Lt. Col. Sawai Bhawani Singh Etc. Etc vs The State Of Rajasthan & Others on 6 February, 1996

Equivalent citations: AIRONLINE 1996 SC 39, 1996 (3) SCC 105, (1996) 2 JT 132, 1996 UJ(SC) 746, (1996) 2 JT 132 (SC), (1996) 2 SCR 145 (SC), 1996 UJ(SC) 1 746

Bench: Madan Mohan Punchhi, K. Ramaswamy

PETITIONER:
LT. COL. SAWAI BHAWANI SINGH ETC. ETC.

Vs.

RESPONDENT:
THE STATE OF RAJASTHAN & OTHERS

DATE OF JUDGMENT: 06/02/1996

BENCH:
MADAN MOHAN PUNCHHI, K. RAMASWAMY,

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T Punchhi, J.

When a legislative enactment is caused an amendment beyond the competence of the legislature and the mistake is corrected by another amendment to bring the enactment back within its competence, can the entire legislation, original as well as ambulatory be said to be "still-born" and thus unenforceable, is the significant question which falls for determination in this group of cases.

It will be necessary to refer to the legislative history of the questioned provisions. In the year 1964, the Rajasthan State legislature enacted a measure called the Rajasthan Urban Lands Tax Act (Act No.18 of 1964) [hereinafter referred to as the "Principal Act"], to provide for levy of tax alone on "urban lands" in the State of Rajasthan. The Act then did not levy tax on buildings though within the competence of the legislature. The Principal Act was not enforced till l973, when amendment was

caused thereto by the Amending Act No. 15 of 1973 bringing about drastic changes in the Act, of far reaching consequences. By virtue of this Amendment Act, tax was sought to be levied or imposed upon both lands and buildings in the urban areas of the State of Rajasthan. The Principal Act and the Amending Act were made enforceable with effect from April 1 l973. A private corporation challenged the constitutional validity of the Act as amended, in the High Court of Rajasthan. The State Government perhaps realizing the flaws in the Amending Act No. 15 of 1973, had the Governor of the State issue on June 23, 1973, an Ordinance No. 6 of 1973 bringing about corrective changes in the provisions, (reference to which will be made later) which Ordinance was replaced by the Amending Act No. 18 of 1973, which came into force on November 10, 1973 but effective from l-4-73. The rates of tax as applicable with effect from April 1, 1973 were changed subsequently by the Rajasthan Finance Act of 1977 (Act No.2 of 1977) causing necessary amendments in the charging section of the Principal Act.

Section 3 of the Principal Act, as it was originally enacted, reads as under:

> "3. Levy of Urban land tax:(1) Subject to the other provisions contained in this Act, there shall be levied and collected for each year a tax on Urban lands (hereinafter referred to as the Urban Land tax) from every owner of urban Land at such rate not exceeding 2% of the market value of such urban land as determined under Section 4, as the State Government may by Notification in the Official Gazette declare in this respect.
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> Provided that the State Government may fix graduated rates of tax on different slabs of market value of urban lands. Provided further that no tax shall be levied on any urban land if the owner thereof or his predecessor in interest has acquired such land by transfer from the Government or any local authority within a period of two years immediately preceding the year for which the tax is levied.
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> (2) The tax shall be in addition to any other tax for the time being payable in respect of the urban land or portion thereof under any other law for the time being in force.

This Section 3 was subsequently substituted by the following provision, by Section 4 of the Amending Act No.15 of 1973. with effect from April 1, 1973.

> "3. Levy of lands and buildings tax:(1) There shall be levied and collected, with effect on and from 1st April, 1973, for each year a tax on lands and buildings situate in an urban area, (hereinafter referred to as the lands and buildings tax) from the owner of such lands and buildings at such rates not exceeding 2% of the market value thereof as the State Government may, by notification in the official gazette declare in this behalf.
>
> Provided that the State Government may fix graduated rates of tax on different slabs of market values of urban lands and buildings.

Provided further that until a notification declaring rates of tax is issued under this sub-section, the rates of tax on lands and buildings shall be as follows:

On First Rs.50,000/- of the market value of the lands and buildings - NIL On the balance of the market value of the lands and buildings - 1/4% Provided further that if any area is declared a cantonments, or is constituted a municipality, after the commencement of Rajasthan Urban Land Tax (Amendment) Act, 1973, the tax on lands and buildings situate in such area shall be levied and collected with effect from the commencement of the year following the year during which the area is declared a cantonment or is constituted a municipality.

Provided also that where more than one land or building in the same urban area is owned by the same Person, the land and building tax shall be assessed on the market value of all such lands and building taken together.

(2) The tax shall be in addition to any other tax for the time being payable in respect of the land and building or portion thereof under any other law for the time being in force."

By Amending Ordinance VI of 1973, which was later replaced by Amending Act No.18 of 1973, the last proviso to sub- section (1) of Section 3 was omitted and it was provided that the same shall be deemed always to have been omitted and the following sub-section (1)A was inserted retrospectively after sub-section ((1) of Section 3.

"(1)A - For removal of doubt it is declared that the tax shall be levied on land or building or both separately as units."

Section 4 of the Principal Act, as it was originally enacted in the year 1964, was under:

"4. Determination of market value:

(1) The Assessing Authority shall determine in the prescribed manner the market value of the urban land liable to be taxed under this Act.

(2) The Assessing Authority in determining the market value shall have regard to the following matters, namely:

(a) the locality in which urban land is situated.

(b) the predominant use to which the urban land is likely to be put, that is to say, industrial commercial or residential.

(c) accessability or proximity to market dispensary, hospital, railway station, educational institutions, or Government offices.

(d) such other matter as may be prescribed."

This Section was also substituted by the under mentioned provision by Section 5 of the Amending Act No.15 of 1973:

"4. Determination of market value - For purpose of this Act, the market value of any land or building or both shall be estimated to be the price which in the opinion of the assessing authority such land or buildings or both would have reached, if sold in the open market on the date of the commencement of the Rajasthan Urban Land Tax (Amendment)Act, 1973."

The relevant portion of charging Section 3, as it stands, after the amendments made therein by Act No.18 of 1973 and Act No.2 of 1977, runs as under:

"Provided further that until a notification declaring rate of tax is issued under this sub-section, the rate of tax on lands and buildings shall be as follows:

On the first Rs.50,000/- of the market value of the land and building - NIL On the balance of the market value of the land and buildings 1.4% Provided further that if any area is declared a cantonment, or is constituted a municipality, after the commencement of Rajasthan Urban Land Tax amendment) Act, 1973, the tax on lands and buildings situate in such area shall be levied and collected with effect from the commencement of the year following the year during which the area is declared a cantonment or is constituted a municipality.

(1-A) For removal of doubt it is declared that the tax shall be levied on land or building or both separately as units."

The challenge was batched up in 42 writ petitions, which were decided by a common order by a learned Single Judge of the High Court on May 11, 1979. The learned Single Judge allowed all the writ petitions in part, leaving both the writ petitioners as well as the state of Rajasthan aggrieved. 59 special appeals were thus filed before a Division Bench of the High Court which was disposed of by a common order whereby the appeals of the State were allowed. appeals of the writ petitioners were dismissed and as a consequence the writ petitions were dismissed in their entirety. Thus on granting leave in the present batch of appeals before us, the only question raised by learned counsel and regarding which written submissions have been submitted to us is whether or not the Principal Act No.18 of 1964 was by itself invalid, more so after its amendment by Amending Act No. 15 of 1973 rendering it further void because it was beyond the legislative competence of the State Legislature. The argument is that since levy of tax on all lands and buildings of a person taken together under the charging sections 3 and 4 in the enacted provisions were outsides the legislative competence of the State Legislature, the entire measure was a piece of "still-born"

legislation, incapable, because inseperatability of being enlivened after its amendment by the Amending Ordinance No. 6 of 1973 and the subsequent Amending Act 13 of 1973. The view of the learned Single Judge was that the Principal Act as enacted in 1964 was a valid piece of legislation and was fully covered by Entry 49, List II as it stood in the 7th Schedule of the Constitution. The learned Single Judge was further of the view that the Amending Act 15 of 1973 had brought in the Principal Act the offensive material which was beyond the legislative competence to the State Legislature, but since that material was severable from the remaining provisions of the charging Section 3, therefore the healthy portion of Section 3 together with the other provisions of the Act was valid, except the last proviso to Section 3(1), which was subsequently deleted by Amending Act 18 of 1973. The Hon'ble Judges of the Division Bench, improving the view of the learned Single Judge, went on to say that the last proviso to Sub-section (1) of Section 3 was also separable from the rest of the provisions of the said Section and after striking out the invalid portion, namely, the last proviso to Sub- section (1) of Section 3, the remaining portion of Section 3 contains a complete Code in itself and is workable without reference to and notwithstanding that a portion thereof is unenforceable. The Bench also took the view that for the purpose of separability, it was immaterial as to whether the invalid and valid portions sere enacted in the same Section or in different sections, because what is important is the substance of the matter, the form being immaterial. Noticeably Ordinance 6 of 1973/Act 18 of 1973 had omitted the last proviso to Sub-section (1) of Section 3 with retrospective effect, thus keeping the remaining portion of Section 3 presenting a workable scheme without affecting its validity. On the deletion of the last proviso to Sub-section (l) of Section 3, the charging provision was expressly clarified by adding a new Sub-section (1)A thereto which declared that the tax shall be levied on lands and buildings or on both separately as units.

It is now well settled that as per Entry 49 of List II, the State Legislature is competent to impose tax either on lands or on buildings or on both. A land or building or both of a person may be subjected to direct tax by the State legislature under Entry 49 of List II and may also be subject matter of direct tax as a component of his total assets, like Wealth-tax by the Union legislature as mentioned in Entry 86 of List I. These two taxes are separate and distinct in nature and it cannot be said that there was any overlapping, or that the State Legislature was not competent to levy such tax on lands and buildings merely on the ground that they have been subjected to another tax as a component of the total assets of the person concerned. See in this connection, a seven member Bench decision of this Court in Union of India vs. H.S. Dhillon [1972(2) SCR 33]. This Court clearly said that for a tax to be under Entry 49 of List II, three conditions must be satisfied, i.e. (i) it must be a tax on units i.e., land and buildings separately as units; (ii) the tax cannot be a tax on totality i.e., it is not a composite tax on the value of all lands and buildings; and (iii) the tax is not concerned with the division of interest in the building or land; in another words, the tax was not concerned whether one person owned or occupied the land or building or two or more persons occupy or own it. In pith and substance, it was a tax on property and

not a personnel tax. Other cases of the same nature being D.C. Gouse & Co. etc. vs. State of Kerala & Anr. etc. [1980(1) SCR 268], which are of the same species, may be turned to with advantage. B. Shama Rao vs. The Union Territory of Pondicherry [1967(2) SCR 650], pressed into service by learned counsel for the appellants, which was a case under the Pondicherry General Sales Tax Act, enlightens us that the core of the taxing statute is in the charging Section of the provisions levying such tax and defining persons who are liable to pay such tax. Understandably if the core disappears, the remaining provisions have no application. This is well understood.

The Principal Act, as it originally stood, provided for levy of tax on lands only. It could then have no taint of unconstitutionally and none could be pointed out to us. It is the Amending Act No.15 of 1973 which brought about the questioned changes in Section 3 and 4, which gave the spill as if levy of tax was being made by the State legislature under Entry 86 of List l on the premise that the tax was being made leviable on a person taking into account his total assets in lands and buildings, which taint, as identified, was later withdrawn by Ordinance 6 of 1973/Act 18 of 1973 by causing certain deletions to keep the remainder complete as a code. Thus it is evident that the Principal Act could stand on its own and the amendment caused to it by Amending Act No.l5 of 1973, by itself brought a blot by way of substitution the offending portion of which was later sliced off as much. Nothing was so inextricably mixed up so that the extricable parts were not severable, or that any damage had been occasioned to the left out healthy portion rendering it incomplete. This court in M.P.V.Sundara Ramaiar and Co.vs. State of Andhra Pradesh [l958 SCR 1442] and R.M.D. Chamarbaugwalla vs. Union of India [1957 SCR 930 at page 950] has laid down the principles that in determining whether the valid parts of the statute are separable from its invalid parts, it is the intention of the legislature that is the determining factor. The test to be applied is whether the legislature would have enacted the valid part if it had known that the rest of the statute was invalid. If the valid and invalid provisions are so inextricably mixed up that they cannot be separated from one another, then the invalidity of a portion must result in the invalidity of the Act in its entirety. This Court further took the view that if on the other hand those valid and invalid portions were so distinct and separate that after striking out what is invalid, what is itself a complete code, independent of the rest,then it will be the subsisting object, notwithstanding that the rest has become unenforceable. In the light of the aforesaid principles it is clear that the charging section 3, which to begin with was unquestionably valid, was replaced with the amendment made by Amending Act 15 of 1973, making it in that state unenforceable, but when the unhealthy part was removed by Ordinance 6 of 1973. Amending Act 18 of 1973, Sections 3 and 4 got resuscitated, gaining radiatance, pristinely legislative, its sparkle re-doubled by insertion of Sub- section (1)A to Section 3, so as to remove doubts ever existing regarding levy of tax on buildings and lands. Thus it must be held that the charging Section 3 and the supportive Section 4, as salvaged, are part of a scheme which was within the legislative competence of the Rajasthan State Legislature. The afore-analysis also demolishes the "stillborn" theory because the

Principal Act was by itself a measure existing on the statute book which had life and breath of its own, irrespective of the date of its enforceability having been kept for a future date. It is the Amending Act No.15 of l973 which got to choke its life but before it could die or be declared dead by a court to competent jurisdiction, life was breathed into it by the Amending Ordinance 6 of 1973 and Amending Act 18 of 1973 with retrospective effect in the manner stated above. The cases relied upon - M/s. West Ramnad Electric Distribution Co. Ltd. vs. State of Madras [1963(2) SCR 747] and Mahendra Lal Jaini vs. The State of Uttar Pradesh and others [1963 Supp.(1) SCR 912], would not serve the purpose for which they have been pressed forward by learned counsel for the appellants to incapacitate the State Legislature to correct its own wrongs, well in time and before a judicial verdict.

On the basis of the aforesaid analysis and reasoning the question posed at the outset and the three questions summarized in the written submission, namely:

(i) whether the Amendment Act of 1973 (Rajasthan Act XV to 1973) in pith and substance imposes a tax which is relatable to Entry 86 of List I or Entry 49 of List II?;

(ii) If the Amendment Act of 1973 in pith and substance imposes a tax under Entry 86 of List I and not under Entry 49 of List II, whether the second proviso to Section 3 is severable from the rest of the Act?; and

(iii) Whether the Ordinance VI of 1973 introducing Sub-Section 1(A) to Section 3 would have the effect of retrospectively curing the defect of the Amendment Act of 1973 and thus revives it?, would stand appropriately answered, without further elaboration, in favour of the State of Rajasthan and against the appellants.

No other question was raised besides those afore- referred to.

As a result, these appeals fail and are hereby dismissed with no order as to costs.