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State of Assam Vs. Assam Tea Co. Ltd.

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Court : Supreme Court of India

Decided On : Aug-21-1970

Reported in : AIR1971SC1358; (1970)2SCC817; [1971]1SCR931

Judge : A.N. Grover,; J.C. Shah and; K.S. Hegde, JJ.

Acts : Assam Municipal Act, 1923 - Sections 4(1); Assam Municipal (Amendment) Act, 1957 - Sections 4 and 4(1); Assam General Clauses Act, 1915 - Sections 26;

Appeal No. : Civil Appeal No. 435 of 1970

Appellant : State of Assam

Respondent : Assam Tea Co. Ltd.

Advocate for Pet/Ap. : B. Datta, Adv

Prior history : Appeal by special leave from the Judgment Order dated March 28, 1969 of the Assam and Nagaland High Court in Civil Rule No. 183 of 1965.

Judgement :

J.C. Shah, J.

1. The Assam Tea Company Ltd owns tea gardens in the village of Nazira in the State of Assam. By a notification dated June 16, 1909, the Government of Bengal (which then had territorial jurisdiction over the territory now within the State of

Assam) constituted a Town Committee at Nazira adjacent to the tea garden of the Company. In 1923 the Legislature enacted the Assam Municipal Act I of 1923. Section 328 of the Act provided for the Constitution of notified areas. By Sub-section (1) of Section 328 the Provincial Government was authorised by notification, to signify its intention to declare that with respect to some or all of the matters upon which a municipal fund may be expended, improved arrangements are required within a specified area. After issuing such a notification the Government was competent, after six weeks from the date of publication, and after considering the objections, if any, to declare, by notification, the specified area or any portion thereof to be a notified area. Section 4 of the Act authorised the Provincial Government by notification, inter alia, to signify its intention to include within a municipality any local area in the vicinity of the same or exclude from a municipality any local area comprised therein. Any inhabitant of any part of a local area defined in a notification published under Section 4, was entitled by virtue of Section 5 to raise objections to the proposed action. The Government would, after considering the objections, inter alia, include the local area or any part thereof within the municipality or exclude it therefrom. The provisions of Sections 4 and 5 were not of their own force applicable to a notified area constituted under Section 328 but by virtue of Clause (d) of Sub-section (1) of Section 330 it was competent to the Provincial Government to extend to any notified area the provisions of any section of the Act. By Sub-section (3) of Section 330 it was provided :

For the purposes of any section of this Act which may be extended to a notified area, the town committee constituted for such area, under Section 329. shall be deemed to be a Municipal Board under this Act and the area to be a municipality.

Notifications were issued from time to time applying certain provisions of the Assam Municipal Act, 1923. In 1951 the Government of the State of Assam issued a notification applying Sections 4(1) (b) & (c) and 5(1) & (2)(b) of the Assam Municipal Act, 1923 to the notified area committee including the Nazira Town Committee. But no notification under Section 328 of the Assam Municipal Act, 1923 extending the boundaries of the Nazira Town Committee area was issued. In 1957 the Assam Municipal Act, 1923 was repealed and was replaced by the Assam Municipal Act 15 of 1957. On January 6, 1964 notification was issued

under Section 4(1)(b) of Act 15 of 1957 to revise the boundaries of the notified area at Nazira, and thereby included a part of the tea estate belonging to the Assam Tea Co. Ltd. in the Nazira Town Committee area. Objections submitted by the Assam Tea Company Ltd. were considered and overruled and the Government of Assam by notification dated September 30, 1964, incorporated within the Nazira Town Committee area a part of the area of the tea garden belonging to the Company.

2. The Company then filed a petition in the High Court of Assam challenging the validity of the notification. The High Court was of the view that the Company had provided all amenities and facilities which a municipality may provide, and since it did not appear that any 'improved arrangements' could be provided by the Town Committee the notification issued by the Government was 'colourable legislation' and was liable to be struck down insofar as it related to the area of the tea estate belonging to the Company. We have considered in appeal No. 2052 of 1969---State of Assam v. The Amalgamated Tea Estates Co. Ltd. and Ors.--the correctness of this decision and we have rejected it. But Mr. Chagla appearing on behalf of the Company contended that the notification dated January 6, 1964 signifying the intention of the State Government to include the area belonging to the Company withtin the Nazira Town Committee and the final notification dated September 30, 1964, were unauthorised, because the provisions of Sections 4 and 5 of the Assam Municipal Act 15 of 1957 were not extended to the Nazira Town Committee by notification issued under Sub-section (3) of Section 336 of the Assam Municipal Act. Counsel invited our attention to Section 2 of the Assam Municipal Act, 15 of 1957 as originally enacted. By Section 2 of that Act the Assam Municipal Act, 1923 was repealed; and by Clause (b) of the proviso to that section it was provided :

all municipalities constituted, limits defined, regulations and divisions made, licenses and notices issued, taxes, tolls, rates and fees imposed or assessed, budgets passed, assessments made, plans approved, permissions or sanctions granted, under the Assam Municipal Act, 1923, shall so far as they are in force at the commencement of this Act, be deemed to have been respectively constituted, defined, issued, imposed, assessed, passed, made, approved or granted under

this Act, and shall remain in force for the period, if any, for which they were so constituted, defined, issued, imposed, assessed, passed, made, approved or granted.

Counsel said that under the proviso, notifications issued under the Act of 1923 were not saved and it was for the first time by the Amending Act of 1958 that the notifications issued under the Act of 1923 were sought to be saved, notwithstanding the repeal of the Assam Municipal Act of 1923. But no retrospective operation was given to the Amending Act of 1958. Counsel submitted that this attempt on the part of the Legislature to save notifications issued under the Act of 1923 was ineffective. It is true that for the existing Clause (b) of the proviso to Section 2 by the new clause substituted 'all municipalities constituted, limits defined, regulations and divisions made, all rules and bye-laws, notifications, orders, appointments and assessments made, licences and notices issued, taxes, tolls, rates and fees imposed or assessed, budgets passed, plans approved, permissions or sanctions granted, contracts entered into, suits instituted and proceedings taken under the Assam Municipal Act, 1923' are saved from the repeal. But the Amending Act of 1958 came into force on June 13, 1958, when it was published in the Assam Gazette. The attempt to save notifications issued under the Act of 1923 by the Assam Municipal (Amendment) Act 17 of 1958 is therefore ineffective.

3. It is unnecessary to consider whether, as suggested by counsel for the State of Assam, by virtue of Section 336(3) once a notification under Section 4 of the Act of 1923 was issued, for all purposes a Town Committee became a municipality and on that account the notification continued to remain in operation. In our judgment, under the provisions of the Assam General Clauses Act, 1915, Section 26 saves the notification in question. Section 26 provides, inter alia :

Where any enactment is repealed and re-enacted with or without modification, then, unless it is otherwise expressly provided, any appointment, notification, order, scheme, rule, form, or by-law, made or issued under the repealed enactment, shall so far as it is not inconsistent with the provisions re-enacted, continue in force and be deemed to have been made or issued under the

provisions so re-enacted,....

4. There is no express provision in the Act 15 of 1957 which supersedes the notification issued in 1951 under the Act of 1923, nor is the continuance of the notification inconsistent with any provision in the new Act. The notification must, therefore, be deemed to have remained in force and the State Government was competent in exercise of the power conferred upon it by Section 4 of Act 15 of 1957 to include within the area of Town Committee any local area contiguous to the same.

5. We are here dealing only with the validity of the notification: issued by the State Government, and not with the validity of the demand for licence fee or other taxes levied by the notified Town Committee. Nothing in this judgment will affect the right of the Company to challenge the validity of the demand for such taxes in appropriate proceedings.

6. The appeal is allowed and the order passed by the High Court is set aside. The petition is dismissed with costs throughout. In all these three appeals there will be one hearing fee.

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