

(1958) 07 AP CK 0013
In the Andhra Pradesh High Court
Case No : Second Appeal No. 799 of 1953

Cherukuri Kutumbayya

APPELLANT

Vs

The Municipal Council, Vijayawada

RESPONDENT

Date of Decision : 22-07-1958

Acts Referred:

Citation : AIR 1959 AP 1

Hon'ble Judges : P. Chandra Reddy, C.J.;Munikanniah, J

Bench : Division Bench

Advocate : D.P. Narayana Rao, for the Appellant; N. Subramanyam and S.V. Kondapi, for the Respondent

Final Decision : Allowed

Judgement

P. Chandra Reddy, C. J.

1. The interpretation of Section 81 of the District Municipalities Act is involved in this second appeal. The question is whether the assessment of property tax on the appellant's agricultural lands within the municipal limits of Vijayawada by the respondent u/s 81(2) instead of Section 81(4), of the District Municipalities Act, is ultra vires the powers of the Municipality.

2. The appellant owns Ac. 3-94 cents of land within the municipal limits of Vijayawada. For the years 1947-48, 1948-49, and 1949-50 the Municipality levied property tax on these lands at the rate of Rs. 86/- per annum, proceeding u/s 81(2) of the District Municipalities Act, while the tax previously paid was Rs. 4/- per year. The appellant, disputing the right of the Municipality to make the levy u/s 81(2), refused to comply with the demand to pay the enhanced tax.

3. This led the Municipality to raise a suit for recovery of the tax of Rs. 258-3-0 for the three years mentioned above. The suit was resisted on the grounds already indicated above. The district Munsif decided that as the subject-matter of assessment was agricultural land, the correct provision of law applicable was Section 81 (4) and not Section 81 (2) and consequently the plaintiff was not

entitled to the relief asked for. In the result, he decreed the suit at the old rate, viz., Rs. 4/- per annum.

4. On appeal, the Subordinate Judge came to an opposite conclusion regarding the applicability of Section 81(2) and decreed the suit and entered judgment for the plaintiff. The aggrieved defendant has brought this appeal.

5. The point for determination is whether the appropriate provision of law is Section 81(2) or 81(4). The answer to this must depend upon the construction we put on Section 81(2) and (4). Section 81(2) enacts:

"Save as otherwise provided in this Act, these taxes shall be levied at such percentages of the annual value of lands or buildings or both as may be fixed by the Municipal Council, subject to the provisions of Section 78."

Section 81(4) is in these words:

"The Municipal Council may, in the case of lands used exclusively for agricultural purposes, levy these taxes at such proportions as it may fix of the annual value of such lands as calculated in accordance with the provisions of Section 79 of the Madras Local Boards Act, 1920."

6. The expression "save as otherwise provided" in Sub-section (2) means "except to the extent specific provision is made". In other words, Sub-section (2) will come into play only in cases which are not governed by any other specific provisions of law. Therefore, it is only where there is no other special provision in respect to any other type of land this sub-section is attracted. Since the Legislature has enacted a specific provision in regard to agricultural lands, it is reasonable to infer that that category of lands contemplated by that sub-section should be governed by it.

7. There is also another cardinal rule of interpretation of statutes, viz., when there is a general provision and a specific provision in regard to a subject, the general provision should yield to the specific provision and it is the latter that prevails. Undoubtedly Sub-section (2) contains a rule for the computation of taxes in regard to lands or buildings or both, that is to say, lands which are of a general character. Its operation will be excluded when there is a specific provision for a specific type of land. In this case the lands assessed are agricultural lands and the mode of taxation is provided for in Sub-section 4. Following this rule of construction, we must hold that it is Sub-section (4) that applies.

8. In support of the contention on behalf of the respondent that option is left to the Municipality to choose either of the modes of computation suggested by the two-sub-sections, reliance is placed on a judgment of Rajagopalan, J., in *Ramaswami Ayyar v. Srirangam Municipal Council* 1949-1 Mad LJ 508: (AIR 1949 Mad 827) (A). This ruling certainly lends support to the proposition put forward for the respondent. In that case the learned Judge took the view that there was nothing in Section 81(4) of the District Municipalities Act preventing a municipality from levying taxes on agricultural lands u/s 81(2) of the Act though

it could have, if it liked, levied it on the basis of Section 81(4).

The learned Judge felt bound by a judgment of the Privy Council in *M. and S. M. Railway Co., Ltd. v. Bezwada Municipality*. He also referred to an un-reported judgment of Byers, J., in S. A. Nos. 1025 and 1026 of 1943 (Mad) , which purported to follow the decision of the Privy Council in *S. M. Railway Co., Ltd. v. Bezwada Municipality*. The decision in 1949-1 Mad LJ 508: (AIR 1949 Mad 827) , is in accordance with that of Byers, J. referred to above. Both the learned Judges thought that the pronouncement of the Privy Council indicated that the municipality had a choice in regard to the levy of taxes on agricultural lands under either of the two provisions mentioned above. They were, under the impression that the ruling in *S. M. Railway Co., Ltd. v. Bezwada Municipality* supported the opinion that the municipality had choice to resort either to Section 81(2) or 81(4).

9. We feel that the pronouncement of the Privy Council has not got that effect. In that case certain vacant lands belonging to the Madras and Southern Maharatta Railway Company, Limited, within the Municipality of Bezwada, were assessed u/s 82(2) of the Act. Undoubtedly the lands were subject to property tax which the municipality was empowered to levy. But the problem to be solved was whether the Municipality acted within the statutory powers in computing the annual value of the lands for the purpose of imposing the tax. The municipality adopted the calculation envisaged in Section 82(2) of the Act. The objection of the Railway Company was not that Section 81(3) was not resorted to.

On the other hand, its attitude was that the Municipality could not have invoked Section 81(3). So the controversy was whether the ascertainment of annual value u/s 82, (2) was correct or not. It is thus clear that their Lordships were not deciding the question whether it was within the competence of the Municipality to act u/s 82(2) when the vacant lands were governed by Section 81(3) of the Act. The following passage clearly brings out in clear terms what we have said above:

"It is manifest that these topics are eminently debatable. As, however, the respondents did not in point of fact proceed u/s 81(3); as the appellants, so far from saying that they should have done so, maintained that the respondents could not lawfully have done so; and as the controversy before their Lordships was confined to the mode of ascertaining annual value u/s 82(2), their Lordships, while mentioning those other topics, do not feel called upon to make any pronouncement upon them and confine themselves to the matter which alone was directly raised before them and on which they have already expressed an opinion adverse to the appellants."

The observations in the judgment which gave rise to the theory that option was left to the Municipality to select either the mode envisaged in Section 81(2) or the one in Section 81 (4) may be conveniently extracted here.

"It will be observed that u/s 81(2) the property tax, save as otherwise provided in the Act, is to be levied at a percentage of "the annual value of lands or

building or both". Sub-section (3) otherwise provides inasmuch as it permits, but does not enjoin, the levying of the tax "in the case of lands which are not used exclusively for agricultural purposes and are not occupied by or adjacent and appurtenant to buildings" either at a percentage of the capital value of such lands or at such rates with reference to the extent of such lands as the Municipal Council may fix subject to compliance with the proviso to the sub-section. If either of the alternative methods permitted by Sub-section (3) is adopted, the assessment is not on annual value. Appropriate as this sub-section was to the case of the appellants' lands, the respondents did not in fact avail themselves of it in making the assessment complained of. In particular, they did not levy the tax at the percentage of the capital value of the appellants' lands; they levied it at a percentage on their annual value."

10. It was evidently thought that the words of Sub-section (3) otherwise provides inasmuch as it permits, but does not enjoin, etc., were capable of being construed only as giving a discretion to the "municipal council either to adopt Section 81(3) in regard to lands described in that sub-section or other modes contemplated by other sub-section. This is also the line of reasoning produced by the counsel for the respondent. We do not think that that language is susceptible of that construction. To understand the meaning of those words it is necessary to bear in mind that at the time when the judgment was rendered, Sub-section (3) read:

"The municipal council may, in the case of lands which are not used exclusively for agricultural purposes and are not occupied by, or adjacent and appurtenant to, buildings, levy these taxes at such percentages of the capital value of such lands or at such rates with reference to the extent of such lands, as it may fix."

11. Subsequently the word "shall" was substituted for the word "may". It is only having regard to the employment of the word "may" that their Lordships observed that it was permissible for the municipality to levy the tax and it was not enjoined upon to levy the tax. In other words, it was not obligatory for the municipality or no duty was cast upon it, to levy an assessment in regard to those lands. It was permissible to make an assessment in regard to such lands. That is the only idea that is conveyed by the relevant language in the passage in the judgment of their Lordships.

In our opinion that does not communicate the thought that an absolute discretion was vested in the municipality to invoke either one sub-section or the other. We cannot extract any principle from the judgment of the Privy Council which is contrary to what we have indicated above. In such circumstances we are of opinion that there is no warrant for the conclusion that the judgment in *S. M. Railway Co., Ltd. v. Bezwada Municipality* confers discretion to levy taxes in regard to agricultural lands u/s 81(2). We, therefore, express our respectful dissent from the decision in *K.G. Ramaswami Ayyar and Others Vs. The Srirangam Municipal Council*,

12. The counsel for the respondent next called in aid the language of Sub-section (4) "the Municipal Council, may" and argued that the word "may" gives absolute discretion to the municipality to choose either of the modus mentioned above. We cannot accede to this contention. We do not think that the word has the connotation that is sought to be attributed to it. It only means that the municipality has power to levy the tax at the proportions stated therein and it does not cast a duty or an obligation to assess all agricultural lands. But if it wants to exercise the power it has to proceed under that subsection.

That is the only force of the word "may" in that sub-section. It is not open to the municipality to disregard this provision of law in regard to lands used exclusively for agricultural purposes and to seek the mode of computation enunciated in Sub-section (2). For these reasons we must hold that the view of the Subordinate Judge is unsustainable and the judgment and decree appealed against should be set aside.

13. In the result, the appeal is allowed. There will be no order as to costs here and in the lower appellate Court.

14. We are obliged to the Advocate-General for the help rendered by him in the present enquiry.