
(2000) 03 PAT CK 0015
In the Patna High Court
Case No : C.W.J.C. No. 2040 of 1997

Jahanabad Nagar Palika Kardatee Sangrah Samiti and Others	APPELLANT
Vs	
State of Bihar and Others	RESPONDENT

Date of Decision : 29-03-2000

Acts Referred:

Patna Municipal Corporation Act, 1951 — Section 130

Citation : (2000) 4 PLJR 146

Hon'ble Judges : S.N. Jha, J

Bench : Single Bench

Advocate : Ravi Shanker Prasad, Sanjay Kumar, Sujeet Kumar Sinha and Anjani Kumar Sharan, for the Appellant; Samarendra Pratap Singh and Anurag Krishna Shukla for Respondent Jehanabad Municipality, for the Respondent

Final Decision : Allowed

Judgement

S.N Jha, J.—A significant question of law is involved in this case. The question is whether the State Government can issue any direction to the municipality in the matter of assessment of municipal taxes under the provisions of the Bihar Municipal Act, 1922. Before advertng to the question and considering the contentions of the counsel, it would be appropriate to briefly notice the facts of the case. There are 12 petitioners in this case. While petitioner no.1 is an association of tax-payers of Jehanabad municipality, petitioner nos. 2 to 12 are the individual tax-payers. They seek, in effect and substance, quashing of the decision of the Appeal Committee of the municipality dated 4.1.96 fixing the rates of municipal tax on the basis of carpet area of holdings, and the certificate proceedings initiated for recovery of the municipal taxes on that basis. Copies of the said decision dated 4.1.96 and the notices issued in connection with the certificate proceedings have been enclosed, respectively, as Annexures 6 and 1 series to the writ petition.

2. According to the petitioners, in Jehanabad municipality the municipal taxes were levied and realised with respect to the holding on the basis of annual rental

value like other municipalities of the State. In 1984 the municipality was superseded u/s 385 by the State Government and since then the functions of the Commissioners are being performed by the Special Officer. In the year 1993 notice was published regarding revision of the existing rates. After objections were filed, the implementation of the revised rates was stayed. In the year 1994 the Special Officer again decided to revise the rates. Objections were again filed and the matter came to be considered by the Appeal Committee in terms of sections 116/117 of the Act. The Appeal Committee considered the matter in its meeting held on 4.1.96 and resolved to fix the rates of taxes on the basis of carpet area and not on the basis of the annual rental value as was always done earlier. The said decision was taken in the light of the communication from the State Government vide letter no. 541 dated 24.4.95 of the Urban Development Department. The contention is that in the scheme envisaged in the Bihar Municipal Act regarding imposition and assessment of municipal taxes under the Act, the State Government has no jurisdiction to issue any direction to the municipality suggesting the basis for imposing other taxes.

3. At this stage it would be useful to notice the relevant provisions of the Act. The provisions in regard to municipal taxation are contained in Chapter IV of the Act. Chapter IV consists of six parts. For the purpose of this case we are concerned with parts I and II alone dealing with the imposition and assessment of taxes. Section 82 empowers the Commissioners of a municipality to impose different kinds of taxes, such as, holding tax, water tax, and latrine tax and so on, upon persons in sole or joint occupation of the holdings within the municipality assessed on their annual value. Section 89 provides that where it has been determined that a tax shall be imposed, the Commissioners after making such inquiry as may be necessary shall cause to be prepared an assessment list containing necessary particulars mentioned in the section. Every such assessment shall remain valid for three years or until such time it is revised. Section 98 lays down that annual value of a holding shall be deemed to be gross annual rental at which the holding may reasonably be expected to let. If there be on the holding building or buildings the actual cost of erection of which can be ascertained or estimated and which is not intended for letting or for the residence of the owner himself, the annual value of such building shall be deemed to an amount equal to but not exceeding 7 1/2% of such cost, in addition to a reasonable ground rent for the land comprised in the holding. Section 101 provides that when it has been determined to impose any tax on the annual value of holdings, the Commissioner shall after making such inquiries, as may be necessary, determine the annual value of all holdings within municipality and for this purpose, u/s 102, call upon the owners or occupiers of the holdings to furnish returns of the rent or the annual value thereof together with the description of the holding containing such particulars as the Commissioner may direct. If the person concerned refuses or fails to furnish any such return or description of the building within stipulated period or knowingly furnishes a false return, he would be liable to fine. Section 104 provides for determination of the

taxes. Section 105 provides for preparation of assessment list. Section 115 provides for publication of notice of assessment and section 116 lays down that if any person is dissatisfied with the amount assessed upon him or with the valuation or assessment of any holding or disputes his occupation of the holding or his liability to be assessed at all, he may apply for review of the amount of assessment or valuation or exemption, as the case may be. Section 117 provides for hearing and determination of such applications by a Committee of Commissioners. It may be stated here that it is this Committee contemplated in section 117, called, Appeal Committee, which took the impugned decision on 4.1.96, which is under challenge in the present case.

4. The stand of the respondents, in sum and substance, is that in an earlier writ petition, C.W.J.C. No. 7864 of 1989, with respect to same dispute this Court had directed the Special Officer to run the administration of the municipality in consultation with the District Magistrate. Since there had been no revision of tax for the last 20-25 years and the taxes were being paid at the rate assessed 25 years ago, and in the meantime the work of the municipality had increased resulting in additional expenditure to it, it was decided to revise the rates. Earlier, list was accordingly prepared in accordance with the provisions of sections 89 and 105 of the Act on 20.3.92. Objections were raised alleging that the proposed assessment was on the higher side. Considering the objections, the entire municipal area was divided into 27 categories based on location, uses, and constructions for equitable assessment of taxes and so on. The revised assessment was duly published in all the 14 wards of the municipality on 19.2.94. After the notices were sent to the tax-payers, some of them again raised objection which was referred to the Appeal Committee for decision. In the meantime, the Commissioner and Secretary, Urban Development Department issued circular vide letter no. 541 dated 24.4.95 (supra) directing all municipalities to standardize levy of taxes on the basis of annual rental value as per the provisions of Assessment of Annual Rental Value of Holdings Rules, 1993. It is said that the validity of the said Rules has been upheld by the Supreme Court in *State of Bihar and Others Vs. Sachchidanand Kishore Prasad Sinha and Others*, .

5. It would appear from the above that the counter affidavit of the municipality touches upon only peripheral issues. The main issue relating to competence of the State Government to direct adoption of the methodology provided in the Assessment of Annual Rental Value of Holdings Rules, 1993 has not been dealt with. The moot point for consideration is whether the State Government is competent to issue such direction and, secondly, whether the provisions of the Patna Municipal Corporation Act, 1951, in terms of which Assessment of Annual Rental Value of Holdings Rules, 1993 has been framed, can be applied to municipalities constituted under the Bihar Municipal Act, 1922.

6. To find the answer it would be appropriate to again notice the provisions contained in parts I and II of Chapter IV of the Municipal Act relating to the

power of the State Government. The first section which confers on the State Government is section 82, sub-section (1) whereof lays down that the decision of the Commissioners to impose the taxes shall be subject to the sanction of the State Government. With regard to tax on trades, profession, calling and employments under clause (ff) the rates determined by the Commissioner shall be subject to approval of the State Government. Under clause (1a) the State Government is required to issue notification duly published in the Official Gazette giving opportunity to the person interested to file their objection or suggestion. Sub-section (2) of section 82 also refers to the power of the State Government regarding levy of fee with respect to grant/renewal of licenses not covered under sub-section (1). u/s 84(3) of the Act the State Government has got power to exempt any holding used exclusively for a charitable purpose on the recommendation of the Commissioners. Section 85(3) provides that the amount of water tax may be varied depending on the distance of the holdings from the place of water pipe and water supply with the sanction of the State Government. u/s 93 a person may be exempted from tax by the State Government on the recommendation of the Commissioner. Proviso to section 104 lays down that the rates of tax once determined shall not be decreased except with the prior sanction of the State Government. u/s 113 the State Government is competent to appoint assessor where it appears to it that the assessment made is insufficient or inequitable. u/s 117 the State Government is empowered to constitute a Committee of Commissioners for deciding the objection/review application filed u/s 116. This is all the powers which the State Government is vested within the whole of parts I and II of Chapter IV of the Act.

7. Though not really necessary, in order to complete the sequence, sections 163 and also 381 of the Act may also be noticed. Sections 163 relates to the rulemaking power of the State Government as to taxation while section 381 relates to the delegation of powers by the State Government. u/s 163 the State Government is empowered to make rules consistent with the Act with respect to-

- (a) prescribing the qualifications of, and the procedure to be followed by, and assessor of municipal taxes appointed under this Act;
- (b) prescribing the form of notices u/s 116, of notices of demand u/s 123, sub-section (2), of warrants u/s 125, sub-section (1), and returns of sales u/s 127, sub-section (3);
- (c) fixing the fees payable upon distraint under this Act;
- (d) prescribing the manner in which, and the period for which, list of arrears of taxes referred to in sub-section (2) of section 129-B shall be published;
- (e) prescribing the manner in which and the conditions subject to which, the drainage tax may be varied under sub-section (3) of section 86A;
- (ee) regulating the collection of duty referred to in section 82A, the crediting thereof, to the municipal fund and the deduction of incidental expenses, If any.

Incurred by the State Government in the collection thereof; and

(f) regulating any other matter relating to taxes in respect of which this Act makes no provision or insufficient provision, and provision is in the opinion of the State Government necessary.

Under section 381 the State Government may delegate any of its power to the municipality. The section is as under:

Power to appoint an officer to execute the work.-The State Government may order the work specified in any scheme or joint scheme sanctioned u/s 378 or section 382 to be executed by an officer to be appointed by it, and shall fix the remuneration of such officer provided that the cost of the scheme as sanctioned be not exceeded and may specify a period within which the work shall be completed, and extend such period from time to time as may be necessary.

8. In contradistinction to the power of the State Government under the Municipal Act, its power under the Patna Municipal Corporation Act 1951 as regards the basis of taxation is much wider. u/s 130 of that Act which corresponds to section 98 of the Municipal Act, determination of the value of holdings i.e. the basis of taxation is "subject to the rules as may be made" by the State Government. A conjoint reading of the two provisions i.e. section 98 of the Municipal Act and section 130 of the Patna Municipal Corporation Act so far as relevant, would make clear the distinction. Section 98 of the Municipal Act is as under:

Annual value of holdings.-(1) The annual value of a holding shall be deemed to be the gross annual rental at which the holding may reasonably be expected to let.

(2) If there be on the holding a building or buildings, the actual cost of erection of which can be ascertained or estimated and which is or are not intended for letting or for the residence of the owner himself, the annual value of such holding shall be deemed to be an amount which may be equal to but not exceed, seven and a half per centum of such cost, in addition to a reasonable ground rent for the land comprised in the holding:

Provided that

Section 130 of the Patna Municipal Corporation Act is as follows:

Annual Value of Holdings.-(1) Save as may be prescribed by rules made by the State Government, the annual value of holdings shall be deemed to be the gross annual rental at which the holding may reasonably be expected to let.

(emphasis added)

(2) It would appear that while the annual value of holding which is the same thing as gross annual rental at which the holding may be expected to be let out is the guiding factor on the basis of which the taxes are to be imposed by the municipal bodies, so far as the municipalities covered by the Patna Municipal

Corporation Act are concerned, they are subject to the rules as may be made by the State Government, but there is no such provision with respect to the municipalities covered by the Municipal Act. In other words, while with respect to the annual value of holding" the State Government is competent to make rules and it is in exercise of that power that the Assessment of Annual Rental Value of Holdings Rules, 1993 has been framed, in the absence of any corresponding provision in the Municipal Act, the State Government is not competent to make any rule. And if it is not competent to make rules, obviously, it cannot also issue any administrative direction to the municipalities covered by Municipal Act to apply those Rules. What cannot be done directly cannot be done indirectly.

9. The Annual Rental value of Holdings Rules 1993, it may be mentioned, have been framed u/s 227 read with section 130 of the Patna Municipal Corporation Act. Section 130 has been referred to above. Section 227 confers rule making power as to taxation, consistent with the Act, on the State Government. This section is similar to section 163 of the Municipal Act, quoted above, but an apparent difference is that clause (f) of section 227 confers power to make rules "regulating assessment, collection and composition of taxes and tolls", but there is no such clause in section 163 of the Municipal Act. There are some other clauses also conferring (rule making) power on subjects which do not find mention in section 163 of the Municipal Act. It would thus follow that the said Rules framed under specific provisions of the Patna Municipal Corporation Act, which are absent in the Municipalities Act, cannot be applied by the State Government to municipalities not covered by the Patna Municipal Corporation Act.

10. So far as section 381 of the Municipal Act is concerned, from a bare reading of the section it is evident that the State Government can delegate only such of its powers as are vested in it by the Act. A power which is not vested in the State Government obviously cannot be delegated. The provisions of section 381 would have had relevance provided the State Government was possessed of any power in the matter of changing the methodology or criteria for fixing the annual value of the holding. Since the State Government has no such power, as seen above, there is no question of making any delegation in favour of the municipality.

11. It is well settled rule that where power is vested in a statutory authority under some statute, the power is to be exercised only by that authority and none else even if it is superior in status to the prescribed authority. Reference may be made to the cases of Commissioner of Police, Bombay Vs. Gordhandas Bhanji, ; State of Punjab and Another Vs. Hari Krishan Sharma, and The Purtabpur Company Ltd. vs. Cane Commissioner of Bihar & ors., AIR 1970 Supreme Court 1896. In Commr. of Police vs. Gordhandas Bhanji the Supreme Court struck down the order of the Commissioner of Police passed pursuant to direction of the State Government with respect to a matter with which he was the competent authority in terms of the provisions of the Bombay Police Act and it was held that since the State Government had no discretion in the matter, the decision of the Commissioner of Police taken pursuant thereto was without jurisdiction. The rule

was re- iterated in State of Punjab vs. Hari Kishan Sharma regarding grant of license. Therein the State Government had assumed power which was vested on the licensing authority under the relevant provisions of the Punjab Cinemas (Regulation) Act, which was held to be bad. In Purtabpur Company vs. Cane Commissioner, the Cane Commissioner was competent to allot the area to sugar mills. He had held that the area reserved in favors of the appellant did not require any modification with which the Chief Minister did not agree. He directed the Cane Commissioner to divide the area into two parts allotting one part to the respondents. Following the earlier decisions aforesaid, the Supreme Court set aside the decision. It held that though the decision was purportedly taken by the Cane Commissioner it had been done pursuant to the order of the State Government which was not competent to do so.

12. The principle of law laid down in the aforesaid cases, in my opinion, would apply with full force in the present case. It is not in dispute that the Appeal Committee took the impugned decision pursuant to the aforesaid circular of the Urban Development Department dated 24.4.95 treating as if the same was binding on the municipality. As per the proposal the assessment was to be revised on room basis. By virtue of the impugned decision carpet area was made the basis in accordance with the Assessment of Annual Rental Value of Holdings Rules, 1993. The said Rules materially change the manner of calculation of annual value of holdings. The State Government has no power to change the methodology and apply those Rules to municipalities not covered by the Patna Municipal Corporation Act. The criteria having already been laid down in the Municipal Act in section 98 it is on that basis on which the assessment could be revised and taxes could be levied. From the relevant provisions of the Act mentioned above, it is evident that the provisions relating to imposition and assessment of taxes are a complete Code laying down the machinery for imposing assessment and collection or recovery of taxes. Any change in criteria can be made only by the Commissioners of the Municipality and not by the State Government. It was the contention of the counsel for the petitioner that the Committee decided upon a new basis without giving opportunity of hearing or filing objection.

13. In the above premises, the impugned decision of the Appeal Committee contained in Annexure-6 must be held to be illegal and without jurisdiction, and liable to be quashed. The impugned certificate proceedings, Annexure-1 series, being consequential must also accordingly be quashed. In the result, the impugned order contained in Annexure-6 and the notices, Annexures-1 series, are quashed and this writ petition is allowed accordingly. There will be no order as to costs.