Patiala, contending that no such application was produced by the plaintiff and the said letter was fabricated by the defendants after the filing of the suit.

14. On the aforesaid pleadings of the parties, the following issues were framed by the learned Senior Sub Judge, Patiala:-

- “1. Whether this court has no jurisdiction to try this suit?
OPD
2. Whether the suit is bad for non-joinder of necessary parties? OPD
3. Whether the suit is not maintainable? OPD
4. Whether the plaintiff has no cause of action to file the suit? OPD
5. Whether notice under Section 80 CPC was served? If not, to what effect? OPP
6. Whether the demand of Rs.1,47,500/- made by letter dated 18.06.1984 by defendant no.2 is illegal, null and void etc. as alleged? OPP
7. Whether the plaintiff is entitled to the injunction prayed for? OPP
8. Relief.”

15. On the question of jurisdiction, the learned Sub Judge held that with the plaintiff not being the owner nor the possessor of the bus in question after 23.03.1978, there would be no question of it paying the token

District Transport Officer, Patiala (appellant-defendant no.2), was without jurisdiction and consequently, that being so, the civil court had jurisdiction to entertain the suit and to adjudicate upon it, the said order being a void order.

16. The 2nd and 3rd issues on non-joinder of necessary parties and the suit not being maintainable, were also decided against the appellants-defendants, they not having been pressed before the trial Court.

17. The important issue of whether the demand vide the impugned order/letter was legal or not and whether the respondent-plaintiff was entitled to the injunction prayed for or not, were taken up alongwith issue no.4 (on there being or not being any cause of action to file the suit).

18. The question on whether the sale of the bus to Noor Mohd. of Delhi was found to be a genuine sale or not, was dealt with by the learned Sub Judge by first recording a finding that Ex.D3 was a copy of a letter written by the District Transport Officer, Patiala, to the Registering Authority at Delhi, asking whether the verification alleged to have been issued by the Delhi authority with regard to the transfer of the bus to Noor Mohd., was a genuine document or not.

It was also found by that Court that Ex.DW5/1 was a copy of the endorsement made by Shri T. D. Chawla (impliedly the registering authority at Delhi), to the effect that the verification did not bear his signatures.

Having recorded the above said findings the learned trial Court however went on to further observe that the actual verification certificate which was stated to have been given by the respondent-plaintiff to appellant-defendant no.2, was not produced on record by the defendants,

“for the reasons best known to them”.

On the other hand, Ex.D4 was seen to be a recovery warrant showing that the District Transport Officer, Ludhiana, had determined that M/s Zimindara Transport Company, Ludhiana, was a defaulter in the payment of road taxes in respect of bus bearing registration no.PUV-9440, to the extent of Rs.91,000/-, starting from the period 1978-79 onwards.

A copy of a *challan* exhibited as Ex.D2 was also referred to by that Court, showing that a bus bearing registration no.PBV-8625 was *challaned* on 09.11.1983, shown therein to be owned by the plaintiff, with one Megh Raj having applied for composition of the offence, the offence then having been compounded on a payment of Rs.250/- on the same date itself, i.e. 09.11.1983.

19. What is further important to notice is that as per the judgment of the learned trial Court, DWs1, 2 and 3, i.e. Raj Kumar, who was an official in the office of 2nd appellant-defendant, Jagjit Puri, who was the 2nd defendant, i.e. the District Transport Officer, Patiala on 12.07.1984, and Mandeep Singh, who was the District Transport Officer at Ludhiana, all testified as witnesses for the defendants, alongwith the aforementioned Shri T. D. Chawla, the Motor Licensing Officer in the Delhi Administration in the year 1978.

As per the testimony of the District Transport Officer, Ludhiana and District Transport Officer, Patiala (DWs 4 and 2 respectively), the bus was actually found at the premises of the respondent-plaintiff, bearing registration no.PBV-8625, but carrying the engine and chassis number of the bus registered with the no.PUV-9440.

As per these witnesses, the bus was got photographed and

seized and was deposited in the Police Station, Civil Lines, Ludhiana.

20. Despite the above, the learned Sub Judge found that the District Transport Officer, Patiala, had actually issued a certificate, Ex.P4, to the effect that the bus stood transferred in the name of Noor Mohd. on 23.03.1978, with the road permit of the bus, Ex.P17, also revealing that after the sale of the bus to Noor Mohd., the permit was utilized for bus no.PBS-5225 belonging to the plaintiff, with the request for transfer of the permit of the bus duly endorsed in respect of the bus carrying the latter registration number.

Thereafter, despite what was recorded earlier, the Sub Judge has also recorded that the *challan*, Ex.D2, dated 09.11.1983, showed that the number of the bus so *challaned* was PBV-8625 though it was shown to be owned by the respondent-plaintiff, with the aforementioned Megh Raj having applied for composition of the offence, with it having been compounded on payment of Rs.250/- on the same date (as already noticed earlier).

21. Thereafter, recording a finding that it was not proved that Megh Raj was an employee of the respondent-plaintiff and Rs.91,000/- having admittedly been recovered from M/s Zimindara Transport due to non-payment of tax from 1978-79 onwards, it was held that the demand made from the respondent-plaintiff, vide the impugned order, was illegal, null and void.

A finding was also recorded by that Court that the bus that was seized was found to be a “66 seater”, whereas the bus bearing registration no.PUV-9440 was a “61 seater”.

22. The contention of the appellants-defendants to the effect that the bus was seized from the premises of the plaintiff, was held to be belied in terms of the admission made by DW3, Shri Jagjit Puri, who in his testimony stated that he had written a letter on 18.06.1984 to the plaintiff, stating therein that the bus was seized from Leyland Service Station, Patiala. That letter was found to be Ex.P11 and therefore, another finding was recorded by the trial Court that with nothing shown that the plaintiff had anything to do with Leyland Service Station, it could not be held that the bus was seized from the plaintiffs' premises.

23. Recording the above findings and reiterating that the documents stated to have been produced by the respondent-plaintiff in the office of appellant-defendant no.2 (District Transport Officer, Patiala), which was alleged by the State to be a fabricated verification from the Registering Authority at Delhi (with regard to the transfer of the bus to Noor Mohd.), was not a document placed on record, the main issues on the recovery being legal or illegal and void, were decided in favour of the respondent-plaintiff.

24. The issue on Section 80 of the CPC not having been complied with, was also decided in favour of the plaintiff, holding that an application had been duly moved in terms of sub-section (2) thereof, seeking to dispense with the notice in view of the urgency of the relief claimed.

25. On the aforesaid findings, the suit of the respondent-plaintiff was decreed in its favour alongwith with the costs.

26. In the first appeal filed by the present appellants-defendants, the learned Additional District Judge, Patiala, essentially on the same reasoning, dismissed the appeal, leading to the filing of the present second

appeal in the year 1995, with the appeal having been admitted to regular hearing vide an order of this Court dated February 19, 1996, with the operation of the judgments and decrees of the learned Courts below having been stayed by this Court.

27. Though no question of law had been framed by the counsel for the appellants, in the opinion of this Court, the primary question of law that requires to be adjudicated upon by this Court in this second appeal is as to whether or not the learned Courts below had jurisdiction to entertain the suit in the face of Section 14 of the Punjab Motor Vehicles Taxation Act, 1924, which reads as follows:-

“14. Bar to jurisdiction of civil and criminal courts in matters of taxation.- The liability of a person to pay the tax or penalty shall not be determined or questioned in any other manner or by any other authority than is provided in this Act or in rules made thereunder, and no prosecution, suit or other proceeding shall lie against any Government Officer for anything in good faith done or intended to be done under this Act.”

The other question that requires adjudication, if the first question is answered by holding that such jurisdiction was not barred, would be whether the demand raised vide the letter dated 18.06.1984, is legal and valid or not.

28. On the 1st question, a perusal of Section 14 of the Act of 1924 shows that even the liability of a person to pay the tax or penalty imposed under the provisions of the said Act, cannot be made subject matter of a civil suit, (and any tax or penalty demanded under the Act would be required to be appealed against by the aggrieved party in terms of Section 12 of the Act).

Therefore, at first blush, it would seem that the Courts below wholly erred in even entertaining the suit, as the liability itself is not to be called in question before a civil Court. Consequently, despite having actually dismissed the appeal on the basis of what was argued in Court by counsel on both sides, this Court was actually first inclined to put the matter up for rehearing upon having gone through the entire case at the time of dictation of the judgment; yet on proper consideration, I am in agreement with what has been held by the learned Courts below on the issue of jurisdiction, in view of the fact that undoubtedly for the same period that the tax was recovered from M/s Zimindara Transport Company, in respect of a bus which (as per the appellants), was the same as was earlier registered in the name of the respondent-plaintiff firm; and therefore, a second liability for the very same bus and the same period could not have been imposed upon the respondent-plaintiff, even if this Court were to presume that all was not well as regards the claimed transfer of the bus from the name of the respondent-plaintiff to the aforementioned Noor Mohd. of Delhi.

29. This observation on all possibly not being well with the alleged transfer of Noor Mohd. would be in view of the fact that it was shown before the learned trial Court by the appellants-defendants, that the concerned authority in Delhi had denied ever endorsing any signature on the document of verification stated to have been presented by the respondent-plaintiff to the District Transport Officer, Patiala, i.e. appellant-defendant no.2. However, the document itself was never placed on record.

Though nothing has been pointed out by learned State counsel to the effect that the said finding of the Courts below is erroneous and that the document of verification as was contended to have been produced by the

respondent-plaintiff from Delhi, was actually placed on record by the appellants-defendants, yet the observation made in the previous paragraph hereinabove is still being made, in view of the facts that the chassis and engine numbers on the bus impounded were contended to be the same as that of the bus purportedly transferred to Noor Mohd.

Whether this was in connivance with appellant no.2 and the respondent-plaintiff, or otherwise, is not being commented upon in detail by this Court at this stage, more than 34 years after the demand of tax was raised, more so because of the fact that the demand, at least substantially, was duly recovered from M/s Zimindara Transport Company, the said recovery being Rs.91,000/- with the demand made upon the respondent-plaintiff being Rs.1,47,500/-.

29. It is, however, to be noticed further that as per Mr. Kapoor, learned counsel for the respondent-plaintiff, eventually another amount of Rs.35,500/- was also recovered from the said firm (M/s Zimindara Transport Company) and the remaining amount consequently being only Rs.21,000/-.

This fact was also not denied by learned State counsel appearing for the appellants, who obviously would have stated so on instructions.

30. Whether or not the aforesaid firm, i.e. M/s Zimindara Transport Company, was in any way connected with the respondent-plaintiff firm, i.e. M/s Patiala Bus High Ways Pvt. Limited, or not, would also be immaterial in the opinion of this Court, as both the firm and the company are obviously separate legal entities, from the former of which the majority of the liability admittedly stands recovered.

31. Hence, that being so, even though the appellant State in its written statement is stated to have contended that the bus was recovered from the premises of the plaintiff, but in cross-examination DW2 admitted that in the letter dated 18.06.1984 he had stated that it had been recovered from Leyland Service Station. In any case, whether it was recovered actually from Leyland Service Station or from the plaintiff, would also not, in my opinion, have any effect at least qua the tax liability to be recovered, that already having been to a major extent recovered from M/s Zimindara Transport Company.

32. Having said that, though undoubtedly liability to pay the amount due does not lie upon the respondent-plaintiff but upon M/s Zimindara Transport Company, the question would then be whether the aforesaid communication dated 18.06.1984 can be treated to be a void order/demand, thereby jurisdiction being inherent in the civil court to declare such an order to be null and void, overriding the bar contained in Section 14 of the Punjab Motor Vehicles Taxation Act, 1924, which has already been reproduced in paragraph 27 hereinabove.

(As also noticed, Section 12 of the said Act provides for an appeal to the Commissioner/Government (if the order of demand is passed by the Commissioner), against any order relating to the determination, re-determination, imposition or recovery of the tax, interest or penalty).

33. Thus, though normally a liability sought to be created by any notice of demand/order, would at best be treated to be an illegal demand raised if it is found to be so, (and not a void order), yet, in the opinion of this Court, where the said liability has already been discharged by another person pursuant to an order passed, with that order not reversed in any

subsequent proceedings, 'a double realization' thereof from another person would not be a valid demand at all and as such the demand itself would be void *ab initio*, with nothing stated in the order raising the demand from the plaintiff that it was wrongly/erroneously realized from another person, to whom it would be refunded.

Consequently, as regards the first question of law framed in paragraph 27, it is answered to the effect that the demand itself raised by the appellants from the respondent, vide the letter/order dated 18.06.1984, being a void order, jurisdiction of the civil Court would lie in a suit instituted by the person from whom the demand has been raised, in the aforesaid circumstances.

It is to be again noticed here that nothing has been brought before this Court to show that the amount recovered from M/s Zimindara Transport Company has been set aside by any superior authority under the Act of 1924, or that the said amount has been refunded to the said firm.

34. Hence, even the second question, of whether the demand made from the respondent-plaintiff, vide the aforesaid order dated 18.06.1984, is an illegal demand, is answered to the effect that in view of the fact that M/s Zimindara Transport Company had already been found to be liable by the appellants to pay the tax and penalty under the Act of 1924 and a substantial part thereof had been realized from the said firm, the demand made from the respondent-plaintiff is illegal.

35. In view of the above, this appeal is dismissed with the judgments and decrees passed by the learned courts below upheld.

It may be observed here that as regards the remaining amount as was not recovered from M/s Zimindara Transport Company, naturally the

State would be at liberty to do so from that firm, with the firm also equally at liberty to raise all pleas as are available to it to refute the legality of the demand, it not being a party to this *lis*.

A decree be issued accordingly.

36. Even having dismissed the appeal, the money sought to be recovered (partly already recovered from M/s Zimindara Transport Company), being public money, liberty is granted to the appellants to file an appropriate application, if any subsequent order has been passed in favour of M/s Zimindara Transport Company, holding the recovery from that firm to be unsustainable and consequently the money to be refunded to it.

It needs to be stated here that though this is an unusual observation made in a second appeal (obviously not being a writ petition), it has been done just so as to ensure that the public exchequer does not suffer on a technicality, with a review permitted to be filed because then in any case all observations made hereinabove, with regard to money having been recovered from the said firm, being observations made against the official record, even though the said record may not be a part of this appeal or the evidence led before the courts below.

(AMOL RATTAN SINGH)
JUDGE

August 06, 2018.
D.K/dinesh.

Whether speaking / reasoned	Yes
Whether reportable	Yes