(1985) 01 MP CK 0043

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 266 of 1983

J.C. Mills Ltd., Gwalior APPELLANT

Vs

Municipal Corporation, Gwalior and another RESPONDENT

Date of Decision : 11-01-1985

Acts Referred:
Madhya Pradesh Municipal Corporation Act, 1956 — Section 146

Citation : (1986) ILR (MP) 585 : (1985) JLJ 667 : (1985) MPLJ 380

Hon'ble Judges : G.L. Oza, C.J;Ram Pal Singh, J

Bench : Division Bench

Advocate : J.P. Gupta, for the Appellant; M.G. Khedkar, for Corporation, for the Respondent

Final Decision : Allowed

Judgement

Oza, C.J.

This is a petition filed by the petitioner seeking a direction for quashing of the notice purporting to havs been issued u/s 146 of the M.P. Municipal Corporation Act, dated 13-9-1983. According to the petitioner, by this notice it was alleged that the valuation of the building has been increased and accordingly it is proposed to assess the property tax from 1-1-1981, at the rate of Rs. 17,94,230 per year on annual letting value Rs. 89,71,150. It is alleged that this notice mentions four inconsistent reasons for the said increase: (1) assessment for the first time u/s 143, (2) increase in annual letting value on reassessment, (3) increase in cost of building or its market value, and (4) on account of increase in rent. It is also alleged by the petitioner that the notice does not show as to on account of which out of the above four reasons the increase is proposed. This notice proposed imposition of increased property tax with retrospective effect from 1-1-1981. At the time of arguments it was also contended that this notice does not mention the details of property and its situation.

According to the petitioner, the petitioner is a company under the Companies Act and is engaged in the business of manufacture of yarn and textiles. It has also constructed quarters and houses to accommodate some of the employees working in it and the quarters and bungalows, are situate in Gwalior. Part of these buildings including the factory are situated on the north of the road leading from Hazira Chouraha to Gola Ka Mandir and the rest are on the south of the aforesaid road. According to the petitioner, the company commenced production in the year 1923 and the quarters and bungalows were constructed since 1956.

It is further alleged that on 27-6-1964 the President gave assent to the M.P. Nagariya Sthawar Sampatti Kar Adhiniyam, 1964 and section 4 of this Adhiniyam made a provision for levying of tax on immovable property. The said section provided for imposition of property tax on lands and buildings situate in an urban area and the "urban area" has been defined in the Act u/s 2 (b) as an area comprised within the Corporation limits, Gwalior. It is alleged that the competent authority under the aforesaid Act purported to complete the assessment proceedings under that Act and the petitioner company raised a dispute that all the lands and buildings belonging to the petitioner company were beyond the area comprised in the Municipal Corporation, Gwalior and hence not subject to property tax. This dispute ultimately was decided by the Second Additional District Judge, Gwalior, in Civil Original Suit No. 4-A of 1975 by his judgment dated 31-3-1977 and in this judgment the Court held that all buildings and lands belonging to the petitioner company which were situate to the north or the road running from Hazira Chouraha to Gola Ka Mandir fall beyond the area of Municipal Corporation, Gwalior, and were not liable to imposition of property tax and hence the assessment proceedings in relation to these properties are without jurisdiction. It is alleged that in consequence of this decision the Property Tax Officer assessed and imposed property tax on lands and buildings belonging to the petitioner company and situate, to the south of the road leading from Hazira Chouraha to Gola Ka Mandir at Rs. 2372.16 per year. This assessment, according to the petitioner, was applicable to the petitioner from 1964-65 to 1975-76, and in 1976 by Act No. 50 of 1976 the provisions of the M.P. Municipal Corporation Act were amended by Municipal Laws (Amendment) Act, 1976, and this amendment came into force on 1-4-1976 and it is alleged that because of this amendment the property tax now became leviable by the Municipal Corporation. It is alleged that the Municipal Corporation, Gwalior, is also entitled to assess, impose or levy tax only in respect of properties situated within the area comprised in the Municipal Corporation limits and those limits continued as they existed on 31-3-1977 and in this notice it was contended that no details of properties have been mentioned to indicate about which properties this notice is issued.

It is contended that u/s 143, as amended, of the M.P. Municipal Corporation Act, 1956, the annual value of any land or building situate within the city as determined under the M. P. Nagariya Sthawar Sampati Kar Adhiniyam 1964, or the rules made thereunder, and in force for the purpose of that Act immediately before the last 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 or properties and the annual value of such land or building 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.

It is contended by the petitioner that the scheme of the M.P. Municipal Corporation Act contemplates u/s 143 the annual letting value of land or building under the provisions of the M.P. Nagariya Sthawar Sampatti Kar Adhiniyam, 1964 or rules thereunder in force immediately before 1-4-1976 would be deemed to be the annual letting value for the assessment or property tax on such land or building under the M. P. Municipal Corporation Act and this shall remain in force until the Commissioner makes a fresh valuation and the scheme of sections 143 and 144 provides for the procedure as to how the valuation could be altered and after the scheme of sections 143 to 145 is followed the Commissioner has to give a special notice contemplated u/s 146 and after a notice u/s 146 section 147 contemplates an objection to be raised by the person concerned.

It is also contended by the petitioner that the notice u/s 146 when issued, the assessment will be for the financial year commencing thereafter and no retrospective assessment could be made and in support of this contention the petitioner has placed relianee on the decision of this Court in Indore Nagar Palika Nigam v. Ramakant Second Appeal No. 81 of 1971 decided on 26-10-1981 (1982 M P W N N 133) and this decision has also relied on earlier decisions of this Court taking the same view. It is contended by the petitioner that this notice u/s 146 is bad also because the procedure under sections 143, 144 and 145 has not been followed and no information was sought for as required u/s 144 and no assessment lists were prepared or publicly notified as contemplate u/s 145. It is also contended that this notice u/s 146 is also bad because the statutory requirement of the statement of grounds for the increase have not been stated in the notice and in fact four alternative grounds are printed in the notice and before issuance of notice nobody has bothered to score out irrelevant ones so that nothing is clear from this notice as to on what ground the proposed increase is suggested. On this basis the petitioner has challenged this notice u/s 146 as being absolutely without jurisdiction.

In the return filed by the Corporation it is contended that the procedure under sections 143, 144 and 145 has been followed. At the time of hearing it was contended by learned counsel that although in the notice neither the details of property have been enumerated nor their situation is indicated nor the grounds for increase have been clearly mentioned but it was contended that there is a reference to some file in the Corporation and it was open to the petitioner to go and find out and file an appropriate reply u/s 147. It was also contended that the alternative remedy which was available to the petitioner was to file an objection u/s 147 and all these questions would have been decided by the Commissioner.

It is only on this ground of alternative remedy that it was contended that the petitioner should not be accepted. As regards retrospective assessment, it was contended that as the proceedings u/s 143 were started in 1981, and the notice u/s 146 talks of levy of tax from 1981, therefore it could not be said to be retrospective.

A perusal of this notice clearly shows that what is contemplated u/s 146 has not been clearly stated in this notice. This notice even does not mention the properties and their situation nor mentions the reasons for the increase. It is also apparent that this notice is issued on 13-9-1983 and it proposes to enhance the tax from 1-1-1981 which is apparently retrospective.

It is unfortunate that such a notice was issued u/s 146 which would confer no jurisdiction on the Commissioner to proceed with the enhanced assessment. Although an attempt was made to contend that the procedure u/s 143 is followed but there is nothing on record to suggest that the procedure under sections 143, 144 and 145 was strictly followed nor any documents in that regard have been filed. Apart from it, it is clear from the language of section 146 that the tax could only be levied on the basis of the changed valuation after a notice u/s 146 is issued to the person. Section 146:

Section 146. Notice when valuation made for the first time is increased.--

The Commissioner shall, in all cases in which any land or building is for the first time valued, or in which the valuation of any land or building previously as increased u/s 143 give special notice thereof, to the occupier of the same, and when the valuation is so increased, the said notice shall contain a statement of grounds of the increase.

It is, therefore, plain that after this notice u/s 146 is issued, the valuation could only be altered prospectively and not retrospectively as has been held by this Court in the decision in Second Appeal No. 81 of 1971 and other decisions on which reliance is place in that decision. It is also clear that notice u/s 146 should mention the statement of grounds for the increase. Admittedly this notice has not mentioned any one of those grounds although it appears that four grounds were printed in the notice so that in every case the relevant ground may be tick-mark the rest may be scored but unfortunately in the notice in hand nothing is tick-marked nor anything is scored out and ultimate result is that no reasons for increase are stated in this notice and on this ground also the notice could not be held to be good. It is also significant that in view of the decision of the Additional District Judge part of the properties of this petitioner fall within the Corporation limits and part of the properties are outside the Corporation limits and under these circumstances the notice should have mentioned the properties about which this increase was proposed but unfortunately that has also not been done. For all these reasons it is apparent that this notice u/s 146 could not be said to be a legal and proper notice which could confer jurisdiction on the Commissioner to proceed to enhance the valuation of the properties and impose the tax on that basis.

The petition is allowed. The notice issued to the petitioner, dated 13-9-1983 purporting to be u/s 146 of the M.P. Municipal Corporation Act, 1956, in hereby quashed and it is directed that if the respondent Corporation proposes to proceed, they may do so after following the appropriate procedure. In the circumstances of the case, parties are directed to bear their own costs. Security amount if deposited, be refunded to the petitioner.

