(2007) 07 UK CK 0044

In the Uttarakhand High Court

Union of India (UOI) APPELLANT

Vs

City Board RESPONDENT

Date of Decision : 13-07-2007

Acts Referred:

Constitution of India, 1950 — Article 185, 285
Government of India Act, 1935 — Section 154
Railways Act, 1989 — Section 135

Citation : (2007) 07 UK CK 0044

Hon'ble Judges : Rajesh Tandon, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajesh Tandon, J.—Heard Sri Lalit Belwat, counsel for the appellant and Sri V.K. Kohli assisted by Sri I.P. Kohli for the respondent.

2. Present second appeal has been preferred against the judgment and decree dated 17.9.1998 passed by the District Judge Dehradun thereby confirming the judgment and decree dated 30.6.1989 passed by the Civil Judge, Dehradun.

3. The appeal was admitted on 5.8.2.005 and the following substantial question of law were framed:

1. Whether in the absence of any notification u/s 135(1) of the Indian Railway Act, the appellant could not have been made liable to pay taxes ?

2. Whether in view of the provision contained in Article 285 of the Constitution of India, no tax could have been levied on the properly of Union of India ?

3. Whether the suit filed by the appellant was wrongly held to be barred under the provision contained in Section 326(4) of the U.P. Municipality Act?

4. Briefly staled the appellant/plaintiff has filed a suit for permanent injunction restraining the defendant from recovering the amount in suit by distress warrant or any other mode. According to the plaintiff, the Union of India Northern Railway

maintains and owns Oak Grove School , Jharipani, Mussoorie which is an educational institution. City Board, Mussoorie has sent a notice on 6,5.1985 demanding a sum of Rs. 1,29,948,05 as house tax. Previously upto the year 1976 the assessment of the premises of Oak Grove School (including the land appurtenant thereto was Rs. 54,000/- only but from 1977 upto March 1982 the assessment of school premises was raised from Rs. 54000/- to Rs. 2,50,000/- was illegal and against the law. From April 1982 the assessment of the school was further raised upto Rs. 3,12,500/- No notice of enhancement of the valuation of the building was served on the plaintiff. According to the plaint averments Railway Administration shall not be liable to pay any tax without notification by the Central Government.

5. Written statement was filed by the defendant. It has been stated that besides school there are residential quarters, post office building and Hospital building etc. Outstanding dues of the house tax are continues from the last several years. The defendant has issued notices from time to time for payment of said amount. In paragraph 15 it has been stated that it is wrong to state that the Central Government has not issued any notification declaring the Railway Administration liable to pay the enhanced tax. In paragraph 44 it has beer stated that in accordance with Central Government''s order dated 22.1.67 the plaintiff is liable to pay the taxes on enhanced assessment and the defendant is entitled to enhance the assessment and the contention of the plaintiff that the defendant cannot enhance the assessment is incorrect. The Government of India, Ministry of Finance in their letter No. 4/1/P/66 dated 154.9.1966 has clarified that in respect of the central Government''s properties, the Central Government would be liable to pay the increased tax due to increase in the valuation of the property.

6. On the pleadings of the parties following issues were framed by the trial Court:

1. Whether the assessment made for levy of tax as described in paragraphs 7 and 8 is null and void?

2. Whether the defendant is not entitled to enhance the valuation of the property?

3. Whether the Civil Court has no jurisdiction to try the suit?

4. Whether the valuation has become final and Civil Court has no jurisdiction of entertain the suit?

5. Whether the Circle Superintending Engineer is not competent to sign and verify the plaint?

6. Whether the suit is barred u/s 326 of U.P. Nagar Palika Act?

7. To what relief, if any, is the plaintiff entitled?

7. The trial Court has held that the defendant is entitled to recover the tax on the enhanced valuation of the building. No notice was required u/s 326 of U.P. Municipalities Act and as such the suit of the plaintiff was dismissed.

8. Feeing aggrieved the appellant/plaintiff'' has filed first appeal before the District Judge, Dehradun, which was dismissed by the Additional District Judge, Dehradun vide judgment and decree dated 17.9.1998. Against the said judgment and decree, the appellant-plaintiff filed the present second appeal.

9. In the present case the plaintiff has challenged the notice-dated 6.5.1985 issued by the Municipal Board, Mussoorie claiming tax to the tune of Rs. 1,29,948.00 by way of house tax. Here in the second appeal, the Union of India, appellant based its case under Article 285 of the Constitution of India read with Section 135 of the Indian Railways Act, 1890 and substantial question of law No. 1 and 2 were framed accordingly.

10. Article 285 of the Constitution of India reads as under: 285. Exemption of property of the Union from State taxation-

(1) The property of the Union shall, save in so far as parliament may by law otherwise provide, be exempt from all taxes imposed by a State or by any authority within a State.

(2) Nothing in Clause (1) shall, until Parliament by law otherwise provides, prevent any authority with a State from levying any tax on am property of the Union to which such property was immediately before the commencement of this Constitution liable or treated as liable, so long as that tax continues to be levied in that State.

11. A perusal of the above Article 285(1) shows that the property of the Union shall, save insofar as Parliament may by law otherwise provide, be exempt from all taxes imposed by the State or by any authority within a State. Section 135 of the Railways Act provides as under:

135. Taxation of railways by local authorities .- Notwithstanding Anything to the contrary in any enactment, or in any agreement or award based on any enactment, the following rules shall regulate the levy of taxes in respect of railways and from railway administrations in aid of the funds of local authorities, namely:

(1) A railway administration shall not be liable to pay any tax in aid of the finds of any local authority unless the Central Government has, by notification in the Official Cazette, declared the railway administration to be liable to pay the tax.

(2) While a notification of the Central Government under Clause (1) of this section is in force, the railway administration snail be liable to pay to the local authority either the tax mentioned . in the notification or, in lieu thereof, such sum, if any, as an officer appointed in this behalf by the Central Government may, hawing regard to all the circumstances of the case, from time to time determine to be fair and reasonable.

(3) The Central Government may at any time revoke or vary a notification under Clause (1) of this section.

(4) Nothing in this section is to be construed as debarring any railway administration from, entering into a contract with any local authority for the supply of water or light, or for the scavenging of railway premises, or for any other service which the local authority may be rendering or be prepared to render within any part of the local area under its control.

(5) ''Local authority'' in this section means a local authority as defined in the General Clauses Act, 1887 (1 of 1887) and includes any authority legally entitled to or entrusted with the control or management of any fund for the maintenance of watchmen or for conservancy of a river.

12. The aforesaid provisions permit the local authorities to levy tax on the railway properties in the manner given above. For levying tax on the property of Railway the essential term is that there must be a notification by the Central Government declaring the Railway Administration liable to pay tax on certain property. In this case the defendant has failed to prove that the defendant Municipal Board is authorized by the Central Government to levy tax on the school of the plaintiff at Oak Grove, Mussoorie.

13. So far as interpretation of Article 285(2) of Constitution of India is concerned letter No. 4 (i)-T/6,5 dated April 23, 1968 of Government of India, Ministry of Finance makes it clear that no tax can be levied by the local authorities on he property of Central Government: unless such tax is being paid since before 1-4-1937. The extract of the letter is as under:

Subject: Payment of Local and Municipal Taxes on Central Government Properties- Interpretation of Article 285(2).

The property of the Central Government was exempt from payment of all taxes imposed by a State or by an authority within a State by virtue of the provisions of Section 154 of the Government of India Act, 1935. The exemption has been continued under Articles 285 of the Constitution except in respect of such property as was liable to tax before 1st April 1937. In regard to this except property in accordance with Clause (2) or Article 285 and so long as Parliament does not pass a law under it providing otherwise, the Government of India are liable to pay such local taxes as were being paid before the 1st April 1937.***

14. Thus it is obvious, that in order to levy house tax and property tax on the plaintiff the defendant has to satisfy either one of the two conditions; firstly taxes on the property was being paid by the plaintiff before 1st April 1937 or secondly the Railway Administration is made liable to pay such taxes by virtue of a notification to that effect in the official gazette by the Central Government. Both these two essential ingredients are missing in the claim of house tax and Land tax by the defendant.

15. A letter-dated 11.8.1969 (Ex. II) written by the Executive Officer, Nagar Palika, Mussoorie shows that the defendant tried to ascertain the position as to whether the Oak C rove property of the plaintiff was constructed before

1.4.1937. Extract of the letter is as under:

Dear Sir,

With reference to your letter No. AM/0/20/WA OG-School Mussooried dated 19.3.1969, I have to request you to kindly let this office know names of the building constructed prior to 1.4.37 and those which were made after 1.4.37.

Yours faithfully, Executive Officer.

16. The Apex Court in a similar case of Union of India Vs. Purna Miunicipal Council and others, , has held that no tax can be levied by a local authority on the property of the Railway unless the Railway Administration is held liable to pay such taxes by the Central Government by notification in the Official Gazette. The Apex Court has held as under:

The aforesaid provision, existing as it is, in terms permits taxation of railways by the local authority in the manner given therein; the Central Government being the controlling and the regulating authority permitting liability at a given point of time, its extent and manner. The Indian Railways Act being a centred enactment has no role to play in Sub-article (2) of Article 185, for that is a sphere in which the State legislation operates. The reasoning of the High Court to oust the applicability of Section 135 of the Indian Railways Act on the test of Sub-article (2) of Article 285 was totally misplaced, as also in not venturing to create room for it in Sub-article (1) of Article 285, The interplay of the constitutional and legal provisions being well cut and well defined requires no marked elaboration to stress the point.

17. However, it is admitted to both the parties that the plaintiff was continuously paying taxes to the City Board, Mussoorie. A letter dated 24.6.1982 by the Principal of Oak Grove School in this context is important, the extract of which is given below:

NO. 9C/CB/82 Oak Grove School Dated: 24.6.1982 P.O. Jharipani The Divisional Railway Distt.- Dehradun Northern Railway Moradabad Sub:- Payment of outstanding Municipal Taxes on Oak Grove School building amounting to Rs. 90034.50.

Ref:- Your letter No. AM/0/20/WA/oG/school dated 31.5.1982 addressed to Shri D.P. Shukla, Executive Officer, City Board, Mussoorie and copy to this office.

In response to your above referred letter, Executive Officer, City Board Mussoorie vide his letter No. 919/(ii)/Tax dated 16.9.1982, addressed to you and copy to the office has sent a complete statement of taxes on oak Grove School building, showing details of amounts of taxes billed for since 1971-72 and the details of amounts passed for payment by your office. The details of the outstanding taxes amounting to Rs. 90,034.50 have also been shown therein.

It is, therefore, requested that the payment of the same may be arranged at the earliest to avoid any embarrassment to the school If any further information is required from the City Board, Mussoorie, please make personal contact with the Executive Officer, City Board, Mussoorie by deputing your dealing staff to that office as such step will facilitate expeditious payment.

Principal

18. Thus from the above letter it is obvious that the plaintiff was continuously paying taxes to the City Board, Mussoorie and a statement of tax paid from 1971-72 has been sent by the Principal to the Divisional Railway Manager for sanctioning fund in that account. The plaintiff-appellant has not claimed refund of the amount already paid by it from the defendant.

19. Undisputedly, the respondent City Board of Mussoorie is collecting the tax from general public for water supply, street-lighting, sanitary service and approach road etc. There is no clarification on behalf of the defendant or the appellant that the charges are being demanded from the appellant for providing such type of public utility services. Therefore, the defendant is not liable to refund the amount already paid by the appellant as yet in the form of charges or taxes.

20. The record of the trial Court shows that neither pleas regarding non payment of tax since before 1.4.1937 has been raised by the plaintiff before the trial Court nor the defendant has tried to establish that the property of the plaintiff was old one and taxes were being paid on the said property by the plaintiff to the defendant before 1.4.1937. Thus the matter is liable to be remanded to the trial Court for a fresh decision after affording opportunities to the parties to adduce evidence after making necessary amendment in their pleadings.

21. Accordingly, the appeal is allowed. The impugned judgment and decree passed by the two courts below are set aside. The case is remanded to the trial court with the direction to decide it afresh in the light of the observations made in the body of judgment after affording opportunity to the parties to suitably amend their pleading and to adduce further evidence if any.

22. However, it is directed that no claim of refund of the amount already paid by the plaintiff, shall be made irrespective of the result of the suit.

23. However, it is made clear that the rights of the defendant Municipal Board u/s 135 of the Indian Railways Act, 1890 stand preserved for moving the Central Government into the matter, if not already moved.

24. No order as to costs.

