

PETITIONER:
STATE OF ASSAM

Vs.

RESPONDENT:
ASSAM TEA CO. LTD.

DATE OF JUDGMENT:
21/08/1970

BENCH:
SHAH, J.C.
BENCH:
SHAH, J.C.
HEGDE, K.S.
GROVER, A.N.

CITATION:
1971 AIR 1358 1971 SCR (1) 631

ACT:
Assam General Clauses Act (2 of 1915), s. 26--Notification issued under Assam Municipal Act, 1923--1923-Act repealed and Assam Municipal Act, 1957, enacted--Whether notification under 1925-Act deemed to be in force under 1957-Act.

HEADNOTE:
Under ss.4 and 5 of the Assam Municipal Act, 1923, the Provincial Government was authorised to signify its intention to include within a municipality any local area in its vicinity, and, after considering any objections to the proposed action to so include the area. Section 328 provided for the constitution of notified areas. Sections 4 and 5 were not applicable to a notified area but the Provincial Government could extend to any notified area any section of the Act by virtue of s. 330(1)(d). Under s. 330(3), for the purpose of any section so extended, the town committee constituted for such notified area would be deemed to be a Municipal Board. In 1957, the 1923-Act was repealed and was replaced by the Assam Municipal Act, 1957. The respondent owned tea gardens in the village of Nazira. In 1909, a town committee was constituted at Nazira adjacent to the tea garden. In 1951, by a notification issued by the Government of Assam, s.4(1)(b) and (c), and s.5(1) and (2)(b) of the 1923-Act were extended to the notified area committee including the Nazira Town Committee. On January 6, 1964, a notification was issued under the 1957 Act to revise the boundaries of the notified area at Nazira, and after considering the objections of the respondent on September 30, 1964, by a final notification, a part of its tea estate was incorporated within the Nazira Town Committee. On the question whether notifications dated January 6, 1964 and September 30, 1964 were unauthorised, because, ss. 4 and 5 of 1957-Act, corresponding to ss. 4 and 5 of the 1923-Act, were not extended to the notified area on these dates, HELD : There is no express provision in the 1957 Act which supersedes the notification issued in 1951 under the 1923-Act nor is the continuance of the notification inconsistent with any provision in the 1957-Act. Therefore, under s. 26 of the Assam General Clauses Act, 1915, the 1951

notification continues in force and must be deemed to have been issued under the 1957-Act. Hence, the State Government was competent, in exercise of the power conferred upon it by the 1957-Act, to include within the area of the Town Committee any local area contiguous to it. [934 H; 935 A]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 435 of 1970. Appeal by special leave from the judgment and order dated March 28, 1969 of the Assam and Nagaland High Court in Civil Rule No. 183 of 1965.

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Naunit Lal, for the appellant.

M. C. Chagla, P. K. Goswami and R. Gopalakrishnan, for the respondent.

B. Datta, for the intervener.

The Judgment of the Court was delivered by Shah J. 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 1 of 1923. Section 328 of the Act provided for the constitution of notified areas. By sub-s. (1) of s. 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 S. 4, was entitled by virtue of s. 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 ss. 4 and, 5 were not of their own force applicable to a notified area constituted under S. 328 but by virtue of cl. (d) of, sub-s. (1) of s. 330 it was competent to the Provincial Government to extend to any notified area the provisions of any section of the Act. By sub-s. (3) of s. 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 ss. 4(1)

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(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 s. 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 S. 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.

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. & 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 with in the Nazira Town Committee and the final notification dated September 30, 1964, were unauthorised, because the provisions of ss. 4 and 5 of the Assam Municipal Act 15 of 1957 were not extended to the Nazira Town Committee by notification issued under sub-s. (3) of s. 336 of the Assam Municipal Act. Counsel invited our attention to S. 2 of the Assam Municipal Act, 15 of 1957 as originally enacted. By S. 2 of that Act the Assam Municipal Act, 1923 was repealed; and by cl. (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

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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 cl. (b) of the proviso to S. 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.

It is unnecessary to consider whether, as suggested by counsel for the State of Assam, by virtue of s. 3 3 6 (3) once a notification under s. 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, s. 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 reenacted.....

There is no express provision in the Act 15 of 1957 which supersedes the notification issued in 1995 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 s. 4 of Act 15 of 1957

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to include within the area of Town Committee any local area contiguous to the same.

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.

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.

V.P.S.

Appeal allowed-

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JUDIS