

(1957) 10 RAJ CK 0010
In the Rajasthan High Court
Case No : Civil Writ Petition No. 170 of 1956

Jeo Raj and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 14-10-1957

Acts Referred:

Constitution of India, 1950 — Article 265
Rajasthan Panchayat (General) Rules, 1954 — Rule 24
Rajasthan Panchayat Act, 1953 — Section 64(1)

Citation : AIR 1959 Raj 73 : (1958) RLW 15

Hon'ble Judges : I.N. Modi, J; D.S. Dave, J

Bench : Division Bench

Advocate : Hastimal, for the Appellant;

Final Decision : Allowed

Judgement

I.N. Modi, J.—This is a writ application by Jeo Raj and 39 others, who are residents of village Deoli, under Article 226 of the Constitution by which they seek to challenge the validity of a tax which is called a tax on buildings under Clause (e) of Section 64 of the Rajasthan Panchayat Act (No. 21 of 1953).

2. The petitioners' case is that there is a village panchayat consisting of villages, Deoli, Isali, Jaitpura, Wadia and Mukanpura and has its headquarters at Deoli. The panchayat was constituted in 1955 and opposite party No. 3, Khanger Singh, is the Surpanch or it. It is further alleged that on the 21st January, 1956, the Surpanch issued a notification to the effect that the Panchayat had decided to levy a house tax on the residents of village Deoli, under Clause (e) of Section 64 of the said Act.

By this notification a profession tax was also sought to be levied on the residents of other villages comprising this Panchayat, but with that we are not concerned. The notification further directed that anybody who might have any objections against the imposition of the tax mentioned in the notification, should raise his objections within 30 days from the date of the notification, failing which no

objections would be considered.

Thereafter, on the 3rd August, 1956, the Surpanch issued a further notice in which it was stated that "a list of the tax"" imposed in village Deoli, had been prepared and was available in the Panchayat office. It was further directed that any objections against the said list should be filed within 15 days of the date of the notice, in default whereof no objections shall be considered.

Finally, on the 19th October, 1956, a notice appears to have been sent to the petitioner Mohanlal calling upon him to pay Rs. 7/- within a period of 15 days. It is not mentioned in this notice for which particular period the amount was to be paid and also it is not mentioned whether the said amount was demanded as tax for one year or more.

Learned counsel for the petitioners stated before us that similar notices were sent by the Panchayat to the other petitioners, but copies of those notices have not been filed as it was not considered necessary to do so. It is a matter for regret that nobody has appeared before us either on behalf of the State or of the Panchayat to oppose this application.

3. The contention of the learned counsel for the petitioners is that the bouse or building tax which has been imposed by the Panchayat on the residents of Deoli in the manner pointed out above was in utter contravention of the provisions of the Rajasthan Panchayat Act and was therefore completely illegal and inoperative and should be struck down as being violative of Article 265 of the Constitution.

That Article clearly provides that no tax shall be levied or collected without the authority of law. The factors upon which learned counsel relies in this connection are mainly these. In the first place, it is contended that before the Panchayat could validly impose the tax in question upon the petitioners or for that matter any other tax on the residents of other villages comprised in this or any other Panchayat, the previous sanction of the Government must have been obtained by it.

The contention is that no previous sanction of the State Government was taken by the Panchayat to the levy of the tax which is questioned before us. We should have been happy if the case of the State or the Panchayat had been properly represented before us, but as this opportunity is not sought to be availed of, we are left to decide the matter on such material as has been brought to our notice on behalf of the petitioners.

From the copies of the notices Exs. 1 and 2 which we have referred to above, it does not at all appear that the Panchayat had applied for the sanction of the State to the imposition of the tax in question or that such sanction had been received by it. We, therefore, take it that no sanction was applied for, much less that it was received. We might further mention in this connection, that as a rule we would expect the Panchayat to mention the fact of its having received previous sanction of the State while issuing the proclamation under the rules

enacted to effectuate Section 64 of the Act.

It is well established that where the validity of a tax depends upon the taxing authority having obtained previous sanction of the State Government, such previous sanction is a condition precedent to the imposition of the tax and where such sanction has not been obtained, there is no alternative but to hold that the tax is illegal and invalid.

Reference may be made in support of this view to *Jai Narain v. State of Rajasthan* ILR (1955) Raj 818. We, therefore, hold that the levy of the building tax by the village Panchayat on the residents of village, Deoli, was illegal and must be struck down on this ground alone.

4. As the matter is of some importance and the imposition of taxes by the Panchayats may come up for challenge in other cases, we desire to take this opportunity of pointing out that it is of utmost importance for the village Panchayats and for those who are responsible for their administration to see that the correct procedure which has been prescribed by the Act and the Rules in connection with the levy of taxes u/s 64, Sub-sections (1) and (3) must be carefully observed.

We have already referred to Sub-section (1) of Section 64 according to which previous sanction of the State Government is required for the imposition of one or more of the taxes mentioned in that sub-section, Sub-section (3) of the same section provides that taxes under Sub-section (1) shall be imposed, assessed and realised in such manner as may be prescribed.

This takes us to the Rajasthan Panchayat (General) Rules, 1954, made u/s 89 of the Rajasthan Panchayat Act, 1953, which have been published in the Rajasthan Rajpatra, dated 15-1-1955. Rule 24 of these Rules lays down that if a Panchayat decides to impose any tax u/s 64 it shall proclaim the purport of the resolution, for the information of the persons who will be affected by it, either by beat of drum or by written notice affixed to some conspicuous place or places within the Panchayat circle, inviting objections thereto within 30 days of such proclamation.

These objections shall be considered at a meeting which will be held for the said purpose. After the objections are considered and it is decided to impose a tax or taxes, such proposal together with the objections should be forwarded to the Chief Panchayat Officer for approval. The Chief Panchayat Officer may either return the proposal for further consideration of the Panchayat or forward it to the Government for approval with such modifications, if any, as he may consider necessary.

When such proposal has been submitted to the Government, then it is for the Government to approve or alter or reject the proposal made to it or give any other proper order subject, however, to this rider that the Government has no authority to enhance the rate of the tax proposed by the Panchayat. The Government is also required to specify a precise date from which the proposed

tax mentioned in the proposal shall come into operation.

This is obviously the procedure which has to be followed by a Panchayat in order to obtain previous sanction of the Government to the imposition of a tax. After such Government sanction is obtained the Panchayat then must again proclaim the approved proposal, the publication of this proclamation being also on the same lines as those prescribed for the original proposal.

We pause here to point out that the various steps which have been outlined above do not appear to us to have been taken in the present case. We then wish to call attention to another important rule namely, Rule 27, in this connection, which has a particular application to the levy of a building or house tax, the validity of which we are called upon to consider in this case.

Rule 27 clearly implies that when a Panchayat wishes to impose such a tax, then it must prepare a list of occupiers or owners, as the case may be, of the buildings situated within its area in the first fortnight of the month of October preceding the year for which the assessment is made. The particulars of such a list are mentioned in the Rule itself and we need not reproduce it here.

After the names of the assesseees and the particulars of the buildings occupied or owned by the assesseees have been filled in by the surpanch, the list is required to be put up at a special meeting called for the purpose whereat the value of the buildings and the amount of the tax proposed to be assessed shall be filled according to the rates proposed by the Government- Then, the assessment list so prepared has to be published by affixing a copy of it on the notice board of the Panchayat along with a notice inviting objections to the list within 15 days from the date of the publication.

A proclamation is also required to be made by beat of drum in the Panchayat area to the effect that the list has been published and that it can be inspected at the Panchayat office and further that objections can be filed before the Panchayat within 15 days of the publication of the assessment list. In addition to this, notices of assessment are required to be sent to non-resident assesseees by post and in their case the period of filing objections is counted from the date of the receipt of the notices by the assesseees concerned.

It is then the duty of the Panchayat to consider such objections that may have been raised and revise the assessment list if necessary. Such amendments are to be signed by the Surpanch and two Panchas before the 15th November preceding the year for which the tax is sought to be imposed. A copy of the amended list must then be posted on the notice board of the Panchayat. Provision has also been made under the Rule for filing appeals against the assessment made to the Tehsil Panchayat or where the Tehsil Panchayat has not been established to the Chief Panchayat Officer.

A final assessment list is then to be prepared in accordance with the decisions arrived at on such appeals and this revised assessment list has got to be

published by the Panchayat not later than the 15th February preceding the year for which the assessment is made. This publication is also required to be made by beat of arum. It is also provided in the Rule that the year of assessment shall be deemed to begin on the 1st April.

We have no hesitation in saying that the procedure outlined above by us has not been followed by the Panchayat in the present case. The tax was obviously sought to be levied by the Panchayat on buildings for the first time in 1955-56, and the first notice in this connection was published on 21-1-56. It is patent, therefore, that the rules prescribed u/s 64(3) have been honoured more in the breach than in the observance thereof. We are, therefore, of the view that the tax imposed in the present case cannot be sustained on this ground also and must be held to be illegal.

5. We should like to add in this connection that, for our part, we would be happy if steps are taken by the authorities concerned to impress upon the Panchayats, which are in a state of infancy in this State, that they are under a statutory duty to obtain the previous sanction of the State Government in accordance with the procedure set out by us above before any tax within their areas can be validly imposed, and also that it is incumbent upon them to achieve the end in view to carefully observe the rules enacted in this connection by the legislature under Sub-section (3) of Section 64 of the Rajasthan Panchayat Act, and further that the failure to observe those rules is bound to frustrate that object and lead to no useful purpose whatsoever.

6. The result is that we allow this application and hold that the tax on buildings sought to be imposed by the Panchayat in the present case has no authority of law behind it and has been imposed in complete disregard of the provisions of Section 64 and the rules prescribed under the Rajasthan Panchayat Act and is, therefore, illegal. We further direct that the said tax shall not be levied on or collected from the petitioners on the strength of the notifications referred to above. We may make it clear that our decision will not stand in the way of the Panchayat imposing this very tax hereafter in accordance with law. The petitioners will be entitled to get one set of costs incurred in this Court from the Village Panchayat, Deoli.