(1989) 09 GAU CK 0034

In the Gauhati High Court

Case No : Civil Rule No. 134 of 1980

Apurba Kumar Barua APPELLANT

Vs

State of Assam RESPONDENT

Date of Decision : 19-09-1989

Acts Referred:

Citation : (1989) 2 GLJ 268

Hon'ble Judges : A.Raghuvir, C.J. and B.P.Saraf, J

Bench : Division Bench

Advocate : N.M.Lahiri, S.N.Sharma, K.Agarwal, J.P.Bhattacharjee, G.K.Talukdar, D.P.Chaliha, U.Barua, Advocates appearing for Parties

Judgement

A.Raghuvir, C.J.—Apurba Kumar Barua, the writ petitioner, is the owner of a two storeyed building bearing No. 253 old, 264 new in Ward No. 4 of Golaghat Municipality (the building). The petitioner seeks a declaration that he is not liable as respects that building to pay water tax levied by the Golaghat Municipal Board (Board). That is the issue raised in the writ petition and as he also seeks to declare sections 68 (1) (b), 71 and 80 of the Assam Municipal Act XV of 1957 ultra vires the Constitution, he impleaded the Golaghat Municipal Board, the Chairman of the Board and also the State of Assam in this case. The facts which lead to filing the writ petition are as under.

The petitioner obtained a loan from a bank and constructed the building. He avers the loan is not discharged even by the date March 20, 1980 the day he filed the instant writ petition. He let out a portion of the building to Assam Cooperative Apex Bank on a monthly rent of Rs. 550/. His case is '' if the buildings were to be attached with a communication pipe for supply of water the building would have fetched higher rent and that may have had helped him to discharge the debt and with that object in mind he submitted an application to the Board on February 26, 1976 for attachment of communication pipes. His complaint is to date his application is not processed by the Board and his building is not attached with the communication pipes.

The Board served a bill on the petitioner on December 7, 1971 to pay Rs. 165/ per quarter water tax for April 1971 to September 30, 1971 and other taxes. He did not pay the bill relevant to water tax. He paid all taxes other than water tax and sought exemption from payment of water tax. Many years later at this instance the Vice Chairman of the Board inspected the building and submitted a report on March 6, 1979 to exempt his building. In the report the Vice Chairman made a reference of stand pipe at Mahabir Jain Bhandar near the building. The water from that pipe is used by passengers of a nearby bus stand. The petitioner or his tenants at no point of time have availed of water from that stand pipe. When the petitioner became certain he is not likely to obtain exemption from water tax he informed the Board in a letter on March 30, 979 that he is not obliged to pay water tax. In spite of the letter demand no (ice on February 7, 1980 was served on him to pay holding tax of Rs. 9,456.33 including water tax of Rs.4,290/. The petitioner thereupon filed the instant writ petition to interdict the Board from collecting water tax from him and for other reliefs.

The Chairman of the Board in the counter of opposition averred the building is occupied by not one tenant but by three tenants, namely, the Assam Cooperative Apex Bank, M/s Shew Sankar Cycle Stores and M/s Khetan Hardware besides the owner of the building. The three tenants pay Rs. J,350/ per month not Rs. 550/. The Chairman traversed the allegations that application dated Fepruary 26, 1976 was filed in the office of the Board by the petitioner. The building was recommended by the ViceChairman on March 6, 1979 for exemption from the water tax was not denied. The Chairman averred the building could not be exempted therefore a resolution to that effect was passed on April 30, 1979. The Chairman averred all buildings in Golaghat Municipality pay water tax from 1948 at 4% of their annual value which was increased in 1951 to 6% and further increased in 1955 to 10%. There is no escalation of tax after 1955. As to how water tax is levied the Chairman stated at first annual value of a building is ascertained after obtaining a return from the owners. The annual value thereafter is entered in Registers of the Board. From that valuation holding tax including water tax is determined. The annual value of the building is Rs. 6j600/ and from that valuation water tax of Rs. 165/ per quarter is determined.

The Board obtained in 1962 a loan of Rs. 2,57,000.00 to implement a water supply scheme and another sum of Rs. 6,43,000/ (the year is not stated) was expended after determining the second loan. The State Government on July 23, 1962 fixed buildings in all Boards of Assam within a radius of 1000 feet are made liable to pay water tax. The stand pipe at Mahabir Jain Bhandar referred in the Vice Chairman''s recommendation and three other stand pipes exist within the distance of 1,000 feet from the building yet the petitioner did not pay the arrears of water tax from 1971. It is not disputed other taxes like house tax, latrine tax, light tax, were paid by the petitioner.

The following disputes arise from the above pleadings whether there are three tenants or one, whether the petitioner receives Rs. 550/ or Rs. 1350/ whether the petitioner on February 26, 1976 applied for attachment of water communication pipes. While these disputes are recounted there is no dispute raised as to the existence of stand pipes within the radius of 1000 feet''s from the building. We make it clear if the location of stand pipe of 1,000 had it been raised we would have directed the petitioner to seek relief elsewhere. Thus the principal question at issue is as to the exigibility of water tax from the petitioner under the State Act XV of 1957.

The Act in three out of twelve Chapters deals with the subject of water supply. In these Chapters the Act directs the Board to supply water for culinary, for drinking and for other purposes. The Act also deals with water for washing the clothes and washing of animals. The Board is required to specify water courses like wells, tanks, parts of rivers, streams channels which can be used for drinking purpose (S. 186) and to specify bathing ghats, places for washing of clothes and animals. Whenever an Assistant Director of Public Health, Civil Surgeon or a Medical Officer certifies water in a well, tank or watercourse is prone to spread disease, the Board can interdict inhabitants not to use such polluted water. For the supply of water mains, ferrules at convenient places can be fixed: stand pipes for use of inhabitants erected. The Board can regulate pressure of water and fix water meters. These duties of the Board are meticulously specified with all the details in Chapter seven of the Act.

What taxes are to be levied is specified in Chapter five. The Board is authorised to determine valuation of buildings with the help of assessors after obtaining returns from owners If owner occupied a building the annual value is 25% less. The Government buildings are valued from the cost of construction. The value of machine) y is excluded from valuation. From the valuation list a holding register is maintained with necessary particulars as to annual valuation. Valuation list and valuation registers the Act recites are to be revised periodically.

The Boards are empowered to tax on the basis of amenities of lights, gas, electricity, sewerage, drainage and water supply. The water and gas if supplied the Board is empowered to fix ferrules (Section 277), when attachment of communication pipes are requisitioned the owner of a building is to bear the expenses is specifically stated.

Water tax, lighting tax, drainage tax all these taxes cumulatively are called holding tax in the Act. Besides holding tax on private markets can be levied by the Board. Fee can be collected from carts, carriage, animals and boats. Tolls on bridges can be collected. Betterment fee for maintenance of fire brigade can be collected. Special fee can be collected for rendering health services. All these are specified in the Act. As to taxes on water and electricity and sanitation (S. 68A) there is a specific direction to levy taxes within four months of rendering of these three services. Toe petitioner averred while under section 71 taxes are levied the Act imposed restrictions simultaneously. If water is supplied from tanks or walls water rate is levied (not water tax). If water is supplied under a Scheme water tax is levied. Since the entire issue stems from section 71 we extract that section for facility of reference :

"71. Restriction regarding watertax and lightingtax

(1) The imposition of a watertax or a lightingtax shall be subject to the following restrictions, namely :

(a) that the tax shall be imposed only on holdings situated within an area for the supply of water to which or for the lighting of which, as the case may be, a scheme has been approved by the State Government:

Provided that where the Board

(i) distribute water by means of water carts or other like agency or provide a water supply by means of tanks or wells or other reservoirs, or

(ii) provide acetylene lamps or such other means of lighting as may be approved by the State Government : the Board at a meeting may impose in the case (i) a water rate and in the case (ii) a lighting tax under such conditions and limitations as may be prescribed;

(b) that the tax shall not be imposed on land used exclusively for purposes of agriculture, or on any holding consisting only of tanks, or in the case of the watertax on any Holding no part of which is within a radius, to be fixed by the State Government, from the nearest stand pipe or other supply of water available to the public;

(c) that in fixing the rate, at which the tax is to be imposed, regard shall be had to the principle that the total net proceeds of the tax, together with the estimated income from payments for water or lighting as the case may be, supplied for the works under special contract or otherwise, shall not exceed the amount required for making, extending or maintaining the watersupply or lighting system, as the case may be, together with an amount sufficient to meet the proportionate share of the cost of supervision and collection and the repayment of and payment of interest of any loan incurred in connection with any such supply or system :

(d) that the tax shall not be leviable until a supply of water has been provided in the area to be so supplied or until the lamps in the area to be lighted have been lighted, as the case may be, nor shall be tax be leviable for any quarter or portion of a quarter antecedent to the provision of such watersupply or lighting :

Provided that nothing in this section shall prevent the Board from making any special arrangement consistent with this Act and with persons residing beyond the radius fixed by the State Government.

(2) The amount of the tax may vary with the distance of holdings from the nearest standpipe or other sources of watersupply and the amount may be higher in the case of premises to which communication pipes are attached than in the case of other premises,

(3) The Board, at its discretion, may compound for any period not exceeding one year with the person liable to pay the tax on any railway premises or any premises used as a factory, dockyard, workshop, Mazdur. depot, school, college, hospital, market, court house, jail, reformatory, lunatic, asylum or other similar place, for a certain sum to be paid by such person in lieu of the tax.

(4) Subject as aforesaid in the preceding subsections additional water tax under section 212 shall be imposed only in the areas served by the closed sanitary water flush sewerage system.

" The records of Board show water supply scheme was approved by the State Government. The resolutions of the Board on June 13, 1960 indicate 2" galvanised iron water pipes are installed on important roads of the local authority.

The learned counsel for the petitioner contended the petitioner and his tenants have made their own arrangements for water supply by engaging Paniwalas. The application on February 26, 1976 for attachment of communication pipes was not accorded to him. If communication pipes are not attached as desired by the petitioner for water no water tax is exigible.

The learned counsel for the petitioner next referred to the radius rule visavis the location of stand pipes and argued water tax is not exigible by providing stand pipes as indicated in the Government notification and qualified the plea in that it is argued building owner can seek attachment of water communication pipes and if such facility is not accorded water tax is not exigible. Article 14 of the Constitution is pressed into service in this regard aid it is argued a building with attachment facility and without both cannot be demanded to pay the same rate of water tax therefore the petitioner seeks clause (1) (b) of section 68, 71 and section 80 of the Act be declared ultra vires of the Constitution. Further it argued buildings nearer to a stand pipe should be required to pay more water tax than those that are away from a stand pipe. This plea is advanced on the hypothesis that tax is exigible under radius rule. These facets are emphasised and it is suggested water tax be based on distance of buildings from a stand pipe. A maximum of water tax and minimum of water tax should be specified. The counsel concluded unless these are not incorporated in the tax structure water tax in law is not payable.

The learned Advocate General of Meghalaya for the State of Assam in rebuttal argued the Board consisted of elected persons. The variations indicated in section 71 especially clause (2) and the word "may" is relied on and it is pointed out options arc open to the elected persons in whom the power is vested to levy water tax as they like. The instant Board (it is represented all Boards constituted under the Act in Assam) did not in their wisdom thought fit to levy water tax imbibing all variations like maximum and minimum and variations from the stand point of distances. In short it is argued water tax is levied on the basis of radius rule as fixed by the State Government on July 23, 1962 water tax is therefore exigible from the petitioner.

We see the Act XV of 1957 makes elaborate provisions for levy of water tax. The Statute invested adequate powers in the Boards and incorporated suitable guidelines in the Act. No ostensible reason is shown as to why guidelines are not followed by Municipal Boards in Assam. Such under classification by Boards may be not .unconstitutional or illegal. Not following the guidelines and levying water tax without the basis of distance do nurture resentment in. rate payers. The instant case is an example. We have not heard of any insurmountable difficulty in not incorporating guidelines indicated in the tax structure. The legislature visualised the contingencies and guided the local authorities yet guidelines are not adopted by the Board. It is time Municipal Boards in the State review their tax structure and incorporate provisions as indicated in the guidelines of the Act. Sooner the better it is for elected Boards to bestow attention in this regard which in our view will also augment the famished finances of the Board.

Adverting to the question at issue whether under the radius rule water tax levied is valid or not is no more reintegra. The Allahabad High Court under the U. P. Municipalities Act II of 1916 considered radius rule contained in section 129 of that Act. The Rule prescribed 600 feet from a stand pipe for the exigibility of water tax. That Court held in AIR 1962 All. 83 it is not ultravires and water tax is exigible on that basis. On appeal the emphasis shifted to clause (3) of section 131 from section 19. The Apex Court Held clause (3) of section 131 was partly directory and partly mandatory in AIR 1965 SC 895 (Raza Buland Sugar Co. Ltd. vs. Rampur Municipality), the Court also held it water is made available at a distance of 600 feet of any building water tax is payable {para 15). We follow the ratio in that case and hold the petitioner is liable to pay water tax levied by the Board of Golaghat.

The learned Advocate General of Meghalaya cited a decision of AIR 1971 SO 2100 (Gulabchand Bapalal Modi vs. Municipal Corporation of City of Ahmedabad) in that maximum rate and minimum rate was also contended. The issue in that case is not on ail fours of the instant case. In that casj powers 01 the State and a local authority were considered and the ratio in AIR 1965 SC 1107 (Corporation of Calcutta vs. Liberty Cinema; me folio wag passage was cited : "There is in our opinion clear distinction between delegation of fixing the rate of tax like sales tax to the State Government and delegation of fixing rates of certain taxes for the purposes o local taxation." The distinction or difference referred in tae case needs no elaboration in the instant case.

The decision of AIR 1982 Manipur 28 (Apabi Singh vs. Imphal Municipal Board) was cited by the board in that two resolutions of a local authority were declared void. Sections 68 and 80 were declared not ultravires of tae Constitution. The relevance of the decision is the impugned Act XV of 1957 was considered in that case. There was discussion as to character of water tax imposed. What is imposed is a fee. The locusclassicus case AIR 1954 SC 281 (Commr. Hindu Religions Endowments vs. Sri Lakshmindra Thirtha Swamiar), AIR 1980 SC 1008 (Kcnal Krishna vs. State of Punjab) and a decision of the Andhra Pradesh High

Court in AIR 1965 AP 91 (Nizam Sugar Factory Ltd. vs. City Municipality, Bodhan) were referred. In the last of the three cases water tax was held is not a fee. We have not heard the petitioner in the instant case to contend water tax is a fee therefore it is unnecessary to delve further on this aspect.

Before we part with the case we direct the petitioner to deliver a copy of the application dated February 26, 1976 to the Chairman of the Board in two weeks from today. The Board is ordered to process the application in two months of the receipt of the application in accordance with law. Barring that relief in other respects the writ petition is dismissed. No costs.

Dr. B.P.Saraf, J. I agree.