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MAHAPALIKA OF CITY OF AGRA

v.

AGRA BRICKKILN OWNERS' ASSOCIATION & ORS.

March 23, 1976

B

[Y. V. CHANDRACHUD AND V. R. KRISHNA IYER, JJ.]

Constitution of India, 1950, *Art.* 276, *Government of India Act,* 1935, *s.* 142*A*(2) *and U.P. Nagar Mahapalika Adhiniyam* (*U.P.* 2 *of* 1959), *s.* 172, *proviso—Scope of.*

In 1947, the State Government issued a notification imposing a tax under s. 128(1)(ii) of the U.P. Municipalities Act, 1916, on brick manufacturers. The affected assessees filed a suit for a declaration that the tax was void and not exigible. The suit was decreed. The appellant appealed to the High Court. By that time the U.P. Nagar Mahapalika Adhiniyam, 1959, had come into force, replacing the 1916-Act. Section 172 of the 1959-Act corresponds to s. 128 of the 1916-Act providing for the levy of various types of taxes on professions, trades and callings. The proviso to s. 172 provided that where *any tax* was being lawfully levied in the area before the commencement of the Constitution, *such tax* may continue to be levied until provision to the contrary is made by Parliament. Construing the proviso, the High Court held that the maximum tax leviable under s. 172(2), after the 1959-Act had come into force on Feb. 1, 1960 was only Rs. 50/- since that was the quantum of tax levied before the commencement of the Constitution. Section 142A(2) of the Government of India Act, 1935, provided that the total amount payable in respect of any one person to any one municipality by way of taxes on professions etc., shall not exceed Rs. 50/- per annum.

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Allowing the appeal of the Mahapalika to this Court in part,

HELD : The period before the Constitution of India had come into force, that is, before January 26, 1950, will be governed by the maximum of Rs. 50/- fixed by the Government of India Act. Article 276 of the Constitution also sets a ceiling on such taxes, but, the maximum is not Rs. 50/- but Rs. 250/-. Therefore, for the period from January 26, 1950, to the date when the 1959-Act came into force, the maximum tax leviable will be Rs. 250/- As regards the period after Feb. 1, 1960, the interpretation put by the High Court on the proviso to s. 172 that it was only the quantum of tax and not its description that was kept alive and that, therefore, the valid tax is only up to the maximum of Rs. 50/- mentioned in s. 142A of the Government of India Act is erroneous. The words 'such tax' in the proviso to s. 172 relates to 'any tax' and saves all species or classes of taxes and does not merely preserve the quantum of rate of such tax. Since the class or species of tax is the correct connotation of the expression 'such tax' and 'any tax' the tax on the trade or calling is saved, and its rate is as fixed in the Notification, subject to a maximum of Rs. 250/-. Therefore, the period after Feb. 1, 1960 will also be controlled by the same constitutional maximum of Rs. 250/-, unless any supervening parliamentary legislation, as contemplated by s. 172 of the 1959-Act, comes into being. [829 B, C, G; 830 D-G]

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2446 of 1969.

Appeal by special leave from the Judgment and Order dated 7th October, 1968 of the Allahabad High Court in S.A. No. 2001/64.

R. N. Sharma and *C. P. Lal* for the Appellant.

B. P. Maheshwari and *Suresh Sethi* for the Respondents.

H

The Judgment of the Court was delivered by

KRISHNA IYER, J.—A crudely drafted plaint, with little legal light to make out a good cause of action, somehow resulted in a decree as

A prayed for at the trial stage and in appeal. But the defendant who is the appellant before us, the Mahapalika of the City of Agra, pursued the matter in Second Appeal where, regardless of the scope of the suit or the precise ground alleged in the plaint, an adverse judgment was rendered affecting the municipality in a general way. Naturally, the appellant Mahapalika has come to this Court by special leave under Art. 136 of the Constitution, overstepping the limits of law, a little, B as will presently appear.

The brief facts necessary to appreciate the contentions on which the High Court has pronounced may now be stated, although, in so doing, we have to depart from the pleadings. Indeed, the questions are of general public importance and so, apart from technical bounds, we proceed to declare the law.

C The Agra Municipal Board was governed by the U.P. Municipalities Act, 1916 (Act II of 1916). In 1947, the State Government issued a notification imposing a tax under s. 128(1)(ii) of the said Act. The levy was on brick manufacturers carrying on that trade, at the rate of 14 annas per 1000 bricks. The brick-kiln owners who were affected, along with their Association, filed a suit for a declaration that the tax was void and not exigible. It may be, stated that, D whatever the reasons urged in the pleadings be, the arguments, purely legal, have turned on the validity of the tax in the light of s. 142(A) of the Government of India Act, 1935 and on Art. 276 of the Constitution of India *vis a vis* the relevant provisions of the two municipal laws and the notification already referred to. One circumstance which occurred after the trial court had decreed the suit deserves to be stated for a comprehension of the High Court's decision. The E U.P. Nagar Mahapalika Adhiniyam, 1959 (U.P. Act II of 1959), came into force on February 1, 1960 repealing and replacing the U.P. Municipalities Act. While the latter Act provided for levy of various types of taxes on professions, trades and callings under s. 128, the former Act which followed, contained a corresponding provision in s. 172 thereof. Thus, today, s. 128 of Act II of 1916 is longer F in force and it is the later Act of 1960 which is extant.

To come to the point straight, there are two questions on which the High Court has decided against the Nagar Mahapalika. This can be understood fully only by a trifurcation by periodisation of the municipal law's operation, viz., the pre-Constitution era and the post-Nagar Mahapalika Act era, with the intervening spell sandwiched in between these two. According to the High Court, the levy of tax G at the rate of 14 annas per 1000 bricks by virtue of the notification Ex. H of September 18, 1947 cannot be sustained to the extent it exceeds Rs. 50/- per person, per annum. The ground given—and, we think, rightly—is that s. 142A(2) of the Government of India Act restricted 'the total amount payable in respect of any one person ... to any one municipality ... by way of taxes on professions, trades, callings and employments, shall not ... exceed Rs. 50/- per annum'. H To the extent to which this ceiling was exceeded, the constitutional provision stood breached by the notification and was void. Therefore, without further argument, the conclusion was reached by the High Court that inevitably the Municipal Board, Agra, could not levy any

amount by way of this tax in excess of Rs. 50/- on any one person per annum'.

The Government of India Act, 1935, certainly set a maximum on the tax on trades and callings and we agree that the High Court was right in holding that the Municipal Board's right to levy tax under the notification Ex. H could be valid only up to Rs. 50/- per year and, to the extent it went beyond that limit, was void. So, we affirm the High Court's holding for the period upto January 26, 1950 that no sum higher than Rs. 50/- as set out in the Government of India Act, 1935 can be exacted under s. 128 of Act II of 1916.

From the Raj to the Republic was a big break in constitutional law, but there was some continuity maintained. A certain ceiling on taxes on professions, trades, callings and employments had been set by Art. 276 of the Constitution of India, but this maximum was not Rs. 50/- as in the Government of India Act, 1935 but Rs. 250/-. We may as well extract sub-cl. (2) of Art. 276, in this context :

> "276. *Taxes on professions, trades, callings and employments.*—
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> (1) ...
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> (2) The total amount payable in respect of any one person to the State or to any one municipality, district board, local board or other local authority in the State by way of taxes on professions, trades, callings and employments shall not exceed two hundred and fifty rupees per annum;
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> Provided that if in the financial year immediately preceding the commencement of this Constitution there was in force in the case of any State or any such municipality, board or authority a tax on professions, trades, callings or employments, the rate, or the maximum rate, of which exceeded two hundred and fifty rupees per annum, such tax may continue to be levied until provision to the contrary is made by Parliament by law, and any law so made by Parliament may be made either generally or in relation to any specified States, municipalities, boards or authorities.
>
> (3) ....."

Inevitably, it follows that during the post-Constitution period nothing by way of taxes on trades or callings above the limit so set is recoverable and hence the maximum levy from each person under the notification issued under Act II of 1916 rises to Rs. 250/-.

A wee-bit twilit area of law, where the High Court has wobbled and gone wrong, if we may say so with respect, relates to the period after the U.P. Nagar Mahapalika Adhiniyam, 1959, came into force. The curious conclusion the learned Single Judge has reached is that since that date i.e. February 1, 1960, there is to be a sudden drop in the maximum tax leviable under s. 172(2) of the Mahapalika Act to Rs. 50/- from Rs. 250/- by a rather strained process of resuscitation of the Government of India Act, 1935.

A We must accept the omnipotence of the Indian Constitution so far as all legislations are concerned, including the municipal laws. Therefore, by the force of this paramountcy we have read down the notification Ex.H to limit the maximum contemplated by it to Rs. 250/-, the ceiling set by Art. 276(2) of the Constitution. But, how can the ghost of the Government of India Act, which died long B ago, revive to haunt the taxing laws of the Republic now and bring down the maximum limit from Rs. 250/- to Rs. 50/-? The learned Judge himself felt that this seemed 'paradoxical', but thought that 'that is the effect of this express and categorical proviso'. What is that proviso. The court had in mind the proviso to s. 172 of the Adhiniyam.

C The view of the High Court stems from a simple misconstruction of the proviso to s. 172 of the Mahapalika Act. The said proviso operates as a saving clause affecting the whole section and may, for facility of making the point, clearly be read here :

"172 ...

D Provided that where any tax was being lawfully levied in the area included in the City immediately before the commencement of the Constitution of India such tax may continue to be levied and applied for the purposes of this Act until provision to the contrary is made by Parliament."

It is plain that 'such tax', in this proviso relates to any tax under s. 172 and saves all species or classes of taxes and does not merely preserve the quantum or rate of such tax. It is typology, not the E amount that is saved. So it follows that the category of tax on trade or calling is salvaged by the proviso and the notification Ex.H. survives. It is clearly erroneous to hold that what is continued is the rate, not the description, of tax. Of course, if only the quantum of tax is kept alive on the wording of the proviso, what remains valid is only upto the maximum mentioned in s. 142A of the Government of India Act, 1935. But if the class or species of tax is the correct con- F notation of the expression 'such tax' and 'any tax'—and we have no hesitation to hold that way in the context, setting and language used—the tax on trade or calling is saved. The rate is as fixed in Exhibit H.

This does not mean that anything beyond Rs. 250/- [the tax freeze under Art. 276(2)] can be levied. No. The constitutional maximum prevails as it covers all taxes on trade or calling even today. Therefore, until Parliament makes any other law, as contemplated in the proviso G to s. 172 of the Adhiniyam, the maximum of Rs. 250/- binds. We have to read down the notification Exhibit H for the post-Constitution period, in tune and conformity with the Constitution and uphold its validity to the extent of constitutional permissibility.

We may thus sum up our conclusion. The period before the Constitution of India came to be enacted, i.e., prior to 26th January H 1950, will be governed by the maximum fixed by the 1935 Act and the Municipal Council of Agra will be entitled to collect tax on trade or calling at the rate fixed in Exhibit H. but subject to the maximum of Rs. 50/- per person, as already explained. For the second period

from the date of the Constitution up to the date of the Mahapalika Act II of 1959, the maximum leviable by way of tax on trade or calling by the Mahapalika will be Rs. 250/- per person. The post-Mahapalika Act period will also be controlled by the same constitutional maximum of Rs. 250/- per person, unless any supervening parliamentary legislation, as contemplated by s. 172 of that Act, comes into being. A

In this view, we allow the appeal in part, i.e., for the period subsequent to the passing of the Mahapalika Act, 1959 and permit the Mahapalika to levy taxes—as per Exhibit H and s. 172, upto a maximum of Rs. 250/. Subject to the extent of this modification, the appeal is allowed. Parties will bear their costs throughout. B

V.P.S. *Appeal partly allowed.*