
(1995) 12 GUJ CK 0027
In the Gujarat High Court

Amtrax Appliances Ltd. and Another	APPELLANT
Vs	
The Sarpanch, Karannagar Gram Panchayat and Others	RESPONDENT

Date of Decision : 04-12-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Gujarat Panchayats (Amendment) Act, 1993 — Section 201(1), 270(2), 270(2)

Citation : (1996) 2 GLR 368

Hon'ble Judges : R.K. Abichandani, J

Bench : Single Bench

Judgement

R.K. Abichandani, J.—The petitioners seek a direction on the respondent Nos. 1 and 2. consider the application of the petitioner No. 1 dated 25-9-1995 for fixing a lumpsum amount in lieu of all or any of the taxes and in particular octroi to be paid by the petitioner No. 1 to the Panchayat and to desist from collecting any octroi until the decision is taken on that application. Similar other petitions being Special Civil Application Nos. 8782 of 1995 to 8793 of 1995 were earlier filed and were heard and disposed of on 13-10-1995 by this Court. These petitions were dismissed as premature. The respondent-contractor was under Resolution No. 16 dated 7-7-1995 passed by the Gram Panchayat given contract to collect octroi. That Resolution was temporarily stayed by the District Development Officer on 10-10-1995 and in that order the District Development Officer had also directed that octroi should not be collected until further orders were made. It appears that thereafter on 13-10-1995 Regular Civil Suit No. 247 of 1995 was filed by the respondent contractor in the Mehsana Court of Civil Judge (S.D.) against the order of the District Development Officer. The petitioners have, therefore, sought to amend this petition by challenging the order made on 17-10-1995 by the Civil Judge (S.D.), Mehsana on application Exh. 5 for interim relief whereby an ad-interim relief was granted staying the operation of the order of the District Development Officer dated 10-10-1995. It was contended that as the suit was filed without serving the requisite notice u/s 270(2) of the Gujarat Panchayats Act, 1993, the Civil Court could not have entertained the suit and granted ad-

interim relief in the matter.

2. Reliance was placed on the decision of the Supreme Court in *Bihari Chowdhary and Another Vs. State of Bihar and Others*, which was in context of the provisions of Sec, 80 of the Civil Procedure Code. The Supreme Court in terms held that it was a settled legal position that a suit to which a requirement of Section 80 of the C.P.C. is attracted cannot be validly instituted until the expiration of the period of two months next after the notice in writing has been served to the authorities concerned in the manner prescribed and if filed before the expiry of the said period the suit has to be dismissed as not maintainable. In the same volume at page 38 there is a decision of the Supreme Court in *Mohd. Yunus Vs. Mohd. Mustaqim and Others*, in which in paragraph 6 while dealing with the question as to the exercise of jurisdiction of the High Court under Article 227 of the Constitution of India against an order of the Civil Court which could have been challenged by way of appeal from order before the District Court, it was held that the High Court had no jurisdiction to interfere with such orders passed by the subordinate Judge under Article 227 of the Constitution of India and the petition under Art, 227 of the Constitution in such cases was wholly misconceived. Therefore, when it is open to the petitioners, if they at all feel aggrieved, to go before the concerned Court and raise all the contentions which they are now seeking to raise, to enable that Court to take appropriate decision, it will not be appropriate for this Court to entertain the challenge against an ad-interim relief order passed by the Civil Court in exercise of its jurisdiction under Article 227 of the Constitution.

3. The learned Counsel for the petitioners contended that as soon as an application is made for fixing lumpsum amount in lieu of property and other taxes it was incumbent upon the authorities to stop collection of octroi, This proposition was propounded on the strength of Rule 4 of the Gujarat Panchayat (Payment of Lumpsum Contribution by Factories in lieu of Taxes) Rules, 1964 under which it was provided that on receipt of the application under Rule 3 the Panchayat shall stay recovery of its taxes from the occupier if the occupier has so desired and then consider the application and, subject to the provisions of Rule 8, pass, not later than sixty days from the date of receipt thereof, a resolution fixing the lumpsum in lieu of all or any of the taxes. Rule 3 refers to an application by an occupier of a factory which could be made u/s 179(1) of the Old Act which corresponded to Section 201(1) of the Act of 1993. The learned Counsel for the petitioners relied on the opening words of Section 201(1)- "Subject to any Rules that may be made under this Act".... On the basis of this expression it was urged that even if the matter was pending with the State Government no recovery of octroi could have been made in view of Rule 4 of the said Rules. The interpretation sought to be put by the learned Counsel on this provision is not at all warranted. The expression "Subject to any Rules that may be made under this Act" occurring in Section 201(1) is to be read only in context of applications which are made under that provision and cannot apply to cases where the agreement is not arrived at and the matter is referred to the State

Government under Sub-section (2) of Section 201 of the Act. Section 201(3) clearly provides that when the matter is referred to it, the State Government may direct having regard to the circumstances of the case and subject to such conditions as it may impose, the Panchayat to stay collection of recovery of taxes until the Government decides the matter under Sub-section (2) of Section 201. Rule 4 of the said Rules cannot override the express provisions of Section 201(3) which empower the State Government to give directions in connection with collection of recovery of taxes when the matter is pending before it u/s 201(2) of the Act. Furthermore, even Rule 4(1) which refers to stay of recovery of taxes when application is made to the Panchayat by the occupier of a factory, makes the provision subject to the provisions of Rules 8 which deals with the manner of referring the disputes to the Development Commissioner in the event of failure in arriving at the agreement. Rule 8(2) provides that on receipt of the reference, the Development Commissioner may order stay of recovery of taxes of the Panchayat pending its decision in the matter. Therefore, in cases where agreement is not arrived at and the matter is required to be referred to the Development Commissioner there cannot be any automatic stay of recovery of taxes contemplated by Rule 4 only in context of making of the application to the Panchayat u/s 201(1) of the Act. In this view of the matter, the petitioners will have to await the decision of the State Government/ Development Commissioner u/s 201(3) of the Act of 1993 if they have approached the State Government in accordance with the Rules.

4. Under the above circumstances, no case is made out for invoking the jurisdiction of this Court at this stage and the petition is rejected. Notice is discharged with no order as to costs. Interim relief stands vacated.