
(1975) 08 GUJ CK 0004
In the Gujarat High Court

Sharma Metal Rolling Mills

APPELLANT

Vs

Bhavnagar Nagarpalika

RESPONDENT

Date of Decision : 25-08-1975

Acts Referred:

Central Provinces and Berar Municipalities Act, 1922 — Section 48
Gujarat Municipalities Act, 1963 — Section 253, 253
Limitation Act, 1963 — Article 24, 24

Citation : (1976) 17 GLR 753

Hon'ble Judges : M.P. Thakkar, J;A.N. Surti, J

Bench : Division Bench

Judgement

A.N. Surti, J.—An interesting point of law is involved in the present appeal viz. Whether a suit can lie against the municipality after six months next after the accrual of the cause of Action in respect of over-payment of terminal tax paid by a tax payer to a municipality under a bona fide mistaken belief in regard to the rate of terminal tax levied, charged and collected by the municipality.

2. In order to appreciate the aforesaid point of law, a few relevant facts giving rise to the present appeal may be stated. The appeal is directed by the original plaintiff against the judgment and decree passed in favour of the respondent-bhavnagar municipality (hereinafter referred as "the respondent municipality"). The appellant-plaintiff filed Special Civil Suit No. 22 of 1968 in the Court of the learned Civil Judge, (Senior Division)", Bhavnagar against the respondent-municipality for recovery of Rs. 14,278-74ps" being the excess amount of terminal tax received and collected by the respondent municipality on the iron scraps brought by the appellant-plaintiff within the limits of the respondent-municipality for consumption in their rolling mills.

3. The appellant-plaintiff imported iron scrap within the limits of the respondent municipality and the said scrap was liable to a terminal tax levied by the respondent municipality from April 10, 1965 to February 26, 1968. The respondent-municipality charged the terminal tax at the rate of four annas for

bengali maund on the iron scrap and thus collected Rs. 34,537-98ps. For the aforesaid period from the appellant-plaintiff. It was alleged by the appellant-plaintiff that the respondent municipality was entitled to recover terminal tax at the rate of two annas per bengali maund and not at the rate of four annas per bengali maund as charged and collected by the respondent municipality. In substance the appellant-plaintiff alleged that the respondent municipality wrongly charged the terminal tax on the iron scrap imported by them at the rate of four annas per bengali maund. The plaintiff further averred in their plaint that the correct rate at which the goods imported should have been charged is the rate of two annas per bengali maund. Shortly stated on the aforesaid facts, the appellant-plaintiff prayed that they are entitled to Rs. 17,278-74ps., being an excess amount of terminal tax received and collected by the respondent-municipality.

4. The respondent-municipality resisted the suit by raising several contentions. In course of the proceedings before the learned trial judge, the respondent-municipality by its pursis Ex. 45 and 46 admitted that it had collected Rs. 34,557-58ps. As terminal tax between April 10, 1965 to February 26, 1968 from the appellant-plaintiff. The respondent-municipality also filed a pursis Ex. 30 stating that it admitted that the respondent-municipality was entitled to charge for the terminal tax for the goods in question at the rate of two annas per bengali maund. In the same pursis, the respondent-municipality stated that the only point which survived for determination in the trial court was as to the period of limitation and that no other issues required any decision of the trial court.

5. In view of what has been stated above, the relevant material issue before the learned trial judge was: whether the suit is within time?

6. The learned trial judge took into consideration Section 253 of the Gujarat Municipalities Act, 1963 and came to the conclusion that a substantial part of claim was time barred and the plaintiff was only entitled to recover Rs. 741-62ps. From the respondent-municipality. He also directed that the parties should bear their own costs of the suit. In course of his judgment, in paragraph 15, the learned trial judge observed that the excess charge was collected by the defendant-municipality on an erroneous misclassification of the goods and so under the rules, the said charge was necessarily wrong. But had the rules permitted the said charge, it would have been within the authority of the defendant-municipality to collect the said charge as the same would not have been hit by any provisions of statute or any article of the constitution.

7. The learned advocate for the respondent-municipality argued before the learned trial Judge that provisions contained in Section 253 of the Gujarat Municipalities Act, 1963, apply in the instant case. The learned trial Judge, in substance, accepted the submission of the respondent-municipality and held that a substantial part of the claim was time barred and decreed the claim of the appellant-plaintiff only to the extent of Rs. 741-82ps. As stated above. It is under these circumstances that the present appeal is filed in this court.

8. Mr. D.U. Shah the learned advocate appearing on behalf of the appellant-plaintiff has only urged the following contention. That the learned trial Judge grievously erred in placing reliance on Section 253 of the Gujarat Municipalities Act, 1963 (hereinafter referred to as "the Act") for deciding the question of limitation in the instant" case.

9. In the instant case, we do not think it necessary to refer to the provisions of the Act in detail, as, in course of the proceedings, the respondent-municipality had filed a pursis Ex. 50 that it was entitled to charge the terminal tax for the goods in question at the rate of two annas per bengali maund. On this aspect of the matter, even in course of the hearing of the present appeal, there was no dispute between the parties.

10. But as stated above, the learned Trial Judge placed reliance on Section 253 of the Act for the purpose of deciding the issue regarding limitation as stated above. Section 253(1) of the Act provides as follows:

253 (1) no suit shall lie against the municipality or against any officer or servant of a municipality in respect of any Act done in pursuance or execution or intended execution of this Act, or in respect of any alleged neglect or default in the execution of this Act-.

(a) unless it is instituted within six months next after the accrual of the cause of Action; and

(b) until the expiration of one month after notice in writing has been, in the case of a municipality, delivered or left at the municipal office and, in the case of an officer, or servant of a municipality, delivered to him or left at his office or place of abode and all such notices shall state with reasonable particularity the cause of Action and the name and place of abode of the intending plaintiff and of his advocate, pleader or agent, if any, for the purpose of the suit.

11. In substance Mr. Shah for the appellant plaintiff contended that the tax in question was collected by the respondent-municipality without any authority of law and was beyond the rules. In this view of the matter, Mr. Shah's submission was that the respondent-municipality collected the tax in question without any Act done on its part in pursuance or in execution or intended execution of the Act. In this view of the matter, Mr. Shah submitted that the learned trial judge grievously erred in placing reliance on Section 253 of the Act for deciding the issue as to the limitation. At this stage, we may emphasise that having regard to the pursis, Ex. 50, given by the respondent-municipality, we are convinced that the respondent-municipality had no authority to collect the tax in question at the rate of 4 annas per bengali maund. Therefore, it is difficult for us to comprehend, how in the instant case, the provisions of Section 253 of the Act can at all be attracted to decide the question as to the limitation as raised by the learned trial Judge. We may state here, that in order to attract the provisions of Section 253 of the Act, the municipality or any officer or servant of the municipality should have done any Act for the execution or intended execution of the Act or the suit

should have been filed in respect of any alleged neglect or default in the execution of the Act. In the case before us, the respondent-municipality collected the tax in question at the rate of four annas per bengali maund and that Act of the municipality was not done under a vestige or semblance of authority or with some show of a right. In this view of the matter it is clear to us that the learned trial judge patently erred in placing reliance on Section 253 of the Act for deciding the issue of limitation; and consequently in rejecting the substantial part of the appellant-plaintiff's claim.

12. In Poona City Municipal Corporation Vs. Dattatraya Nagesh Deodher, , the Supreme Court had to consider similar provisions contained in the Bombay Provincial Municipal Corporations Act, 1949. The provisions of Section 127 of that Act were similar to Section 253 of the Act. In paragraph 21 the Supreme Court observed as follows:

The benefit of this section would be available to the corporation only if it was held that this deduction of ten per cent was "an Act done or purported to be done in pursuance or execution of intended execution of this Act." We have already held that this levy was not in pursuance or execution of the Act. It is equally clear that in view of the provisions of Section 127(4)(to which we have already referred) the levy could not be said to be "purported to be done in pursuance or execution or intended execution of the Act.

13. In the instant case, we have already held as stated above, that the collection of the tax in question was not in pursuance of the execution or intended execution of the provisions of the Gujarat Municipalities Act, 1963. As a matter of fact, as stated above, that position was conceded by the respondent-municipality in course of the proceedings before the learned trial judge.

14. In Bharat Kala Bhandar Ltd. Vs. Municipal Committee, Dhamangaon, , the Supreme Court had to construe the words "anything done or purported to be done under this Act". The Supreme Court was considering the provisions of Section 48, 83, 84 and 85 of the C. R Municipalities Act (2 of 1922). While considering the aforesaid expression, the Supreme Court took the view that the tax can be recovered only if it is payable and it would be payable only after it is assessed. The ban placed by the aforesaid provisions extends not only to recoveries but also to an earlier stage. Hence the collection of a tax above the constitutional limit was not merely illegal or irregular, but without jurisdiction. A suit by an assessee to recover the amount paid by him in excess of the constitutional limit would not be in respect of a matter "purported to be done" under the Act and the provisions of Section 48 of the Act would not therefore apply to it.

15. In the case before us, as already stated above, and we may once again emphasise, that in the instant case, the collection of terminal tax in question was not an Act done or purported to have been done in the intended execution of the Act.

16. In *The City Municipality Vs. Nusserwanji Hormusji Madon*, , the High Court of Bombay had to consider the provisions of Articles 62 and 96 of the (Old) Limitation Act, (1908). The court observed that Article 96 applies when the cause of Action is founded on mistakes. But generally a mistake of law which is applicable to all citizens is not and cannot itself form the basis of a cause of Action. Hence, a suit to recover certain amount of municipal tax on the ground that it was illegally levied is governed by Article 62 and not by Article 96. Article 62 of the old Limitation Act is equivalent to Article 24 of the new limitation Act. 1963.

16 a. In *Vinayak v. Shahada-Kukdel Municipality* 63 BomLR 589. The court while referring to a decision reported in *Jalgaon Municipality v. Khandesh Spinning Etc. Co.* 55 Bom. L.R. 65 referred to the following observations of the division bench in that case. "That what the municipality did was not an Act done in pursuance of the Act, but it was an Act which it purported to do in pursuance of the Act, and, that, therefore, its Action was well within the terms of Section 206 of the Act." The division bench further observed:

The Acts which would fall within the category of those "done or purporting to have been done in pursuance of this Act" could only be those which were done under a vestige or semblance of authority or with some show of a right. If an Act was out-regeous and extraordinary or could not be supported at all, not having been done with a vestige or semblance of authority, or some sort of a right invested in the party doing that Act, it would not be an Act which is done or purports to have be done in pursuance of the Act. The distinction is really between ultra vires and illegal Acts, on the one hand, and wrongful Acts, on the other-wrongful in the sense that they purport to have been done in pursuance of the Act; they are intended to seem to have been done in pursuance of the Act. And are done with a vestige or semblance of authority, or sort of a right invested in the party doing those Acts.

18. I view of the aforesaid clear authorities of the Supreme Court and the BombayLrigh Court, we do not wish to refer to any other authorities, otherwise the same would unnecessarily burden our judgment. Mr. G.N. Desai, the learned advocate appearing on behalf of the respondent-municipality tried to support the judgment of the trial court by reading the same but to no purpose. As a result of the aforesaid discussion, we are convinced that the learned trial judge erred in deciding the issue as to the limitation in favour of the respondent municipality. In the instant case, the suit is filed within the period of limitation i.e. within a period of three years as required by Article 24 of the new limitation Act. We are told that the respondent-municipality recovered a sum of Rs. 24,557-98 ps. During the period commencing from April 10, 1965 to February 26, 1968. The present suit is filed on may 4, 1968. In view of the aforesaid facts, we are convinced that the present suit is filed within a period of three years as required by Article 24 of the limitation Act, 1963. This was the_ only point which was canvassed at the bar in course of the hearing of the appeal,

19. As a result of the aforesaid discussion, we reverse the judgment and decree passed by the learned trial judge, to the extent, the same are adverse to the interests of S the appellant-plaintiff. We hereby allow the appeal and hold that the appellant-plaintiff is entitled to recover a further sum of Rs. 16,500/-with interest thereon at the rate of 4 percent per annum from the date of the suit till payment with costs throughout.