State Of Rajasthan vs Leela Jain on 16 September, 1964

Equivalent citations: 1965 AIR 1296, 1965 SCR (1) 276, AIR 1965 SUPREME COURT 1296

Author: N. Rajagopala Ayyangar

Bench: N. Rajagopala Ayyangar, A.K. Sarkar, R.S. Bachawat

PETITIONER:
STATE OF RAJASTHAN

Vs.

RESPONDENT:
LEELA JAIN

DATE OF JUDGMENT:
16/09/1964

BENCH:
AYYANGAR, N. RAJAGOPALA
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AYYANGAR, N. RAJAGOPALA
SARKAR, A.K.
BACHAWAT, R.S.

CITATION:
1965 AIR 1296 1965 SCR (1) 276
CITATOR INFO :
F 1968 SC 59 (10)
R 1973 SC1034 (22)
RF 1973 SC1461 (907)
R 1985 SC 582 (37)

ACT:
Rajasthan City Municipal Appeals (Regulation) Act (3 of 1950), s. 4(1), proviso-State Government-Revisional Jurisdiction--Scope of.

HEADNOTE:
The respondent made certain constructions on her land in the city of Jaipur. Those constructions were in variation of the plans approved by the Municipality. As they were completed in spite of an order by the President of the Municipal Board to stop unauthorised constructions, he ordered the matter to be compounded by the respondent paying

a fine. No appeal was provided by the Jaipur Municipal Act against such an order, and so, a neighbour, who was affected by the constructions moved the State Government and the latter, acting under the proviso to S. 4(1) of the Rajasthan City Municipal Appeals (Regulation) Act, 1950, set aside the order of the President. The respondent then moved the High Court under Art. 226 of the Constitution and the High Court held that the order of the President was not subject to the revisional jurisdiction of the State Government. The State thereupon, appealed to the Supreme Court.

HELD : The appeal should be allowed.

The main purpose of the Act is to create a uniform forum for dealing with municipal appeals, that is, appeals lying under a municipal law to an authority other than a municipal authority, because such appeals, when provided for, lay to different authorities in different cities of the State of Rajasthan. Under s. 3 of the Act the appeal, if provided for, was to be disposed of by the Commissioner. The order of the Commissioner and the order of a municipal authority, where no appeal was provided for a.-, in the instant case, would be final subject to revision by the State Government under the proviso to s. 4(1) of the Act. It would not be proper, when the words of the statute are clear, to take the preamble and the long title into consideration and come to the conclusion that it could not have been intended to permit the Government to interfere in municipal affairs, especially when such an interpretation has the effect of omitting or deleting the words "order passed by a Municipal authority" in the proviso, when they have a meaning and significance in their normal connotation. [278H; 281E, H; 282C-F; 283H; 285B-D].

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 245 of 1962.

Appeal by special leave from the judgment and order dated November 7, 1958 of the Rajasthan High Court in D. B. Civil Writ Petition No. 65 of 1957.

M. M. Tewari, K. K. Jain and R. N. Sachthey, for the appellant.

S. P. Sinha, V. Kumar and Naunit Lal, for respondent No. 1. The Judgment of the Court was delivered by Ayyangar J. A very short question regarding the proper construction of the proviso to s. 4(1) of the Rajasthan City Municipal Appeals (Regulation) Act, 1950, is involved in this appeal which comes before us by virtue of special leave granted by this Court.

The facts giving rise to this appeal are briefly these :

The respondent Mrs. Leela Jain is the owner of a plot of land in the city of Jaipur. Under the relevant provisions of the city of Jaipur Municipal Act, 1943, she was required to submit to the Municipal Council plans for erecting constructions on her plot, obtain their approval and make the constructions in accordance with the sanctioned plans. She submitted her plans, which were sanctioned but it was stated that during the course of the constructions she made certain variations from the plan as approved by the Municipal authorities. A neighbour of hers, one D. D. Goswami, alleged that the variations made by the respondent in carrying out the constructions of her house prejudicially affected him. On the basis of his representation the Municipal Council initiated an inquiry as a result whereof a report was submitted to it in which a finding was recorded that the respondent had effected variations from the sanctioned plan. The President of the Municipal Board con- considered the report and passed an order on September 19, 1956 directing the respondent to stop the unauthorised constructions immediately. It was stated that notwithstanding this order the respondent continued the constructions and completed them. When this was brought to the notice of the Municipal authorities, an order was passed that action be taken against her under S. 210 of the City of Jaipur Municipal Act, 1943. This section provides that where an owner or occupier was required to execute any work under the provisions of the Act and a default was made in the execution thereof, the Municipal Board might cause such work to be executed and the expenses incurred thereby to be recovered from the person in default. It is not very clear from the record what exactly was the work which the respondent was directed to carry out and which she failed to execute. The only thing that is necessary to be noticed is that there existed an order under s. 210 passed on September 26, 1956. Representations were made by the respondent to the President of the Municipal Council and thereupon, by an order dated October 24, 1956, the President L2Sup. /64-5 ordered that the case against the respondent be compounded by her paying to the Municipal Council a sum of Rs. 101 as fine. It is stated that the respondent paid this fine, but the fact of her having done so is apparently a matter of some controversy to which it is not necessary to refer. Shri D. D. Goswami, the respondents neighbour, felt aggrieved by this order compounding the violation of the building bye-laws. No appeal was provided by the Jaipur Municipal Act from such an order, but he moved the State Government to set aside that order and the latter purporting to exercise jurisdiction under the proviso to s. 4 of the Rajasthan City Municipal Appeals (Regulation) Act,, 1950 (to which we shall hereafter refer as the Act) set aside the order of the President of the Municipal Council. The respondent thereupon invoked the jurisdiction of the Rajas- than High Court under Art. 226 of the Constitution of India for issue of a writ of certiorari to quash this order of the State Government. Though several contentions were raised by the respondent in support of her plea regarding the invalidity of the impugned order of the State Government, the learned Judges of the High Court confined their attention to one of the points raised that the order of the President of the Municipal Council which was final and not subject to appeal under the City of Jaipur Municipal Act was not subject to the revisional jurisdiction of the State Government under the proviso to S. 4(1) of the Act. The learned Judges of the High

Court accepted this contention and acceded to the Writ Petition and passed an order as prayed for. The appellant-State having obtained special leave from this Court, has preferred this appeal. In order to appreciate the contentions urged before us relating to the construction of the proviso to S. 4 of the Act, it is necessary to read the main provisions of the Act. It is a short Act containing 5 sections. The long title states that it was enacted "to provide for and secure uniformity in the forum for Municipal appeals pertaining to the cities of Rajasthan." Its Preamble carries out what is stated in the long title and it runs "Whereas it is expedient to provide for and secure uniformity in the forum for Municipal appeals in the different cities of Rajasthan." The different cities, it may be noticed, include inter alia, the city of Jaipur with which we are concerned. The main purpose of the Act is, as recited in the preamble and the long title, to create a uniform forum for entertaining and dealing with Municipal appeals which lay to different authorities in the several separate Municipal enactments in force in the different cities within the State of Rajasthan.

The officer or authority designated by the Act as the forum for hearing appeals is the Commissioner and the expression "Commissioner" is defined in s. 2 which contains definitions of the terms used in the Act, as meaning "Commissioner or Additional Commissioner of the Division within the local limits whereof a Municipal authority exercises jurisdiction". The "Municipal appeals" for which a forum is being provided is, by the Act, treated as a technical term and is defined in s. 2(iii) as meaning " an appeal from an order of a Municipal authority lying under any Municipal law to any officer or authority other than a Municipal authority"; in other words, by "Municipal appeal" is meant an appeal lying under a Municipal law to an outside authority, i.e., some designated officer of the Government.

Sections 3 and 4 have a vital bearing on the rival constructions submitted to us by either side and therefore it is necessary to set them out :

"3. First Municipal appeals. (1) Notwithstanding anything contained in any Municipal law, wherever such law provides for a Municipal appeal, the appeal shall, subject to the time-limit prescribed therefore by such law, lie to and be brought before the Commissioner.

(2) All Municipal appeals pending at the commencement of this Act before any officer or authority other than the Commissioner shall be transferred to the Commissioner for disposal. (3) In any Municipal appeal under this section, the Commissioner shall proceed in the manner provided for such appeal in the Municipal law applicable thereto and the decision thereon of the Commissioner, shall subject to the provisions of ss. 4 & 5, be final and conclusive.

(4) When an appeal under this section is pending at the commencement of this Act or has been thereafter preferred, all proceedings to enforce the order appealed against and all prosecutions for a breach thereof may, by order of the Commissioner be

suspended pending the decision of the appeal.

4. Second Municipal appeals and revisions. (1) Notwithstanding anything contained in any Municipal Law, no Municipal appeal shall lie from any order passed in appeal under section Provided that the Government may, of its own motion or on the application of a Municipal authority or of any aggrieved person call for the record of any case for the purpose of satisfying itself as to the correctness, legality or expediency of any order passed by a Commissioner or a Municipal authority and may pass such orders therein as the Government may consider fit and reasonable.

(2) Any Municipal appeals from orders made in appeal by any officer or authority other than a Municipal authority, pending at the commencement of this Act, shall be transferred to the Government and be disposed of in accordance with the proviso to sub-sec. (I). (3) The provisions of sub-section (4) of s.

3 shall mutatis mutandis apply also to appeals and applications under this section." Section 5 contains merely a saving and though not very relevant in the present context, we may quote it for completeness :

"5. Saving. Nothing in this Act shall affect any power other than the power to entertain, hear and determine municipal appeals, vested in the Government by any Municipal law."

The controversy between the parties rests on the meaning and effect of the expression "or a municipal authority"

occurring in the proviso to s. 4. It may be mentioned that the expression "a Municipal authority" is defined in s. 2(iv) of the Act and it is common ground that on that definition the President of the Municipal Council who passed the order which was set aside by the State Government was a Municipal Authority.

Before considering the arguments addressed to us it would be convenient to briefly advert to the reasoning by which the learned Judges held that the State Government had no jurisdiction to entertain the revision against the order of the Chairman of the Municipal Council which, as stated already, was not under the provisions of the City of Jaipur Municipal Act subject to an appeal either to a Municipal authority or to an outside party. In the first place, the learned Judges considered that the long title, the preamble and the operative portion of the enactment other than the crucial words of the proviso all pointed to the enactment not being intended to alter the substantive rights of parties but only to provide a new forum for entertaining and disposing appeals which already existed under the relevant Municipal enactment If, as was admitted, an order of the President of the Municipal Council compounding an offence against a Municipal bye-law was under the City of Jaipur Municipal Act final and not subject to an appeal or any other kind of interference, they held that it could not be

the intention of the Act to confer a right on the Government to interfere with such orders. This, one might say, proceeds on the textual construction of the Act. The other line of reasoning which according to the learned Judges pointed to the same conclusion was that the City of Jaipur Municipal Act was intended to confer on the inhabitants of the Municipal area and their representatives on the Municipal Council the right of local self-Govemment and it was inconsistent with that basic conception to read the Act as making such an inroad on local autonomy as to permit the Government to interfere in cases where under the Municipal Act an order was final and immune from challenge. It would, however, be seen that the construction adopted by the learned Judges does not give any effect to the words 'or other municipal authorities' in the proviso and, in fact, on their interpretation the words had no meaning and in reality, though not in terms, have been rejected as inconsistent with the theory of the local self-Government. With due respect to the learned Judges we do not find it possible to agree that it is permissible to omit or delete words from the operative part of an enactment, which have meaning and significance in their normal connotation merely on the ground that according to the view of the Court it is inconsistent with the spirit underlying the enactment. Unless the words are unmeaning or absurd, it would not be in accord with any sound principle of construction to refuse to give effect to the provisions of a statute on the very elusive ground that to give them their ordinary meaning leads to consequences which are not in accord with the notions of propriety or justice entertained by the Court. No doubt, if there are other provisions in the statute which conflict with them, the Court may prefer the one and reject the other on the ground of repugnance. Surely, that is not the position here. Again, when the words in the statute are reasonably capable of more than one interpretation, the object and purpose of the statute, a general conspectus of its provisions, and the context in which they occur might induce a court to adopt a more liberal or a more strict view of the provisions, as the case may be, as being more consonant with the underlying purpose. But we do not consider it possible to reject words used in an enactment merely for the reason that they do not accord with the context in which they occur. or with the purpose of the legislation as gathered from the preamble or long title. The preamble may, no doubt, be used to solve any ambiguity or to fix the meaning of words which may have more than one meaning, but it can, however, not be used to eliminate as redundant or unintended, the operative provisions of a statute. Besides, if one strictly applied this rule of interpretation that the Act did not intend to make provision for nothing except a forum for appeals--the whole of the proviso even where it provided for revisions against the orders of a Commissioner, must be rejected as traveling beyond the long title and the preamble, for in neither of them is reference made to revisions. We do not therefore consider that in the case of the Act under consideration, it would be possible to reject the words "or a municipality authority" by reference to the preamble and the long title.

Coming next to the words used, we start with the position that under s. 3 of the Act, appeals from Municipal authorities to outside authorities which are designated

"Municipal appeals" by the Act are to be filed before and disposed of only by the Commissioner. If any appeals were pending before authorities designated by the several Municipal enactments, they were directed to be transferred to the Commissioner and to be disposed of by him [Sec. 3 (2)].

Then comes section 4(1) by which the finality of the orders of the Commissioner declared by s. 3(3) was repeated and reinforced by the use of the words "notwithstanding anything contained in any Municipal law", even where a second appeal or other proceeding had been permitted by the Municipal law against orders of an outside authority passed in Municipal appeals as defined by s. 2 (3) of the Act. But this finality was not absolute as indicated by s. 3 (3) but could be imperilled by a revision to a State Government. This is effected by the proviso to s. 4(1) and if the learned Judges of the High Court are right, the proviso has done nothing more.

The question for our consideration is whether any effect can or should be given to the words "the Government may on its own motion or on the application of a Municipal authority or of any aggrieved person call for the record of any case..... for the purpose of considering the correctness..... of any orders passed by. . . . a Municipal authority". Before entering on a discussion of this question it might be convenient to put aside the arguments addressed to us by the learned Counsel for the respondent that these words occurring as they do in a proviso are to be construed differently from what they would have been if they occurred as an independent provision. This, to some extent, also figures as part of the reasoning of the learned Judges of the High Court who have cited a few decisions one of which was of the Privy Council and the other of this Court in which the construction of a proviso came up for consideration. These cases may be thus summarised. In some of them a question has arisen as to whether the terms of a proviso could be called in aid to determine the scope of the main part to which it is a proviso. This approach and its limitations need not detain us, for obviously that is not the principle that arises for examination in the case before us. There are other decisions to which learned Counsel for the respondent drew our attention in which the question to be considered was whether the proviso was really redundant i.e., enacted ex abundanti cautela. No such principle arises for consi- deration in the proviso before us either. So far as a general principle of construction of a proviso is concerned, it has been broadly stated that the function of a proviso is to limit the main part of the section and carve out something which but for the proviso would have been within the operative part. It is obvious that this is not the function of the proviso to s. 4(1) of the Act, for the operative words in the main part of s. 4(1) prohibit all appeals from the appellate orders of the Commissioner. The primary purpose of the proviso now under consideration is, it is apparent, to provide a substitute or an alternative remedy to that which is prohibited by the main part of s. 4 (1). There is, therefore,. no question of the proviso carving out any portion out of the area covered by the main part and leaving the other part unaffected. What we have stated earlier should suffice to establish that the proviso now before us is really not a proviso in the accepted sense but an independent legislative provision by which

to a remedy which is prohibited by the main part of the section, an alternative is provided. It is, further, obvious to us that the proviso is not co-extensive with but covers a field wider than the main part of s. 4(1). If its function were only to provide a remedy alternative to a further appeal from the orders of the Commissioner and no more and that is the contention of the learned Counsel for the respondent, the words "of any order passed by . . . . . a municipal authority" should have no place in it. If this submission has to be accepted, the proviso would have to be read deleting the words "or other municipal authority," As already pointed out, this rejection cannot be done on any accepted principle of statutory construction, for the words have meaning and effect can be given to them without the same conflicting with any other operative provision of the Act.

If the argument that the words should be rejected is not accepted and some meaning has to be attributed to these words, the alternative submission of the learned Counsel for the respondent was that we should read the words 'orders passed' as confined to orders which were appealable orders for which an appeal was provided under a Municipal law. In this connection it was urged that the intention of the framers of the Act was merely to enact a legislation providing for an uniform forum in which appeals, for which diverse provisions were made in the Municipal laws of the several Municipalities in the State, were to be entertained and disposed of and it would be inconsistent with such an intention to hold that they made a provision for Government revising orders which according to the relevant Municipal law were final and not subject to any appeal. This argument though plausible does not appear to us to be sound or maintainable on any proper construction of the words employed. If the learned Counsel is right, the clause would read "The Government may..... call for any record of any case..... of any appealable order passed by a Commissioner or by a Municipal authority and may pass such orders. This would show how impossible it is to read the word 'order' as confined to appealable order,, which is what the learned Counsel suggests as the proper construction of the proviso, for it would at once be seen that there are no appealable orders of the Commissioner, since s. 4(1) has in terms prohibited all appeals. As the words 'orders of' are not repeated before the words 'a municipal authority',. you cannot, read word 'order' as meaning 'orders declared final by this Act' when applied to the orders of a Commissioner and as meaning I orders subject to appeal under a Municipal law' in relation to the orders of a municipal authority. Besides, it would be somewhat anomalous that s. 3 should provide the forum for appeals which lay under the Municipal Act and in regard to the same matter i.e., those in regard to which a Municipal appeal would lie, make a parallel provision for a revision by the State Government without clearer words. We do not consider it necessary to examine this matter further or to examine the other anomalies which this construction might involve, because we are in this case concerned with a non-appealable order of a municipal authority. So far as they are concerned, such orders would be in exactly the same situation as regards their finality as the orders of i Commissioner, which by reason of the positive provisions of s. 3 (3) and s. 4 (I are expressly declared final by the Act. It appears to us that the more

reasonable construction is to construe the words 'orders of a municipal authority' as including final order,, not subject to a Municipal appeal which would fall into the same category as appellate orders of a Commissioner which are declared final by the Act.

It is, no doubt, true that so to construe these words could empower a State Government to interfere in Municipal affairs and this on an extensive scale and enable them to pass orders in revision, on matters which under the relevant Municipal law was final and not subject to any appeal. That is an aspect which appealed greatly to the learned Judges of the Hi-Ili Court and as we have pointed out earlier, forms the main reasoning on which they have arrived at the construction of the proviso. Though we are not unmindful of the consequences and implications of this construction, we consider that it would not be proper to take these factors into consideration where the words of the statute are clear and what we have stated earlier should suffice to show that, in our opinion, the opposite construction is not reasonably open without doing violence to the language of the enactment either by omitting the words "or other Municipal authorities" altogether or by rewriting the section so as to achieve the desired result. We do not conceive this to be the function of a Court of construction but that it must be left to other organs of Government. We, therefore. consider that the learned Judges of the High Court were in error in holding that the State Government had no power to entertain the revision against the order of the President of the Municipal Council and to quash it on that ground. As already indicated in the Writ Petition under Art. 226 filed by the respondent to the High Court she based her attack on the validity of the order of the State Government not merely on the grand that it was beyond their revisions] jurisdiction, but on various other grounds. The learned Judges of the High Court having reached a conclusion in her favour on this around, observed in the course of their judgment "The order of the Government is Without Jurisdiction and must be quashed on this ground alone. It is not necessary to go into the other grounds raised in this petition."

The learned Counsel for the respondent drew our attention to this passage and submitted that should we allow the appeal on our construction of the proviso to s. 4(1), we should remand the case to the High Court for considering the other objections that were raised. Though the learned Counsel for the appellant submitted that we might ourselves deal with the other points, we do not accede to this request. In our opinion the case has to be sent back to the High Court for all the other objections being considered on their merits as may arise on the pleadings and in law. We are not to be understood as having expressed any opinion as to whether any such point arises or their merits.

The appeal is accordingly allowed and the order of the High Court allowing the Writ Petition is set aside and the matter is remanded to the High Court for being disposed of in accordance with law and with this judgment. The costs of the parties in this Court will abide the result and will be provided for by the High Court in its final order. Appeal allowed and case remanded.