(1994) 07 AP CK 0006

In the Andhra Pradesh High Court

Case No : Writ Appeal No. 1286 of 1988

C.J. Raju APPELLANT

Vs

The State of Andhra Pradesh and Others RESPONDENT

Date of Decision : 28-07-1994

Acts Referred:
Andhra Pradesh Revenue Recovery Act, 1864 — Section 52A

Citation : (1995) 1 ALT 333

Hon'ble Judges : S. Nainar Sundaram, C.J;Syed Shah Mohammed Quadri, J;P. Ramakrishnam Raju, J

Bench : Full Bench

Advocate : S. Sriramchandra Murthy, for the Appellant; Government Pleader for Agriculture for Respondent Nos. 1, 4 and 5, K. Niladri Raju and M.G. Srirama Rao, for the Respondent

Final Decision : Dismissed

Judgement

Syed Shah Mohammed Quadri, J.—This sprit appeal has been referred to the Full Bench by a Division Bench of this Court by order dated 12-7-1994 in view of the submission made by the learned counsel for the appellant that Section 52-A of the Andhra Pradesh Revenue Recovery Act (for short the Act'') is ultra vires of the powers of the State Legislature in so far as it permitted recovery of dues of the present nature owing to respondents 2 and 3 as arrears of land revenue.

2. The facts which led to the reference of this writ appeal to the Full Bench may briefly be stated thus:

The appellant had been getting supplies of eggs from respondent 3, which is a Zonal Office of respondent 2 a Corporation owned by the State of Andhra Pradesh. For the recovery of the amounts due by the appellant on account of such transaction, proceedings were initiated against him u/s 52-A of the Act and a notice u/s 8 of the Act was served on him. Challenging the validity of the notice and application of Section 52-A of the Act for the recovery of the amounts due, the Writ Petition was preferred. On December 8, 1987a learned Single Judge of this Court dismissed the Writ Petition taking note of the fact that u/s 52-A(1)(ii) of the Act, notification has been issued by the Government in the A.P. Gazette and further holding that the amount due by the appellant can be recovered under the Act. The correctness of that judgment of the learned Single Judge is assailed in this Writ Appeal. In view of the order of reference this Writ Appeal has come up before us.

3. Sri S. Sriramachandra Murthy, learned counsel for the appellant, contends that Section 52-A of the Act can be invoked only when the amount sought to be recovered is arrears of land revenue and having regard to the concept of land revenue the sums due by the appellant to respondents 2 and 3 in the present case cannot be recovered by resorting to Section 52-A of the Act and that enacting the section for such recoveries is ultra vires of the powers of the State Legislature. In view of the recent pronouncement of the Supreme Court dated 11-7-1994 in Civil Appeal Nos. 2620 to 2664 of 1981 (State of Tamil Nadu v. G.N. Venkataswamy and Ors.), the question is no longer res integra. The judgment of the Supreme Court was pronounced just a day before the order was made in the Writ Appeal referring it to the Full Bench and the Division Bench did not have the advantage of perusing the pronouncement of the Supreme Court.

4. In the said case the Supreme Court reversed the judgment of the Madras High Court in G.N. Venkataswamy Vs. Tamil Nadu Small Industries Development Corporation Ltd., . The Madras High Court had taken the view that Section 52-A of the Tamil Nadu Revenue Recovery Act, which is similar to Section 52-A of the Act, was ultra vires the powers of the State Legislature having regard to the scope of Entry 43 of List II. The Supreme Court upheld the constitutional validity of Section 52-A of the Tamil Nadu Revenue Recovery Act on the ground that the legislation falls under Entry 11-A of List III as well as under Entry 30 of List II. In that view of the matter, the Supreme Court set aside the judgment of the Madras High Court. Having regard to the pronouncement of the Apex Court in State of Tamil Nadu v. G.N. Venkataswamy and Ors. (supra), we can not allow the learned counsel to canvass the competency of the State Legislature in enacting Section 52-A of the Act.

5. The learned counsel for the appellant tried to persuade us that by the recent pronouncement of the Supreme Court the legislative competency of Section 52-A of the Tamil Nadu Revenue Recovery Act was upheld as falling within Entry 30 of the State List to provide a speedy remedy to the State-owned Corporations only to realise the amounts due on loans and advances made by them by way of financial assistance, and the provision would be incompetent for the purpose of realising other sums due to such State-owned Corporations. This is fallacious thinking, and omits to take note of the entire gamut of the ratio decidendi of the recent pronouncement of the Supreme Court.

6. The Supreme Court in its recent pronouncement decided the question as to whether Section 52-A of the Tamil Nadu Revenue Recovery Act is ultra vires the powers of the State Legislature from more than one angle Section 52-A of the

Tamil Nadu Act is similar to Section 52-A of the Act. The statutory provision as a whole was examined with regard to legislative competence to enact the same. The Supreme Court held that the Tamil Nadu Legislature could enact it under Entry II-A of List III of the Seventh Schedule to the Constitution of India. The relevant observations in the recent pronouncement of the Supreme Court run as follows:

"..........It is, therefore, settled that under Entry 13-A the State Legislature has the power to make laws thereby enlarging or reducing the powers of the Courts. The State Legislature can create new courts, recoganise the existing courts, provide jurisdiction to the said courts and also take away the existing jurisdiction if it so desires. We, therefore, see no reason why a State Legislature cannot confer additional jurisdiction on existing revenue courts to recover any public dues as arrears of land revenue,......".

The question was also examined by the Supreme Court from another angle as to whether the legislation could fall under Entry 30 of the State List concerning money-lending and money-lenders. On such an examination, the Supreme Court held that Section 52-A of the Tamil Nadu Act is directly related to Entry 30 of List II of the Seventh Schedule to the Constitution of India, and hence it is constitutionally valid and the Tamil Nadu Legislature had legislative competence to enact the same.

7. In this context, it may be useful to read the following observations of the Supreme Court in its recent pronouncement:

"........Section 52-A of the Act is passed with the object of providing a speedier remedy to the State-owned corporations to realise the loan advanced by them. While advancing loans the corporations do not act as ordinary bankers with a view to earn interest. The loans are advanced as a financial assistance to establish an industry, develop agriculture or any other purpose which would advance the well-being of the people. Ordinarily the amounts so advanced are repayable in easy instalments and carry comparatively lesser rate of interest as compared to the loans advanced by the banks. The loans are advanced out of the funds of the State which is a public money. Money has to be recovered expeditiously so to fresh advances be made to others who have not yet received financial assistance from the State agencies. If the corporations are left to a remedy of a suit the recover}'' is bound to be delayed considerably. It is with the object of avoiding the unusual delay which normally takes place in the civil courts the expeditious remedy by enacting Section 52-A has been provided......"

8. We may observe that in that case the question before the Supreme Court was as to whether the loans and advances made by State-owned Corporations could be recovered u/s 52-A of the Tamil Nadu Revenue Recovery Act, and from that angle their Lordships of the Supreme Court had to examine the validity of the legislation with special reference to loans and advances made by State-owned corporations. In our view this does not mitigate against the validity of the State

legislation with regard to other sums which are recoverable u/s 52-A of the Act. We are unable to make a distinction between "sums due to State-owned corporations on account of other transactions" and "sums due to State-owned corporations on account of loans and advances made by them". Both, in our view, stand on the same footing as State-owned corporations, being public bodies, while recovering either categories of dues, are recovering only public dues. So the contention of the learned counsel for the appellant that the dues of the present nature could not be recovered by resorting to Section 52-A of the Act, cannot be countenanced.

9. Thus the endeavour on the part of the learned counsel for the appellant to say that the dues are purely commercial and tradistic in nature, could not succeed. The second respondent is the Andhra Pradesh Meat and Poultry Development Corporation Limited, and the third respondent, which is the unit of the second respondent, is the Poultry Marketing Centre. We could not view the transaction between respondents 2 and 3 on the one hand and the appellant on the other as purely a commercial transaction. Respondents 2 and 3 do have the character of public bodies, functioning for public objectives of poultry development and marketing. The dues owing from the appellant to respondents 2 and 3 certainly assume the character of public dues, and for recovery of such public dues as arrears of land revenue there could be an enactment by the State Legislature as found in Section 52-A of the Act and setting in motion that machinery for recovery of the dues of the present nature is perfectly valid.

10. The whole of the provision of Section 52-A of the Tamil Nadu Revenue Recovery Act has been upheld as falling within the legislative competence of the State by the Supreme Court. The decision concerning the legislative competence by the Supreme Court is with regard to the whole of the provision. There was no reservation made concerning any part of the provision. It is well settled that a case is an authority for what it actually decides. Here, the Supreme Courthasdecidedaboutthelegislativecompetenceof Section52-A of the Tamil Nadu Revenue Recovery Act as a whole. It is the decision that counts, and not every observation and every reasoning found therein, nor what logically follows from the various observations made in it. For this proposition the pronouncement of the Supreme Court in The State of Orissa Vs. Sudhansu Sekhar Misra and Others, is elucidative, and it is found that in the said pronouncement what Earl of Halsbury LC said on the proposition in Quinn v. Leathem, 1901, AC 495 has been succinctly recapitulated. The Supreme Court further observed therein that it is not a profitable task to extract a sentence from here and there in a judgment and to build upon it. Section 52-A of the Tamil Nadu Act being similar to Section 52-A of the Act, what was decided by the Supreme Court in the above pronouncement gives a complete answer with regard to the legislative competence of Section 52-A of the Act as a whole.

11. For the above reasons we answer the reference holding that Section 2-A of the Act is not ultra vires the powers of the State Legislature, and that the sums

of the present nature due to public bodies like respondents 2 and 3 are recoverable by resorting to Section 52-A of the Act. In the result, we do not find any justifiable ground to interfere with the order of the learned Single Judge. The Writ Appeal, therefore, fails and accordingly we dismiss the same. But in the circumstances of the case, we make no order as to costs.

12. After the above pronouncement was made, Sri S. Sriramachandra Murthy, learned counsel for the appellant, seeks leave of us to appeal to the Apex Court. We have only followed the pronouncement of the Apex Court in deciding the question, hence we do not think that the case involves any substantial question of law of general importance that requires determination at the hands of the Apex Court. Hence, oral leave prayed for is refused.