REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1921 OF 2006

Nagar Palika Nigam ..Appellant

versus

Krishi Upaj Mandi Samiti and Ors. ..Respondents

J U D G M E N T

Dr. ARIJIT PASAYAT, J.

1. A Bench of two learned Judges being of the view that one of the questions which is interlinked with the interpretation of Section 9(3) of Madhya Pradesh Krishi Upaj Mandi Adhiniyam, 1972 (in short the 'Adhiniyam') would be whether having regard to the provisions contained in Part IXA of the Constitution of India, 1950 (in short the 'Constitution') the Legislature of the State of M.P. had the requisite legislative competence therefor. Respondent No.1 filed a writ petition before the Madhya Pradesh High Court under Article 226 of the Constitution with basically two prayers. They are as under:

> "(1) The respondent No.1-Municipal Corporation, Ratlam has no jurisdiction or right to claim the property tax from the petitioner for the building and the superstructure constructed in the Market Yard within the area of Municipal Corporation, Ratlam.
>
> (2) That the amount of Rs.70,000/- which has been deposited by the petitioner with respondent No.1 pursuant to the notice and auction proceedings initiated against the petitioner should be directed to be refunded to the petitioner. Interest on the said amount is also being claimed."

2. With reference to Section 9(3) of the Adhiniyam it was submitted that exemption had been provided on the property on which no property tax could be levied even if the same falls within the area of Municipal Corporation, Municipal Council, Notified Area, Gram Panchayat or a Special Area Development Authority. Learned Single Judge accepted the first prayer, but permitted the respondent-writ petitioner to avail such remedy as is available by filing a civil suit in respect of second prayer.

3. Review petition was filed by the present appellant which was dismissed. A Letters Patent Appeal was also filed, which was dismissed on the ground that the same was not maintainable against an order passed in the review petition. The appeal was also without merit.

4. The basic stand in the appeal was whether the Corporation had jurisdiction and authority to assess and recover the property tax from respondent No.1 for the buildings, superstructure constructed in the market yard within the area of Municipal Corporation, Ratlam.

5. During the course of hearing of the appeal, learned counsel for the appellant fairly accepted that there was no challenge to the proviso appended to sub-section (3) of Section 9 of the Adhiniyam. It is also fairly accepted that the proviso casts out an exception.

6. Learned counsel for the respondents on the other hand submitted that in the absence of a challenge to the legality of the proviso, there is no question of adjudicating the issue which the reference Bench has considered to be of importance.

7. Section 9(3) of the Adhiniyam so far as relevant reads as under:

> "(3) Nothing contained in the Madhya Pradesh Land Revenue Code, 1959 (No.20 of 1959), and rules made thereunder in so far as they relate to diversion of land, revision of land revenue consequent on the change in the use of land from agriculture to any other purpose and other matters incidental thereto shall apply to land acquired by the market committee under sub-section (1) or acquired by transfer, purchase gift or otherwise and use for the purpose of establishment of a market yard or a sub-market yard:
>
> Provided that the premises used for market yard, sub-market yard or for the purpose of the Board shall not be deemed to be included in the limits of the Municipal Corporation, Municipal Council, Notified Area, Gram Panchayat or a Special Area Development Authority, as the case may be."

8. The normal function of a proviso is to except something out of the enactment or to qualify something enacted therein which but for the proviso would be within the purview of the enactment. As was stated in Mullins v. Treasurer of Survey [1880 (5) QBD 170], (referred to in Shah Bhojraj Kuverji Oil Mills and Ginning Factory v. Subhash Chandra Yograj Sinha (AIR 1961 SC 1596) and Calcutta Tramways Co. Ltd. v. Corporation of Calcutta (AIR 1965 SC 1728); when one finds a proviso to a section the natural presumption is that, but for the proviso, the enacting part of the section would have

included the subject matter of the proviso. The proper function of a proviso is to except and to deal with a case which would otherwise fall within the general language of the main enactment and its effect is confined to that case. It is a qualification of the preceding enactment which is expressed in terms too general to be quite accurate. As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment and ordinarily, a proviso is not interpreted as stating a general rule. "If the language of the enacting part of the statute does not contain the provisions which are said to occur in it you cannot derive these provisions by implication from a proviso." Said Lord Watson in West Derby Union v. Metropolitan Life Assurance Co. (1897 AC 647) (HL). Normally, a proviso does not travel beyond the provision to which it is a proviso. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other. (See A.N. Sehgal and Ors. v. Raje Ram Sheoram and Ors. (AIR 1991 SC 1406), Tribhovandas Haribhai Tamboli v. Gujarat Revenue Tribunal and Ors. (AIR 1991 SC 1538) and Kerala State Housing Board and Ors. v. Ramapriya Hotels (P)Ltd. and Ors. (1994 (5) SCC 672).

9. "This word (proviso) hath divers operations. Sometime it worketh a qualification or limitation; sometime a condition; and sometime a covenant" (Coke upon Littleton 18th Edition, 146)

10. "If in a deed an earlier clause is followed by a later clause which destroys altogether the obligation created by the earlier clause, the later clause is to be rejected as repugnant, and the earlier clause prevails....But if the later clause does not destroy but

only qualifies the earlier, then the two are to be read together and effect is to be given to the intention of the parties as disclosed by the deed as a whole" (per Lord Wrenbury in Forbes v. Git [1922] 1 A.C. 256).

11. A statutory proviso "is something engrafted on a preceding enactment" (R. v. Taunton, St James, 9 B. & C. 836).

12. "The ordinary and proper function of a proviso coming after a general enactment is to limit that general enactment in certain instances" (per Lord Esher in Re Barker, 25 Q.B.D. 285).

13. A proviso to a section cannot be used to import into the enacting part something which is not there, but where the enacting part is susceptible to several possible meanings it may be controlled by the proviso (See Jennings v. Kelly [1940] A.C. 206).

14. The above position was noted in Ali M.K. & Ors. v. State of Kerala and Ors. (2003 (4) SCALE 197).

15. It is well settled principle in law that the Court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the Legislature. The language employed in a statute is the determinative factor of legislative intent.

16. Words and phrases are symbols that stimulate mental references to referents. The object of interpreting a statute is to ascertain the intention of the Legislature enacting it.

(See Institute of Chartered Accountants of India v. M/s Price Waterhouse and Anr. (AIR 1998 SC 74)) The intention of the Legislature is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said. As a consequence, a construction which requires for its support, addition or substitution of words or which results in rejection of words as meaningless has to be avoided. As observed in Crawford v. Spooner (1846 (6) Moore PC 1), Courts, cannot aid the Legislatures' defective phrasing of an Act, we cannot add or mend, and by construction make up deficiencies which are left there. (See The State of Gujarat and Ors. v. Dilipbhai Nathjibhai Patel and Anr. (JT 1998 (2) SC 253)). It is contrary to all rules of construction to read words into an Act unless it is absolutely necessary to do so. (See Stock v. Frank Jones (Tiptan) Ltd. (1978 1 All ER 948 (HL). Rules of interpretation do not permit Courts to do so, unless the provision as it stands is meaningless or of doubtful meaning. Courts are not entitled to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself. (Per Lord Loreburn L.C. in Vickers Sons and Maxim Ltd. v. Evans (1910) AC 445 (HL), quoted in Jamma Masjid, Mercara v. Kodimaniandra Deviah and Ors.(AIR 1962 SC 847).

17. The question is not what may be supposed and has been intended but what has been said. "Statutes should be construed not as theorems of Euclid". Judge Learned Hand said, "but words must be construed with some imagination of the purposes which lie behind them". (See Lenigh Valley Coal Co. v. Yensavage 218 FR 547). The view was re-iterated in Union of India and Ors. v. Filip Tiago De Gama of Vedem Vasco De Gama (AIR 1990 SC 981).

18. In Dr. R. Venkatchalam and Ors. etc. v. Dy. Transport Commissioner and Ors. etc. (AIR 1977 SC 842), it was observed that Courts must avoid the danger of a priori determination of the meaning of a provision based on their own pre-conceived notions of ideological structure or scheme into which the provision to be interpreted is somewhat fitted. They are not entitled to usurp legislative function under the disguise of interpretation.

19. While interpreting a provision the Court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary. (See Commissioner of Sales Tax, M.P. v. Popular Trading Company, Ujjain (2000 (5) SCC 515). The legislative casus omissus cannot be supplied by judicial interpretative process.

20. Two principles of construction – one relating to casus omissus and the other in regard to reading the statute as a whole – appear to be well settled. Under the first principle a casus omissus cannot be supplied by the Court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself but at the same time a casus omissus should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the Legislature. "An intention to produce an unreasonable result", said Danackwerts, L.J. in Artemiou v.

Procopiou (1966 1 QB 878), "is not to be imputed to a statute if there is some other construction available". Where to apply words literally would "defeat the obvious intention of the legislature and produce a wholly unreasonable result" we must "do some violence to the words" and so achieve that obvious intention and produce a rational construction. (Per Lord Reid in Luke v. IRC (1966 AC 557) where at p. 577 he also observed: "this is not a new problem, though our standard of drafting is such that it rarely emerges".

21. It is then true that, "when the words of a law extend not to an inconvenience rarely happening, but due to those which often happen, it is good reason not to strain the words further than they reach, by saying it is casus omissus, and that the law intended quae frequentius accidunt." "But," on the other hand, "it is no reason, when the words of a law do enough extend to an inconvenience seldom happening, that they should not extend to it as well as if it happened more frequently, because it happens but seldom" (See Fenton v. Hampton 11 Moore, P.C. 345). A casus omissus ought not to be created by interpretation, save in some case of strong necessity. Where, however, a casus omissus does really occur, either through the inadvertence of the legislature, or on the principle quod semel aut bis existit proetereunt legislators, the rule is that the particular case, thus left unprovided for, must be disposed of according to the law as it existed before such statute - Casus omissus et oblivioni datus dispositioni communis juris relinquitur; "a casus omissus," observed Buller, J. in Jones v. Smart (1 T.R. 52), "can in no case be supplied by a court of law, for that would be to make laws."

22. The golden rule for construing wills, statutes, and, in fact, all written instruments has been thus stated: "The grammatical and ordinary sense of the words is to be adhered to unless that would lead to some absurdity or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity and inconsistency, but no further" (See Grey v. Pearson 6 H.L. Cas. 61). The latter part of this "golden rule" must, however, be applied with much caution. "if," remarked Jervis, C.J., "the precise words used are plain and unambiguous in our judgment, we are bound to construe them in their ordinary sense, even though it lead, in our view of the case, to an absurdity or manifest injustice. Words may be modified or varied where their import is doubtful or obscure. But we assume the functions of legislators when we depart from the ordinary meaning of the precise words used, merely because we see, or fancy we see, an absurdity or manifest injustice from an adherence to their literal meaning" (See Abley v. Dale 11, C.B. 378).

23. At this juncture, it would be necessary to take note of a maxim "Ad ea quae frequentius accidunt jura adaptantur" (The laws are adapted to those cases which more frequently occur).

The above position was highlighted in Maulavi Hussein Haji Abraham Umarji v. State of Gujarat (2004 (6) SCC 672).

24. Since there was no challenge at any point of time by the appellant to the proviso to sub-section (3) of Section 9 on the alleged ground of lack of legislative competence,

obviously the High Court could not have dealt with that issue. Till now also, no such challenge has been made by the appellant. That being so, we find no scope for interference with the order passed by the High Court. In the circumstances indicated above, there is no need to answer the reference made. If and when challenge is made to the legislative competence to enact proviso to sub-Section (3) of Section 9, it goes without saying, the same shall be considered in its proper perspective and in accordance with law.

25. The appeal is disposed of without any order as to costs.

.....J.
(Dr. ARIJIT PASAYAT)

.....J.
(P. SATHASIVAM)

.....J.
(AFTAB ALAM)

New Delhi
October 14, 2008