Gujarat Agro Industries Co. Ltd.

Vs

Municipal Corporation of the City of Ahmedabad

Civil Appeal No. 3012 of 1980

(D.P. Wadhwa, N. Santosh Hegde JJ)

26.04.1999

JUDGMENT

D.P. Wadhwa, J.

1. This batch of appeals arises out of judgment dated October 9, 1980 passed by the Division Bench of the Gujarat High Court holding that Section 406(2)(e) of the Bombay Provincial Municipal Corporations Act, 1949 in its applications to Ahmedabad in the State of Gujarat was a valid piece of legislation. Section 406 of the Act we may set out here and now.

> *"405.(1)* Subject to the provisions hereinafter contained appeals against any rateable value or tax fixed or charged under this Act shall be heard and determined by the Judge.
>
> (2) No such appeal shall be entertained unless -
>
> (a) it is brought within fifteen days after the accrual of the cause of complaint;
>
> (b) in the case of an appeal against a ratable value of complaint has previously been made to the Commissioner as provided under this Act and such complaint has been disposed of;
>
> (c) in the case of an appeal against any tax in respect of which provision exists under this Act for a complaint to be made to the Commissioner against the demand, such complaint has previously been made and disposed of;
>
> (d) in the case of an appeal against any amendment made in the assessment book for property taxes during the official year, a complaint has been made by the person aggrieved within fifteen days after he first received notice of such amendment and his complaint has been disposed of;
>
> (e) in the case of an appeal against a tax, or in the case of an appeal made against a ratable value, the amount of the disputed tax claimed from the appellant, or the amount of the tax chargeable on the basis of the disputed ratable value up to the date of filing the appeal, has been deposited by the appellant with the Commissioner.
>
> Provided that where in any particular case the judge is of the opinion that the deposit of the amount by the appellant will cause undue hardship to him, the judge may in his discretion, either unconditionally or subject to such conditions as he may think fit

to impose, dispense with a part of the amount deposited so however that the part of the amount so dispensed with shall not exceed twenty five per cent of the amount deposited or required to be deposited."

`Judge is defined in Section 2(29) of the Act to mean in the City of Ahmedabad the Chief Judge of the Court of Small Causes or such other Judge of the Court as the Chief Judge may appoint in his behalf and in any other City and Civil Judge (Senior Division) having jurisdiction in the City. Section 406 suffered some amendments. In sub-section (2) for the words "shall be heard" were substituted by shall be entertained." Proviso to clause (e) of sub-section (2) was first added by Gujarat amendment 5 of 1970. This proviso (as it now exists) was then substitution Gujarat Amendment 1 of 1979. Appellants in all these appeals own properties in the City of Ahmedabad. They are liable to pay property tax which is a tax on building and lands in the City Property tax is revisable every four years. When last revision took place, appellants challenged those assessments in appeals which they filed before the Judge under Section 406(1) of the Act after bills were presented by the Municipal Corporation to them. During the pendency of appeals before the Judge, appellants prayed for stay of recovery of the property tax. In view of proviso to clause (e) of Section 406(2) of the Act, the Judge could not give effective interim relief to the appellants as exemption from payment of property tax could not be more than 25% of the amount of the property tax demanded from the appellants. The appellants therefor challenged the constitutional validity of clause (e) of sub-section (2) of Section 406 contending that it was violative of Article 14 of the Constitution.

The Division Bench who heard the writ petitions considered the earlier history of amendments to clause (e) of Section 406(2) of the Act. Clause (e), as it originally stood at the time when the Act was made applicable to the City of Ahmedabad, read as under ;

"No such appeal shall be heard unless -

....

in the case of an appeal against a tax or in the case of an appeal made against a rateable value after a bill for any property tax assessed upon such value has been presented to the appellant, the claimed from the appellant has been deposited by him with the Commissioner."

A Division Bench of the Gujarat High Court in SCA No. 662 of 1968 decided on October 27, 1969 held that clause (e) violated Article 14 of the Constitution. It is not necessary for us to go into the reasons which weighed with the Court in reaching such a conclusion. By Gujarat Act 5 of 1970 following proviso was added to clause (e) :

"Provided that where in any particular case the Judge is of opinion that the deposit of the amount by the appellant will cause undue hardship to him; the Judge may in his discretion dispense with such deposit or part thereof either unconditionally or subject to such conditions as he may deed fit."

This proviso also came to be challenged before the Gujarat High Court on the same very plea that it

violated the provisions of Article 14 of the Constitution. This time also a Division Bench of the High Court held that clause (e) violated Article 14 of the Constitution. This decision of the High Court was challenged in this Court in *The Anant Mills Co. Ltd. v. State of Gujarat and others, 1975(2) SCC 175*. This Court reversed the decision of the High Court and held that clause (e) with the added proviso did not violate article 14 of the Constitution. Now it is this amended clause (e) and the proviso which were subject matter of the constitutional challenge in the High Court and by the impugned judgment, High Court held the same to be constitutionally valid and dismissed all the petitions filed before it. We may refer to the reasons which led this Court to uphold the constitutional validity of clause (e) read with proviso which was added by Gujarat Act 5 of 1970. This Court said :

> "After hearing the learned Counsel for the parties, we are unable to subscribe to the view taken by the High Court. Section 406(2)(e) as amended states that of appeal against a rateable value or tax fixed or charged under the Act shall be entertained by the Judge in the case of an appeal against a tax or in the case of an appeal made against a rateable value after a bill for any property tax assessed upon such value has been presented to the appellant, unless the amount claimed from the appellant has been deposited by him with the Commissioner. According to the proviso to the above clause, where in any particular case the Judge is of opinion that the deposit of the amount by the appellant will cause undue hardship to him, the Judge may in his discretion dispense with such deposit or part thereof, either unconditionally or subject to such conditions as he may deem fit. The object of the above provision apparently is to ensure the deposit of the amount claimed from an appellant in case he seeks to file an appeal against a tax or against a rateable value after a bill for any property tax assessed upon such value has been presented to him. Power at the same time is given to the appellate Judge to relieve the appellant from the rigour of the above provision in case the Judge is of the opinion that it would cause undue hardship to the appellant. The requirement about the deposit of the amount claimed as a condition precedent to the entertainment of an appeal which seeks to challenge the imposition or the quantum of that tax, in our opinion, has not the effect of nullifying the right of appeal, especially when we keep in view the fact that discretion is vested in the appellate Judge to dispense with the compliance of the above requirement. All that the statutory provision seeks to do is to regulate the exercise of the right of appeal. The object of the above provision is to keep in balance the right of appeal, which is conferred upon a person who is aggrieved with the demand of tax made from him, and the rightly of the Corporation to speedy recovery of the tax. The impugned provision accordingly confers a right of appeal and at the same time prevents the delay in the payment of the tax. We find ourselves unable to accede to the argument that the impugned provision has the effect of creating a discrimination as is offensive to the principle of equality enshrined in Article 14 of the Constitution. It is significant that the right of appeal is conferred upon all persons who are aggrieved against the determination of tax or rateable value. The bar created by Section 406(2)(e) of the entertainment of the appeal by a person who has not deposited the amount of tax due from him and who is not able to show to the appellate Judge that the deposit of the amount would cause him undue hardship arises out of his own omission and default. The above provision, in our opinion, has not the effect of making individual distinction or creating two classes with the object of meting out differential treatment to them. It only spells out the consequences

> flowing from the omission and default of a person who despite the fact that the deposit of the amount found due from him would cause him no hardship, declines of his own volition to deposit that amount. The right of appeal is the creature of a statute. Without a statutory provision creating such a right the person aggrieved is not entitled to file an appeal. We fail to understand as to why the Legislature while granting the right of appeal cannot impose conditions for the exercise of such right. In the absence of any special reasons there appears to be no legal or constitutional impediment to the imposition of such conditions. It is permissible for example, to prescribe a condition in criminal cases that unless a convicted person is released on bail, he must surrender to custody before his appeal against the sentence of imprisonment would be entertained. Likewise, it is permissible to enact a law that no appeal shall lie against an order relating to an assessment of tax unless the tax had been paid. Such a provision was on the statute book in Section 30 of the Indian Income-tax Act, 1922. The proviso to that section provided that "...no appeal shall lie against an order under sub-section (1) of Section 46 unless the tax has been paid". Such conditions merely regulate the exercise of the right of appeal so that the same is not abused by a recalcitrant party and there is no difficulty in the enforcement of the order appealed against in case the appeal is ultimately dismissed. It is open to the Legislature to impose an accompanying liability upon a party upon whom legal right is conferred or to prescribe conditions for the exercise of the right. Any requirement for the discharge of that liability or the fulfillment of that condition in case the party concerned seeks to avail of the said right is a valid piece of legislation, and we can discern no contravention of Article 14 in it. A disability or disadvantage arising out of a party's own default or omission cannot be taken to be tantamount to the creation of two classes offensive to Article 14 of the Constitution, especially when that disability or disadvantage operates upon all persons who make the default or omission."

BY the Amending Act 1 of 1979 discretion of the Court in granting interim relief has now been limited to the extent of 25% of the tax required to be deposited. It is, therefore, contended that earlier decision of this Court in Anant Mills case may not have full application. We, however, do not think that such a contention can be raised in view of the law laid by this Court in Anant Mills case. This Court said that right of appeal is the creature of a statute and it is for the legislature to decide whether the right of appeal should be unconditionally given to an aggrieved party or it should be conditionally given. Right of appeal which is statutory right can be conditional or qualified. It cannot be said that such a law would be violative of Article 14 of the Constitution. If the statute does not create any right of appeal, no appeal can be filed. There is a clear distinction between a suit and an appeal. While every person has an inherent right to bring a suit of a civil nature unless the suit is barred by statute. However, in regard to an appeal position is quite opposite. The right to appeal inheres in no one and, therefore, for maintainability of an appeal there must be authority of law. When such a law authorises filing of appeal, it can impose conditions as well (see *Smt. Ganga Bai v. Vijay Kumar and others, 1974(2) SCC 393*. In *M/s. Elora Construction Company v. Municipal Corporation of Greater Bombay and others, AIR 1980 Bom. 162*, the question before the Bombay High Court was as to the validity of Section 217 of the Bombay Municipal Corporations Act. This Section provided for filing of appeal against any rateable value or tax fixed or charged under that Act but no such appeal could be entertained unless :

> "(d) in the case of an appeal against a tax, or in the case of an appeal made against a ratable value the amount of the disputed tax claimed from the appellant, or the

amount of the tax chargeable on the basis of the disputed ratable value, up to the date of filing of the appeal, has been deposited by the appellant with the Commissioner."

It will be seen that clause (d) aforesaid was in similar terms as clause (e) of Section 406(2) as it originally existed. Bombay High Court upheld the constitutional validity of Section 217 of the Bombay Municipal Corporation Act. Calcutta High Court in *Chhatter Singh Baid and others v. Corporation of Calcutta and others, AIR 1984 Cal. 283* also took the same view. There it was sub-section (3A) of Section 183 of the Calcutta Municipal Act, 1951 which provided :

"No appeal under this section shall be entertained unless the consolidated rate payable up to the date of prevention of the appeal on the valuation determined -

(a) by an order under Section 182, in the case of an appeal to the Court to Small Causes;

(b) by the decision of the Court of Small Causes, in the case of an appeal to the High Court;

has been deposited in the municipal office and such consolidated rate is continued to be deposited until the appeal is finally decided."

Similar provisions existed in the Delhi Municipal Corporation Act, 1957. There it is Section 170 which is as under :

170. *Conditions of right of appeal.* - No appeal shall be heard or determined under Section 169 unless -

(a) the appeal is, in the case of a property tax, brought within thirty days next after the date of authentication of the assessment list under Section 124 (exclusive of the time requisite for obtaining a copy of the relevant entries therein) or, as the case may be, within thirty days of the date on which an amendment is finally made under Section 126, and, in the case of any other tax, within thirty days next after the date of the receipt of the notice of assessment or of alternation of assessment or, if no notice has been given, within thirty days after the date of the presentation of the first bill or, as the case may be, the first notice of demand in respect thereof.

Provided that an appeal may be admitted after the expiration of the period prescribed therefor by this Section if the appellant satisfies the court that he had sufficient cause for not preferring the appeal within that period;

(b) the amount, if any, in dispute in the appeal has been deposited by the appellant in the office of the Corporation."

A Full Bench of the Delhi High Court, by majority, upheld the constitutional validity of the aforesaid provision though there was also challenge to the same based on Article 14 of the Constitution. Appeal against the judgment of the Delhi High Court was taken to this Court which upheld the view of the Delhi High Court. The decision of this court is reported as *Shyam Kishore and others v. Municipal Corporation of Delhi and another, 1993(1) SCC 22*. This Court relied on its earlier decisions in Ganga Bai case and Anant Mills case. Reference was also made to another decision of this Court in *Vijay Prakash D. Mehta/Shri Jawahar D. Mehta v. Collector of Customs*

(Preventive), Bombay, 1988(4) SCC 402 where Justice Sabyasachi Mukharji, J., speaking for the Court, said :

> "Right to appeal is neither an absolute right nor an ingredient of natural justice the principles of which must be followed in all judicial and quasi-judicial adjudications. The right to appeal is a statutory right and it can be circumscribed by the conditions in the grant."

It is not necessary for us to refer to other decisions asserting the same principle time and again. When the statement of law is so clear, we find no difficulty in upholding the vires of clause (e) of sub-section (2) of Section 406 read with proviso thereto. Any challenge to its constitutional validity on the ground that onerous conditions have been imposed and right to appeal has become illusory must be negatived. We also note that under clause (e) of sub-section (2) of Section 406, a complaint lies to the Municipal Commissioner against imposition of any property tax and only after that when the complaint is disposed of that appeal can be filed. Appeal to the Court as provided in clause (e) may appear to be rather a second appeal. Then under Section 406 of the Act provisions exist for referring the matter to arbitration. Under sub-section (1) of Section 408 where any person aggrieved by any order fixing or charging any rateable value or tax under the Act desires that any matter in difference between him and the other parties interested in such order should be referred to arbitration, then, if all such parties agree to do so, they may apply to the Court for an order of reference on such matter and when such an order is made provisions relating to arbitration in suits shall apply. That apart, if a person cannot avail of the right of appeal under Section 406 of the Act, other remedies are available to him under the law. In that case, it may not be possible for the Municipal Corporation to contend that an alternative remedy of appeal exist under Section 406 of the Act. When leave was granted in these appeals by order dated December 12, 1980 this Court granted stay on the condition that seventy-five per cent of the tax is deposited with the Municipal Corporation within two months from that date and on such deposit being made, the appeals be heard and disposed of (by the Judge) and we believe by this time the appeals filed before the Judge under Section 406 must have been disposed of. When the arguments stated in these matters, on the statement of learned Counsel for the appellant two appeals bearing Nos. 3018-19/80 were dismissed as withdrawn. We do not find any merit in these appeals. These are accordingly dismissed with costs.