Yadlapati Venkateswarlu

Vs

State of A.P.

Civil Appeal No. 2494 of 1978

11.09.1990

JUDGMENT

K.N. SAIKIA J

1.This appeal by special leave is from the common Judgment of the High Court of Andhra Pradesh dismissing two writ appeals and a writ petition. The Andhra Pradesh (Andhra Area) District Municipalities Act, 1920 (hereinafter referred to as the 'old Act) was applicable to Vijayaw%da Municipality of Andhra Pradesh and property tax was levied under that Act. The Andhra Pradesh Municipalities Act, 1965 (hereinafter referred to as the new Act) came into force on 2-4-1965. Section

> 2(11) of the new Act defined "council" to jnean "a municipal council constituted under this Act." Section 391(1) of the new Act repealed the old Act. Section 389 of the new Act provided:-
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> "389. Act to be read subject tq Schedule IX in Regard to first reconstitution of councils etc.:- In regard to the first constitution of a council for any local area under S. 3, or to the first reconstitution in accordance with the provisions of this Act, of a council in existence at the commencement thereof, and otherwise in first giving effect to the provisions of this Act, this Act shall be read subject to the rules in schedule IX."

The Schedule IX to the new Act contained the transitional provisions in the rules therein. R. 12 thereof dealt with levy of taxes etc. and said .

> " 12. Levy of taxes etc. any tax, cess or fee which was being lawfully levied by or on behalf of any council at the commencement of this Act and which may be lawfully levied under this Act, shall notwithstanding any change in the method or manner of assessment or levy of such tax, cess or fee be levied by or on behalf of the council at such rate as may be prevailing at such commencement or at such other rate as may be determined by the council from time to time, by a resolution for the year in which this Act is brought into force, and unless the Government by general or special order otherwise direct, for subsequent years also."

2. The result was that tax lawfully levied and continued to be levied under the old Act had to be continued unless the council by resolution determined such other rate from time to time, and unless the Government by general or special order otherwise directed under the transitional provisions. On

18-9-1969 the Government of Andhra Pradesh issued G.O. Ms. No. 749 M.A. in exercise of its powers under the' aforesaid R. 12 of Schedule IX directing that all Municipal Councils, shall with effect from 1-4-1970 levy the property tax as per the provisions of the new Act. But due to certain administrative difficulties the revision could not be completed before 1-4-1970 and the Government, therefore, issued G.O. Ms. No. 293 M.A. dated 18-4-1970 directing the Municipal Councils to levy the property tax as per ine provisions of the new Act from 1- 10- 1970. By another G.O. Ms. No. 81 M.A. dated 30-1-1971 the Government directed the Municipal Council of Vijayawada to continue to levy the property tax under the provisions of the old Act as certain rate payers had filed writ petition in the High Court and obtained stay. However, by G.O. Ms. No. 675 M.A. the G.O. Ms. No. 81 was rescinded and the Vijayawada Municipal Council was directed to collect revised taxes under the provisions of the new Act with effect from 1-10-1970. This latter G.O. Ms. No. 675 was in its turn rescinded by G.O. Ms. No. 255 M.A. dated 15-6-73 whereby the Government ordered that the Vijayawada Municipal Council shall continue to levy the property tax under the provisions of the old Act and that G.O. was to be deemed to have come into force from 1-10-1970. As a result the Vijayawada Municipality continued to levy and enhance the property tax under the provisions of the old Act. It may be mentioned that under S. 82 of the old Act property, tax was levied on the basis of gross annual rental value, whereas under S. 87 of the new Act the basis of assessment in owner occupied building was the capital value thereof to be determined in the prescribed manner.

3. The G.O. Ms. No. 255 dated 15-6-1973 was challenged by house property owners in the High Court in two writ petitions under Art. 226 of the Constitution of India seeking writ in the nature of mandamus or order or direction restraining the Vijayawada Municipal Council from enforcing it and declaring the same illegal and void. It was inter alia contended before the learned Single Judge that by earlier G.0s. the Government having directed that taxes should be levied under the new Act, the transitional power under Rule 12 had been already exercised and the power to levy any tax under the old Act therefore ceased and it was not open to the Government to rescind the previous orders and re-direct taxes to be levied under the old Act. That contention was accepted observing:

> "The language of the Rule is clear that once the Government by a general or special order, otherwise directs, the power to levy tax under the old Act is exhausted."

Even so, it was held that in view of the provisions in S. 4(1) of the Andhra Pradesh Municipalities (Fourth Amendment) Act (23 of 1975) which validated the actions taken, those could not be challenged as invalid. The submissions that the Amendment Act was not retrospective and that the enhancement of the tax was not made following the procedure prescribed by law, were also negatived holding that the procedure prescribed under the old Act was followed inasmuch as under the old Act the property tax was levied on the basis of only rental value whereas under the new Act it was on the basis either of the rental value or of the capital value, and that under the old Act when tax was being levied on the basis of rental value there was no need to ascertain the capital value of the land and for enhancing the assessment all that the authority had to know was whether there had been an increase in the rent and Rule 6 of Schedule 11 which dealt with the value of the building for the purposes of property tax was inapplicable as the levy under the old Act on the basis of rental value and enhancement could be done according to the procedure contained in Schedule VII Rule 10 of the old Act. It was not denied that special notice as required under the old Act was given. The writ petitions were accordingly dismissed.

4. Two writ appeals were filed by the writ petitioners. Another writ petition having raised identical questions was heard with the two apepals by the Division Bench. The Division Bench held that the finding of the Single Bench that having already given directions by the General Orders under the

transitory provision of Schedule IX Rule 12 the Government's power under that provision ceased and it had no power to rescind that order and direct that the taxes which were under the old act must be continued to be collected was not challenged before it. The Division Bench held that the Fourth Amendment Act had entrusted to the Municipal Councils the power to tax;iinder the old Act, though that Act had been repealed. It held that though the actions of the Vijayawada Municipal Council pursuant to the General Order might have been invalid those were validated by S. 4(1) of the Fourth Amendment Act. It was also held that the appellant could pursue their remedies by way of revision under the new Act. Thus, the Division Bench having dismissed the two writ appeals as well as the writ petition by the impugned judgment and also having refused the certificate, the appellant has obtained special leave.

Mr. A. Subba Rao, the learned counsel for the appellant, submits that under the old Act the basis for assessment of property tax was the annual rental value while under the new Act it was capital value. By the G.O. No. 749 the Government having directed that property tax would be levied under the new Act, the subsequent G.0s. passed after rescinding the said G.O. No. 749 and redirecting assessment to be made under the old Act were invalid as was held by the Single Bench and that finding was not challenge before the Division Bench. Consequently, it is submitted, during the period from 1969 to 1973 there was no valid law to enable the Municipal Council to levy taxes under the old Act and the actions under the G.0s. art sought to be validated by the Fourtl-, Amendment Act of 1975, but unless the substantive law relating to the method of assessment was also amended retrospectively, the invalid actions could not be validated, as that law could, not be deemed to have been in existence by a legal fiction. Counsel submits that S. 87 of the new Act relating to levy of Property Tax was amended so as to bring it in conformity with the corresponding provision of S. 20 of the old Act which prescribed rental value as the basis for assessment. It's pointed out that S.3 of the Fourth Ammendment Act did not contain anv indication that the said amendment was retrospective so as to bring it on the statute book by a fiction prior to 1973 when the invalid assessment was made. The Fourth Amendment Act ca.rric into force only from 10th June 1975 which was the date of the Ordinance. The amendment of S. 87 of the new Act being not retrospective In its operation prior to 1973, it is submitted that the nvalid assessments could not have been validated.

4-A. Mr. A. S. Namblar, the learned counsel for the respondents, submits that the old Act entitled the Municipality to collect the taxes which had been collected in accordance with law and after comin. into force of the new act according to the intermediate G.0s.; and that the impugned G.O. Ms. No. 255 dated 15-6-73 having directed the taxes to be levied and collected in accordance with the old Act, there was no infirmity in the Judgments of the High Court.

5. It appears that after the writ petitions were filed challenging G.O. Ms. No. 255 dated 15-6-73 the Government issued the Andhra Pradesh Municipalities (Amendment) Ordinance 1975 (Ordinance 1 of 1975) which became the Andhra Pradesh Municipalities (Fourth Amendment) Act 1975 which was deemed to have come into force on the 10th June 1975. By the said Amendment Act not only Ss. 85 and 87 of the new Act were amended but also certain intervening actions of the Municipal Council were sought to be validated. S. 85 dealt with levy of tax and sub-sec. (1) thereof said:

> "Where the council by resolution determines that a property tax shall be levied, such tax shall be l evied on all buildings and lands within the municipal limits save those exempted by or under this Act or any other law."
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> Sub-section (2) provides:

"Save as otherwise provided in this Act and subject to the provisions of Ss. 81 and 87 and in accordance with the rules made by the Government in this behalf, these taxes shall be levied.....

Section 2 of the Fourth Amendment Act amended S. 85 of the new Act by substituting Cls. (a) and (b) of sub-sec. (2) excluding the proviso thereto, by the following words:

"At such percentages of the annual rental value of lands or buildings or both as may be fixed by the council."

Section 86 of the new Act provides as follows:-

"86. Levy of property tax on a direction by Government:-

(1) The Government may, after consultation with the council by order published in the Andhra Pradesh Gazette, direct any council to levy the property tax referred to in subsec. (1) of S. 81 or any class of such tax, at such rate and with effect from such date, not being earlier than the first day of the half year immediately following that in which the order is published, as may be specified in the order.

(2) When an order under sub-sec. (1) has been published, the provisions of this Act relating to property tax shall apply as if the council had, on the date of publication of such order, by resolution, determined to levy the tax at the rate and with effect from the date specified in the order and as if no other resolution of the council under S. 81 determining the rate at which and the date from which property tax shall be levied, had taken effect.

(3) A council shall not alter the rate at which the property tax or any class or such tax is levied in pursuance of an order under sub-sec. (1) or abolish such tax except with the previous sanction of the Government."

Section 87(1) of the new Act provided:

"87(1) Every building shall be assessed together with its site and other adjacent premises occupied as an apprutenance thereto unless the owner of the building is a different person from the owner of such site or premises."

By S. 3 of the Fourth Amendment Act in sub-sec. (2) of S. 87 of the new Act the following words were substituted, namely:

"(2) The annual rental value of lands and buildings shall be deemed to be the gross ' annual rent at which they may reasonably be expected to let from month to month or from year to year less a deduction, in the case of buildings, of ten per cent of that portion of such annual rent which is attributable to the buildings alone, apart from their sites and the adjacent lands occupied as an appurtenance thereto; and the said deduction shall be in lieu of all allowance for repairs or on any other account whatever.

Provided that in respect of any building and the lands appurtenant thereto, the fair

rent of which has been fixed under S. 4 of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960, the gross annual rent shall be the annual amount of the fair rent so fixed."

Section 4 of the fourth Amendment Act sought to validate the actions taken earlier by providing as under:

"4(1) Notwithstanding anything in the provisions of the principal Act or any order of the Government made under the R. 12 in Schedule IX to the Principal Act, any action taken till the commencement of this Act by any municipal council to continue to levy and collect the property tax in accordance with the method or manner of assessment or levy as provided in the Andhra Pradesh (Andhra Area) District Municipalities Act, 1920 or the Andhra Pradesh (Telangana Area) District Municipalities Act 1956, as the case may be, shall not be deemed to be invalid or ever to have been invalid by reason only of the fact that such action was taken by the said municipal council during the period when the power in this behalf had not been validly entrusted to it in accordance with the provisions of the principal Act or the rules made thereunder and accordingly:-

(a) The levy and collection of property tax made in pursuance of such action shall for all purposes be deemed to be, and to have always been, made in accordance with law; and

(b) no suit or other proceeding shall be instituted or continued in any Court against the municipal council concerned or any person or authority whatsoever on its behalf on the ground only that any such action or levy and collection was not taken or made in accordance with law.

(2) Notwithstanding anything in Ss. 85 and 87 of the Principal Act as amended by this Act, the property tax levied in accordance with the provisions of the Principal Act as it stood before the commencement of this Act by such of the municipalities as have come into existence after the commencement of the principal Act shall continue to be levied and collected by or on behalf of the Municipal Council of any such municipality for the year commencing on the Ist April, 1975."

Admittedly the validity of the Fourth Amendment Act had not been challenged in the High Court In fact it was passed during the pendency of the writ petitions in the High Court. Mr. Subba Rao's submission is that S. 3 of the Fourth mendment Act having not been made retrospective, S. 4 of the Act could not have said that the levy and collection of property tax made in pursuance of such action for all purposes be deemed to be and to have always been made in accordance with law.

6. It is true that only sub-sec. (2) of S. 87 of the new Act was substituted as stated above by the Fourth Amendment Act. However , once the amendment substituted sub-sec. (2) of S. 87 it formed a part of that section. This amendment only provided the basis of assessment and it itself did not provide for the commencement of such calculation which however might be taken from the other provisions of the new Act or from the General Orders issued by the Government. S. 4(1) of the Fourth Amendment Act expressly validated any action taken till the commencement of that Act notwithstanding anything in the provisions of the new Act or in any Government Order made under R. 12 of Schedule IX of the new Act and the Municipal Council should continue to levv and collect

the property tax in accordance with the method or manner of assessment or levy as provided in the old Act and those acts shall not be deemed to be invalid or ever to have been invalid by reason only of the fact that such action was taken by the said municipal council during the period when the power in this behalf had not been validly entrusted to it in accordance with the provisions of the new Act or the rules made thereunder and that the levy and collection of property tax may in pursuance of such action shall for all purposes be deemed to be,, and to have always been, made in accordance with law. From the above provisions of S. 4(1) of the Fourth Amendment Act there is no doubt that the legislature ntended to validate the actions taken under the general orders and under the old as well as the new Act. It may be interpreted that the Impugned G.O. having been validated, the tenure covered by it must also be held to have been covered by it, so that there was really no interregnum in the process or procedure of assessment of property tax.

7. Mr. Subba Rao relies on Janapada Sabha, Chhindwara v. The Central Provinces Syndicate Ltd., (1970) 3 SCR 745: (AIR 1971 SC57). In that case in 1935, the Independent Mining Local Board, Chhindwara constituted under C.P. Local Self Government Act, 1920 resolved to levy a cess on coal extracted within the area at 3 pies per ton. The sanction of the Local Government, as required by S. 51(2) of the Act, was obtained for the levy. In 1943, the levy was enhanced to 4 pies, in 1946 to 7 pies and in 1947 to 9 pies. The validity of the enhanced levy was challenged and this Court, in appeal, held that the increased levy would also require the previous sanction of the local Government and such sanction not having been obtained, the levy at a rate higher than 3 pies was illegal. The State legislature thereafter enacted the Madhva Pradesh Koyala Upkar (Manyatakaran) Adhiniyam, 1964. S. 2(a) of that Act defined "Board" to mean the independent Mining Local Board, Chhindwara and its successor body the Janapada Sabha, Chhindwara, the appellant, constituted under the C.P. and Berar Local Government Act, 1948. S. 2(b) defined "cess"' to mean "a cess imposed by the independent Mining Local Board Chhindwara or its successor" S. 3(1) of that Act provided that 'Notwithstanding ajudgment of any Court, cesses imposed, assessed or collected by the Board in pursuance of the notifications specified in the Schedule shall, for all purposes, be deemed to be, and to have been validly imposed, assessed or collected as if the enactment under which they were issued stood anjended at material times so as to empower the Board to issue the said notifications. In the Schedule were specified three notifications enhancing the rate of cess. On the question whether the enhanced levy was validated by "he 1964 Act, this Court held that the Act did not give legal effect to the imposition of cess at the enhanced rates. It was pointed out that the text or even the nature of the amendments was not disclosed though S. 51(2) of the 1920 Act could not be deemed to have been repealed by the 1964 Act. because the latter Act. in terms was ,limited in it is applicition to the Independent Mining Local Board, Chhindwara, and successor body and only in respect of the three notifications specified in the Schedule. An Act so limited in 'its application to one Local Board and to specified notification could not repeal the sub-section which applied to all Boards. Nor was there anything to indicate that notifications issued by the appellant Board without the sanction of the State Government must be deemed to have been issued validly. It was held that such an intendment could not be implied without express language, in a taxing statute. It was further observed that it was open to the legislature within certain limits to amend the provisions of an Act retrospectively and to declare what the law shall be deemed to have been. But the Legislature, in that case attempted to overrule or set aside a decision of the Court. It was not open to the Legislature to say that a judgment of a Court properly constituted and rendered in exercise of its powers in a matter brought before it shall be deemed to be ineffective either as a precedent or between the parties. That case is, therefore, clearly distinguishable from the instant case on facts. Firstly, in the instant case there is no question of any judgment of any Court having been overruled or set aside. The single Bench judgment was passed on 23-3-76, that is, after the

Amendment Act which came'nto force on 10-6-75. Secondly, the language of S. 4(1) is very clear as to the intention of the legislature as to the contents of the amendment. What the amendment in the instant case did was to amend the new Act and also validate actions taken under the G.O. impugned in the case. What was prescribed by the impugned G.O. was the same as was prescribed by the old Act which itself stood repealed by the new Act. The procedure thus prescribed was one under the G.O. and not under the old Act, and S. 4(1) validated those actions without reviving the repealed old Act itself but by amending the new Act and validating the transitory measure taken by virtue of the Government's orders issued under the transitional provision Schedule IX, of the new Act particularly R. 12 thereunder. The validity of S. 4(1) itself having not been challenged, it was not open for the Courts to give an interpretation contrary to the clear and unequivocal language of the Section. The rule is that an amendment Act must be read as if the words of amendment had been written into the Act except where that would lead to an consistency. (Shamarao V. Parulekar v. District Magistrate, Thana Bombay, 1952 SCR 683 at p. 689 : (AIR 1952 SC 324 at p. 327-8)). Power of the Legislature to pass a law includes the power to validate actions retrospectively, of course, within Constitutional limitations. It is apt to remember that the State's power to tax is derived from the Constitution and the municipality's power to tax is derived from the State Legislature which could delegate that power in the manner the Constitution permits to the municipal council, an agent of the State Government, and the municipality cannot refuse to raise taxes as directed. The proper authority to determine what should and what should not constitute a public burden is the Legislature of the State. This is not only true for the State itself but it is also true in respect of each municipality of the State; these inferior corporate bodies having only such authority in this regard as the legislature shall confer upon them. A statute will not be declared unconstitutional unless it is specifically challenged and the principle is equally applicable to an enactment authorising levy of a tax for a public purpose. The power to tax is a soverign power and is legislative in character and it has to be exercised within the Constitutional limitations. The statutes relating to municipal taxes rriay be changed according to the existing legislative rules of State policy unless forbidden by the Constitution from doing so. Irregular assessment may also be regularised with retrospective effect within the same Constitutional limitations. Where the Court has not already declared invalid a taxing measure which was of doubtful validity, it is permissible for appropriate legislature to validate it by retrospective legislation. No legal fiction is involved in such a case. Mr. Subba Rao's submission has, therefore, to be rejected.

8. We find force in the submission of Mr. Nambiar in this regard. The G.O. impugned before the High Court has been covered and validated by the above provisions, the G.O. itself covered the period after the repeal of the old Act and till the date of commencement of the Fourth Amendment so that no interregnum was really there. The assessment made according to the, provisions of the old Act were validated as actions taken by the council pursuant to the impugned G.O. and not under the provisions of the old Act which was already repealed. While referring to the old Act, the G.O. did not revive the Act but only prescribed the same procedure as was found in the repealed Act as a transitory measure.

9. The validity of S. 4(1) of the Fourth Amendment Act having not been challenged before the High Court, we do not find any infirmity in the impugned judgments of the High Court.

10. In the result, this appeal fails and is dismissed but under the facts and circumstances of the case without any order as to costs.

Appeal dismissed.

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