
(2000) 02 RAJ CK 0049

In the Rajasthan High Court

Case No : Civil Writ Petition No. 3901 of 1999

Bheru Lal and Another

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 15-02-2000

Acts Referred:

Stamp Act, 1899 — Section 75, 76
Stamp Rules, 1955 — Rule 73

Citation : (2000) 2 RLW 920 : (2000) 2 WLC 524

Hon'ble Judges : B.S. Chauhan, J

Bench : Single Bench

Advocate : D.S. Shishodia, B.L. Purohit and Bheem Arora, for the Appellant;
R.L. Jangid, A.A.G., S.S. Bhati and Chandralekha, Dy. Govt. Advs., for the Respondent

Final Decision : Allowed

Judgement

B.S. Chauhan, J.—A large number of writ petitions have been filed challenging the Constitutional validity of the provisions of Rule 73 of the Rajasthan Stamp Rules, 1955, as amended vide Notification dated 26-2-1977, being substantive ultra-vires and for quashing the order dated 1-3-1997 issued by the Inspector General of Stamps providing, the applicability of the amendment even in pending revisions.

2. The facts and circumstances giving rise to this case are that petitioners purchased a piece of agricultural land measuring 20 Biswas comprise of Aaraji No. 1028 at village Rayala, district Bhilwara, for a consideration of Rs. 12,000/-. The said document was presented before the Registering Authority (respondent No. 3) for registration. However, the Authority took the view that the sale-deed, purported to have been made of an agricultural land, was in fact, sale deed of a commercial plot and the value of the land in dispute was required to be computed at the commercial rate and, thus, the Sub-Registrar assessed the value of the land as Rs. 17,69,700/-. With the aforesaid foundation, petitioners

were given notices, in response of which they appeared and presented their case. The Sub-Registrar filed an application u/s 47-A(2) of the Indian Stamps Act, 1899 for short, "the Act") as adopted by the State of Rajasthan vide Adoption Act of 1952 read with Rule 66-A of the Rajasthan Stamps Rules, 1955 (for short, "the Rules") before the Collector (Stamps) for determining the market value of the land. The Collector (Stamps), vide order dated 27-10-1997 (Annexure. 1), assessed the value of the land as Rs. 17,69,700/- and directed the recovery of Rs. 1,78,200/- from petitioners. Being aggrieved and dissatisfied, petitioners preferred Revision No. 275/1998 before the Board of Revenue but the same has been dismissed vide order dated 11-8-1999 (Annexure. 2) only on the ground that the revision could not be entertained for want of deposit of fifty per cent, of the recoverable amount as mandatorily required under Rule 73 of the Rules. Hence this petition.

3. Section 56 of the Act provides for reference and revision, in case of doubt as to the amount of duty with which any instrument is chargeable. Revisional Authority decides the case and send the copy to the Collector (Stamps), who proceeds to assess and charge the duty, if any, in conformity with such decision. Section 75 empowers the State Government to make Rules generally to carry out the purpose of the Act. Section 76 provides that once the Rules are published in the official gazette, the same shall have effect as If enacted under the Act.

4. The State Government framed the Rules, 1955 and Rule 73 earlier provided that revision by the Chief Controlling Provisional Authority may be entertained but no stay application would be entertained u/s 56 of the Act or under the Rule unless it was accompanied by a bank guarantee for payment of the entire recoverable amount, or a satisfactory proof of the payment of fifty percent, of the recoverable amount. Vide Notification dated 26-2-1997 the said proviso has been substituted by the proviso which reads as under:--

"Provided that no revision application shall be entertained u/s 56 of the Act or under this rule unless it is accompanied by the satisfactory proof of payment of fifty per cent, of the recoverable amount."

5. The validity of the said proviso has been challenged on the ground that the State Government had no competence to frame such a rule as it put fetters on the substantive right of maintaining the revision by a aggrieved party. Sub-rule (2) of Rule 73 empowers the concerned Authority to call for the record and exercise its revision powers and vary the order passed by the Sub-Registrar and in a case where the Revision Authority exercises its power suo motu, requirement of depositing fifty per cent, of the recoverable amount is not there.

6. There can be no dispute to the legal proposition that appeal/revision is a statutory remedy and the same is maintainable provided the statute enacted by a competent legislature provides for it. Further, there can be no quarrel that right of appeal/revision cannot be absolute and the legislature can put conditions for maintaining the same. In *Vijay Prakash D. Mehta and Another Vs. Collector of*

Customs (Preventive), Bombay, the Hon"ble Apex Court held as under:--

"Right to appeal is neither an absolute right nor an Ingredient of natural justice, the principles of which must be followed in all judicial or quasi-judicial adjudications. The right to appeal is a statutory right and it can be circumscribed by the conditions in the grant..... The purpose of the section is to act in terrorem to make the people comply with the provisions of law."

7. Similar view has been reiterated by the Hon"ble Apex Court in *The Anant Mills Co. Ltd. Vs. State of Gujarat and Others*, and *Shyam Kishore and others Vs. Municipal Corporation of Delhi and another*, In *Shyam Kishore (supra)* the Hon"ble Supreme Court placed reliance upon its earlier judgment in *Seth Nand Lal and Another Vs. State of Haryana and Others*, wherein it has been held that "right of appeal is a creature of statute and there is no reason why the legislature, while granting the right, cannot impose conditions for the exercise of such right so long as the conditions are not soonerous as to amount to unreasonable restrictions rendering the right almost Illusory", the Court cannot interfere.

8. In *The Gujarat Agro Industries Co. Ltd. Vs. The Municipal Corporation of the City of Ahmedabad and Others Etc. Etc.*, the Apex Court held that right of appeal though statutory, can be conditional/ qualified and such a law cannot be held to be violative of Article 14 of the Constitution. An appeal cannot be filed unless so provided under the statute and when a law authorises filing of an appeal, it can impose conditions as well.

9. In the instant case, the sheet-anchor of the argument of the learned counsel for the petitioners has been that the legislature can do it while providing the remedy of appeal/revision; but it is not permissible to do so by subordinate legislation for the reason that the legislature did not authorise the State Government for enacting such a rule. The submission made by the petitioner"s counsel is full of substance and stands fortified by the consistent view taken by the Hon"ble Supreme Court time and again.

10. In *Hoosein Kasam Dada (India) Ltd. Vs. The State of Madhya Pradesh and Others*, the Apex Court held that a vested right of appeal cannot be taken away except by express enactment or necessary intendment. An Intention to interfere with or to impair or imperial such a vested right cannot be presumed unless such intention is clearly manifested by express words or necessary implication. A Constitution Bench of the Hon"ble Supreme Court in *Tahir Hussain Vs. District Board, Muzaffarnagar*, while considering the provisions of U.P. District Boards Act, 1922, held that the provisions of Section 174 of the Act enabled the District Board to frame the bye-laws for the purpose of promoting or maintaining the health, safety and convenience of the inhabitants of the area. Framing the bye-laws by the District Board for regulating the market or prohibiting a citizen from holding the market was beyond jurisdiction in face of provisions of Section 174 of the Act and it was held to be beyond its competence to frame such a bye-law.

Similarly, a Constitution Bench of the Supreme Court, in *Garikapatti Veeraya Vs. N. Subbiah Choudhury*, held that the right of appeal is a substantive right and is not a mere matter of procedure and such a vested right can be taken away only by a subsequent enactment and not otherwise.

11. In *State of Bombay Vs. Supreme General Films Exchange Ltd.*, the Apex Court held that an impairment of the right of an appeal by putting a new restriction thereon or imposing a more onerous condition is not a matter of procedure as it impairs a substantive right.

12. In *Sant Saranlal and Another Vs. Parsuram Sahu and Others*, the Apex Court held that the enactment framed by the legislature, namely, Bihar Money-lenders Act, 1938, did not provide for fixing of upper limit for the loans remained outstanding at any particular time. The rule-making power of the Government cannot be extended for fixing of such a limit as the rule-making power was held to be limited to what was stated in the provisions of Section 27 of the Act and those clauses did not empower the State Government to prescribe the limit up to which the loans advanced by the money-lender would remain outstanding at any particular moment of time. The said rule was declared to be substantive ultra-vires.

13. In *Sales Tax Officer, Ponkunnam v. K.I. Abraham* AIR 1967 SC 1823 the Hon^{ble} Supreme Court examined the provisions of Central Sales Tax Act, 1956 and the Central Sales Tax (Kerala) Rules, 1957, and held that as the provisions of Section 8(4) of the Act did not prescribe time limit, within which the declaration was to be filled-up by registered dealers, the same could not have been provided by Rule 6 of the said Rules, 1957, for the reason that the Act did not confer power on the rule-making authority to make a rule prescribing limitation for making the declaration by a registered dealer. In absence of any limitation fixed by the legislature, the declaration was to be made within reasonable period, but as the rule-making authority had exceeded its jurisdiction, the said rule was held to be ultra-vires of Section 8(4) of the Act. Similar view has been reiterated by the Apex Court in *Collector of Customs and Excise, Cochin and Others Vs. A.S. Bava*,

14. In AIR 1972 1935 (SC) the Apex Court held that the provisions of Section 96(1)(b) of the Employees' State Insurance Act, 1948, did not confer the power on the Government to prescribe by rules a period of limitation for claim u/s 75 and Rule 17 framed by the Bombay Government u/s 75 of the Act prescribing limitation was ultra vires of Section 96(1)(b) being beyond competence of the State Government.

15. Similarly, in *Prabhu Narayan Vs. A.K. Srivastava*, the Apex Court struck down the provisions of Rule 9 of the Madhya Pradesh High Court Rules in respect of election petitions being ultra vires of provisions of Section 123 (4) of the Representation of People Act, 1951 holding that the rules framed under the Act cannot make any substantive law and the rules themselves, on a perusal, would

show that they relate merely to procedural matters unlike the rules made u/s 122 of the Code of Civil Procedure.

16. In *General Officer Commanding-in-Chief and Another Vs. Dr. Subhash Chandra Yadav and Another*, the Supreme Court examined the provisions of Rule 5(c) of the Cantonment Board Servant Rules, 1937, framed u/s 280 of the Cantonment Act, 1924 and held it "to be void as being contrary to and in excess of the rule-making power of the Central Government" for the reason that unamended Act did not include the service conditions of an employee which may take the transfer of an employee within its ambit and, therefore, framing the rules for transfer was beyond the competence of the Central Government.

17. In *Ahmedabad Urban Development Authority Vs. Sharadkumar Jayantikumar Pasawalla and others*, the Apex Court held that for imposition of any liability under a fiscal statute, an express provision authorising such imposition is a condition precedent and it cannot be done by the delegated authority. The Court rejected the contention that such an imposition can be made under general statutory powers including the incidental, ancillary and consequential powers. The Court distinguished its earlier judgments in *Khargram Panchayat Samiti v. State of West Bengal*, (1987) 3 SCC 8 and *District Council of the Jowai Autonomous Distt., Jowai and Others Vs. Dwet Singh Rymbai etc.*, wherein it had been held that in a statute, conferment of general statutory power also carries with it the Incidental and consequential power.

18. In *Agricultural Market Committee Vs. Shalimar Chemical Works Ltd.*, the Apex Court held that in fiscal statute, the delegate cannot legislate on the field covered by the Act and it must restrict to implementation of the Policy. The Court struck down the bye-laws 24(5) and Rule 74(2) of the Andhra Pradesh (Agricultural Produce and Live-stock) Market Rules, 1969 framed under the Andhra Pradesh (Agricultural Produce and Live-stock) Markets Act, 1966 being beyond the competence of the Authority concerned. In *Vasantlal Maganbhai Sanjanwala Vs. The State of Bombay and Others*, and *Municipal Corporation of Delhi Vs. Birla Cotton, Spinning and Weaving Mills, Delhi and Another*, it was held that the legislature must retain in its own hands the essential legislative functions and what can be delegated is the task of subordinate legislation necessary for implementing the purposes and the objects of the Act concerned.

19. In *Avinder Singh and Others Vs. State of Punjab and Others*, the Hon^{ble} Supreme Court laid down the following tests for valid delegation of legislative powers:--

"(1) the legislature cannot efface itself;

(2) It cannot delegate the plenary "or the essential legislative functions;

(3) even if there be delegation, Parliamentary control over delegated legislation should be a living continuity as a constitutional necessity."

20. It further observed as under:--

"While what constitutes an essential feature cannot be delineated in detail it certainly cannot include a change of policy. The legislature is the master of legislative policy" and if the delegate is free to switch policy it may be usurpation of legislative power it self."

21. In the instant case, the legislature provided for the remedy of revision. The State Government, in exercise of its rules-making power, changed the legislative policy by adding the proviso, requiring of deposit of fifty per cent, of the recoverable amount, as a condition precedent for entertaining a revision, State Government had been authorised to frame the rules generally for carrying out the purpose of the Act. In view of such a limited competence, the Government could not make the procedure of entertaining revision so onerous /burdensome and It rendered the provisions of Rule 73 liable to be struck down being ultra vires of the provisions of Section 75 of the Act.

22. Though instant case is being decided as main case but a large number of petitions are also in respect of the revisions which were pending prior to the date of amendment. The basic question involved herein also is: whether such an amendment can be made applicable in those cases, though the amendment does not provide for retrospective application? Such an application is not permissible in view of the judgments of the Hon"ble Supreme Court in Hoosein Kasam Dada (India) Ltd. Vs. The State of Madhya Pradesh and Others, Garikapatti Veeraya Vs. N. Subbiah Choudhury, and State of Bombay Vs. Supreme General Films Exchange Ltd., Similarly, a constitution Bench of the Supreme Court, in Vitthalbhai Naranbhai Patel Vs. Commissioner of Sales Tax, M.P., Nagpur, referred to its earlier judgment in Messers Hoosein Kasam Dada (supra) and explained that the said Judgment proceeded on the ground that when a its commences, all rights get crystalised and no clog upon a likely appeal can be put unless the law was made retrospective, expressly or by clear implication. Therefore, unless it can be proved exclusively that the this had commenced before the amendment of the law, the ratio decidendi in the said case would not apply. Therefore, in view of the above, ft is a question of fact which has to be agitated and proved before the Revisional Authority whether the us had come into existence prior to amendment or not and if the same was existing, the amended law will not apply.

23. Circular dated 1-3-1997, Issued by inspector General Registration provides that word "entertain" contained in Impugned Rule 73, Includes every procedural step from the moment of consideration of admission to final disposal of a revision and, therefore, it has been clarified that even if the revisions were pending prior to the amendment, the amendment would apply to those revisions and the same cannot be heard unless fifty percent, of the recoverable amount is deposited.

24. The dictionary meaning of word "entertain" is: either to deal with it or admit to consideration; proceed to consider on merits or adjudicate upon; "receive" or "accept"; "file" or "receive" by the Court and may not mean hearing on merit. The word "entertain" has been considered by the Hon"ble Supreme Court in The Anant Mills Co. Ltd. Vs. State of Gujarat and Others, wherein it was held that It

should be construed in the context of subject. In Kundan Lal Vs. Jagan Nath Sharma, and Dhoom Chand Jain Vs. Chaman Lal Gupta and Another, the Allahabad High Court opined that "entertain" means: hearing the matter on merit and it does not include "filing of an application."

25. In Hindusthan Commercial Bank Ltd. Vs. Punnu Sahu (Dead) through Legal representatives, the Apex Court held that in the context of the Code of Civil Procedure, 1908 the expression "entertain" means "adjudicate upon" or "proceed to consider on merit." Thus, in such a case, an appeal or revision may be entertained, but the Court may not be able to decide it on merit owing to some difficulty, not in Jurisdiction but in procedure.

26. In Martin and Harris Ltd. Vs. Vith Additional District Judge and Others, while interpreting the provisions of the U.P. Urban Buildings (Regulation of Letting. Rent and Eviction) Act, 1972 the Supreme Court held that the word "entertain" means "admit for consideration." Similar view had been reiterated in Lakshmi Rattan Engineering Works Ltd. Vs. Asstt. Commr. Sales Tax, Kanpur and Another, In Anandilal Bhanwarlal and Another Vs. Smt. Kasturi Devi Ganeriwala and Another, the word "institute" was found to be synonymous with the word "entertain."

27. In Lala Ram Vs. Hari Ram, the Apex Court held that in the context of Section 417(3) of the Code of Criminal Procedure, the word "entertain" means "file or receive by the High Court" and It has no reference to actual hearing of the application for leave to appeal.

28. In Rajasthan State Road Transport Corporation v. Santosh AIR 1995 Raj 2 this Court, in the context of motor accident claims appeal, held that mere filing of an appeal and stay application by the applicant u/s 173 of the Motor Vehicles Act, 1988 will not be entertained by the Court unless the mandatory provisions contemplated in the aforesaid section are complied with.

29. In the instant case, as the impugned rule is being declared ultra vires, considering the meaning of "entertain" in contest of the Rules, 1955 would amount to an futile exercise and, thus, such a course is not Warranted herein.

30. I find no force in the submission made by Mr. Jangid that Section 76 itself provided that the rules framed thereunder shall constitute a part of the Act after being published in the Official Gazette for the reason that it merely declares the rules having statutory force. The Constitution Bench of the Supreme Court in The State of Uttar Pradesh and Others Vs. Babu Ram Upadhyaya, observed as under:--

".... the rules cannot be treated as administrative directions, but shall have the same effect as the provisions of the Statute whereunder they are made, in so far as they are not Inconsistent with the provisions thereof."

31. Thus, a statutory rule or regulation, while under subordinate to the parent statute, is otherwise to be treated as part of the statute and as effective as the Statute. (Vide State of Tamil Nadu Vs. Hind Stone and Others, Medical Council of

India Vs. State of Karnataka and Others, and Mewa Singh and Others Vs. Shiromani Gurdwara Prabandhak Committee,

32. A verbatim provision was considered by the Hon"ble Supreme Court in General Officer Commanding-in-Chief and Another Vs. Dr. Subhash Chandra Yadav and Another, and the Court held that it merely shows that the Rules were having statutory force, but before a rule framed under the statute is regarded as statutory provision or a part of the statute, it must fulfil two conditions, namely, (I) it must conform to the provisions of the statute under which It is framed; and (ii) it must also come within the scope and purview of the rule-making power of the Authority framing the rule. If either of these two conditions is not fulfilled, the rule so framed would be void.

33. In view of the above, the writ petition succeeds and is allowed. The impugned Rule 73 of the Rules, 1975, is struck down being substantive ultra vires of the provisions of Section 75 of the Act. The Impugned Circular dated 1-3-1997 is also quashed. The impugned order of the Board of Revenue, dismissing the revision of the petitioner for want of deposit of fifty per cent, of the recoverable amount, dated 11-8-1999 (An-nexure-2) is set aside. The case is remitted to the learned Board of Revenue with a request to decide the revision on merit. There shall be no order as to costs.