(2005) 08 CHH CK 0014

In the Chhattisgarh High Court

Case No : Writ Petition No. 2236 of 2005

Chief General Manager, South Eastern Coalfields Ltd. APPELLANT

Vs

Municipal Corporation RESPONDENT

Date of Decision : 05-08-2005

Acts Referred:

Chhattisgarh Municipal Corporation Act, 1956 — Section 132(1), 135, 135(1), 136, 138
Chhattisgarh Municipality (Determination of annual letting value of building/land) Rules, 1997 — Rule 10, 6A, 8, 9
Constitution of India, 1950 — Article 14, 226, 243

Citation : (2006) 1 CGLJ 292

Hon'ble Judges : L.C. Bhadoo, J

Bench : Division Bench

Advocate : H.B. Agrawal, Pankaj Agrawal and Sangeeta Mishra, for the Appellant; Sanjay K. Agrawal, for the Respondent

Final Decision : Dismissed

Judgement

L.C. Bhadoo, J.—The Petitioner has preferred this writ petition under Article 226 of the Constitution of India questioning the legality, propriety and correctness of the resolution No. 10 dated 30th March 2005 whereby the property tax in respect of residential building has been increased from 8% to 9% and in respect of commercial from 8% to 10%.

Brief facts leading to filing of this writ petition are that Petitioner South Eastern Coalfields Limited, Korba is having residential and commercial buildings in the municipal corporation area, Korba and based on the impugned resolution Respondent Corporation issued a letter dated 23rd April 2005 (Annexure-P/2).

In response to that the Petitioner sent a cheque of Rs. 34,42,991/- on 12-5-2005 along with objection dated 10-5-2005. It has been mentioned that in view of the provisions of Section 143 of the Chhattisgarh Municipal Corporation Act, 1956 (hereinafter referred to as the Act, 1956) resolution No. 10 is illegal and bad for the reason that annual letting value of land and building cannot be assessed every year as the law prescribes that once assessment is made, it will continue for 5 years. The said action of Respondent has been challenged being contrary to the provisions of Section 143 and also contrary to the provisions of Sections 145 to 148 of the Act 1956.

Return has been filed on behalf of Respondent Corporation in which it has been mentioned that as per the provisions of Section 132(1) of the Act, 1956, the Corporation shall, subject to any general or special order which the State Government may make in this behalf, impose in the whole or in any part of the Municipal Area under Sub-section (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. Section 136 speaks about exemption from property tax which provides that the property tax levied u/s 135 shall not be leviable in respect of the buildings and lands enumerated in Section 136. Section 136(i) of the Act provides that buildings and lands in occupation of owner for his residence shall be exempted from property tax to the extent of fifty percent. Amended provision of Section 138(1) provides that 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. Section 138(2) provides that on the basis of the resolution adopted by the Corporation under Sub-section (1), every owner of land or building shall assess the annual letting value of his land or building and deposit the amount of property tax.

Rule 6A of the Chhattisgarh Municipality (Determination of annual letting value of building/land) Rules, 1997 (for shot the Rules, 1997) speaks about prevailing of the last year rates in case the resolution is not adopted. Rule 8 speaks about publication of resolution. Rule 9 speaks about calculation of annual letting value. Rule 10 speaks about self assessment of the property tax.

The Respondent Corporation in accordance with the provisions of Section 135(1) of the Act passed a resolution determining the rate of property tax to be 8% for the financial year 2000-01 and for the year 2002 the property tax was assessed in accordance with the resolution Annexure-R/2 and the same was made effective for the year 2000-01. The Petitioner filed a writ petition No. 775/2001 and during the pendency of the writ petition, parties entered into a compromise (Annexure-R/3). During the pendency of that writ petition, a resolution No. 141 was passed and considering the representation of the Petitioner, the annual letting value was also reduced to some extent. The resolution passed on 23-3-2002 was made effective from 1-4-2000. As per the compromise, some property tax was realized up to 2004-05. Now, resolution has been passed in this year on 30th March 2005 in which only rate of tax u/s 135(1) of the Act has been increased from 8% to 9% for residential areas and for commercial buildings, it has been increased from 8% to 19%. However, the annual letting value of the land or building is same as it was in the resolution dated 23 rd February 2002.

I have heard learned Counsel for the parties.

Shri H.B. Agrawal, learned Senior Counsel for the Petitioner argued that as per the provisions of Section 143 of the Act assessment cannot be changed for 5 years and as per the compromise arrived at between the parties on 29-6-2002 Respondent is not entitled to increase the property tax up to 2007.

On the other hand, Shri Sanjay K. Agrawal, learned Counsel for Respondent, while drawing the attention of the Court towards the last para of the said compromise, argued that the compromise was for 3 years i.e. 2000-01, 2002-03 and 2003-04. Even thereafter, during the financial year 2004-05 rate was not increased and the same has been increased under the provisions of Section 135 of the Act. The said exercise of Respondent Corporation comes under the legislative power and increase of rate has not been specifically challenged in this petition, therefore, the writ petition be dismissed.

I have perused the record and relevant law. Under Article 243(a) of the Constitution of India the Municipalities are entitled to levy, collect and appropriate such taxes, duties, tolls and fees in accordance with such procedure and subject to such limits. Under the enabling powers which have been delegated to the Respondent Corporation, the Corporation vide its resolution dated 30th March 2005 has increased the rate of property tax in respect of residential buildings from 8% to 9 % and in respect of commercial buildings from 8% to 10%.

As far as residential buildings are concerned, in view of the exemption u/s 136(i) of the Act, 1956 the Petitioner is entitled for 50% exemption, therefore, practically the increase is of 1/2%. The said resolution can be challenged only on the ground of violation of Article 14 of the Constitution of India or any other illegality. Section 135 envisages that ''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 [twenty] percent of the annual letting value, as may be determined by the Corporation for each financial year 20% increase has been inserted by the amendment in the Act, 1956 by notification dated 19-1-2002.

Therefore, Shri Sanjay K. Agrawal, argued that Respondent is entitled to increase the property tax up to 20%, even though Corporation is entitled to incrsase the property tax. This increase has been made very marginally only to 1% in respect of residential buildings and 2% in respect of commercial buildings. The said increase has been made after about 4 years, whereas, Corporation is entitled to increase for one year, as such it cannot be said to be arbitrary or irrational in any manner.

Argument advanced by learned Counsel for Respondent seems to be valid for the reason that the increase is marginal and the same has been made only after a period of 4 years. Moreover, the increase in the rate has not been specifically questioned by the Petitioner. The annual letting value of land or building as envisaged u/s 138 of the Act, 1956 has not been increased by Respondents.

Now, coming to the compromise entered into between the Petitioner and Respondent, from perusal of the said compromise it is evident that there was some dispute regarding outstanding dues between the Petitioner and Respondent and ultimately a settlement was arrived at between the parties and that was for 3 years i.e. financial years 2000-01, 2002-03 and 2003-04 and as agued by Shri Sanjay K. Agrawal, learned Counsel for Corporation, even for the financial year 2004-05 same rate was charged from the Petitioner, therefore, nothing can be read from this compromise that the said compromise was arrived at for 5 years.

Now, coming to the argument of learned Counsel for the Petitioner regarding the point that once the rates are settled, that cannot be increased for 5 years as per the provisions of Section 143 of the Act, 1956. The above argument is misconceived for the reason that u/s 135 of the Act the Corporation is entitled to increase the property tax on the annual letting value as may be determined by the Corporation for each financial year and annual letting value has not been increased. Therefore, the provisions of Section 143 of the Act, 1956 are not attracted in this case. Section 143 of the Act, 1956 relates to annual value which has not been changed in this case Sub-section (1) of Section 143 of the Act, 1956 envisages that ''the annual value of any land or building situate within the city as determined under the Chhattisgarh Nagariya Sthawar Sampatti Kar Adhiniyam, 1964 or the rules made thereunder, and in force for the purpose of that Act immediately before the 1 st day of April, 1976 shall be deemed to be the annual value for the assessment of property tax on such land or building under this Act, until such time as the commissioner makes a fresh valuation and determines annual value under this Act of the land and buildings therein and the annual value of such land or buildings shall remain unchanged for a period of one year and may be revised thereafter by the Commissioner at the termination of successive period of one year.''

Therefore, the Commissioner is also entitled to change annual value of the property even after one year.

Sub-section (2) of Section 143 envisages that the Commissioner may, instead of making a new assessment every year, adopt the existing assessment, with such alteration as he thinks fit, as the assessments for each new year, giving to persons affected by such alterations the same notice of the altered valuation and assessment as would have been required if a new assessment had been prepared. Therefore, the Commissioner, instead of making a new assessment every year, can make alteration as he thinks fit after hearing the parties.

Argument advanced by learned Counsel for the Petitioner appears to be regarding Sub-section (3) of Section 143, which envisages that ''the Commissioner shall arrange for a survey for the purposes of assessment of each part of the City at least once in five years''. Therefore, this Sub-section says that the Commissioner shall arrange for a survey for the purposes of assessment of each part of the City at least once in five years. In this case, as has been mentioned above, assessment of annual value has not been changed.

Therefore, for the foregoing reason, I am of the opinion that this petition is devoid of any merit, the same is liable to be dismissed and it is accordingly dismissed.

Consequently, M.(W.) P. No. 1804/2005 and I.A. No. 4365/2005 also stand disposed of.

