(2018) 03 CHH CK 0332

In the Chhattisgarh High Court

Case No : WPT No. 273 of 2017

BHARAT ALUMINIUM COMPANY LIMITED APPELLANT

Vs

STATE OF CHHATTISGARH RESPONDENT

Date of Decision : 28-03-2018

Acts Referred:

Chhattisgarh Municipalities Act, 1961 — Section 1(a)(1), 66, 132, 135, 136, 138, 433
Constitution of India, 1950 — Article 243Q, 243W, 226

Citation : (2018) 03 CHH CK 0332

Hon'ble Judges : P. SAM KOSHY, J

Bench : Single Bench

Advocate : Brian De Silva, S.S. Rajput, Sarab Veer Singh Oberoy, Gary Mukhopadhyay, Rajeev Shrivastava, B.D. Guru

Final Decision : Dismissed

Judgement

1. The present writ petition has been filed seeking for an issuance of a writ holding that the Municipal Corporation, Korba is not entitled to collect

property tax from the petitionerâ??s establishment as they are not providing any service or benefits to the petitioner or within the premises under

possession of the petitioner. It was also the prayer of the petitioner seeking for refund of the amount of property tax collected for the Financial Year

2017-18. Lastly, petitioner had sought quashment of the resolution (Annex.P/1) whereby the Municipal Corporation has decided to presume/treat

buildings/structures with single roof, the height of which at more than 16 feet of having multiple floors and the same being ultra vires and voilative of

the provisions of Sections 132, 135, 136 & 138 of the Chhattisgarh Municipal Corporation Act. That as a consequential relief, the petitioner also sought

for quashment of Annex.P/2 the demand notice dated 05.08.2017 demanding balance of the property tax for the Financial Year 2017-18 of

Rs.18,10,84,796/-.

2. The petitioner is a manufacturer of Aluminum and also has a Power Generation Plant at district Korba. According to the petitioner, a Municipalities/

Municipal Corporation/Municipal Council/Nagar Panchayat are all constituted under Article 243Q of the Constitution of India. These bodies under

Article 243W of the Constitution have been empowered authorized and made responsible enabling them to function as institutions of self government

and such law also contain provisions for devolution of powers and responsibilities upon them. They have also been given the power for preparation of

plans for economic development and social justice.

3. Section 66 of the Municipal Corporation Act envisages the requirement which the corporation is suppose to provide to the public at large and for

providing these requirements it can have means of measure which it may lawfully use or take for providing lightings on the public streets, places and

buildings, cleaning the public streets and places and sewers, disposing of night soils and rubbishes, making available the fire brigades for extinguishing

fires and other like accidents ensuring protection of life and property from fire, removing obstructions and projections in public streets and public

places, etc. etc. The contention of the petitioner is that all these facilities in the premises, which is in possession of the petitioner and its surroundings

are being made available by the petitioner. According to the petitioner, these are duties which were bound to be provided by the Municipal

Corporation, which since they are not providing and in turn the petitioner themselves are providing these facilities in the premises, which is in

possession of the petitioner and its surroundings. The corporation would not be entitled to collect or impose property tax on the petitioner.

4. It was also contended by the petitioner that since it is the petitioner themselves which is maintaining the townships and in the process is incurring

huge expenditure in providing the basic services and facilities like road, electricity, sanitation, cleanliness and lightings in the township of the petitioner.

Thus they should not be further burdened with payment of property tax. Since the object behind collecting the property tax is being fulfilled by the

petitioner themselves so far as their premises are concerned.

5. According to the petitioner, the property tax so collected by the respondent-corporation is in fact in the nature of a compensatory tax and since the

expenses towards civic amenities in this case is being borne by the petitionerâ??s establishment itself they cannot be further fastened with the liability

of payment of property tax which otherwise also is to be used for providing the basic facilities and amenities in the townships of the petitionerâ??

establishment.

6. So far as the second limb of argument by the petitioner is that the resolution Annexure P/1 passed by the respondent-corporation is bad in law for

more than one reasons.

7. According to the counsel for the petitioner, the impugned resolution Annexure P/1 is bad in law to the extent of assessing property tax on buildings

the height of which is more than the normal, as building having multiple floors at a height of every 16 feet. According to the petitioner, this resolution

infact has been passed in fiction as such floor in the building does not exist, but presuming of there being floors at height of every 16 feet, the tax is

being assessed. This according to the petitioner is nothing but a tax calculated on presumption and that is why it is being termed by the petitioners as

property tax being charged under fiction. According to the petitioner, the assessment of property tax has to be made in accordance with the provision

of Section 135 of Municipal Corporation Act. It was the contention of the petitioner that the property tax is always assessed on the annual letting value

and on the actual size of the constructed building. There could not be an assessment made on presumption or under the belief of there being a floor in

existence which infact does not exist. According to the petitioner, the said resolution or the mode of assessment introduced by the Municipal

Corporation is nothing but an Act of unjust enrichment. The contention raised by the senior counsel was that the basis for fixing the property tax is the

annual letting value of the building and that too the measurement per square meter of the built up area. According to the petitioner, taxing statute can

never be presumption based. It has to be on the actuals and thus the resolution imposing property tax is vindictive of Section 135, 136 & 138 of

Municipal Corporation Act and the rules framed therein and thus prayed for allowing the petition and quashing all the resolutions and notices issued

demanding property tax.

8. Per contra, the counsel appearing for the Municipal Corporation opposing the petition submits that, the entire petition filed by the petitioner is totally

misconceived. According to him, Section 66 of Municipal Corporation Act provides certain duties on the Corporation, but the Act at the same time

does not provide any exemption if services are not provided. The Act also does not provide any provision wherein in case the services are already

provided by the assessee, they would be exempted from the payment of property tax. The Municipal Corporation Act provides for certain exemption

and Section 136 deals with exemptions and the case of the petitioner does not come under any of the parameters laid down under Section 136 of

Municipal Corporation Act. He further contended that, the taxing event does not depend upon the services which has to be provided that taxing event

is different than compensatory tax. Therefore imposition of property tax by the Municipal Corporation under the Municipal Corporation Act cannot be

considered as compensatory tax. According to the counsel for the corporation, the property tax which are collected from different assessee are based

on different factors like the location of premises, the situation, the purpose for which the consideration is made, the quality of construction, its capacity,

the profitable use and other such relevant factors. It was further contended that only because corporation is not providing the basic facilities or the

amenities in the premises of the petitioner by itself can never be a good ground for seeking exemption from payment of property tax. According to

him, the owners of buildings situated within the territories of Municipal Corporation are required to pay property tax on the basis of gross annual letting

value of the building or land. It was also the contention of the counsel for the petitioner that it is only the property tax which is being demanded by the

corporation from the petitioner and the corporation does not charge water tax, general sanitary tax and general lighting tax etc. from the petitioner as

the corporation is not providing these services within the premises of the petitioner and the same is being looked after by the petitioners themselves.

He further submits that, the height of a particular building is also a relevant factor for assessing of property tax and annual letting value. The counsel

for the corporation relied upon 1980 1 SCC 416 & 1983 MPLJ 253 to support the contention that they have made, highlighting the fact that height also

is a relevant consideration for determining the annual letting value for the purpose of demanding property tax and thus prayed for rejection of petition.

9. Having heard the contentions put forth on either side, before going into the issue which is put for adjudication in the present case, it would be

relevant at this juncture to refer to some of the provisions of the Municipal Corporation Act (for short 'the Act') dealing with the property tax as has

been discussed in the preceding paragraphs. Section 66 of the Municipal Corporation Act envisages the requirement of the Corporation to provide the

public all the basic facilities and amenities like providing lights and cleaning of public streets, places & sewers and disposing of night soil and rubbish

and other such basic facilities required for the general public at large. The entire Chapter V of the Municipal Corporation Act deals with the social

responsibilities casted upon the Corporation for better living of the society at large. Chapter-XI of the Act deals with the topic of taxation. Section 132

of the Municipal Corporation Act empowers the Corporation to impose tax under different heads which includes property tax. Section 132

(1) (a) refers to imposition of property tax which for ready reference is reproduced hereunder:

Â â??(a) a tax payable by the owners of buildings or lands situated within the city with reference to the gross annual letting value of the buildings or

lands, called the property tax, subject to the provisions of Sections 135, 136 and 138:â??

10. A plain reading of the said provision of law itself clearly reflects that the Corporation has the power to impose property tax under this Act but the

same shall be subject to the provisions of Sections 135, 136 & 138 of the Municipal Corporation Act. Section 135 of the Act specifically deals with

imposition of property tax which again for ready reference is being reproduced hereunder:

â??135. Imposition of property tax â?" (1) Notwithstanding anything contained in this Act, the tax under clause (a) of sub-section (1) of Section 132

shall be charged, levied and paid, at the rate not less than six percent and not more than ten percent of the annual letting value, as may be determined

by the Corporation for each financial year.â??

11. Section 135 of the Act provides for imposition of property tax as provided under Section 132 of the Act and the tax rate also stands fixed i.e. at

the rate not less than 6% and not more than 10% of the â??annual letting valueâ? as would be determined by the Corporation for each financial year.

Section 136 casts certain exemptions and guidelines in respect of the following properties:

(a) buildings and lands owned by or vesting in-

i) the Union Government

ii) State Government

iii) the Corporation;

12. If we peruse Section 135 of the Act, what clearly reflects is that it is the annual letting value which is material while quantifying the property tax.

Annual letting value of land and building has been defined in Section 138 of the Corporation Act. According to Section 138 of the Act, the annual

letting value of building and land shall be determined as per the resolution of the Corporation adopted in this behalf on the basis of per square meter of

the built up area of a building or land, as the case may be, taking into consideration the area in which the building or land situates, its location, situation,

purpose for which it is used, its capacity for profitable user, quality of construction of the building and other relevant factors, as may be, made by the

State Government in this behalf. Sub Section 1 & 1(a) of Section 138 of the Act reads as under:

â??138. Annual letting value of land or building â?" (1) Notwithstanding anything contained in this Act or any other law for the time being in force, the

annual letting value of any building or land, whether revenue paying or not, shall be determined as per the resolution of the Corporation adopted in this

behalf, [on the basis of per square meter of the [built up area] of a building or land, as the case may be] taking into consideration the area in which the

building or land is situated, its location, situation, purpose for which it is used, its capacity for profitable user, quality of construction of the building and

other relevant factors and subject to such rules, as may be made by the State Government in this behalf.

(1-a). The Commissioner shall prepare the draft resolution under sub-section (1) for the next financial year and submit before the Corporation before

31st December of each financial year. In case the corporation fails to adopt the resolution as required by sub- section (1) by 31st March of each

financial year then the draft resolution prepared by the Commissioner shall be presented to the Mayor and the resolution as approved by the Mayor

shall be deemed to be the resolution finally adopted by the Corporation:

13. On the basis of the aforesaid resolution adopted by the Corporation, every

owner of the land or building has to assess the annual letting value of his

land or building and deposit the amount of property tax. The variation up to 10% on either side in the assessment made, shall be ignored where the

variation is more than 10%, the owner shall be liable to pay penalty equal to 5 times the differences.

14. The respondents in exercise of the power under Municipal Corporation Act have framed the Municipality (Determination of Annual Letting Value

of Building/Lands) Rules, 1997 (for short 'the Rules, 1997'). Rule 2 (h) defines constructed area which means the constructed area of each floor or

the house owned by the owner of the building/land. Rule-4 further has made classification of buildings and lands in different zone and certain criteria

have been laid down to be considered while determining the annual letting value. For ready reference Rule-4 is reproduced hereunder:

Â â??4. Classification of Buildings and lands - The classification of buildings and lands situated in every zone shall be as follows:

(a) Quality of construction

i) Buildings having roof made or R.C.C./R.B.C. or stone;

ii) Buildings having roof made of sheets of cement or iron or tiles;

iii) Other semi-pakka or Kuccha buildings which does not fall within sub-clause (i) or (ii).

(b) On the basis of use-

i) Buildings/lands for the purpose of commercial or industrial;

ii) Buildings/lands for the purpose of residential.

(c) On the basis of location-

i) Building/land situated at main road;

ii) Building/land situated at main market.â??

15. So far as the rule of construction to be taken into consideration by the Courts to find out the true intention of the Legislature is concerned, it would

be relevant at this juncture to refer to AIR 1971 SC 1033 (Jage Ram and Ors. Vs. State of Haryana and Ors) where in paragraphs- 13 & 14 referring

to Halsbury's Laws of England the Hon'ble Supreme Court held as under:

â??13. The ejusdem generis rule is not a rule of law but is merely a rule of construction to aid the courts to find out the true intention of the legislature. If a given provision is plain and unambiguous and the legislative intent is clear, there is no occasion to call into aid that rule ejusdem generis

rule is explained in Halsbury's Laws of England (3rd Edn.). Vol. 36 p. 397 paragraph 599 thus:

As a rule, Where in a statute there are general words following particular and specific words, the general words must be confined to things of the

same kind as those specified, although this, as a rule of construction, must be applied with caution and subject to the primary rule that- statutes are to

be construed in accordance with the intention of Parliament. For the ejusdem rule to apply, the specific words must constitute a category, class or

genus; if they do constitute such a category, class or genus, then only things which belongs to that category, class or genus fall within the general

words......

14. It is observed in Craies on Statute Law (6th Edn.) p. 181 that :

The ejusdem generis rule is one to be applied with caution and not pushed too far, as in the case of many decisions, which treat it as automatically

applicable, and not as being, what it is, a mere presumption in the absence of other indications of the intention of the legislature. The modern tendency

of the law, it was said, is ""to attenuate the application of the rule of ejusdem generis"". To invoke the application of the ejusdem generis rule there must

be a distinct genus or category. The specific words must apply not to different objects of a widely differing character but to something which can be,

called a class or kind of objects.â??

16. Keeping in view the aforesaid settled legal position, if we take into consideration the provisions of law particularly taxing, it is evident that Section

136 of the Act deals with exemptions from levy of property tax. There are host of conditions stipulated under Section 136 of the Act granting

exemption from levy of property tax. A plain reading of the conditions enumerated therein would by itself clearly demonstrate that only because a

particular person is not availing the facilities or basic amenities to be provided by the Corporation, he cannot claim for exemption from payment of

property tax neither is there a clause under Section 136 of the Act which provides that if a particular institution, establishment or a person of its own

arranges for the basic amenities required for them, can claim for exemption from payment of property tax.

17. Given the aforesaid factual matrix of the case and the statutory provisions as it stands under the Corporation Act, the first ground raised by the petitioner that they not being liable to pay property tax does not have sufficient force of law or strength for the writ Court to grant an exemption in exercise of its powers conferred under Article 226 of the Constitution of India. The exemption could be granted to the petitioner only in the event if the statute so provides for. Another aspect which cannot be lost sight is that the statute does not envisage a provision wherein it holds that in the event if the Corporation does not fulfill the responsibility conferred upon it under Section 66, there can be a claim for exemption from payment of property tax. Thus, the first ground so raised by the petitioner stands negated and is decided against the petitioner.

18. This leads to the second ground in the petition i.e. challenge to the resolution to the extent of the method of assessing the property tax treating the building height which is more than the normal buildings as a special category for charging property tax and presuming such building to have multiple floors at a height of every 16 feet.

19. The expenses incurred by the Corporation or a Municipality in discharging its obligatory functions are usually met by the imposition of variety of taxes. One such tax is the property tax, which again is as per the provision of Section 135 of the Municipal Corporation Act. It is when a fee is charged which necessitates the Corporation to provide service, but such a requirement is not available when the levy is by way of a tax. So far as the challenge to the resolution of the Corporation Annex.P/1 is concerned, the only portion of the resolution which is under challenge is the note at the bottom of the chart providing the rates of property tax fixed by the Corporation and the note envisages that property tax in respect of buildings of which height is higher than the normal height of a building, then the said building would be treated as buildings of multiple floors at a height of every 16 feet.

20. The fact which needs an appreciation at this juncture is section 138 of the Act which deals with the annual letting value of a land or building. The said provision itself very specifically holds that the annual letting value of a building shall be determined as per the resolution of the corporation adopted in this behalf. Likewise, sub-sections (1a) and (2) of Section 138 provides with

the manner in which the resolutions are to be passed and proved. Now,

if we look at sub-section (1) it provides for certain factors, which are taken into consideration for determining the annual letting value and some of the

relevant factors are; (a) the area in which the land or building situates, (b) its location, (c) its situation, (d) the purpose for which it is used, (e) its

capacity for profitable user and (f) quality of construction of the building and other relevant factors.

21. If keeping all these factors into consideration, particularly the capacity of the plant for profitable user, the quality of construction and other relevant

factors would easily bring in the factor regarding the height of the building for the purpose of assessment of property tax. A height of a building

irrespective of whether it has an extra floor or not, may not be too crucial a factor. The corporation has in the instant case taken 16 feet as the normal

height of a building and has vide the resolution declared that those buildings which are more than 16 feet in height would be considered as buildings

with multiple floors at a height of every 16 feet.

22. A plain reading of section 138(1) would reveal that what is broadly to be taken into consideration is the area of construction, the capacity of the

building, the quality of construction and other relevant factors and if the corporation in the process has keeping in mind the large number of high rising

buildings huge chimneys and other like structures in the corporation area, for the purpose of determining the property tax have considered the height of

the building to also be a relevant factor, the same cannot be said to be in any manner violative of any of the provisions of Municipal Corporation Act.

23. If we carefully read Section 138 of the Municipal Corporation Act, it would clearly reveal that there are certain factors which have to be borne in

mind while determining the annual letting value of the building/land. There are various factors and those factors are general factors which have to be

kept in mind and the factors if given a wide interpretation, it would also bring the height of a building to be one of the relevant factor for determining

the property tax.

24. Now, we come to the Rules which have been framed under Section 433 read with Section 138 of the Municipal Corporation Act i.e. MP

Municipality (Determination of Annual Letting Value of Building/Land) Rules, 1997. Rule 4 of the said Rules 1997 deals with the classification of buildings and lands. Among different classifications, one is the quality of construction and second is the basis of the use of the building. If we look at

the classifications provided under Rule 4 of the Rules, 1997 and the factors provided under Section 138 of the Corporation Act, some of which are the

purpose for which it is used, its capacity for profitable user, quality of the construction of the building and it also has left open to the Corporation to

have other relevant factors also to be taken for determining the annual letting value.

25. One should not forget that larger the capacity of a company/factory, the larger would be the responsibility of the Corporation in the peripheral

areas around the factory which have to be taken care of by the Corporation. There are these chimneys the smoke of which spreads even far away

places, the dust which emanates also travels to far off places and all this has also to be taken note of by the Municipal Corporation. The plain reading

of the aforesaid two provisions i.e. Section 138 of the Municipal Corporation Act and Rule 4 of the Rules, 1997 gives a clear impression that the

Corporation has been granted sufficient play in joint while determining the annual letting value of the land/building.

26. The contention of the petitioner of the provisions being fictional or presumptive is not sustainable for the simple reason that if both under Section

138 of the Municipal Corporation Act and under Rule 4 of the Rules, 1997, the quality of construction of a building and the basis of the use can be a

factor for determining the annual letting value, then the height of a building can also be considered as a factor for determining the annual letting value.

27. Given the facts and circumstances of the case, this Court does not find the resolution passed by the Corporation to be either contrary to the

Municipal Corporation Act or in any manner unconstitutional.

28. So far as the judgments which have been relied upon by the counsel for the petitioner are concerned, if we look into the facts of those cases, it

would clearly reveal that those judgments have been passed under entirely different factual matrix of the case and in none of these matters, the issue

of height of a building was discussed or was the bone of contention. Under the circumstances, the challenge to the resolution of the respondents also

stands negated.

29. The present writ petition, thus, being devoid of merit deserves to be and is

accordingly dismissed.

