

CASE NO.:
Appeal (civil) 11299-11301 of 1995

PETITIONER:
Rama Talkies & Ors.

RESPONDENT:
Government of A.P. & Anr.

DATE OF JUDGMENT: 01/11/2002

BENCH:
N Santosh Hegde & B P Singh.

JUDGMENT:
J U D G M E N T

(With CA Nos.11302-03/95)

SANTOSH HEGDE, J.

Having failed in their endeavour to question successfully the validity of the Andhra Pradesh Entertainments Tax (Second Amendment) Act, 1988 inserting Explanation-II in Section 4 of the Andhra Pradesh Entertainments Tax Act, 1939 before the High Court of Judicature Andhra Pradesh at Hyderabad, the appellants are before us in these appeals by way of special leave. The main contention urged on behalf of the appellants by Ms. K. Amareshwari, learned senior counsel, is that the respondent-State could not have collected entertainment tax from the appellants at a rate which is applicable to cinema theatres situated in the area administered by a Municipality because the State Government under the Municipalities Act had not issued any notification equating the respective areas in which appellants' cinema theatres are situated, with a Municipality. It is the contention of the appellants that in the absence of any such Gazetted Notification the State has no authority to collect the entertainment tax at a higher rate. This argument of the appellants was rejected by the High Court on the ground that this was a question which was available to the appellants to be urged in an earlier writ petition filed by them and that having not been done, the appellants are barred by the principle of constructive res judicata from raising such a contention in the subsequent writ petitions.

In this appeal, we need not go to that question because it is pointed out by Mr. G Prabhakar, learned counsel for the State of Andhra Pradesh, that in fact such a Notification as stated by the appellants, was issued by the State Government as could be seen from G.O.Ms.274, M.A. Health and Municipal Administration Department, dated 29th March, 1971 which was in regard to Kothagudem notified area. Learned counsel for the State urges similar notifications are there in regard to other areas involved in these appeals. A perusal of this notification shows that the State Government has, exercising the power under Section 389-A of the Andhra Pradesh Municipalities Act, 1965, issued the above notification wherein Kothagudem and other areas found in the different notifications have been equated to that of a first grade municipality in the State, and the said notification has been Gazetted in the Gazette Extraordinary issued by the Andhra Pradesh Government published on 31.3.1971. In view of the above factual position, we are unable to accept the argument addressed on behalf of the appellants.

We also find no merit in the next argument addressed on behalf of the appellants in regard to the retrospective effect of the levy. We find in these appeals there is no challenge to the constitutionality of the levy. The limited challenge is based on the fact that without proper notification under the municipality's Act, the levy could not be imposed. That argument of want of notification, we have rejected on facts if that be so levy being a valid levy is liable to be collected from the date of its original imposition.

In the said view of the matter, we find no merit in these appeals and the same are dismissed. No costs.

JUDIS