(2018) 07 BOM CK 0067

In the Bombay High Court

Case No : Writ Petition No.4121 Of 2018

Anita Dhammapal Bodade APPELLANT

Vs

Honble Minister For Rural Development, Thr. Secretary, Mumbai And Others RESPONDENT

Date of Decision : 11-07-2018

Acts Referred:
Maharashtra Village Panchayats Act, 1958 — Section 39(1), 124, 124(2)
Maharashtra Village Panchayats Taxes and Fees Rules, 1960 — Rule 9, 18, 20

Citation : (2018) 07 BOM CK 0067

Hon'ble Judges : S.B. SHUKRE, J

Bench : Single Bench

Advocate : K.S. Narwade, Ritu Kalia, S.D. Chopde

Final Decision : Dismissed

Judgement

1. Reply of respondent No.2 filed by the learned Counsel Shri S.D. Chopde is taken on record.

02] Issue notice for final disposal at the admission stage to respondent Nos.1, 2 & 6.Â Ms. Ritu Kalia, learned Assistant Government Pleader waives

service of notice on behalf of respondent Nos.1 & 6 and Shri S.D. Chopde, learned Counsel waives for respondent No.2.Â There is no need to issue

notice to respondent Nos.3, 4 & 5, they being formal parties and the issue involved in this petition being capable of resolution through the interpretation

of the applicable provisions of law.

03] Rule.Â Rule made returnable forthwith.Â Heard finally by consent.Â

04] The issue involved in this petition is as to whether or not the petitioner, an elected Sarpanch of Grampanchayat Wadiadampur, Tahsil Telhara,

District Akola has incurred disqualification in terms of Section 39(1) of the

Maharashtra Village Panchayats Act, 1958 (hereinafter referred to as

â??V.P. Actâ?? for short) on account of misconduct on her part.

05] The issue has been answered against the petitioner by the Divisional Commissioner as well as the Hon'ble Minister by their orders respectively

passed on 04/04/2018 and 26/06/2018.Â

06] According to the learned Counsel for the petitioner, the Sarpanch has been authorized to levy taxes upon the structures made on the encroached

lands in terms of the Government Resolution, dated 18/07/2016, which has been issued by the Government in consonance with the provision of Section

124 of the V.P. Act.Â He submits that under Rules 9 and 20 of the Maharashtra Village Panchayats Taxes and Fees Rules, 1960 (hereinafter after

referred to as â??Rules 1960â? for short), the Sarpanch has power to not only prepare the assessment list of the buildings, structures, lands etc. for

levying of the tax, but has also power to take action for levying of the tax on such buildings.Â Therefore, the resolution passed by the Sarpanch and

the tax assessment list prepared in prescribed Form-8 by the Sarpanch for levying taxes upon the structures made by making encroachments cannot

be said to be against the provisions of law. He also submits that the resolution passed by the Gram Sabha on 18/07/2016 also shows that this action

has been taken bona fide by the petitioner with a view to increase the income of the Gram Panchayat and it was not for her personal benefit.Â So, he

submits that this would also show the bona fides of the petitioner.Â

07] The learned A.G.P. as well as the learned Counsel for respondent No.2 support the impugned orders.Â According to them, no patent illegality

has been committed in passing the impugned orders. They submit that the Government Resolution dated 18/07/2016, cannot be so read as to authorize

a Gram Panchayat or Sarpanch to levy tax upon a structure or building existing on a land or belonging to the Government and which has been made by

encroaching upon such a land.Â They submit that on the contrary, the Government Resolution, dated 04/12/2010, mandates that the Sarpanch and the

concerned Gram Panchayat must take immediate action for removal of the encroachments, the moment encroachments are noticed. They also submit

that in the case of Jagpal Singh and others vs. State of Punjab and others â?" (2011) 11 SCC 396, the Hon'ble Apex Court has expressed it's anguish

and concern over the inaction of the concerned authorities regarding removal of the encroachments made upon the common village lands or the

government lands.Â The Hon'ble Apex Court has, therefore, issued various directions including the direction for preparing the scheme for removal of

the encroachments in a certain time frame by the concerned Governments and the local authorities.

08] Upon consideration of the relevant provisions of law, such as Section 124(2) of the V.P. Act and Rule 18 of the Rules 1960, I find that none of

these provisions authorizes a Sarpanch to levy tax upon an encroacher, who has made an encroachment upon the common village land or the

government land.Â

09] Section 124(2) of the V.P. Act prescribes that the tax on buildings or lands referred to in clause (i) of sub-section (1), which are described as

buildings and lands within the limits of the village, shall be leviable from the owners or occupiers of such buildings and lands.Â

10] Rule 18 of Rules 1960 prescribes as to from whom tax is primarily leviable.Â It lays down that the tax shall be leviable primarily from the actual

occupier of the building or land upon which it is assessed.Â This provision, when considered in it's entirety, reveals that it envisages that the occupier

of the building or land is a person in whom some or other right is vested in law and that is the reason why it clarifies the word occupier by taking into

account various situations in which the occupier of the building or land may find himself.Â So, it says that the tax shall be leviable from the occupier

of the building or land in the following situations:

i. When the occupier is the owner of such building or land and ;

ii. if the occupier of the building or land is not the owner himself, then, the tax is primarily leviable from -

(a) the lessor, if the property is let,

(b) the superior or lessor, if the property is sub-let

(c) the person in whom the right to let the same vests, if itis unlet and

(d) the person to whom the land or building has beentransferred if the owner of the land or building has left the village or cannot otherwise be

found.Â

So, it is clear that this rule only clarifies the position regarding leaviability of the tax from the owners or the occupiers of buildings and lands as prescribed under the substantive provision of Section 124(2) of the V.P. Act.Â

11] These two provisions of law would make it clear that the tax is leviable only on a person who is the owner of the building or land or a person who

is occupier of the building or land in the capacity of lessor or sub-lessor or a person having right to let the land or building or a person to whom the land

or building has been transferred. These provisions of law do not lay down anywhere that the tax is leviable on and recoverable from an encroacher,

who has made an illegal structure on the encroached land.Â

12] The learned Counsel for the petitioner has also referred to Rules 9 and 20 of the Rules 1960.Â However, reliance upon these provisions can be

made only when the tax is found to be leviable on the lands or buildings as contemplated under Section 124 of the V.P. Act read with Rule 18 of the

Rules, 1960 and in the facts of the present case, I do not think that there is any occasion for this Court to consider the applicability of the Rules 9 and

20 of the Rules, 1960, for, the facts and law discussed earlier have shown that tax is not leviable on and recoverable from encroachers.Â

13] There is, of course, a Government Resolution, dated 18/07/2016, which authorizes a Gram Panchayat to levy tax upon certain buildings and

constructions. It prescribes that tax can be levied by the Gram Panchayat upon those buildings and structures which have been constructed or made

without any prior sanction or which are unauthorized.Â It also prescribes the procedure to be followed in such cases for levying of the tax.Â

According to this procedure, necessary entries are required to be taken in the assessment list prepared as per the prescribed Form-8.Â Then, this

Government Resolution goes on to add a clarification to the effect that by preparing assessment list and including such unauthorized buildings and

structures in the assessment list, the unauthorized buildings and structures would not by themselves become authorized.Â In this clarificatory note,

there is also a word employed which is â?? v f r d z f e r â?, indicating that the structure is made by encroachment, and it is this word which is being

read by the petitioner as the source of her power to levy tax on structures raised on government lands encroached upon, which I see to be a

misreading of the term.

14] This word, â?? v f r d z f e r â?, denoting a structure made by encroaching upon government land, could not be interpreted by any stretch of imagination as giving authority to a Gram Panchayat to levy tax upon it.Â The reason being that this word has appeared along with the other words

referring specifically to the unauthorized buildings/structures and, therefore, the meaning conveyed by the other words would also have to be taken for

understanding the connotation of Marathi word â?? v f r d z f e r â?.Â This word has been employed in paragraph 3 of the Government Resolution,

dated 18/07/2016, in following manner :-

â??rlsp] uequk ua- 8 Eg.ktsp dj vkdkj.kh uksanoghe/;s bekjrhph uksan ?ksrY;keqGs vuf/kd`r@ vfrdzfer@voS| bekjrh@cka/kdke vf/kd`r gksr ukgh]

;kph uksan ?;koh-â??

15] All these words i.e. â??vuf/kd`r@vfrdzfer@voS| bekjrh@ cka/kdkeâ? clearly form one group of words having similar characteristics and have

been used together to make an authoritative statement of purpose sought to be achieved.Â The purpose is that such type of unauthorised or illegal

structures and constructions, by bringing under tax liability, do not turn into authorised structures.Â When we consider the purpose sought to be

achieved, the word â?? v f r d z f e r â? would connote the same meaning as is conveyed by other similar words appearing in this group of words.Â

There is another dimension involved.Â This Government Resolution enables a Gram Panchayat to levy tax upon unauthorised structures by

prescribing a certain procedure.Â When such authority is given by the Government Resolution, the authority cannot be construed as giving more

power than is available under the substantive provisions of law and rules made thereunder, which are Section 124(2) of the V.P. Act read with Rule

18 of the Rules, 1960.Â We have already seen that these provisions do not authorize a Gram Panchayat to levy tax on structures of

encroachers.Â Â Â

16] Even otherwise, the authority so given to the Gram Panchayat is only by way of an executive direction, which cannot prevail upon the statutory

provisions of law discussed earlier, according to which, no authority has been given to the Gram Panchayat to levy any tax upon the buildings or the

structures made upon the land, which is a land encroached upon.

17] In view of the above, the only conclusion that can be drawn in the present case is that the petitioner acted in the present case without any

authority of law and in an illegal manner.Â Now the question would be, whether such action would amount to misconduct on her part or not.Â

According to the learned Counsel for the petitioner, it was a bona fide mistake and, therefore, it cannot be treated as a misconduct as contemplated

under Section 39(1) of the V.P. Act.Â This has been disagreed to by the learned A.G.P. for the State and also the learned Counsel for respondent

No.2.

18] I think the disagreement expressed by the learned A.G.P. and the learned Counsel for respondent No.2 is in consonance with the facts established

on record. If one goes through the resolution passed by the Gram Panchayat and also the assessment list prescribed as per Form-8, one would find

that the action taken by the petitioner could not be described as having been borne out of bone fide intention on her part.Â There is no mention

whatsoever in these documents that the persons, who were shown as occupiers of certain lands were the encroachers.Â Of course, there is a

mention about the fact that the tax was being levied with a view to increase the income of the Gram Panchayat. But, there is no justification or any

reason stated in these documents as to why these persons, who are the encroachers, have been described as occupiers and not as encroachers.Â

The consequences of such description made of persons on whom the tax has been levied are too significant to be ignored.Â Â

19] There is a sea of difference between a person who is an encroacher and one who is an occupier of the government land or building in the context

a dispute of present nature.Â The discussion made by me while interpreting the provisions of Section 124(2) of the V.P. Act and Rule 18 of Rules,

1960 would show it.Â Therefore, it was necessary for the petitioner to have clarified the status of the persons whose names are entered in Form-8 by

mentioning in a specific manner that they were the encroachers, but that was not done by the petitioner, rather, the petitioner, admittedly shown these

persons straightway as â??occupiersâ??, without further qualifying them as â??encroachersâ??.Â Once the person is shown as an occupier in Form-8,

the description would confer a particular status upon that person thereby indicating that a person is not an encroacher, but is a person having some

rights vested in him in law.Â This is the reason why the action taken by the petitioner cannot be said to be performed in good faith and this is where

theÂ argument of the learned Counsel for the petitioner about presence of bona fide in the dispute fails.

20] This was a case, which required the petitioner to uphold the law by following the directions of the Hon'ble Apex Court issued in the case of Jagpal

Singh (supra), wherein the Hon'ble Apex Court directed that no illegal encroachments upon the village/Gram Panchayat lands be regularized and long

duration of occupation or huge expenditure incurred in making constructions thereon or political connections is no justification for regularizing such

illegal occupations.Â Not only that, the petitioner was also duty bound to obey the directions issued by the State of Maharashtra in Government

Resolution No.2010/P.K.252/P.S.8, dated 04/12/2010. This resolution casts various obligations upon the Gram Panchayats including an obligation to

remove the illegal encroachments forthwith.Â It also lays down in clause 10 that if the office bearers of Zilla Parishad/Panchayat Samiti/Gram

Panchayat do any acts in the nature of rendering any assistance to make encroachments upon the government and public lands, it would be considered

as an instigation to make the encroachments and so, it would be treated as a misconduct as contemplated in Section 39 of the V.P. Act.Â

21] The facts of the present case would show that there being encroachments made by various persons on the government land, as admitted by the

petitioner herself, the only action permissible in law was to proceed against the encroachers in terms of the directions issued by the Hon'ble Apex

Court in the case of Jagpal Singh (supra) and the instructions of the State Government contained in it's Government Resolution, dated 04/12/2010.Â

But, that was not done by the petitioner.Â On the contrary, a move was taken by her to confer upon them some legal status by showing the

encroachers in the Gram Panchayat record, on the excuse of taking entries in Form-8 with a view to assess tax and increase income of Gram

Panchayat, as occupiers without any clarification that their presence on land was as encroachers.Â This was clearly against the provisions of law.Â

The move so taken by the petitioner was nothing but an instigation and encouragement to the encroachers to continue to occupy the government land

even with greater strength gained from assessment of tax made for occupation of the land, though the occupation was born of encroachment and not

of some legal right, which is the basic requirement for assessing a property to tax under Section 124(2) of the V.P. Act read with Rule 18 of the

Rules, 1960.

22] What follows now and necessarily so, the authorities below have rightly found that the petitioner is guilty of misconduct in the present case and

that she did not act in a bona fide manner. There is no merit in the petition and it deserves to be dismissed.

23] The writ petition stands dismissed.Â Rule is discharged with no order as to costs.

