

SHRI PRITHVI COTTON MILLS LTD. & ANR.

v.

BROACH BOROUGH MUNICIPALITY & ORS.

April 25, 1969

[M. HIDAYATULLAH, C.J., J. M. SHELAT, V. BHARGAVA,
K. S. HEGDE AND A. N. GROVER, JJ.]

Bombay Municipal Boroughs Act, 1925, s. 73—Levy of 'rate' on tax and buildings—'Rate' held not to include tax on capital value or percentage of capital value—Defect sought to be removed by Gujarat Imposition of Taxes by Municipalities (Validation) Act, 1963—Enactment of s. 99 of Gujarat Municipalities Act to give power to municipalities to levy tax on capital value or percentage of capital value of lands and buildings—Power of State Legislature under item 49 List II of Seventh Schedule to Constitution levy tax on capital value of buildings—Efficacy of Validation Act—Principles on which retrospective validation can be upheld..

Section 73 of the Bombay Municipal Boroughs Act, 1925 allows the municipality to levy 'a rate on building or lands or both situate within the municipality'. The Rules under the Act applied the rates on the basis of the percentage on the capital value of lands and buildings. In *Patel Gordhandas Hargovindas v. Municipal Commissioner, Ahmedabad*, [1964] 2 S.C.R. 608 this Court held that the term 'rate' must be given the special meaning it had acquired in English law and must be confined to an impost on the basis of the annual letting value; it could not be validly levied on the basis of capital value though capital value could be used for the purpose of working out the annual letting value. Faced with this decision the Gujarat Legislature passed the Gujarat Imposition of Taxes by Municipalities (Validation) Act, 1963. By s. 3 of this Act past assessment and collection of 'rate' on lands and buildings on the basis of capital value or a percentage of capital value was declared valid despite any judgment of a court or Tribunal to the contrary, and future assessment and collection on the basis of capital value for the period before and after the Validation Act was authorised. At the same time s. 99 was enacted in the Gujarat Municipalities Act to provide for the levy of a tax on lands and buildings "to be based on the annual letting value or the capital value or a percentage of capital value of the buildings or lands or both."

Appellant No. 1 was a company carrying on the manufacturers of cotton goods at Broach. It was assessed for the assessment years 1961-62, 1962-63 and 1963-64 to a rate on lands and buildings under s. 73 of the Bombay Municipal Boroughs Act on the basis of a percentage of the capital value. It filed writ petitions in the High Court challenging the said assessments. After the Validation Act of 1963 was passed it amended the petitions to challenge the validity and efficaciousness of s. 3 of the said Act. The High Court dismissed the writ petitions. Appeals with certificate were filed before this Court.

HELD : (i) When a legislature sets out to validate a tax declared by a court to be illegally collected under an ineffective or invalid law, the cause for ineffectiveness or invalidity must be removed before validation can be said to take place effectively. The most important condition is that the legislature must possess the power to impose the tax, for if it does not, the action must ever remain ineffective and illegal. Granted legislative competence it is not sufficient to declare merely that the decision of the

- A court shall not bind, for that is tantamount to reversing the decision in exercise of judicial power which the legislature does not possess or exercise. A Court's decision must always bind unless the conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances. [392 H-393 B]

- B Ordinarily, a court holds a tax to be invalidly imposed because the power to tax is wanting or the statute or the rules or both are invalid or do not sufficiently create jurisdiction. Validation of a tax so declared illegal may be done only if the grounds of illegality or invalidity are capable of being removed and are in fact removed and the tax thus made legal. Sometimes this is done by providing for jurisdiction where jurisdiction has not been properly invested before. Sometimes this is done by re-enacting retrospectively a valid and legal taxing provision and then by fiction making the tax already collected to stand under the re-enacted law. Sometimes the legislature gives it own meaning and interpretation of the law under which the tax was collected and by legislative fiat makes the new meaning binding on courts. The legislature may follow any one method or all of them and while it does so it may neutralise the effect of the earlier decision of the court which becomes ineffective after the change of the law. [393B-D]

- D Whichever method is adopted it must be within the competence of the legislature and legal and adequate to attain the object of validation. If the legislature has the power over the subject-matter and competence to make a valid law, it can at any time make such a valid law and make it retrospectively so as to bind even past transaction. The validity of a Validating law, therefore, depends upon whether the legislature possesses the competence which it claims over the subject-matter and whether in making the validation it removes the defect which the courts had found in the existing law and makes adequate provisions in Validating law for a valid imposition of the tax. [393D-F]

- E (ii) After this Court's decision in *Sudhir Chandra Nawn's* case it could no longer be questioned that the State Legislature had power under entry 49 of List II of the Seventh Schedule to the Constitution to levy a tax on the capital value of lands and buildings. It was open to the State legislature to authorise the municipality to levy the same tax indicating the mode of levy. This the legislature had done by enacting s. 99 of the Gujarat Municipalities Act and by indicating the different modes which may be adopted in making the levy, one such mode being a percentage of the capital value. [394C-E]

Sudhir Chandra Nawn v. Wealth-tax Officer, Calcutta, A.I.R. 1969 S.C. 59, applied.

- G (iii) The legislature by the Validation Act provided for the following matters. First, it stated that no tax or rate by whichever name called and laid on the capital value of lands and buildings must be deemed to be invalidly assessed, imposed, collected or recovered simply on the ground that a rate is based on the annual letting value. Next it provided that the tax must be deemed to be validly assessed, imposed, collected or recovered and the imposition must be deemed to be always so authorised. The legislature by this enactment retrospectively imposed the tax on lands and buildings based on their capital value and as the tax was already imposed, levied and collected on that basis, made the imposition, levy collection and recovery of the tax valid, notwithstanding the declaration by the court that 'as rate', the levy was incompetent. The legislature not only equated the tax collected to a tax on lands and buildings which it had the power to levy, but also to a rate giving a new meaning to the word 'rate'

and while doing so it put out of action the effect of the decisions of the courts to the contrary. The exercise of power by the legislature was valid because the legislature does possess the power to levy a tax on lands and buildings based on capital value thereof and in validating the levy on that basis, the implication of the word 'rate' could be effectively removed and the tax on lands and buildings imposed instead. The tax therefore could no longer be questioned on the ground that s. 73 spoke of a rate and the imposition was not a rate as properly understood but a tax on capital value. [394F-395E]

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 2197 and 2198 of 1966.

Appeals from the judgment and decree dated September 10, 1966 of the Gujarat High Court in Special Civil Applications Nos. 846 of 1963 and 765 of 1964.

A. K. Sen, A. K. Verma, D. Datta and Ravinder Narain, for the appellants (in both the appeals).

M. C. Chagla and I. N. Shroff, for the respondents Nos. 1 and 2 (in both the appeals).

B. Sen and S. P. Nayar, for respondent No. 3 (in both the appeals).

The Judgment of the Court was delivered by

Hidayatullah, C.J. These matters arise under Art. 226 of the Constitution and are appeals by certificate granted by the High Court of Gujarat against its judgment and order, September 10, 1966. The appellant No. 1 is a Company which has spinning and weaving mills at Broach and manufactures and sells cotton yarn and cloth. Respondent No. 1 is the Broach Borough Municipality constituted under s. 8 of the Bombay Municipal Boroughs Act, 1925. In the assessments years 1961-62, 1962-63 and 1963-64 the Municipality purporting to act under s. 73 of the Bombay Municipal Boroughs Act, 1925 and the Rules made thereunder imposed a purported rate on lands and buildings belonging to the respondent at a certain percentage of the capital value. Section 73 of the Act allows the Municipality to levy "a rate on buildings or lands or both situate within the municipal borough". The Rules under the Act applied the rates on the basis of the percentage on the capital value of lands and buildings. The assessments lists were published and tax was imposed according to the rates calculated on the basis of the capital value of the property of the appellant and bills in respect of the tax were served. The writ petitions were filed to question the assessment and to get the assessment cancelled.

During the pendency of the writ petitions the legislature of Gujarat passed the Gujarat Imposition of Taxes by Municipalities (Validation) Act, 1963. As a result the writ petitions were amen-

A ded and the Validation Act was also questioned. The appellants also filed a second writ petition questioning the validity of the Validation Act under Arts. 19(1)(f), (g) and 265 of the Constitution. By the order under appeal here both the writ petitions were dismissed although a certificate of fitness was granted.

B The Validation Act was presumably passed because of the decision of this Court reported in *Patel Gordhandas Hargovindas v. Municipal Commissioner, Ahmedabad*⁽¹⁾. In that case the validity of the Rules framed by the Municipal Corporation under s. 73 were called in question, particularly Rule 350A for rating open lands which provides that the rate on the area of open lands shall be levied at 1 per centum on the valuation based upon capital value.

C Dealing with the word 'rate' as used in these statutes, it was held by this Court that the word 'rate' had acquired a special meaning in English legislative history and practice and also in Indian legislation and it meant a tax for local purposes imposed by local authorities. The basis of such tax was the annual value of the lands or buildings. It was discussed in the case that there were three methods by which the rates could be imposed : the first was to take into account the actual rent fetched by the land or building where it was actually let the second was, where it was not let, to take rent based on hypothetical tenancy, particularly in the case of buildings; and the third was where neither of these two modes was available, by valuation based on capital value from which annual value had to be found by applying suitable percentage which might not be the same for lands and buildings.

E It was held that in s. 73 the word 'rate' as used must have been used in the special sense in which the word was understood in the legislative practice of India before that date. Rule 350A which laid the rate on land at a percentage of the valuation based upon capital was therefore declared *ultra vires* the Act itself.

F In short, the word 'rate' was given a specialised meaning and was held to mean a kind of imposition the annual letting value of property, if actually let out, and on a notional letting value if the property was not let out. The legislature of Gujarat then passed the Validation Act seeking to validate the imposition or the tax as well as to avoid any future interpretation of the Act on the lines on which Rule 350A was construed. The Act came into force on January 29, 1964. After defining the expressions used in the Act and providing for its application, the Act enacted s. 3 which concerned validation of impositions and collections of taxes or rates by Municipalities in certain cases. That section reads as follows :

H "3. Validation of imposition and collection of taxes or rates by municipalities in certain cases.

(1) [1954] 2 S.C.R. 608.

Notwithstanding anything contained in any judgment, decree or order of a Court or Tribunal or any other authority, no tax or rate assessed or purporting to have been assessed by a municipality under the relevant municipal law or any rules made thereunder on the basis of the capital value of a building or land, as the case may be, or on the basis of a percentage of such capital value, and imposed, collected or recovered by the municipality at any time before the commencement of this Act shall be deemed to have been invalidly assessed, imposed, collected or recovered by reason of the assessment being based on the capital value or the percentage of the capital value, and not being based on the annual letting value, of the building or land, as the case may be, and the imposition, collection and recovery of the tax or rate so assessed and the provisions of the rules made under the relevant municipal law under which the tax or rate was so assessed shall be valid and shall be deemed always to have been valid and shall not be called in question merely on the ground that the assessment of the tax or rate on the basis of the capital value of the building or land, as the case may be, or on the basis of a percentage of such capital value was not authorised by law; and accordingly any tax or rate, so assessed before the commencement of this Act and leviable for a period prior to such commencement but not collected or recovered before such commencement, may be collected and recovered in accordance with the relevant municipal law, and the rules made thereunder."

If this section is valid then the imposition cannot be questioned and the short question which arises in this case is as to the validity of this section. It is not denied that a legislature does possess the power to validate statutes and to pass retrospective laws. It is, however, contended that the Validation Act is ineffective in carrying out its avowed object. This is the only point which falls for consideration in these appeals.

Before we examine s. 3 to find out whether it is effective in its purpose or not we may say a few words about validating statutes in general. When a legislature sets out to validate a tax declared by a court to be illegally collected under an ineffective or an invalid law, the cause for ineffectiveness or invalidity must be removed before validation can be said to take place effectively. The most important condition, of course, is that the legislature must possess the power to impose the tax, for, if it does not, the action must ever remain ineffective and illegal. Granted legis-

- A lative competence, it is not sufficient to declare merely that the decision of the Court shall not bind for that is tantamount to reversing the decision in exercise of judicial power which the legislature does not possess or exercise. A court's decision must always bind unless the conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances. Ordinarily, a court holds a tax to be invalidly imposed because the power to tax is wanting or the statute or the rules or both are invalid or do not sufficiently create the jurisdiction. Validation of a tax so declared illegal may be done only if the grounds of illegality or invalidity are capable of being removed and are in fact removed and the tax thus made legal. Sometimes this is done by providing for jurisdiction where jurisdiction had not been properly invested before. Sometimes this is done by re-enacting retrospectively a valid and legal taxing provision and then by fiction making the tax already collected to stand under the re-enacted law. Sometimes the legislature gives its own meaning and interpretation of the law under which the tax was collected and by legislative fiat makes the new meaning binding upon courts. The legislature may follow any one method or all of them and while it does so it may neutralise the effect of the earlier decision of the court which becomes ineffective after the change of the law. Whichever method is adopted it must be within the competence of the legislature and legal and adequate to attain the object of validation. If the legislature has the power over the subject-matter and competence to make a valid law, it can at any time make such a valid law and make it retrospectively so as to bind even past transactions. The validity of a Validating law, therefore, depends upon whether the legislature possesses the competence which it claims over the subject-matter and whether in making the validation it removes the defect which the courts had found in the existing law and makes adequate provisions in the Validating law for a valid imposition of the tax.

The inquiry in this case may begin by asking whether the legislature possesses competence to pass a law imposing a tax on lands and buildings on the basis of a percentage of their capital value. If the legislature possesses that power then it can authorise the Municipality to levy that tax. To test the proposition we may consider s. 99 which has now been enacted in the Gujarat Municipalities Act. It reads :

"99. Taxes which may be imposed.

- (1) Subject to any general or special orders which the State Government may make in this behalf and to the provisions of sections 101 and 102, a municipality may impose for the purposes of this Act any of the following taxes, namely :—

(i) a tax on buildings or lands situate within the municipal borough to be based on the annual letting value or the capital value or a percentage of capital value of the buildings or lands or both;

Learned counsel for the appellants did not contend that this section was outside the powers of the legislature. In fact, he could not, in view of entry 49 of List II of the Seventh Schedule to the Constitution. That entry reads: "Taxes on lands and buildings" and a tax on lands and buildings based upon capital value falls squarely within the entry. The doubt which is created by entry 86 of List I "Taxes on the capital value of assets", no longer exists after the decision of this Court in *Sudhir Chandra Nawn v. Wealth-Tax Officer, Calcutta*⁽¹⁾. In that case the respective ambits of the two entries are explained. It is pointed out that unlike the tax contemplated by entry 49 (List II) the tax under entry 86 (List I) is not a direct tax on lands and buildings but on net assets, the components of which may be lands and buildings and other items of assets excluding such liabilities as may exist. The incidence of the tax is not on lands and buildings as units of taxation but on the net assets of which lands and buildings are only some of the components. This is not the case under entry 49 (List II) where the tax can be laid directly on lands and buildings as units of taxation. Therefore, a tax on lands and buildings is fully within the competence of the legislature and it is open to it to authorise the municipality to levy the same tax indicating the mode of levy. This the legislature has done by indicating the different modes which may be adopted in making the levy, one such mode being a percentage of the capital value.

The legislature in s. 73 had not authorised the levy of a tax in this manner but had authorised the levy of a rate. That led to the discussion whether a rule putting the tax on capital value of buildings answered the description of the impost in the Act, namely, 'a rate on buildings or lands or both situate within the Municipal borough'. It was held by this Court it did not, because the word 'rate' had acquired a special meaning in legislative practice. Faced with this situation the legislature exercised its undoubted powers of redefining 'rate' so as to equate it to a tax on capital value and convert the tax purported to be collected as a 'rate' into a tax on lands and buildings. The legislature in the Validation Act, therefore, provided for the following matters. First, it stated that no tax or rate by whichever name called and laid on the capital value of lands and buildings must be deemed

(1) A-I.R. 1969 S.C. 59.

- A** to be invalidly assessed, imposed, collected or recovered simply on the ground that a rate is based on the annual letting value. Next it provided that the tax must be deemed to be validly assessed, imposed, collected or recovered and imposition must be deemed to be always so authorised. The legislature by this enactment retrospectively imposed the tax on lands and buildings based
- B** on their capital value and as the tax was already imposed, levied and collected on that basis, made the imposition, levy collection and recovery of the tax valid, notwithstanding the declaration by the Court that as 'rate', the levy was incompetent. The legislature not only equated the tax collected to a tax on lands and buildings, which it had the power to levy, but also to
- C** a rate giving a new meaning to the expression 'rate', and while doing so it put out of action the effect of the decisions of the courts to the contrary. The exercise of power by the legislature was valid because the legislature does possess the power to levy a tax on lands and buildings based on capital value thereof and in validating the levy on that basis, the implication of the use of the word 'rate' could be effectively removed and the tax on lands
- D** and buildings imposed instead. The tax, therefore, can no longer be questioned on the ground that s. 73 spoke of a rate and the imposition was not a rate as properly understood but a tax on capital value. In this view of the matter it is hardly necessary to invoke the 14th clause of s. 73 which contains a residuary power to impose any other tax not expressly mentioned.

E In our judgment these appeals possess no merits after the passing of the Validation Act and must be dismissed but in the circumstances without any order about costs.

G.C.

Appeals dismissed.