**(1982) 05 AHC CK 0016**

**In the Allahabad High Court**

**Case No :** Civil Miscellaneous Writ No. 92 of 1977

Hira Lal and Others — APPELLANT

Vs

Collector Banda and Others — RESPONDENT

**Date of Decision :** 06-05-1982

**Acts Referred:**

Uttar Pradesh Municipalities (Amendment) Act, 1961 — Section 128, 128(1), 131, 132, 132(1)
Uttar Pradesh Water Supply and Sewerage Act, 1975 — Section 30, 33, 33(1), 64

**Citation :** (1982) AWC 557

**Hon'ble Judges :** R.R. Rastogi, J;K.N. Seth, J

**Bench :** Division Bench

**Advocate :** R.R.K. Trivedi, for the Appellant; M.C. Dwivedi and M.K. Mehrotra, for the Respondent

**Final Decision :** Dismissed

## Judgement

K.N. Seth, J.—The Petitioners, who reside within the municipal limits of Banda, have challenged the recovery of water tax from them. The case set up by the Petitioners is that water works scheme was introduced in Banda in the year 1950 but the scheme did not function for some time and for that reason the Municipal Board never enforced its right to realise the water tax from the residents / consumers who came within the radious of 900 feet from the stand post prescribed under Rule 8 of the Assesssment and Collection of Water Tax Rules. It has also been alleged that the Municipal Board wrote to the State Government to writ off the charges and a resolution to that effect was passed by the Board on 6-3-1972. According to the Petitioners arrears of water tax are being realised from them for the financial year 1950-51 and 1951-52 when the water supply scheme did not function. It has also been alleged that there was non-compliance with the provisions of Sections 131 to 135 of the U.P. Municipalities Act and consequently imposition of water tax was not in accordance with law. An alternative plea has been taken that the water tax in fact is a fee and since no service has been rendered to the Petitioners, they are not liable to pay the levy.

 

A further plea has been raised that the recovery of the dues is barred by time.

2. In the counter affidavit filed on behalf of the Jal Sansthan it has been asserted that the Water Works has been functioning at Banda since the year 1950 and has been supplying water to the inhabitants of the municipal limits. A number of public stand posts were also constructed and water tax was regularly realised from the tax payers although considerable amount: remained in arrears. With regard to the assertion that the Municipal Board did not realise water tax and in fact recommended to the State Government that water tax be not realised, it has been asserted that the Municipal Board had no authority to exempt the payment of water tax. The stand taken by the Respondent is that unrealised dues of the Municipal Board stood transferred to the Jal Sansthan u/s 33 of the U. P. Water Supply and Sewerage Act, 1975 and are recoverable as arrears of land revenue. As regards the arrears of tax it has been specifically stated that no amounts for the years 1950-51 and 1951-52 are sought to be realised from the Petitioners. With regard to the liability of the Petitioners, the stand taken is that under the Assessment and Collection of Water Tax Rules the Petitioners are liable to pay water tax as they reside within a radius of 900 feet from the nearest stand post or Water Works from where water is made available to the owners of the buildings or land assessed to water tax. Residences of the Petitioners fell within that radius and consequently they were liable to pay water tax. In the supplementary counter affidavit details of the proceedings under Sections 131 to 135 of the U.P. Municipalities Act have been set out. On July 3, 1951 by a special resolution No. 4 it was resolved to impose water tax and objections from the public were invited. The water supply rules were published to which objections were invited as required by Section 132 (1) of the Act but no objection was received from the public within the prescribed time and consequently the rules were confirmed by the Board vide resolution No. 2 dated July 21, 1951. The record was then submitted to the Prescribed Authority who by notification dated July 23, 1951 published the draft rules and invited objections and suggestions. Thereafter the Prescribed Authority issued notification dated August 25, 1951 framing the rules for assessment and collection of water tax in Banda municipality. The Municipal Board thereafter passed special resolution No. 1 (b) on December 24, 1951 which was sent to the Prescribed Authority. Thereafter notification dated February 29, 1952 imposing water tax with effect from April 1, 1952 was published in the U.P. Gazette.

3. From the facts set out in the counter affidavit it is established beyond doubt that the provisions of Sections 131 to 135 were fully complied with and the imposition of water tax cannot be assailed on that ground. By virtue of Sub-section (3) of Section 135 of the U.P. Municipalities Act the notification is the conclusive proof that the tax has been imposed in accordance with the provisions of the Act.

4. With regard to the assertion that tax for the years 1950-51 and 1951-52 cannot be legally realised since the water supply scheme did not come into force

 

it may be noted that according to the Respondent water tax is not being realised for the aforesaid years. We find no reason to disbelieve the assertion that the recoveries which are being made do not include any amounts for the years 1950-51 and 1951-52.

5. The assertion of the Petitioners that since the Municipal Board by its resolution passed on March 6,1972 decided not to realise any water tax, recovery of the tax upto that year was illegal has no merit. Section 157 of the Act to which reference was made in that connection empowers the Board to exempt any person from the payment of tax for a period not exceeding one year if that person, in the opinion of the Board, by reason of his poverty is unable to pay the same. There is no case that this exemption was granted to any person on the ground of poverty from the payment of tax imposed under the Act. The resolution of the Board has to be confirmed by the Prescribed Authority. It is not the Petitioners'' case that the resolution passed by the Board was confirmed by the Prescribed Authority. It is also not the Petitioner''s case that the State Government at any stage exempted from payment of water tax any person or class of persons or any property or description of property. It must, therefore, be held that the resolution of the Municipal Board was of no consequence and the Petitioners cannot claim exemption from liability to pay tax demanded even for the period upto the year 1972.

6. The assertion of the Petitioners that no stand post was created in the locality of the Petitioners has been denied in the counter affidavit. The averments made by the Petitioners in this respect are too vague and deserve to be ignored.

7. It was lastly contended that imposition of water tax was in fact a fee and not a tax and since no service was rendered to the Petitioners, the demand was illegal. We find no merit in the contention. Taxes which may be imposed by the Board are set out in Section 128 of the Act. Clause (x) empowers the Municipal Board to impose a water tax on the annual value of buildings or lands or of both. It was in exercise of this power that the Municipal Board, Banda, imposed water tax after following the procedure prescribed by Sections 131 to 135 of the Act. The controversy raised by the Petitioners is concluded by a decision of a Division Bench of this Court in Raza Buland Sugar Co. Ltd. Vs. Municipal Board, wherein it has been held that water tax imposed u/s 128(1)(x) of the U.P. Municipalities Act is a tax and not a fee. As observed earlier, by virtue of Section 33(1)(c) of the U.P. Water Supply and Sewerage Act, 1975, all rights, liabilities and obligations of the Municipal Board, relating to water supply including the right to recover arrears of water tax vest in the Jal Sansthan. The Jal Sansthan is entitled to recover the dues as arrears of land revenue by virtue of Section 64 of the aforesaid Act.

8. In the petition it has been stated that the Petitioners referred the dispute u/s 30 of U.P. Act No. 43 of 1975 to Respondent No. 3, Uttar Pradesh Jal Nigam on 15-11-1976 but no order on the said reference has yet been communicated to the Petitioners. No relief has been claimed in the petition for any direction to

 

Respondent No. 3 to decide the reference. It would, however, be open to the Petitioners to approach Respondent No. 3 to decide the matter, if it has not already been decided, at an early date.

9. None of the contentions raised by the Petitioners has any force. The petition is accordingly dismissed. Parties shall bear their own costs.

 