

Shubhlaxmi Mills Ltd.

Vs

Union of India and Another

Civil Appeal No. 269 of 1955

(S.K. Das, M. Hidayatullah, K.C. Das Gupta, J.C. Shah, N. Rajgopala Ayyangar JJ)

02.09.1960

JUDGMENT

DAS GUPTA J. –

This appeal by special leave is against the order of the High Court of Bombay dismissing summarily the appellant's petition under article 226 of the Constitution of India. The appellant is a company incorporated and registered under the Indian Companies Act and has its registered office at Station Road, Cambay, in the State of Bombay. It appears that on May 1, 1943, the Nawab Saheb of Cambay representing the State of Cambay sold for and on behalf of the State the property known as "Cambay State Mills" to a private limited company - "Shree Vijaylaxmi Cotton Mills Ltd." In the indenture of conveyance the vendor covenanted for himself and his successors that the vendor shall not during the period of five years from the date of the conveyance and during such further period thereafter as the Cambay Durbar may, from time to time, determine, levy, impose, claim or recover from the purchaser company and its successors and assigns any income-tax, super-tax, excess profits tax or any other tax, impost o

On an application made by the Vijaylaxmi Cotton Mills Ltd. for extension of the exemption for a further period of 15 years after expiry of the original period of 5 years the Nawab granted an extension of 11 years after the expiry of the original period of 5 years. In December, 1949, the Vijaylaxmi Cotton Mills transferred its interest in the entire property of the mills to the appellant herein, Shubhlaxmi Mills Ltd. More that a year before this, on March 19, 1948, the Nawab of Cambay had signed an agreement of merger of the Cambay State in the Bombay Province. Under this agreement the merger became effective on and from June 10, 1948. On December 31, 1949, the Government of the Dominion of India enacted a law called "Taxation Laws Extension to Merged States Act". The consequence of this was that the Income-tax Act became applicable to merged States including what had formerly been the State of Cambay as from August 1, 1949. On the same date of Government also promulgated an order called the "Merged States Ta

The question which the High Court had to consider and which is also raised before us is whether the fact that Vijaylaxmi Cotton Mills was entitled to exemption from income-tax from the Cambay State by virtue of the covenant entered into by the Nawab of Cambay, entitles the present appellant to exemption from income-tax from the Government of India. The fact that the Vijaylaxmi Cotton Mills is no longer in the picture and the appellant company has purchased the property does not affect the question. The real question is whether after the accession of the Cambay State to the Dominion of India, somebody having contractual right which could be enforced against the Cambay State was entitled to enforce it against the Government of India in the Indian courts. There is an exhaustive review of the authorities pertinent on this question in this court's decision in Dalmia

Dadri Cement Co. Ltd. v. Commissioner of Income-tax. It is unnecessary to discuss these authorities again. We may only refer to the succinct statement

"When a territory is acquired by a sovereign state for the first time that is an act of state. It matters not how the acquisition has been brought about. It may be conquest, it may be by cession following on treaty, it may be by occupation of territory hitherto unoccupied by a recognized ruler. In all cases the result is the same. Any inhabitant of the territory can only make good in the municipal courts established by the new sovereign such rights as that sovereign has, through his officers, recognised. Such rights as he had under the rule of predecessors avail him nothing. Nay more, even if in a treaty of cession it is stipulated that certain inhabitants should enjoy certain rights, that does not give a title to these inhabitants to enforce these stipulations in the municipal courts. The right to enforce remains only with the high contracting parties."

On a consideration of the authorities the law stated thus in the Dalmia Dadri Cement case by Venkatarama Aiyar J. on behalf of the court :

"The result of the authorities then is that when a treaty is entered into by sovereigns of independent States, whereunder sovereignty in territories passes from one to the other, clauses therein providing for the recognition by the new sovereign of the existing rights of the residents for those territories must be regarded as invested with the character of an act of State and no claim based thereon could be enforced in a court of law."

The appellant company was therefore not entitled to have any relief from the courts in India on the basis of the covenants in spite of the fact that the merger agreement included - by a communication from the Government of India to the Nawab dated September 10, 1948 - a clause in these terms :

"No order passed or action taken by you before the date of making over the administration to the Dominion Government will be questioned unless the order was passed or action taken after the 1st April, 1948, and is considered by the Government of India to be palpably unjust or unreasonable. The decision of the Government of India in this respect will be final."

Before us a point was sought to be taken on behalf of the appellant that the Dominion of India did in fact recognize the right of Vijaylaxmi Cotton Mills to exemption from income-tax and so the right can be enforced. It is to be noticed that in the application before the High Court no such case of recognition was set up. Paragraph 6 of the petition to which the learned counsel drew our attention says : "The petitioners say that ever since the grant of the said exemption from 1943 onwards the said Shree Vijaylaxmi Cotton Mills enjoyed the said exemption and the said Cambay State carried out its obligations." It is urged that by these words the appellant wanted to say that the Government of India also gave the Vijaylaxmi Cotton Mills an exemption from taxation on the basis of the covenant. The words used in paragraph 6 are however not capable of this interpretation. We think it proper to add that even assuming that a claim for recognition of the right to exemption on the basis of the covenant had been made, th

The appeal is accordingly dismissed with costs.

Appeal dismissed.

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