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MGR INDUSTRIES ASSOCIATION AND ANR.

v.

STATE OF U.P. AND ORS.

(Civil Appeal No. 1362 of 2017)

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FEBRUARY 03, 2017

[RANJAN GOGOI AND ASHOK BHUSHAN, JJ.]

Uttar Pradesh Industrial Area Development Act, 1976 – s. 12-A – Area declared as industrial development area – Exclusion from Panchayat area treating the same as Industrial Township – Zila Panchayat initiated proceedings under Uttar Pradesh Kshetra Panchayat and Zila Panchayat Adhiniyam, 1961, for realizing tax – The appellants filed writ petition objecting the same on the ground that the area since was declared as industrial development area, was excluded from Zila Panchayat area u/s. 12-A of 1976 Act and thus was exempted from the tax – High Court dismissed the petition – On appeal, held: Exclusion of industrial development area is consequent and dependent upon notification issued under Proviso to Clause (1) of Art. 243-Q – Mere declaration of development area under 1976 Act is not sufficient to treat an area as an industrial Township – In the present case no notification under Proviso to Art. 243-Q (1) was issued – Therefore, exemption u/s. 12-A of 1976 Act was not available to the appellants and hence they were not entitled for exemption from tax levied under 1961 Act – Constitution of India – Art. 243-A (1) Proviso – Uttar Pradesh Kshetra Panchayat and Zila Panchayat Adhiniyam, 1961.

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Dismissing the appeal, the Court

HELD: 1. Article 243-Q of the Constitution mandates constitution of a municipality in every State, constitution of Nagar Panchayat, Municipal Council and Municipal Corporation in every State respectively for a transitional area, a smaller urban area and a larger urban area respectively. The proviso to Article 243-Q(1) contemplates a circumstance where a Municipality under Article 243-Q(1) may not be constituted in an urban area or part thereof, when such area is specified by a notification having regard to the following circumstances: “(i) Having regard to the size of the area, (ii) Municipal services being provided or proposed to be

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provided in that area, and (iii) such other factors as may deem fit.” Thus, exemption from non-constitution of Municipality is dependent upon consideration of aforesaid factors and a public notification thereof. [Para 14] [610-C-F] A

2. Section 12-A has been inserted in the Uttar Pradesh Industrial Area Development Act, 1976 in consonance with proviso to Article 243-Q(1). Section 12-A specifically contemplates issuance of notification under proviso to clause (1) of Article 243-Q and exclusion from Panchayat area is consequent and dependent upon such notification. Notification under proviso to clause (1) of Article 243-Q has to be subsequent to declaration of an area as industrial development area, which itself indicates that declaration of development area under 1976 Act is not sufficient to treat an area as an industrial township. Industrial township as contemplated by Article 243-Q(1) proviso has to be specifically a public notification after consideration of relevant statutory ingredients referred therein. The exclusion of industrial development area from Panchayat has a serious consequence since persons residing within the industrial development area are immediately deprived of facilities and benefits extended to them by the respective Panchayats. The deprivation of the said benefits has to be thus a conscious decision in accordance with condition as contained in Article 243-Q. In the present case, it has not been pleaded that any notification referable to proviso to Article 243(Q)(1) has yet been issued. It was rightly held by the High Court that exemption under Article 12-A of the 1976 Act was not available in the facts of the case. The appellants were not entitled for the reliefs claimed in the writ petition. [Paras 15, 17] [610-F-G; 611-A-C, E; 613-D] B C D E F

Saij Gram Panchayat vs. State of Gujarat and Ors. 1999 (2) SCC 366 : 1999 (1) SCR 263 – relied on.

Rishipal & Ors. vs. State of U.P. & Ors. 2006 (1) AWC 426 – referred to. G

Case Law Reference

2006 (1) AWC 426	referred to	Para 4
1999 (1) SCR 263	relied on	Para 16

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A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1362 of 2017.

From the Judgment and Order dated 17.07.2014 of the High Court of Judicature at Allahabad, in Civil Misc. Writ (Tax) No. 447 of 2014.

B Ms. Meenakshi Arora, Sr. Adv., Vikram Patralekh, Ms. Sarika Singh, Braj Kishore Mishra, Aviral Saxena, M. C. Dhingra, Advs. for the Appellants.

P. N. Mishra, Sr. Adv., Sandeepan Pathak, C. D. Singh, Sanjay Kumar Visen, Advs. for the Respondents.

C The Judgment of the Court was delivered by

ASHOK BHUSHAN, J. 1. Leave granted.

D 2. This appeal has been filed against the judgment and order dated 17th July, 2014 of High Court of Judicature at Allahabad by which judgment Civil Misc. Writ (Tax) No.447 of 2014 filed by the appellants has been dismissed.

3. The brief facts of the case are:

E Appellant No.1 is an Industries Association registered under the Societies Registration Act, 1860 whose members are running small industries. Zila Panchayat, Hapur initiated proceedings for realisation of tax from members of the appellant - Association which was objected to and a representation was submitted to the District Magistrate. Appellant also represented the matter to the Upper Mukhya Adhikari, Zila Panchayat, Bulandshehar and filed a Civil Misc. Writ Petition (Tax) No.4 of 2013 which was disposed of by the Allahabad High Court by order dated 6th January, 2014, directing the State Government to consider the appellant's representation. The representation submitted by the appellant was rejected by the Principal Secretary, Panchayat Raj vide its order dated 23rd June, 2014. The State Government held that although the area has been declared as industrial area under U.P. Industrial Area Development Act, 1976 but no notification having been issued as industrial township within the meaning of Article 243-Q(1) proviso of the Constitution, the Zila Panchayat/Nagar Panchayat is entitled to realise tax and appellants cannot claim exemption from taxation by local authority. Aggrieved by the order of the State Government, appellants filed a Civil Misc. Writ (Tax) No.447 of 2014 claiming the following reliefs:

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"A. Call for the records of the case; and issue writ, order or direction in the nature of certiorari quashing the order dated 23-6-2014 passed by respondent No.1 (Annexure 8 to this writ petition)." A

B. Issue writ, order or direction in the nature of mandamus directing the respondent Nos.2, 3 and 4 not to realise any taxes from the members of petitioner No.1 (as mentioned in paragraph No.10 of the writ petition and other members of petitioner No.1). B

C. Issue any other writ, order or direction the Hon'ble Court deems just and proper on the facts and circumstances of the case. C

D. Award cost of this petition to the petitioner."

4. The writ petition was heard by the High Court and the same was dismissed by its judgment dated 17th July, 2014. The Division Bench of the High Court relying on an earlier Division Bench judgment in **Rishipal & Ors. vs. State of U.P. & Ors., 2006 (1) AWC 426**, dismissed the writ petition. The Division Bench also held that the area having not been declared as industrial township, exemption as sought to be claimed by the appellants under Section 12-A of 1976 Act is misconceived. Aggrieved by the judgment of the High Court, the appellants have filed this appeal. D E

5. We have heard Ms. Meenakshi Arora, learned senior counsel for the appellants, Mr. Aviral Saxena has appeared on behalf of respondent No.5. We have also heard learned counsel appearing for the State of U.P. F

6. Learned counsel for the appellant contends that area in question having been declared as industrial area by issuing a notification dated 5th September, 2001 in exercise of power under Section 2(d) of U.P. Industrial Area Development Act, 1976 (hereinafter referred to as '1976 Act'), the appellants are entitled for the benefit of exemption as contemplated by Section 12-A of the 1976 Act and by virtue of Section 12-A no Panchayat is to be constituted for the said area. Hence, the Zila Panchayat is not entitled to realise any tax under the Uttar Pradesh Kshetra Panchayat and Zila Panchayat Adhiniyam, 1961. G

7. The Authority constituted under the 1976 Act fully satisfied H

A the condition under Section 12-A of the 1976 Act, hence, there is no
 requirement of issue of any separate notification as contemplated by
 Article 243-Q of the Constitution of India. It is submitted that once
 industries have been set up under the notified industrial development
 area and taxes under Section 11 of the 1976 Act are levied, the industries
 B are exempted from liability of any tax under 1976 Act and the appellants
 are put on double jeopardy.

8. Learned counsel appearing for the State of U.P. refuting the
 submission of learned counsel for the appellants contended that the State
 Government by its detailed order dated 23rd June, 2014 after referring to
 C all relevant provisions of 1976 Act has found that unless industrial township
 is notified the provisions of Section 12-A are not attracted. It has been
 stated by the State that no notification notifying the area as industrial
 township has yet been issued. Learned counsel appearing for the U.P.
 State Industrial Development Corporation submits that in the writ petition
 the appellants have only prayed for mandamus restraining respondent
 D Nos.2 to 4 from realising any tax. No relief having been claimed against
 respondent No.5 the writ petition has rightly been dismissed by the High
 Court.

9. We have considered the submission made by the learned
 counsel for the parties and perused the records.

E 10. The U.P. Industrial Area Development Act, 1976 has been
 enacted to provide for the constitution of an authority for the development
 of certain area in the State into industrial township and for matters
 connected therewith. Section 2 sub-section (d) defines industrial
 development area which is to the following effect:

F *"Section 2(d)- "industrial development area" means an area
 declared as such by the State Government by notification."*

11. Under Section 3, the State Government, by notification, can
 constitute an Authority to be called Industrial Development Authority
 for industrial development area. By notification dated 5th September,
 G 2001 which is in exercise of power under Section 2(d) of the 1976 Act,
 various areas as mentioned in the Schedule were declared as industrial
 development areas. There is no dispute that area in question has been
 declared as industrial development area. The claim which has been laid
 in the writ petition before the High Court by the appellants was for
 H exemption from taxation by Zila Panchayat, Hapur under Section 12-A.

Section 12-A of 1976 Act which has been added by U.P. Act 4 of 2001 is as under: A

“Section 12-A. NO panchayat for industrial township.- Notwithstanding anything contained to the contrary in any Uttar Pradesh Act, where an industrial development area or any part thereof is specified to be an industrial township under the proviso to clause (1) of Article 243-Q of the Constitution, such industrial development area or part thereof, if included in a Panchayat area, shall, with effect from the date of notification made under the said proviso, stand excluded from such Panchayat area and no Panchayat shall be constituted for such industrial development area or part thereof under the United Provinces Panchayat Raj Act, 1947 or the Uttar Pradesh Kshetra Panchayats and Zila Panchayats Adhiniyam, 1961, as the case may be, and may Panchayat constituted for such industrial development area or part thereof before the date of such notification shall cease to exist.” B C D

12. Zila Panchayat, Hapur against whom reliefs have been claimed by the appellants, is Zila Panchayat constituted under the Uttar Pradesh Kshetra Panchayats and Zila Panchayats Adhiniyam, 1961 as amended from time to time. E

13. Part IX A was inserted by the Constitution (Seventy-fourth Amendment) Act, 1992. Article 243-Q is contained in Part IX A of the Constitution dealing with Municipalities which provides as follows:

“243Q. Constitution of Municipalities.- (1) There shall be constituted in every State,- F

(a) a Nagar Panchayat (by whatever name called) for a transitional area, that is to say, an area in transition from a rural area to an urban area;

(b) a Municipal Council for a smaller urban area; and G

(c) a Municipal Corporation for a larger urban area, in accordance with the provisions of this Part:

Provided that a Municipality under this clause may not be constituted in such urban area or part thereof as the Governor may, having regard to the size of the area and the municipal H

A *services being provided or proposed to be provided by an industrial establishment in that area and such other factors as he may deem fit by public notification. specify to be an industrial township.*

B *2. In this article, "a transitional area", "a smaller urban area" or "a larger urban area" means such area as the Governor may, having regard to the population of the area, the density of the population therein, the revenue generated for local administration, the percentage of employment in non-agricultural activities, the economic importance or such other factors as he may deem fit, specify by public notification for the purposes of this Part."*

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 D 14. Article 243-Q mandates constitution of a municipality in every State, constitution of Nagar Panchayat, Municipal Council and Municipal Corporation in every State respectively for a transitional area, a smaller urban area and a larger urban area respectively. The proviso to Article 243-Q(1) contemplates a circumstance where a Municipality under Article 243-Q(1) may not be constituted in an urban area or part thereof, when such area is specified by a notification having regard to the following circumstances:

E *"(i) Having regard to the size of the area,*
(ii) Municipal services being provided or proposed to be provided in that area, and
(iii) such other factors as may deem fit."

F Thus, exemption from non-constitution of Municipality is dependent upon consideration of aforesaid factors and a public notification thereof.

G 15. Section 12-A has been inserted in the 1976 Act in consonance with proviso to Article 243-Q(1). Section 12-A specifically provides that "....where an industrial development area or any part thereof is specified to be an industrial township under the proviso to clause (1) of Article 243-Q of the Constitution, such industrial development area or part thereof, if included in a Panchayat area, shall, with effect from the date of notification made under the said proviso, stand excluded from such Panchayat area and no Panchayat shall be constituted for such industrial development area or part thereof.....". Section 12-A thus, specifically contemplates issuance of notification under proviso to clause (1) of Article

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243-Q and exclusion from Panchayat area is consequent and dependent upon such notification. Notification under proviso to clause (1) of Article 243-Q has to be subsequent to declaration of an area as industrial development area, which itself indicates that declaration of development area under 1976 Act is not sufficient to treat an area as an industrial township. As noted above, industrial township as contemplated by Article 243-Q(1) proviso has to be specifically a public notification after consideration of relevant statutory ingredients referred therein. The exclusion of industrial development area from Panchayat has a serious consequence since persons residing within the industrial development area are immediately deprived of facilities and benefits extended to them by the respective Panchayats. The deprivation of the said benefits has to be thus a conscious decision in accordance with condition as contained in Article 243-Q. In the case before us, it has not been pleaded that any notification referable to proviso to Article 243(Q)(1) has yet been issued. The Division Bench of the High Court has also referred to and relied upon an earlier judgment of the Allahabad High Court in *Rishipal (supra)*. In the above case, the appellants who were residents of industrial development area prayed for direction that no election for constituting Panchayat in various villages including the said industrial development area should be allowed since, notification under Section 2(d) of the 1976 Act has already been issued on 11th July, 1989. The State Government categorically stated that no notification under proviso to Article 243-Q(1) has been issued. The Division Bench of the High Court referring to Section 12-A has rejected the contention and dismissed the writ petition. In paragraphs 6,7 and 8 following was stated:

"6. From a plain reading of Section 12A of the Act it is clear that after declaration of any industrial development area u/s. 2 (d) of the Act two things are required for excluding them from existing panchayat area. First is, specification to be an industrial township and secondly a notification under Proviso to Article 243Q of the Constitution of India.

7. From Section 12A it further reveals that if the said area is included in panchayat area, such area with effect from the date of notification made under proviso (proviso to Article 243Q) stands excluded from such panchayat. Thus, specification to be an industrial township as well as a notification under proviso to Article 243Q are condition

A precedent for excluding from any panchayat area. There is nothing on the record to come to conclusion that the area in question has been specified as an industrial township. Further no notification, as stated by Chief Standing Counsel, has been issued under proviso to Article 243Q by the State Government, hence, question of exclusion of the area from panchayat area does not arise.

B 8. Merely because the villages in question are covered u/s. 2 (d) does not ipso facto exclude them from panchayat area. As noted above neither it has been specified as Industrial Township nor a notification under Article 243Q has been issued. The relief claimed by the writ petitioner in the writ petition cannot be granted.”

C 16. It shall also be relevant to refer the judgment of this Court in *Saij Gram Panchayat vs. State of Gujarat and others, 1999 (2) SCC 366*, where this Court had occasion to consider the proviso to Article 243-Q sub-clause (1) in the context of Gujarat Industrial Development Act, 1962. After insertion of Part IX-A in the Constitution, the Gujarat Municipalities Act, 1962 was also amended by adding Section 264-A. It was provided under Section 264-A that notified area means an urban area or part thereof specified to be an industrial township area under the proviso to Article 243-Q(1) of the Constitution of India. Paragraphs 10 and 11 of the judgment are extracted below:

D “10. The Gujarat Municipalities Act, 1962 was amended on 20-8-1993 in view of the insertion of Part IX-A in the Constitution. Section 264-A was substantially amended. It now provided:

F “264-A. For the purpose of this chapter, notified area means an urban area or part thereof specified to be an industrial township area under the proviso to clause (1) to Article 243-Q of the Constitution of India.”

G Thus, as a result of this amendment in the Gujarat Municipalities Act, as industrial area under the Gujarat Industrial Development Act, which is notified under Section 16 of the Gujarat Industrial Development Act, would become a notified area under the new Section 264-A of the Gujarat Municipalities Act and would mean an industrial township

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area under the proviso to clause(1) of Article 243-Q of the Constitution of India. A

11. On 7-9-1993, the Government of Gujarat issued a notification under Section 16 of the Gujarat Industrial Development Act declaring Kalol Industrial Area as a notified area under Section 264-A of the Gujarat Municipalities Act. By another notification of the same date 7-9-1993, the Government of Gujarat excluded the notified area from Saij Gram Panchayat under Section 9(2) of the Gujarat Panchayats Act, 1961." B

Thus, for treating industrial area as industrial township notification under proviso to Article 243-Q(1) was contemplated which is also the statutory scheme under the 1976 Act. C

17. In view of the foregoing discussion, we are of the view that it was rightly held by the High Court that exemption under Article 12-A of the 1976 Act was not available in the facts of the above case. The appellants were not entitled for the reliefs claimed in the writ petition. In the result, the appeal is dismissed. D