

State of Uttar Pradesh and Others

Vs

Dr. Vijay Anand Maharaj

Civil Appeal No. 25 of 1961

(CJI B. P. Sinha, T. L. Venkatarama Ayyar, K. Subha Rao,

N. Rajgopala Ayyangar, J. R. Mudholkar JJ)

26.03.1962

JUDGMENT

SUBBA RAO J. –

This appeal by special leave is directed against the judgment and order of a division bench of the Allahabad High Court confirming those of a single judge of that court dismissing the application filed by the appellants to review the order of the High Court dated November 22, 1958.

The facts leading up to the filing of this appeal may be briefly stated. The respondent held certain zamindari and agricultural properties in different districts of the State of Uttar Pradesh. On December 22, 1952, the Additional Collector, Banaras, in exercise of the powers conferred on him under the provisions of the U. P. Agricultural Income-tax Act (III of 1949), assessed the respondent to an agricultural income-tax of Rs. 99,964-12-0 for the year 1359 fasli. On September 30, 1955, the respondent filed a petition before the High Court under article 226 of the Constitution for quashing the said order on the ground that the Additional Collector, Banaras, had no jurisdiction to make the said assessment. On November 22, 1955, Mehrotra J. allowed the writ petition quashing the said assessment. The State of Uttar Pradesh did not prefer an appeal against the said order and allowed it to become final. On February 9, 1956, the State of Uttar Pradesh promulgated an Ordinance, being Ordinance No. II of 1956, which

Mr. C. B. Aggarwala, learned counsel for the appellants, has raised before us the following points :

(1) The order of Mehrotra J. dismissing the application for review of his earlier order is a "judgment" within the meaning of Chapter VIII, rule 5 of the Rules of Court and, therefore, an appeal lies against that order to a division bench of that court. (2) The terms of section 11 of the Act are comprehensive enough to take in an order made by the High Court under article 226 of the Constitution quashing the order of assessment, and even if there is some lacuna, the provisions shall be so construed as to carry out the clear intention of the legislature. (3) In any view, the application for review filed by the appellants could be treated as one filed under Order XLVII of the Code of Civil Procedure, and the earlier order reviewed on the ground that there is an error apparent on the face of the record. We shall take the questions in the order they were argued.

The first question is whether an appeal lay against the order of Mehrotra J. rejecting the application for review filed by the appellants to a division bench of the High Court. Chapter VIII, rule 5 of the Rules of Court provides for an appeal against an order of a single judge. Under that rule a special appeal against an order of a single judge of the court can be maintained only if that order amounts to

a "judgment". That rule gives effect to clause 10 of the Letters Patent for the High Court of Allahabad, which gives a right of appeal against a judgment of a single judge subject to the conditions mentioned therein. The said clause 10 corresponds to clause 15 of the Letters Patent for the High Courts of Calcutta, Bombay and Madras. The scope of the expression "judgment" came under the judicial scrutiny of the various High Courts : there is a cleavage of opinion on that question. We shall briefly notice the leading decisions of the various High Courts on the subject. Couch C.J., in Justices of the Peace for

"We think 'judgment' in clause 15 means a decision which affects the merits of the question between the parties by determining some right or liability. It may be either final or preliminary or interlocutory, the difference between them being that a final judgment determines the whole cause or suit and a preliminary or interlocutory judgment determines only a part of it leaving other matters to be determined."

The same High Court in Hadjee Ismail v. Hadjee Mahomed held that an appeal lay under the said clause from an order refusing to set aside an order granting leave to sue to the plaintiff under clause 12 of the Letters Patent. Therein Couch C.J. observed :

"It is not a mere formal order, or an order merely regulating the procedure in the suit, but one that has the effect of giving a jurisdiction to the court it otherwise would not have. And it may fairly be said to determine some right between them, viz., the right to sue in a particular court, and to compel the defendants who are not within its jurisdiction to come in and defend the suit, or, if they do not, to make them liable to have a decree passed against them in their absence."

The Bombay High Court followed the Calcutta view. The leading judgment of the Madras High Court is that in Tuljaram Row v. Alagappa Chettiar, where it was held that an order of a single judge in the original side refusing to frame an issue asked for by one of the parties is not a "judgment" within the meaning of clause 15 of the Letters Patent. White C.J. laid down the following tests :

"The test seems to me to be not what is the form of the adjudication but what is its effect in the suit or proceeding in which it is made. If its effect, whatever its form may be, and whatever be the nature of the application on which it is made, is to put an end to the suit or proceeding so far as the court before which the suit or proceeding is pending is concerned, or if its effect, if it is not complied with, is to put an end to the suit or proceeding, I think the adjudication is a 'judgment' within the meaning of the clause."

Referring to the decisions of the Calcutta High Court the learned Chief Justice proceeded to state :

"On the other hand I am not prepared to say as was held in Justices of the Peace for Calcutta v. Oriental Gas Company and in Sonbai v. Ahamedbhai Habibhai, it must be a decision which affects in merits by determining some right or liability. I think the decision may be a judgment for the purposes of the section though it does not affect the merits of the suit or proceeding and does not determine any question of right raised in the suit or proceeding."

Krishnaswami Ayyar J. observed much to the same effect :

"I would only stop here to remark that a decision which determines the cause or

proceeding so far as the particular court is concerned, though it refuses to adjudge the merits, must also be deemed to be a judgment : for otherwise the rejection of a plaint for defect of form or insufficiency of court fee or a return of it for want of jurisdiction would be outside the definition of the learned Chief Justice which could hardly have been his meaning. I may also observe that the 'part' which is determined may be a part of the claim separable from the rest or a determination of liability generally though the actual measure of liability may be a matter of account."

The Lahore High Court generally followed the view expressed by the Madras High Court. The Allahabad High Court in Muhammad Naim ul-lah Khan v. Ihsan ul-lah Khan expressed the view that an order which is not appealable under Order XLIII, rule 1 of the Code of Civil Procedure is not appealable under clause 10 of the Letters Patent. This view has been followed by a division bench of the same High Court in Tirmal Singh v. Kanhaiya Singh. But the said decisions do not attempt to lay down a definition of the expression "judgment" in the Letters Patent. The Nagpur High Court in Manohar v. Baliram, by a majority, after considering the case-law on the subject, laid down the following definition. Hidayatullah J., who delivered the leading judgment, laid down the test at page 522 thus :

"A judgment means a decision in an action whether final, preliminary or interlocutory which decides either wholly or partially, but conclusively in so far as the court is concerned, the controversy which is the subject of the action. It does not include a decision which is on a matter of procedure, nor one which is ancillary to the action even though it may either imperil the ultimate decision or tend to make it effective. The decision need not be immediately executable per se but, if left untouched, must result inevitably without anything further, save the determination of consequential details, in a decree or decretal order, that is to say, an executive document directing something to be done or not to be done in relation to the facts of the controversy. The decision may itself order that thing to be done or not to be done or it may leave that over till after the ascertainment of some details but it must not be interlocutory having for its purpose the ascertainment of some matters or details prior to the d

The foregoing brief analysis of the judgments shows that the definition given by the Madras High Court is wider than that given by the Calcutta and Nagpur High Courts. It is not necessary in this case to attempt to reconcile the said decisions or to give a definition of our own, for on the facts of the present case the order of Mehrotra J. would be a judgment within the meaning of the narrower definition of that expression.

The appellants filed an application to review the order of the High Court quashing the order of assessment made by the Additional Collector. It was alleged in the affidavit that the impugned assessment had been validated under the ordinance and that the applicants had the right to have the order of Mehrotra J. reviewed in the light of the provisions of section 6 thereof. The assessee denied that the appellants had any such right. The appellant's statutory right to have the order of the High Court reviewed was denied by the other side and was put in issued before the High Court. The relevant provisions of the Act read :

"Section 2. In section 2 of the U. P. Agricultural Income-tax Act, 1948 (hereinafter called the Principal Act), for clause (4), the following shall be and be deemed always to have been substituted -

(4-a) 'Collector' shall have the meaning as in the U. P. Land Revenue Act, 1901, and will include an Additional Collector appointed under the said Act."

"Section 10. Validation - (1) For the removal of doubts it is hereby declared that,

(a) in rule 18 of the U. P. Agricultural Income-tax Rules, 1949, the expression 'Collector' and 'Assistant Collector in-charge of a sub- division' shall respectively include and be deemed always to have included an 'Additional Collector' and an 'Additional Assistant Collector in-charge of a sub-division.'

(b) all orders, actions or proceedings taken, directions issued or jurisdiction exercised in accordance with the provisions of the principal Act or of any rule framed thereunder prior to the amendment of that Act by section 2 of this Act shall be deemed to be as good and valid in law as if section 2 aforesaid had been in force at all material dates.

(2) Where any question arises as to the validity or legality of any assessment made by an Additional Collector in-charge of a sub-division or by an Additional Collector in purported exercise of the powers under section 14 or of the rules framed under clause (o) of sub- section (2) of section 44 of the principal Act, the same shall be determined as if the provisions of section 2 of this act had been in force at all material dates.

Section 11. Review of Proceedings. - Where before the commencement of this Act any court or authority had, in any proceedings under the principal Act, set aside any assessment made by an Additional Collector on the ground that the assessing authority had no jurisdiction to make an assessment, any party to the proceedings may, at any time within ninety days from the date of commencement of this Act apply to the court or authority for a review of proceedings in the light of the provisions of this Act, and the court or authority to which the application is made shall review the proceedings accordingly and make such order, if any, varying or revising the order previously made, as may be necessary to give effect to the provisions of the principal Act as amended by sections 2 and 8 of this Act."

Under the aforesaid provisions the assessments made by the Additional Collector were retrospectively validated and a right was conferred on a party to the proceedings under the principal Act, wherein the assessments were set aside merely on the ground that the assessing authority had no jurisdiction to make an assessment, to apply to the court to have that order reviewed. A statutory injunction was also issued to the court which set aside the assessment on the ground of want of jurisdiction to review its order and to give effect to the provisions of the principal Act, as amended by sections 2 and 4 of the Act, that it to say, a fresh right has been conferred upon a party to the earlier proceedings to have the previous order set aside and to have a decision from the court on the basis of the amended Act. This is a valuable and substantive right conferred upon a party to the proceeding.

On the rival contentions, the question of the fresh right conferred upon a party to the proceeding and the jurisdiction of the court to enforce the said right would be in issue and any decision thereon could legitimately be said to be a decision determining the rights of parties. But for the amending Act, the order of the High Court admittedly would have become final; but, because of the amending

Act there was a controversy whether the binding decision could be reopened and the rights of the parties decided in accordance with the amending Act. The decision of Mehrotra J. dismissing the application was certainly a decision denying the right of the appellants alleged to have been conferred under the amending Act. We, therefore, hold that the order of Mehrotra J. dismissing the application, filed for review of his earlier order, on the ground that section 11 of the Act did not confer any such right on the appellants was a "judgment" within the meaning of clause 10 of the Letters Patent as well as Chapter VIII,

Even so, the appellants would not be entitled to succeed, unless we hold, differing from the High Court, that section 11 of the Act confers a right on the appellants to have the order of Mehrotra J. reviewed. We have already extracted the provisions of section 11. Section 11 is in two parts : the first part of the section confers a right on a party to the proceedings under the principal Act to apply to the court or authority for a review of the proceedings in the light of the provisions of the Act within 90 days from the commencement of the Act, and the second part issues a statutory injunction on such court or authority to review the proceedings accordingly and to make an order as may be necessary to give effect to the provisions of the principal Act as amended by sections 2 and 4 of the Act. The first question, therefore, is whether the order of Mehrotra J. in an application under article 226 of the Constitution was in any proceeding under the principal Act. Obviously, a petition under article 226 of the

"The construction must not, of course, be strained to include cases plainly omitted from the natural meaning of the words."

Crawford says that a liberal construction does not justify an extension of the statute's scope beyond the contemplation of the legislature. The fundamental and elementary rule of construction is that the words and phrase used by the legislature shall be given their ordinary meaning and shall be construed according to the rules of grammar. When a language is plain and unambiguous and admits of only one meaning, no question of construction of a statute arises, for the Act speaks for itself. It is a well recognized rule of construction that the meaning must be collected from the expressed intention of the legislature. So construed, there cannot be two possible views on the interpretation of the first part of the section. Learned counsel suggested that we should read the relevant portion of the first part thus : "in any proceedings, to set aside any assessment made on the basis of the principle Act". To accept this argument is to rewrite the section. While the section says that the order sought to be reviewed is

Article 226 confers a power on a High Court to issue the writs, orders or directions mentioned therein for the enforcement of any of the rights conferred by Part III or for any other purpose. This is neither an appellate nor a revisional jurisdiction of the High Court. Though the power is not confined to the prerogative writs issued by the English courts, it is modelled on the said writs mainly to enable the High Courts to keep the subordinate tribunals within bounds. Before the Constitution, the chartered High Courts, that is, the High Courts at Bombay, Calcutta and Madras, were issuing prerogative writs similar to those issued by the King's Bench Division, subject to the same limitations imposed on the said writs. In *Venkataram v. Secretary of State for India*, a division bench of the Madras High Court consisting of Venkatasubba Rao and Madhavan Nair JJ. held that the jurisdiction to issue a writ of certiorari was original jurisdiction. In *Ryots of Garabandha v. Zamindar of Parlakimidi*, another division

"It cannot be disputed that the issue of such writs is a matter of original jurisdiction."

The Calcutta High Court, in *Budge Budge Municipality v. Mangru*, came to the same conclusion, namely, that the jurisdiction exercised under article 226 of the Constitution is original as distinguished from appellate or revisional jurisdiction, but the High Court pointed out that the jurisdiction, though original, is a special jurisdiction and should not be confused with ordinary civil jurisdiction under the Letters Patent. The Andhra High Court in *Satyanarayanamurthi v. Income-tax Appellate Tribunal* described it as an extraordinary original jurisdiction. It is, therefore, clear from the nature of the power conferred under article 226 of the Constitution and the decisions on the subject that the High Court in exercise of its power under the article 226 of exercise original jurisdiction, though the said jurisdiction shall not confused with the ordinary civil jurisdiction of the High Court. This jurisdiction, though original in character with its appellate and revisional jurisdictions, in exercisable throughout

There is another insurmountable difficulty in accepting the construction suggested by learned counsel. Under the second part of the section, a party to the earlier proceedings may within the prescribed time apply to the court or authority for a review the proceedings in the light of the provisions of the Act, and the court or authority to which the application is made shall review the proceedings accordingly, and make such order, if any, varying or revising the order previously made as may be necessary to give effect to the principal Act, as amended by section 2 of the Act. Should it be held that this section applies to an order made by a High Court under article 226 of the Constitution, the statutory mandatory injunction issued under the second part of the section to the High Court to make an order in a particular way would be constitutionally void. Under the Constitution, the legislature of a State derives its authority to make laws under article 245 of the Constitution, which reads :

"(1) Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State."

Article 245 is, therefore subject to article 226 of the Constitution. It follows that no law made by the legislature of a State can be in derogation of the powers of the High Court under article 226 of the Constitution. It is well settled that article 226 confers a discretionary power on the High Courts to make or issue appropriate orders and writs for enforcement of any of the rights conferred by Part III of the Constitution or for any other purpose. While article 226 confers a discretionary power on the High Court, the second part of section 11 of the Act enjoins on the High Court to make an order in a particular way. We should not give such a construction to the section as would bring it into conflict with article 226 of the Constitution and which would have the effect of invalidating it to that extent. On the other hand, the construction adopted by us would be consistent with the second part of the section, for if the first part is confined only to an order made by any court or authority, other than the

Learned counsel for the appellants seeks to get over this obvious difficulty by contending that the word "shall" may be treated as "may" so that the discretion of the High Court under article 226 may be maintained. Alternatively, he contends that the second part of the section comprises two parts - the first empowers an aggrieved party only to file an application, and the second imposes a statutory duty, and that the first may conveniently be severed from the second and its validity to that extent sustained. The first arguments is contrary to the express words used and the intention of the legislature. If we read "shall" as "may" the same discretion will have to be given even to authorities and courts other than the High Court, with the result the purpose of the section would be defeated. On the other hand, if the expression "shall" is given its natural meaning, the section carries out the

intention of the legislature, viz., the mandatory injunction imposed on courts and authorities to restore the assessment

Lastly, it is contended that even if section 11 does not apply, we should treat the application filed by the appellants before the High Court as made under Order XLVII of the Code of Civil Procedure. There are many objections for allowing the appellant to do so at this very late stage of the proceedings. The application was filed only under section 11 of the Act and no attempt was made either before Mehrotra J. or before the division bench of the High Court to ask for an amendment or to sustain the petition under Order XLVII of the Code of Civil Procedure; nor did the appellants raise this plea in the petition filed for special leave or even in the statement of case as originally filed by them. After the case was argued for sometime on an observation causally made by the court, time was taken and for the first time this plea was taken in the additional statement of case filed by the appellants. This is, therefore, a highly belated attempt to convert the application filed on one basis into that on another. Fu

In the result, we hold that the order of the High Court is correct. The appeal fails and is dismissed with costs.

MUDHOLKAR J. –

I agree with my learned brother that the appeal should be dismissed for the reasons stated in his judgment. I, however, express no opinion on the question regarding the maintainability of the appeal under the Letters Patent against the decision of a single judge in a case of this kind.

Appeal dismissed.

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