
(1988) 08 KAR CK 0076

In the Karnataka High Court

Case No : Writ Petition No"s. 18839 to 18842 of 1986

B. Krishnabhat

APPELLANT

Vs

Bangalore Development Authority

RESPONDENT

Date of Decision : 30-08-1988

Acts Referred:

Bangalore Development Authority Act, 1976 — Section 29
Karnataka Municipal Corporations Act, 1976 — Section 103, 104, 105, 106, 2 (c)

Citation : (1988) ILR (Kar) 2865 : (1988) 2 KarLJ 481

Hon'ble Judges : Chandrakantaraj Urs, J

Bench : Single Bench

Advocate : T.S. Ramachandra, for the Appellant; Shivaraj Patil, for the Respondent

Final Decision : Allowed

Judgement

Chandrakantaraj Urs, J.—In these petitions filed by the petitioners, the facts and questions of law that fall for consideration being common, they are disposed of by the following order.

2. The petitioners are all owners of sites in what is known as Vishwabharathi Housing Complex situated in Banashankari III Stage, except the petitioner in second of the Writ Petitions who is residing in the Industrial Suburb, Rajajinagar II Stage. They have asserted that Banashankari III Stage or the Industrial Suburb of Rajajinagar has not been handed over to the Bangalore City Corporation. They have further alleged that the Bangalore Development Authority has been collecting house or property tax, vacant land tax and other taxes and cesses from the petitioners. The petitioners contend that Notification dated 14th May, 1981 issued by the Government gazetted on 21st May 1981 (Annexure-A) in exercise of its power u/s 29 of the Bangalore Development Authority Act 1976 (hereinafter referred to as "the B. D. A. Act") expired three years after it was published. In such circumstances, power exercised by the Corporation which stood transferred to the Bangalore Development Authority and

the corresponding authorities under the B.D.A. Act ceased to be operative and therefore the demand notices issued to the petitioners were clearly without the authority of law. It is also urged by the petitioners that the assessment of tax by the B. D.A. in the areas covered by the Notification issued by the Government u/s 29 of the B. D.A. Act is clearly without the authority of law as the procedure which are mandatory under Sections 104, 105, 106 and 107 of the Karnataka Municipal Corporations Act 1976 (hereinafter referred to as "the Corporations Act") has not been followed in assessing the petitioners for property tax and other cesses due thereon.

3. The respondent Bangalore Development Authority filed objections on 3-12-1986. It therein contended that the Government had issued Notification u/s 29 of the B. D.A. Act for the areas in question even after the Notification dated 14th May 1981 had lapsed by passage of time; and that the B.D.A. had followed the procedure prescribed under Sections 103 to 106 of the Corporations Act before collecting the taxes, fee or cesses from the petitioners in respect of their property. It is also submitted that u/s 29 of the B. D.A. Act it is only the powers exercised by the Corporation which may be exercised by the respondent and that has nothing to do with the procedural aspect of the matter (vide para 4 of the statement of objections) under the relevant provisions of the Corporations Act. The same has been reiterated in para 7 of the Statement of objections that it need not follow the procedure under Sections 103 to 106 of the Corporations Act before levying or collecting the tax or any other fees.

4. This, despite the earlier rulings of this Court in the case of Vishwa Bharathi House Building Co-operative Society Ltd. Vs. Bangalore Development Authority, Therein it was clearly held that no tax could be levied without the authority of law. In the absence of a current notification u/s 29 of the BDA Act it was held in that case, that no tax could be levied exercising the powers of the Corporation and as such the petitions came to be allowed and the demands were quashed. A review petition filed in C P.428 to 430 of 1987 to review the said order came to be dismissed by me on 12-11-1987 inter alia on the ground that the Notification which replaced the earlier notification in those cases was never published either in the Gazette or in the leading news papers and no explanation was offered by the B.D.A. as to why the notification was not produced at the time of hearing of the Writ Petition. The review petitions were dismissed with an observation that power u/s 29 of the BDA Act could not have been exercised in the manner it had been exercised because the procedure to be followed mandatorily under the Karnataka Municipal Corporations Act for the purposes of levying tax was never followed by the B.D.A. The B.D.A. did not choose to file any appeal against that order and as such the matters came to be concluded in so far as the B. D.A. was concerned.

5. It was in that circumstance, when this matter was heard on an earlier date, the Court directed the Counsel for the B. D.A. to file additional statement of objections placing on record any additional material including the notification

issued in respect of the areas under consideration. Therefore, additional statement of objections was filed on 24-6-1988 reiterating the earlier stand, but pointing out that before issuing the demand of property tax and cesses, notices were issued to the owners of the sites as evidenced by Annexure-R.7 followed by an enquiry by the Officer of B.D.A. to verify the statement filed by the assessee and after assessing rateable value, tax was determined and demanded. The B.D.A. also produced notification dated 26th June 1985 by which powers of the Corporation were to be exercised by the B.D.A. in respect of certain areas including Banashankari III Stage retrospectively with effect from the date the previous notification ceased to be operative. That is, nearly two years gap was sought to be covered by the notification gazetted as at Annexure-R.3 in the Gazette dated 28th January 1988. The notification itself was dated 26th June 1985. Apparently the observation made by me in the review petitions that the Notification had not been gazetted in the year 1985 itself was noticed by the Government.

6. But it is not necessary to examine the validity of the notification because Mr. T.S. Ramachandra, learned Counsel for the petitioners assumed that the B.D.A. had power to levy taxes and cesses in respect of the areas covered by the notification but the tax now levied and demanded has not followed the procedure for such levy and collection and therefore bad in law. He relied upon the decision of the Supreme Court in the case of *Visakhapatnam Municipality Vs. Kandregula Nukaraju and Others*, . In that case, Andhra Pradesh Municipalities Act fell for consideration in regard to the power of the Municipality to levy property tax. The respondents before the Supreme Court were the residents of two villages. Prior to the year 1956 the area comprised in both the villages were not included within the municipal limits of the Vishakapatnam Municipality. They were not assessed to property tax under the A.P. District Municipalities Act 1920 which was in force till the Act of 1965 was introduced. They were paying tax only to the Village Panchayat. On March 24, 1970 and June 10, 1970, the Municipal Council of Vishakapatnam declared its intention to levy tax on the two villages now included in the Municipal limits of Vishakapatnam. The demand issued in that behalf was challenged by the residents of the two villages. In that context, the Supreme Court held that imposition of property tax on the residents of the newly included area without following the procedure prescribed by the relevant Sections in the A. P. Municipalities Act was illegal. The Judgment of the High Court of Andhra Pradesh in that behalf was affirmed.

7. It is not disputed in these cases that these area form part of the Bangalore Metropolitan area as defined u/s 2(c) of the B.D.A. Act. Section 2(c) reads as follows:

"Bangalore Metropolitan Area" means the area comprising the City of Bangalore as defined in the City of Bangalore Municipal Corporations Act, 1949 (Mysore Act 69 of 1949), the areas where the City of Bangalore Improvement Act, 1945 (Mysore Act 5 of 1945) was immediately before the commencement of this Act in

force and such other areas adjacent to the aforesaid as the Government may from time to time by notification specify."

The definition read with Section 3(1) of the B.D.A. Act, makes it clear that the B.D.A. has jurisdiction over the Bangalore Metropolitan area in so far as the territorial limits are concerned. In this context one should not fail to notice that the areas coming within the jurisdiction of the Corporation of the City of Bangalore and the area coming within the jurisdiction of the B.D.A. within the Bangalore Metropolitan area overlap. Therefore in so far as the authority to perform the duties and functions of the Corporation contemplated u/s 29 of the B. D.A. Act is concerned, the B. D.A. is only a substitute for the Corporation in respect of the areas which fall within the Bangalore Metropolitan area but not included in the Corporation of the City of Bangalore. If that is borne in mind, then there is no difficulty as to how the two authorities exercise their respective duties and function over the areas comprised within one unit known as Bangalore Metropolitan area. In other words, the area coming within the Corporation limits for purposes of tax falls outside the purview of the power of taxation of the B.D.A. and vice-versa.

8. It was pointed out by the learned Counsel appearing for the B.D.A. that the areas in question wherein sites have been formed, taxes were being paid to some local authority and therefore, the B.D.A. u/s 501A or the Corporations Act could continue to levy taxes and therefore there was no procedural bar under Sections 103 to 107 of the Corporation Act. Section 501A reads as follows:

"Effect of absorption of Municipality or sanitary board area, notified area or a town board area, into a City -

If any local area comprised in a Municipality or a sanitary board or a notified area of a town board constituted or continued under the Karnataka Municipalities Act, 1964 (Karnataka Act 22 of 1964) or any other law is included in a City by virtue of a notification under Sub-section (1) of Section 4, then, notwithstanding anything contained in this Act or the Karnataka Municipalities Act, 1964 or any other law, but subject to the provisions of Section 4, with effect from the date on which such area is included in the City, the following consequences shall ensue, namely -

(a) the Municipal Council or the sanitary board, or the notified area committee or the town board of such local area (hereinafter referred/to as the local authority) shall cease to exist;

(b) the unexpended balance of the fund of the local authority (including arrears of rates, taxes and fees) belonging to the local authority and all rights and powers which, prior to such notification, vested in the local authority shall, subject to all charges and liabilities affecting the same, vest in the Corporation of the City (hereinafter referred to as the Corporation);

(c) any appointment, notification, notice, tax, order, scheme, licence, permission,

rule, bye-law or form made, issued, imposed or granted under any law or rule immediately before the said date in respect of the said local authority shall continue in force and be deemed to have been made, issued, imposed or granted under this Act until it is superseded or modified by any appointment, notification, notice, tax, order, scheme, licence, permission, rule, bye-law or form made, issued, imposed or granted under this Act.

(d) all budget estimates, assessment lists, valuations or measurements, made or authenticated under any law or rule immediately before the said date in respect of the said local authority shall be deemed to have been made or authenticated under this Act;

(e) all debts and obligations incurred and all contracts made by or on behalf of the local authority immediately before the said date and subsisting on the said date shall be deemed to have been incurred and made by the Corporation in exercise of the powers conferred on it by this Act;

(f) all Officers and servants in the employ of the local authority immediately before the said date shall become Officers and servants of the Corporation under this Act and shall, until other provision is made in accordance with the provisions of this Act, receive salaries and allowances and be subject to the conditions of service to which they were entitled immediately before such date;

Provided that it shall be competent to the Corporation, subject to the previous sanction of the Government, to discontinue the services of any Officer or servant who, in its opinion, is not necessary or suitable for the requirements of the service under the Corporation after giving such Officer or servant such notice as is required to be given by the terms of his employment and every Officer or servant whose services are dispensed with shall be entitled to such leave, pension, provident fund and gratuity as he should have been entitled to take or receive on being invalidated out of service, as if the local authority in the employ of which he was, had not ceased to exist;

(g) all proceedings pending on the said date before the local authority shall be deemed to be transferred to and shall be continued before the Corporation ;

(h) all appeals pending before any authority shall, so far as may be practicable, be disposed of as if the said local area had been included in the City when they were filed;

(i) all prosecution instituted by or on behalf of the local authority and all suits or other legal proceedings instituted by or against the local authority or any Officer of the local authority pending on the said date shall be continued by or against the Corporation as if the area of the said local authority had been included in the City when such prosecutions, suits or proceedings were instituted ;

(j) all arrears of rates, taxes and fees vesting in the Corporation shall, notwithstanding that such rates and fees cannot be levied under this Act, be recoverable in the same manner as a tax recoverable under this Act;

(k) until the reconstitution of the Corporation in accordance with the provisions of this Act, notwithstanding anything to the contrary contained in this Act, such number of persons as may be prescribed ordinarily resident in the area of the said local authority included in the City who shall be nominated by the Government shall be additional Councillors of the Corporation."

From the plain language employed, it is evident that it confers no power on anybody but merely declares the consequences when certain areas come within the limits of the Corporation. In other words, if any property was being taxed by the local authority within whose Jurisdiction the property was situated before it as included within the area of the Corporation then those taxes continued to be levied by the Corporation. Nothing more than that would occur as a consequence. Therefore it does not absolve the BDA from following the procedure which the Corporation is required to follow before it levies tax in terms of Sections 103 to 106 of the Corporations Act.

9. A look at these Sections clearly points to an inescapable conclusion that levy of tax is controlled by the procedural safeguards are mandatory and cannot be separated from the power to levy.

10. Section 103 provides for various matters in regard to which the Corporation shall have power to tax. Section 104 deals with the procedure which is preliminary to imposition of tax. It provides for a resolution being passed at a total general meeting for the purpose of levying tax on one or other of the taxes specified in Section 103 and in such resolution specify so far as may be applicable (i) the classes of persons or of property or of both which the Corporation proposes to make liable and any exemption which it proposes to make; (ii) the amount or rate at which the Corporation proposes to assess each such class. On the resolution being passed, the Corporation shall publish in the official Gazette and in such other manner as may be prescribed, a notice of such resolution in the prescribed form. Any inhabitant objecting to the imposition of the said tax may within one month from the publication in the Official Gazette of the said notice, send his objections in writing to the Corporation which shall consider the same or authorise the standing committee for taxation and finance to consider the same and report thereon and unless it decides to abandon the proposed tax, shall submit such objections with its opinion thereon and any modifications proposed in accordance therewith, together with a copy of the notice aforesaid to Government for its sanction. Section 105 provides for sanction by Government with or without notification and it may even refuse. Thereafter if sanction is obtained, the sanctioned resolution shall be published. It is only then in respect of land or building in terms of Section 109 rateable value has to be determined before the property is assessed to tax.

11. In the case of *KASTURIRANGA IYENGAR v. TOWN MUNICIPAL COUNCIL, HASSAN* 1975 KarLJ 333 a Full Bench of this Court clearly held that the resolution sanctioned by Government approving proposal of tax should be published setting out all the details that are necessary if not the whole of the

resolution, while considering the corresponding provisions relating to the procedure followed by the Municipality under the Karnataka Municipalities Act 1964 in the matter of levy of tax. Therefore, publication proposed is mandatory requirement in addition to obtaining sanction by Government. If these requirements are to be dispensed with in so far as the B.D.A. is concerned because it claims power to tax but not the procedural burden, the resultant position is unequal treatment of persons equally placed. For citizens coming within the Corporation area, Corporation must follow the procedure prescribed mandatorily, while the inhabitants of the area coming within the executive control of the B. D.A. need not be admitted to the privilege or right of objection. Such a situation, violative of Article 14, is unthinkable. Therefore, I have no hesitation to reject the contention that by virtue of notification u/s 29 of the BDA Act only power and not procedural aspect of the power to levy tax is transferred to the B.D.A.

12. In that view of the matter, the petitioners are bound to succeed as no material is placed before the Court either to demonstrate that the B. D. A. has passed the resolution in question muchless obtained the sanction of the Government and further has published the proposal after such sanction has been obtained for the benefit of the persons who are subjected to the tax.

13. The fact that they admit the issuance of notices to the owners of the sites or building, a check report invited by their own officers and having determined the rateable value of such property assessment completed and demand issued, the B.D.A. itself admits a procedure but not the procedure prescribed by the statute.

14. In that view of the matter, these Writ Petitions are allowed and a declaration made that respondent -Bangalore Development Authority cannot levy property tax or any other tax under the Corporations Act, without following the procedure prescribed under Sections 104 to 106 and subject to other limitations imposed by the provisions of the Corporations Act. Tax so far collected for the last three years from the date of the petitions shall be refunded to the petitioners. Assessment of building tax being an individual right and each assessee must seek separate relief in respect of his or her property. Therefore, no general declaration may be made. The respondent is restrained from collecting the tax unless they follow the procedure prescribed under Sections 104 to 107 of the Corporations Act in so far as the petitioners are concerned.

15. Petitioners are Entitled to costs. Rs. 500/- as Advocates fee in each of the petitions.