

(2000) 09 KAR CK 0035
In the Karnataka High Court
Case No : Writ Petition No. 17094 of 2000

Bangalore Mahanagara Nagareeka Kriyasamithi	APPELLANT
Vs	
Bangalore Mahanagara Palike and Another	RESPONDENT

Date of Decision : 04-09-2000

Acts Referred:

Constitution of India, 1950 — Article 226, 265
Karnataka Municipal Corporations Act, 1976 — Section 103 (b) (i), 148, 57, 72

Citation : (2000) ILR (Kar) 3772 : (2001) 3 KarLJ 123 : (2000) 4 KCCR 318 SN

Hon'ble Judges : Manjula Chellur, J;G.C. Bharuka, J

Bench : Division Bench

Advocate : Sri B.N. Ananthanarayana, for the Appellant; Sri Ashok Harnahalli and Sri B. Manohar, A.G.A., for the Respondent

Judgement

G.C. Bharuka, J.—The petitioner is an unregistered association claimed to have been formed for taking steps to solve the grievances of citizens of Bangalore and for safeguarding their civil rights.

2. The present writ petition has been filed by the Association as a Public Interest Litigation, questioning the implementation of Property Tax Self-Assessment Scheme (in short, "the Scheme"), framed and published by the respondent-Bangalore Mahanagara Palike through its Commissioner. The ground raised for impugning the Scheme is that it is violative of Article 265 read with Article 14 of the Constitution of India since formation of such a Scheme is not permitted under the provisions of the Karnataka Municipal Corporations Act, 1976 (in short, "the Act") and even if found to be so permissible, it is still void because it is tainted with hostile discriminations,

3. The Scheme had been framed and enforced by the respondent-Commissioner pursuant to the Mahanagara Palike Council Resolution No. 194/1999-2000, dated 13-3-2000 in order to give an option to the tax-payers to get their property tax assessed on a predictable and rationalised basis evolved under the Scheme. The inspiration for formulation of the impugned Scheme appears to have been taken

from the judgment of the Supreme Court in the case of State of Bihar and Others v Sachchidanand Kishore Prasad Sinka and Others . We will be dealing with the law laid down by the Supreme Court in this judgment a little later.

4. The purpose for which the Scheme had been floated is set out in the first document published with the Scheme under the title "Letter to Citizens". The relevant portion thereof is to the following effect:

"The method of assessment of property tax is provided u/s 109 of the Karnataka Municipal Corporations Act, 1976. The property is assessed to tax based on its Annual Rateable Value (ARV). As per Section 109(2), ARV of a property is the gross annual rent at which the building or land may reasonably be expected to let from month to month or from year to year. Section 109(2)(a)(ii) provides the method for assessing property tax when in the opinion of the Commissioner, the gross annual rent cannot be estimated. Though the property tax is being assessed u/s 109(2), the Corporation has so far not issued any guidelines to its Assessing Officers for the purpose of determining the annual rent. This has resulted in official discretion, which has not always been fair, different rates for similar buildings, citizen dissatisfaction and leakage of revenue to the Corporation. Obviously, this system has benefited neither the citizen nor the Corporation.

Apropos Section 148 of the KMC Act, 1976, the Corporation is empowered to revise the property tax at least once in five years, the reason for which is obvious. It is a trade off between the higher cost of annual reassessment and the gradual increase in revenue from the base year to meet the growing needs of the Corporation. While adopting the self-assessment scheme, the Council has simultaneously passed a resolution vide No. 388/99-2000, dated 13-3-2000, to take up general revision of all the residential properties since the same had not been done since 1972. The general revision is likely to cause avoidable harassment. Hence, the need for a revised system of assessment and one that is based on fair and rational parameters and is simultaneously citizen friendly".

(emphasis supplied)

5. In the additional statement of objections filed on 5-6-2000 by the respondent-Mahanagara Palike, it has been stated that within the limits of its area, there are 3,95,000 registered properties, out of which 2,80,000 are residential, 90,000 non-residential and 25,000 are vacant plots. It has further been stated that after enforcement of the Scheme till 1-6-2000, it has approximately received 52,40,000 applications from the tax-payers for availing the benefit under the Scheme. It has also been stated that against total collection of property tax in a sum of Rs. 17 crores in May 1999, the Corporation has already collected about Rs. 45 crores during the corresponding month in this year and keeping in view the response to the Scheme, the revenue collection is expected to reach the targeted collection of Rs. 175 crores. The details have also been given regarding overwhelming response received from the citizens of Bangalore, who have

welcomed the Scheme as correct measure to prevent evasion of property tax and its benefits for the honest tax-payers.

6. Broadly speaking, the impugned scheme contains various rent rates per square foot per month that the property owner has to adopt for arriving at the Annual Rateable Value (ARV) of the properties. The Mahanagara Palike area has been divided into six zones and five property classification and has provided the rate of expected rents for arriving at the ARV. The rates have been shown under/against different zones/category for rented and self-occupied properties differently. Similar classification has been made in respect of non-residential properties. For the present, we need not enter into the details thereof.

7. Provisions similar to those made in the impugned Scheme for assessing the ARV of properties were made by the Government of Bihar by framing "The Assessment of Annual Rental Value of Holdings Rules, 1993" by invoking its powers conferred under the Patna Municipal Corporations Act, 1952. The Supreme Court in the case of State of Bihar, *supra*, negated its challenge under Article 14 of the Constitution of India by holding that-

"The merit of the Assessment Rules, 1993, as emphasized by the High Court at more than one place, is that they rid the house owners of the harassment and the constant threats of revision of annual rental value by the concerned officials of the Corporation. The earlier system of taxation left too much discretion in their hands. Now, the only thing that has to be ascertained is the carpet area of the house, the rest is determined by the rules and the notifications. There is no question of revision of annual rental value periodically on the ground that the rental value has gone up. A new system, with all good intentions is being tried out a system designed in the interest of the body of house owners taxpayers as well as the Corporation. May be, this is the trial and error method spoken of in *R.K. Garg v Union of India and Others*¹. Unless found to be offending the constitutional or statutory provisions, it must be allowed to be worked out. One should start with the presumption that the Corporation knows what is the better method of classification. It has chosen to divide it with reference to roads. It is difficult for the Court to substitute its opinion for that of the Corporation nor can any one guarantee that if the Municipal Corporation area is divided on the basis of zones it will be a perfect classification and would eliminate all complaints and grievances of differential treatment".

(emphasis supplied)

Re: Legislative Scheme and Law Relating to ARV

8. Chapter X of the Act deals with Taxation". Section 103(b)(i) *inter alia* provides that subject to the general or special orders of the Government a Corporation shall with the sanction of the Government and at the rates not exceeding those specified in Schedules III, IV and VII can levy a tax on buildings or lands or both situated within the city called the "Property Tax". It is not in dispute that by following the procedure laid down u/s 104 the Corporation has already levied

property tax.

9. So far as the rate of tax is concerned, it is governed by Section 108(2) which provides that the property tax shall be levied, at such percentage, not being less than 20% and not more than 25% of the rateable value of buildings and lands as may be fixed by the Corporation. It further provides that the percentage so fixed may be different in different areas and for different classes of buildings and lands. Pursuant to these powers the Corporation has fixed the rate of 20% for residential buildings and 25% for non-residential buildings based on rateable value of the buildings and lands.

10. Sub-section (3) of Section 108 provides that for the purpose of assessing the property tax the rateable value of the building or land shall be determined by the Commissioner. For an effective resolution of the dispute involved herein, Section 109 of the Act is the most material provision. It provides the method for assessment of property tax. It reads as under:

"109. Method of assessment of property tax.--(1) Every building shall be assessed together with its site and other adjacent premises occupied as appurtenances thereto unless the owner of the building is a different person from the owner of such site or premises.

(2) The rateable value of a building or land shall be deemed to be the gross annual rent at which such building or land may at the time of assessment reasonably be expected to let from month to month or from year to year less a deduction in the case of buildings only of sixteen and two-thirds per cent of such annual rent and the said deduction shall be in lieu of all allowance for repairs or on any other account whatever:

Provided that-

(a) in the case of-

(i) any Government or railway building; or

(ii) any building of a class not ordinarily let, the gross annual rent of which cannot in the opinion of the Commissioner be estimated, the rateable value of the premises shall be deemed to be six per cent of the total of the estimated market value of the land at the time of assessment and the estimated cost of erecting the building at such time after deducting for depreciation a reasonable amount which shall in no case be less than ten per cent of such cost, and

(b) machinery and furniture shall be excluded from valuation under this section".

(emphasis supplied)

11. From the above provisions it is clear that all the parameters or measures which are required for determining the property tax-payable by the owner of the building or land like the rate of tax and permissible deductions from rateable value has already been prescribed by the legislature itself. But so far as the

rateable value of the building/land is concerned, it has to be worked out and assessed by the Commissioner by determining the gross annual rent at which such buildings / lands may at the time of assessment reasonably be expected to let from month to month or year to year.

12. In the case of *Motichand /Hirachand v Bombay Municipal Corporation*, while considering a provision similar to Section 109(2) of the present Act, it has been held by the Supreme Court that-

"the measure for purposes of rating is therefore the rent which the hypothetical tenant looking at the building as it is, would be prepared to pay".

13. The Supreme Court, in the case of *Patel Gordhandas Hargovindas v The Municipal Commissioner, Ahmedabad*, after examining various Municipal Acts and also the law on the subject in England has said that annual value or rateable value of land or building is arrived at by one of the three modes, namely, (i) actual rent fetched by land or building where it is actually let, (ii) where it is not let, rent based on hypothetical tenancy, particularly in the case of buildings, and (iii) where either of these two modes is not available, by valuation based on capital value from which annual value has to be found by applying a suitable percentage.

14. Apart from the above three modes of determining the rateable value of building/land, the Supreme Court in the case of *State of Bihar, supra*, has upheld the validity of the fourth mode of determining the said value on the basis of the prescribed rate of rental value per square foot of the carpet area for different classes of holding subject to its fixation and publication as per law. The Supreme Court in para 20 of the report, while un holding the validity of this mode, has taken notice of the contemporary administrative scenario and appears to have consciously observed that-

"While putting the method of determination of annual rental value on a more uniform basis eliminating room for arbitrariness and corruption. We are unable to see any room for legitimate grievance on this account".

(emphasis supplied)

Re: Legality of the Corporation Resolution and the Scheme

15. In the backdrop of the above facts, the first and the foremost question to be considered is whether the Commissioner or the Corporation was competent to envisage and enforce the Scheme of the nature impugned herein within the framework of the Act.

16. It is not in dispute that the impugned Scheme was framed and unformed pursuant to an unanimous resolution taken by the Corporation in its meeting held on 13-2-2000. According to Mr. Ashok Harna-halli, learned Counsel for the Corporation, Section 57 of the Act empowers the Corporation to pass such a resolution.

17. Section 57 of the Act provides for-

"Section 57. General powers of the Corporation.--(1) Subject to the provisions of this Act, the rules, the regulations and the bye-laws made thereunder, the Municipal Government of the city shall vest in the Corporation.

(2) Without prejudice to the generality of the provisions of sub-section (1), it shall be the duty of the Corporation to exercise such powers, perform such functions and discharge such duties as are conferred on it by and under this Act and consider all periodical statements relating to the receipts and disbursements and all progress reports and pass such resolution thereon, as it thinks fit".

18. We find that Section 72 of the Act casts an obligation on the other Municipal Authorities including the Commissioner to carry out the resolution of the Corporation. This section provides that-

"Section 72. Obligation laid on remaining Municipal Authorities to carry out resolutions of the Corporation.-- The Committees constituted under this Act and the Commissioner shall be bound to give effect to every resolution of the Corporation unless such resolution is cancelled in whole or in part by the Government:

Provided that, if in the opinion of the Commissioner any resolution of the Corporation or a Committee constituted under this Act contravenes any provision of this Act or any other law or any rule, notification, regulation or bye-law made or issued under this Act or any other law, or of any order passed by the Government or is prejudicial to the interests of the Corporation he shall, within fifteen days of the passing of the resolution, refer the matter to the Government for orders and inform the Corporation or the committee, as the case may be, of the action taken by him at its next meeting and until the orders of the Government on such reference are received, the Commissioner shall not be bound to give effect to the resolution".

19. According to Mr. Ashok Harnahalli, learned Counsel for the respondent-Corporation, since the Scheme formulated by the Corporation was found to be in the best of its interest, therefore the Commissioner found no occasion to refer it to the Government nor the Government of its own found it advisable to cancel the same. In the view of the matter, the Commissioner was bound to carry out the Scheme giving an option to the tax-payers to pay property tax without inviting any assessment at the hands of the Commissioner or his subordinates.

20. No tax-payer availing the Scheme has approached this Court with the grievance that enforcement of the Scheme has in any way infringed any of his constitutional, fundamental or statutory rights. As of fact, no such grievance could have been raised by any tax- payer since the impugned Scheme was optional in nature and nobody was forced or coerced to adopt the same and pay property tax only in accordance with the contemplations of the Scheme.

21. It is also of importance to note that as on the date of completion of hearing

of the present case, the Scheme had already been put in force and the persons opting for it had already paid the tax voluntarily. Thus, coming into force of the Scheme and availing of the benefits thereunder by the desired tax-payers has become fait accompli.

22. So far as the pleas raised on behalf of the petitioners regarding discriminatory treatments for different classes of owners of different classes of properties are concerned, which is sought to be raised on the basis of a microscopic dissection of the Scheme, also does not require any detailed examination by us because all these aspects have been duly answered by the Supreme Court in the case of *State of Bihar, supra*, by relying on its earlier judgments in the case of *P.M. Ashwathanarayana Setty v State of Karnataka* and *I.T.O., Shillong v N. Takin Roy Ryabai*.

23. In the case of *P.M. Ashwathanarayana Setty, supra*, it has been held that-

"The lack of perfection in a legislative measure does not necessarily imply its unconstitutionality. It is rightly said that no economic measure has yet been devised which is free from all discriminatory impact and that in such a complex arena in which no perfect alternatives exist, the Court does well not to impose too rigorous fiscal services. In *G.K. Krishnan v State of Tamil Nadu*, this Court referred to, with approval, the majority view in *San Antonio Independent School District v Rodrigues*, speaking through Justice Stewart:

"No scheme of taxation, whether the tax is imposed on property, income or purchases of goods and services, has yet been devised which is free of all discriminatory impact. In such a complex area in which no perfect alternative exist, the Court does well not to impose too rigorous a standard of scrutiny lest all local fiscal schemes become subjects of criticism under the Equal Protection clause"..".

24. In *N. Takin Roy Ryabai's* case, *supra*, the Apex Court has held that-

"The mere fact that a tax falls more heavily on some in the same category, is not by itself a ground to render the law invalid. It is only when within the range of its selection, the law operates unequally and cannot be justified on the basis of a valid classification, that there would be a violation of Article 14".

25. Another aspect, which had been raised by the petitioners to assail validity of the impugned resolution is that u/s 109(2) of the Act, ARV can be assessed only on the basis of fair rent of the property. This legal aspect has been considered at length by one of us (G.C. Bharuka, J.) in the case of *M/s. Rajatha Enterprises v Commissioner of Corporation of the City of Bangalore*, which has been affirmed by the Division Bench in W.A. No. 7635 of 1996, DD: 12-12-1996. It is true that the Commissioner while making assessment cannot deviate from the law laid down by the Supreme Court and this Court but situation acquires a different complexion when the Corporation in the best interest of its revenue as also that of the tax-payers and to mitigate the prevailing vices of arbitrariness and

corruption in its administrative machinery comes out with an optional scheme like the impugned one, which even on a judicial review cannot be found to be prejudicial to anybody's interest.

26. We are of the considered opinion that if the scheme has withstood the test of its good intention and has proved to be an appropriate innovative system to augment revenue of the Corporation which are direly needed to provide much needed civic amenities to the residents of Bangalore, then it may be found advisable for the Government to bring about appropriate amendment in Section 109(2) of the Act like the one u/s 130(1) of the Patna Municipal Corporations Act, which states that "save as may be prescribed by the rules made by the State Government. . ." and make appropriate rules to embody the structure of the Scheme with such modification which make it more intelligible and rational. Such a legislative measure will certainly meet the need of the day and give some amount of solace against the arbitrariness and corruption prevailing in the administrative wing of the Corporation as has been admitted in the impugned Scheme itself.

26-A. We hope and trust that the Government and the Corporation will take similar innovative steps in relation to areas like sanctioning of building plans and change of khatas as well, which are also alleged to be heavily infected with the above vices. These goals can certainly be achieved by appropriately amending the law, if necessary, and pressing into service the present Information Technology, for contribution to which, the State of Karnataka is so proud of. Such innovative steps will be in consonance with the professed policy of the Government ensuring transparency and accountability, which has now been made legally feasible with the statutory recognition of e-governance under the Information Technology Act, 2000 enacted by the Parliament,

Reg: Maintainability of writ petition

27. As noticed above, the petitioner claims itself to be an association, though unregistered, of like minded citizens of Bangalore, who intends to take steps to resolve the grievances of the citizens of the city and safeguard their civic amenities. This writ petition has been filed as Public Interest Litigation. The respondent-Corporation has taken threefold objections regarding its maintainability. The first is that the petitioner has failed to establish that enforcement of the impugned scheme has resulted in any public injury or is intended to protect any social right or vindicate any public interest. The second ground is that the association does not hold any property of its own and cannot claim to be a tax-payer and therefore it cannot question any measure taken by the Corporation regarding levy of tax. The third and last ground is that the association being an unregistered one, has no locus standi to maintain the writ petition.

28. So far as the first ground is concerned, in relation to the scope of Public Interest Litigation and its entertainability by the High Courts under Article 226 of

the Constitution of India, the Supreme Court, after taking into consideration its previous pronouncements in the cases of Sachidanand Pandey v State of West Bengal, and Ramsharan Autyanuprasi v Union of India , in its recent judgment in the case of Matik Brothers v Narendra Dadhich, has held that-

"it is necessary to bear in mind that a public interest litigation is usually entertained by a Court for the purpose of redressing public injury, enforcing public duty, protecting social rights and vindicating public interest. The real purpose of entertaining such application in the vindication of the rule of law, effective access to justice to the economically weaker class and meaningful realization of the fundamental rights. The directions and commands issued by the Court of law in a public interest litigation are for the betterment of the society at large and not for benefiting any individual. But if the Court finds that in the garb of a public interest litigation actually an individual's interest is sought to be carried out or protected, it would be the bounden duty of the Court not to entertain such petition as otherwise the very purpose of innovation of public interest litigation will be frustrated. It is in fact a litigation in which a person is not aggrieved personally but brings an action on behalf of the downtrodden mass for the redressal of their grievance".

29. Even in an another earlier case, the Supreme Court in the case of Chaitanya Kumar v State of Karnataka and Others, has held that-

"According to Shri Venugopal while the institution of public interest litigation is a good thing in itself, those professing to be public spirited citizens cannot be encouraged to indulge in wild and reckless allegations besmirching the character of others and so the Court must refuse to act at the instance of such pseudo-public spirited citizens. We agree with Mr. Venugopal. But, simultaneously, the Court cannot close its eyes and persuade itself to uphold publicly mischievous executive actions which have been so exposed. When arbitrariness and perversion are writ large and brought out clearly, the Court cannot shirk its duty and refuse its writ. Advancement of the public interest and avoidance of the public mischief are the paramount considerations. As always, the Court is concerned with the balancing of interests".

(emphasis supplied)

30. In the present case, as noticed above by us, response to the impugned Scheme, tax-payers on their own opted for the same, paid somewhere in the range of 175 crores by way of property tax avoiding rigors of assessment and consequential litigation by way of appeals, revisions and writ petitions. This has helped not only them in buying peace and utilising their time to pursue their business/profession/calling more effectively but also enriched the coffers of the Corporation to provide better civic amenities. Therefore, the Scheme can in no way be held to be injurious to the public need or affected social and legal rights or law abiding citizens, In this view of the matter, in our opinion, the present writ petition by the present association under the guise of public interest litigation

cannot be held to be maintainable. On the facts as found, we feel constrained to hold a view that the present writ petition has been filed for considerations other than those meant for invoking such a jurisdiction. Though according to the respondents the present writ petition is tainted with mala fide inspired by group, class or political rivalry but we refrain from probing into the same.

31. So far as the second ground regarding maintainability is concerned, it is based on the Division Bench decision of this Court in the case of *Thimmarayaswamy v Gurumurthy*. In this case, despite agreeing with the view taken by the Bombay High Court in the case of *Municipal Corporation for the City of Bombay v Govind Laxman Savant*, that tax-payer has a specific legal interest entitling him to come to Court in order to prevent the Corporation from acting contrary to law or their own character, it has been held that-

"We have to note in this case that appellant is not even an individual tax-payer, but Yuvaka Rytha Sangha, an association. In our considered view, therefore, the appellant cannot claim to be rate payer".

After so holding, the writ petition filed by the said association was dismissed as not maintainable. The Bench decision binds us. Even otherwise, we respectfully agree with the view taken as above.

32. The third ground is based on a learned Single Judge's judgment of the Calcutta High Court in the case of *Sand Carriers' Owners' Union v Board of Trustees for the Port of Calcutta*, wherein it has been held that-

"Unincorporated associations are not legal person and as such, writ petitions are not maintainable. An association could be formed to protect the interest of consumers, tenants or other groups with the common interest but such group cannot move writ application. No aspect of the representative law has been changing more rapidly than the law governing standing and the standing barrier has been substantially lowered in recent years, but on the basis of the law relating to standing as in England or in America as also in India, it can be held without any difficulty that the writ petition at the instance of an association is not maintainable where the association itself is not affected by any order. The members of such association may be affected by common order and may have common grievance, but for the purpose of enforcing the rights of the members, writ petition at the instance of such association is not maintainable. The door of the Writ Court could be made open at the instance of persons or authorities under the aforesaid four categories and to hold that every Tom, Dick and Harry can move the writ application would render the standing requirement meaningless and would introduce a procedure which is not judicially recognised".

33. The Orissa High Court as well in (1972)88 Cut. L.T. 1338, has taken the view that unincorporated club, not being a judicial person, is not entitled to invoke Article 226 of the Constitution. Similarly, the Allahabad High Court in the case of *Indian Sugar Mills Association through its President Shri Hart Raj Swarup v Secretary to Government, Uttar Pradesh Labour Department and the Madhya*

Pradesh High Court in the case of S.K. Kalani and Company v Iron and Steel Controller, have also taken similar views.

34. We also agree with the view so taken by the High Courts of Calcutta, Orissa, Allahabad and Madhya Pradesh and hold that an unincorporated body of individuals describing itself to be an Association, Union, Club or under any other name, being not juristic person, cannot be held to be sui juris or competent to maintain writ petition for ventilating the grievances either for its members or for serving the so-called public cause.

35. For the aforesaid reasons, the writ petition is dismissed.