Firm Surajmal Banshidhar and Others

Vs

Municipal Board, Ganganagar

Civil Appeal Nos. 372-382 of 1969

(CJI Y. V. Chandrachud, P. N. Shinghal, P. N. Untwalia JJ)

25.10.1978

JUDGMENT

SHINGHAL, J. -

1.These appeals by special leave arise out of a common judgment of the Rajasthan High Court dated October 10, 1968, by which the suits which were filed by the present appellants were dismissed in pursuance of the earlier judgment of the same court dated November 9, 1964, on the ground that they were governed by Section 179(2) of the Rajasthan Town Municipalities Act, 1951, hereinafter referred to as the Act, and were barred by limitation.

2. The facts giving rise to the appeals were different in details, but they were examined in the High Court with reference to the common questions of law which arose in all of them and formed the basis of that court's decision against the plaintiffs. We have heard these as companion appeals, and will decide them by a common judgment.

3. It is not necessary to give the detailed facts of all the cases as it will be enough to refer to the suit which was filed by M/s. Surajmal Banshidhar and the developments connected with it, in order to appreciate the controversy.

4. The plaintiff firm referred to above carried on business in "pakka arat" and exported goods of various kinds from Ganganagar. The Municipal Board of Ganganagar realised "export duty", by way of terminal tax, on the exported goods. The plaintiff therefore raised a suit on October 19, 1957, challenging the Board's right to "impose or to realise" any export duty during the period June 5, 1954 to March 10, 1957, amounting to Rs. 10,729. It however confined the suit to the recovery of Rs. 10,000 along with interest and gave up the balance. The Board denied the claim in the suit and pleaded, inter alia, that the levy of the terminal tax, was in accordance with the law and the suit was barred by limitation. The trial Court rejected the defence and decreed the suit, and its decree was upheld by the District Judge on appeal. Similar decrees were passed in the other suits for various sums of money. The Board took the matter to the High court in second appeal. The appeals were heard by a Single Judge who, while deciding that the suits were governed by Section 179(2) of the Act, referred the question of the legality of the levy to a larger Bench. A Full Bench of the High Court held that the levy of the terminal tax was illegal, and sent the cases back to the single Judge who allowed the appeals only for those amounts which were found to be within limitation under Section 179(2) of the Act and dismissed the other suits. The plaintiffs obtained special leave and have come up to this Court in these circumstances.

5. The question which arises for consideration is whether the suits fell within the purview of Section

179(2) of the Act. The first two sub-section of Section 179 which bear on the controversy read as follows :

> 179. Limitation of suits, etc. - (1) No suit shall be instituted against any municipal board, president, member, officer, servant or any person acting under the direction of such municipal board, chairman, member, officer or servant for anything done or purporting to be done under this Act, until the expiration of two months, next after notice in writing, stating the cause of action, the name and place of abode of the intending plaintiff and the relief which he claims, has been, in the case of a municipal board, delivered or left at its office, and, in case of a chairman, member, officer, or servant, or person as aforesaid, delivered to him or left at his office or usual place of abode; and the plaint shall contain a statement that such notice has been so delivered or left.
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> (2) Every such suit shall, unless it is a suit for the recovery of immovable property or for a declaration of title thereto, be dismissed if it is not instituted within six months after the accrual of the alleged cause of action.

The question therefore is whether the illegal levy of terminal tax (assuming that it was illegal as held by the High Court) could be said to be a thing "done or purporting to be done" under the Act. A similar question arose for the consideration of the Court in Poona City Municipal Corporation v. Dattatraya Nagesh Deodhar ((1964) 8 SCR 178 : AIR 1965 SC 555 : (1965) 1 SCJ 626) with reference to the provision in Section 127(4) of the Bombay Provincial Municipal Corporation Act, 1949, and it was held that if the levy of a tax was prohibited by the Act concerned and was not in pursuance of it, it "could not be said to be 'purported to be done in pursuance or execution or intended execution of the Act'". It was observed that what was plainly prohibited by the Act could not be "claimed to be purported to be done in pursuance or intended execution of the Act". I was therefore held that the suit was outside the purview of Section 127(4) and was not barred by limitation. We are in respectful agreement with that view, and we have no hesitation in holding, in the circumstances of the present cases, which are governed by a provision similar to Section 127(4) of the Poona City Municipal Corporation Act, that the suits did not fall within the purview of Section 179 of the Act and were not barred by limitation. It may be mentioned that it has not been argued before us, and is nobody's case, that the suits would be barred by limitation even if they did not fall within the purview of Section 179(2) of the Act. The decision of the High Court to the contrary is not correct and will have to be set aside.

6. It has however been argued on behalf of the respondents that the High Court erred in taking the view that the levy of the terminal tax was illegal, and our attention has been invited to the relevant provisions of the law including the Bikaner State Municipal Act, 1923, Article 277 of the Constitution and Section 2 of the Act.

7. It is not in controversy before us that the Bikaner State Municipal Act, 1923, authorised the levy of terminal tax and such a tax was levied by the Ganganagar Municipal Board under the authority of that law up to January 26, 1950, when the Constitution came into force. On and from that date, the power to levy export duty vested in the Parliament, but Article 277 saved that and some other taxes as follows :

> 277. Any taxes, duties, cesses or fees which, immediately before the commencement of this Constitution, were being lawfully levied by the Government of any State or

> by any municipality or other local authority or body for the purposes of the State, municipality, district or other local area may, notwithstanding that those taxes, duties, cesses or fees are mentioned in the Union List, continue to be levied and to be applied to the same purposes until provision to the contrary is made by Parliament by law.

It was therefore permissible for the Municipal Board to continue to levy the terminal tax until provisions to the contrary was made by Parliament by law. But it so happened that the Bikaner Municipal Act, 1923 was repealed and the Act was brought into force with effect from December 22, 1951. Section 2(b) of the Act, which dealt with the repeal of the Bikaner Act and the saving of some of its provisions, expressly provided that on the coming into force of the Act, the laws and enactments specified in the First schedule of the Act shall be repealed insofar as they relate to the Town Municipalities covered by the Act. So, as the Bikaner State Municipal Act, 1923, was included in the First Schedule, it was repealed by the aforesaid Section 2. That section however contained a proviso, clause (b) whereof was to the following effect :

> (b) all town municipalities constituted under the said laws or enactments, and members appointed or elected, committees established, limits defined, appointments, rules, orders and bye-laws made, notifications and notices issued, taxes imposed, contracts entered into, and suits and other proceedings instituted, under the said laws or enactments or under any laws or enactments thereby repealed, shall, so far as may be and so far as they relate to town municipalities, be deemed, unless the Government directs otherwise, to have been respectively constituted, appointed, elected, established, defined, made, issued, imposed, entered into and instituted under this Act;

> The repeal did not therefore effect the validity of those taxes which had already been imposed and which could be "deemed" to have been imposed under the Act, unless there was a direction to the contrary by the State Government. It is quite clear from the provisions of the Act, and is in fact not disputed before us, that the terminal tax in question could not be imposed under any of the provisions of the Act. Its levy could not therefore be saved by clause (b) of the proviso to Section 2 of the Act. On the other hand, it could be said with justification that the State Legislature had decided to discontinue the levy by excluding it from the purview of the savings clause. The further levy of the tax therefore became illegal and it was not permissible to continue it any longer under Article 277 which merely gave the authority concerned the option to continue the levy if it so desired.

8. So as the levy of the tax after December 22, 1951, was illegal, there is nothing wrong with the view taken by the High Court that the amounts paid by the plaintiffs by way of terminal tax were recoverable by the suits which have given rise to these appeals, and there is no force in the argument to the contrary.

9. The appeals are allowed with costs, the decrees of the High Court are set aside and those of the lower appellate court restored.

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