(2017) 03 GUJ CK 0177

In the Gujarat High Court

Case No : 11249 of 2015

AMBAJI GRAM PANCHAYAT — APPELLANT

Vs

STATE OF GUJARAT & Ors. — RESPONDENT

Date of Decision : 10-03-2017

Acts Referred:

Constitution of India, Article 226, Article 227, Article 246 -
Gujarat Panchayat Act, 1961, Section 242 -
Gujarat Gram and Nagarpalikas Taxation and Fees Rules, 1964, Rule 11

Citation : (2017) 03 GUJ CK 0177

Hon'ble Judges : M.R. Shah, B.N. Karia

Bench : Division Bench

Advocate : MEHUL H RATHOD, HS MUNSHAW, RB THAKOR, YN RAVANI

Judgement

1. As both these petitions are interconnected, both these petitions are decided and disposed of by this common judgment and order.

2. Special Civil Application No.11249/2015 has been preferred by the Ambaji Gram Panchayat, under Article 246 of the Constitution of India for an appropriate writ, direction and order to quash and set aside the impugned order dated 15.06.2015 passed by the respondent No.2 Appellate Committee, Banaskantha District Panchayat in Appeal No.2/2013.

2.1 Special Civil Application No.19329/2015 has been preferred by the respective petitioners occupiers of some of the premises within the local limit of Ambaji Gram Panchayat for an appropriate writ, direction and order quashing and setting aside the Resolution No.109 dated 05.01.2013, Resolution No.149 dated 20.03.2013 and Resolution No.268 dated 21.06.2014 passed by the respondent No.1 Ambaji Gram Panchayat holding that such resolutions are contrary to the provisions of the Gujarat Gram and Nagarpalikas Taxation and Fees Rules, 1964 (hereinafter referred to as Rules, 1964) and to direct respondent No.1 Panchayat to levy property tax prevailing prior to passing of such resolution.

3. Facts leading to the present Special Civil Applications in nutshell are as under:

3.1 That prior to 201213, the petitioner Ambaji Gram Panchayat was levying the property tax on the building and lands situated within the local limits of Ambaji Gram Panchayat on the basis of the Annual Letting Value of the properties. That by Resolution No.361 dated 30.12.2009 of the General Body of the Panchayat, it was resolved to levy the property tax on the basis of actual value/carpet area of the properties instead of Annual Letting Value of the properties. For the

aforesaid the Panchayat entrusted work to All India Institute of Local Self Government for carrying out survey of each properties and to make data entries in the software. The said work was completed. However, in the meantime and before the aforesaid resolution was implemented, the term of the old elected body came to an end and the newly elected body took the charge of the Panchayat on 30.04.2012. The newly elected body vide Resolution No.10 dated 15.05.2012 resolved to keep in abeyance the decision of levy of capital tax on the basis of the Capital Value and to continue to levy property tax on the basis of the old system of Annual Letting Value of the properties by adding 30% on the existing amount of tax on each bill. That the said resolution was suspended by the Taluka Development Officer vide order dated 24.05.2012. That thereafter on 26.06.2012, the Panchayat passed another Resolution No.30 and thereby resolved to add 60% amount on the existing tax amount, but did not resolve to implement the earlier decision to levy tax on the basis of the Annual Letting Value of the properties. The said resolution also came to be suspended by the TDO vide its order dated 16.07.2012. That thereafter on 20.07.2012, the Panchayat passed another Resolution No.65 and thereby resolved to levy taxes on capital value of the properties and also determined the market value of the properties. The said Resolution N.65 also came to be suspended by the TDO vide its order dated 13.09.2012 on the ground that the same is not in the financial interest of the Panchayat.

3.2 That thereafter on 05.01.2013, the Panchayat passed another Resolution No.109 determining the value of the properties and tax rate on different category of properties. That in pursuant to the Resolution No.109, the Panchayat issued a public notice on 15.01.2013 as required under Rule 11 of the Taxation Rules inviting the objections against the proposed assessment on 20.01.2013.

3.3 That the respondent No.4 herein one of the occupier of the property situated within the local limit of Panchayat preferred Appeal No.2/2013 before the Appellate Committee of the District Panchayat on 18.01.2013, challenging the Resolution No.109 dated 05.01.2013 under Section 242 of the Gujarat Panchayat Act. That the Appellate Committee of the District Panchayat granted ex parte interim stay against the execution of Resolution No.109 vide its order dated 21.01.2013. That the said ex parte adinterim order came to be challenged before the State Government by the petitioner Panchayat and the District Development Officer, Banaskantha. That in the Revision Application No.5/2013 of the DDO, Banaskantha, the Revisional Authority granted the interim order on 07.03.2013 and stayed the ex parte interim order of the Appellate Committee of the District Panchayat dated 21.01.2013. That in pursuance of the order dated 07.03.2013, the DDO, Banaskantha vide communication dated 11.03.2013 instructed the petitioner to proceed further in pursuance of Resolution No.109. That thereafter the petitioner assessee proceeded further and vide Resolution No.149 dated 20.03.2013, considered the objections which were received in pursuance of the public notice dated 15.01.2013 and the decision of the same were communicated to the objectors in accordance with the Rules vide communication dated 25.03.2013 and 26.03.2013. That as at the relevant time the said decision / communication dated 25.03.2013 and 26.03.2013 rejecting the objections were not challenged, the proposed assessment list prepared on the basis of Capital Value of the properties was to be implemented and therefore, the Panchayat issued the bills for 201213 and 201314 to all the property holders of the petitioner Panchayat.

3.4 That thereafter the respondent Nos.5 to 12, instead of challenging the bills / assessment as provided under the provisions of the Act and Taxation Rules, straightway preferred Special Civil Application

No.13826/2013 before this Court challenging the Resolution No.109 dated 05.01.2013 and Resolution No.149 dated 20.03.2013 and the bills issued by the Panchayat. That this Court did not entertain the aforesaid Special Civil Application on merits and disposed of the said petition by reserving the liberty in favour of the petitioner to join themselves as party before the Appellate Committee in the pending Appeal No.2/2013. That on 16.09.2013, the respondent Nos.5 to 12 applied to the Appellate Committee for impleading them as parties in Appeal No.2/2013. That the respondent Nos.5 to 12 were permitted to be joined themselves as appellants in Appeal No.2/2013. That vide order dated 17.02.2013 the Appellate Committee of the Banaskantha District Panchayat finally allowed Appeal No.2/2013 and directed the petitioner Panchayat to take a final decision after affording personal hearing to the respondent Nos.4 to 12 herein and till the final decision is taken by the Panchayat, the execution of Resolution Nos.109 and 149 came to be stayed.

3.5 That the order passed by the Appellate Committee of the Banaskantha District Panchayat dated 17.12.2013 came to be challenged by the petitioner Panchayat by way of revision application before the State Government and the State Government / Revisional Authority vide order dated 29.04.2014 rejected the revision application of the petitioner Panchayat. That against the order passed by the State Government / Revisional Authority, the petitioner Panchayat preferred Special Civil Application No.8813/2014. Before the said petition came to be heard, Panchayat passed a further Resolution No.268 dated 21.06.2014 and took a final decision of reaffirming the Resolution Nos.109 and 149 of the General Body of the Panchayat.

3.6 That thereafter the Panchayat issued the bills for the year 201415. It appears that thereafter without challenging the subsequent Resolution No.268 dated

21.06.2014 reaffirming the earlier Resolution

Nos.109 and 149 before the appropriate Forum either by way of appeal or revision application, respondent Nos.4 to 12 submitted some application in Appeal No.2/2013, which as such was already disposed of earlier vide order dated 17.12.2013. That the petitioner Panchayat received a communication from the Appellate Committee of the District Panchayat on 13.08.2014 informing that Appeal No.2/2013 is fixed for hearing on 22.08.2014. That the petitioner Panchayat objected to the said notice by pointing out that there is no question of again / further hearing of Appeal No.2/2013 as the same is already disposed of earlier vide order dated 17.12.2013. Despite the above, by order dated 20.03.2015, the Appellate Committee of the District Panchayat stayed the Resolution Nos.109 and 149. That thereafter despite the specific objections raised by the petitioner Panchayat that Appeal No.2/2013 has already been disposed of, by impugned order dated 15.06.2015, the Appellate Committee of the District Panchayat though vacated the earlier interim order, however while vacating the interim relief, the Appellate Committee of the Banaskantha District Panchayat has directed the petitioner Panchayat to levy the property differently on Dharamshala (Trust) as separate group and the hotel, guest house, dining hall, shops etc. as another different group.

3.7 Feeling aggrieved and dissatisfied with the order dated 15.06.2015 passed by the Appellate Committee of the Banaskantha District Panchayat passed in Appeal No.2/2013, the petitioner Panchayat has preferred the present Special Civil Application No.11249/2015.

3.8 That the original appellants of Appeal No.2/2013 have also straightway and directly preferred another petition being Special Civil Application No.19329/2015 challenging the Resolution Nos.109, 149 and 268, which is the subject matter of Special Civil Application No.19329/2015.

4. Shri Mehul Rathod, learned Advocate has appeared on behalf of the Ambaji Gram Panchayat. Shri H.S. Munshaw, learned Advocate has appeared on behalf of respondent Nos.4 to 12 appellants of Appeal No.2/2013 and Shri Abhishek Joshi, learned Advocate has appeared for Shri R.B. Thakor, learned Advocate appearing on behalf of the Appellate Committee of District Panchayat in Special Civil Application No.11249/2015. Shri Y.N. Ravani, learned Advocate has appeared on behalf of the petitioners of Special Civil Application No.19329/2015 who are also the respondent Nos.4 to 13 in Special Civil Application No.11249/2015.

5. Shri Mehul Rathod, learned Advocate appearing on behalf of the petitioner Panchayat as vehemently submitted that in the impugned order dated 15.06.2015 passed in Appeal No.2/2013 is absolutely illegal and without jurisdiction. It is vehemently submitted by Shri Rathod, learned Advocate appearing on behalf of the petitioner Panchayat that as such Appeal No.2/2013 was already earlier finally disposed of by the Appellate Committee of the District

Panchayat vide order dated 17.12.2013 and therefore, there was no question of passing any further order more particularly the impugned order in an appeal which was already disposed of.

5.1 It is submitted that in view of the final order dated 17.12.2013 disposing of the main appeal No.2/2013, no proceedings were pending before the Appellate Committee of the District Panchayat and therefore, no order could have been passed by the Appellate Committee of the District Panchayat thereafter in Appeal No.2/2013.

5.2 It is further submitted that even otherwise the impugned order dated 15.06.2015 passed by the Appellate Committee of the District Panchayat in Appeal No.2/2013 by which the Appellate Committee has

issued the directions to the Panchayat to levy the property tax in a particular manner and more particularly with respect to different categories separately viz. Dharamshala / Trusts and Hotels, dining halls, shops etc. as a separate category, is wholly without jurisdiction.

5.3 It is vehemently submitted by Shri Rathod, learned Advocate appearing on behalf of the petitioner Panchayat that except respondent Nos.4 to 13 herein, all other occupiers of the properties within the local limits of Gram Panchayat are paying the property tax as per the new formula and as per Resolution No.268 reaffirming the earlier Resolution Nos.109 and 149. It is submitted that the respondent Nos.4 to 13 are neither paying the property tax either as per the old formula nor as per the new formula. Therefore, it is requested to allow the present Special Civil Application No.11249/2015 and quash and set aside the impugned order passed by the respondent No.2.

6. Now, so far as Special Civil Application No.19329/2015 is concerned, Shri Ravani, learned Advocate appearing on behalf of the petitioners seeks permission to withdraw the said petition with a liberty to challenge Resolution Nos.109 and 149 and 268 before the appropriate Appellate / Revisional Forum. In the facts and circumstances of the case and more particularly considering the earlier proceedings, we are of the opinion that let the petitioners challenge the aforesaid resolutions before the Secretary, Panchayat, Rural Housing and Rural Development Department, Gandhinagar, which may be treated as an Appeal / Revision Application and the same may be decided and disposed of in accordance with law and on merits at the earliest, but not later than six months from the date of filing of such application / revision. Shri Ravani, learned Advocate appearing on behalf of the respective petitioners has stated at the Bar that as such the Appeal / Revision Application shall be preferred before appropriate Appellate / Revisional

Forum within a period of two weeks from today. He has also stated at the Bar that by way of interim arrangement and without prejudice to the rights and contentions of the respective parties, the respective petitioners shall pay 50% of the demand as per the new formula in two installments. However, the first installment of 25% of the total demand shall be deposited / paid with the Panchayat within a period of 15 days from today and balance 25% of the total demand as per the new formula shall be paid / deposited with the Panchayat within further period of six weeks thereafter. He has also stated at the Bar that the respective petitioners shall file necessary undertaking to the aforesaid extent on or before 17.03.2017. Such undertaking shall be filed in the present proceedings and the copy of the same may be furnished to the learned Advocate appearing on behalf of the Panchayat.

7. Having heard learned Advocates appearing for respective parties so far as Special Civil Application No.11249/2015 is concerned, the impugned order passed by the Appellate Committee of the Banaskantha District Panchayat in Appeal No.2/2013 cannot be sustained. It is required to be noted that as such Appeal No.2/2013 was already earlier disposed of by the Appellate Committee of the District Panchayat vide order dated 17.12.2013 and therefore, thereafter no proceedings were pending before the Appellate Committee much less Appeal No.2/2013. Therefore, when the Appeal No.2/2013 was already earlier disposed of and the same was not pending before the Appellate Committee, thereafter it was not open for the Appellate Committee of the District Panchayat to pass any order in disposing of the appeal. Even Shri Munshaw, learned Advocate appearing on behalf of the respondent Nos.4 to 12 and even Shri Abhishek Joshi, learned Advocate appearing for Shri Thakor, learned Advocate appearing on behalf of the Appellate Committee of District Panchayat have conceded the above position.

7.1 Even otherwise the directions issued by the Appelllate Committee of the District Panchayat while passing the impugned order and directing the Panchayat to levy / impose the property tax on Dharamshala (Trust) and on hotels, dining halls, shops etc. separately cannot be sustained. Such directions issued by the Appellate Committee of the District Panchayat are wholly without jurisdiction. In any case as observed hereinabove the impugned order dated 15.06.2015 could not have been passed in Appeal No.2/2013 as earlier vide order dated 17.12.2013, Appeal No.2/2013 was already finally disposed of and no appeal was pending before the Appellate Committee of the District Panchayat.

8. In view of the above and for the reasons stated above, Special Civil Application No.11249/2015 is hereby allowed. Impugned order dated 15.06.2015 passed by the respondent No.2 Appellate Committee, Banaskantha District Panchayat in Appeal No.2/2013 is hereby quashed and set aside. Rule is made absolute accordingly in Special Civil Application No.11249/2015. No costs.

8.1 So far as Special Civil Application No.19329/2015 is concerned, the same is dismissed as withdrawn with above liberty in favour of the petitioners of Special Civil Application No.19329/2015 to challenge the Resolution Nos.109, 149 and 268 before the Secretary, Panchayat and as and when the same is challenged, the same may be treated as Appeal / Revision Application and if such appeal is preferred within a period of two weeks from today, same may be decided and disposed of by the Secretary, Panchayat, Rural Housing and Rural Development Department, Gandhinagar in accordance with law and on merits at the earliest but not later than six months from the date of filing of such Appeal / Revision Application. By way of interim arrangement and as agreed and as per the statement made by Shri Ravani, learned Advocate appearing on behalf of the petitioners of Special Civil Application

No.19329/2015, recorded hereinabove, respective petitioners shall deposit / pay 50% of the demand as per the new formula and as per the bills in two equal installments. However, first installment of 25% of the demand shall be deposited / paid by the respective petitioners within a period of two weeks from today and the balance 25% of the demand shall be deposited / paid within a period of six weeks thereafter. Respective petitioners, as agreed, to file separate undertaking to the aforesaid extent on or before 17.03.2017. Rule is discharged with above observations and directions so far as Special Civil Application No.19329/2015 is concerned. In the facts and circumstances of the case, there shall be no order as to costs.

