

(1991) 08 GUJ CK 0012
In the Gujarat High Court

Jyotindrasinhji Vikramsinhji Jadeja

APPELLANT

Vs

Gondal Municipality

RESPONDENT

Date of Decision : 21-08-1991

Acts Referred:

Constitution of India, 1950 — Article 362
Gujarat Education Cess Act, 1962 — Section 16
Gujarat Municipalities Act, 1963 — Section 101, 102, 99, 99

Citation : (1994) 1 GLR 100

Hon'ble Judges : R.K. Abichandani, J; R.C. Mankad, J

Bench : Division Bench

Judgement

R.K. Abichandani, J.—The petitioner, an Ex-Ruler of the erstwhile State of Gondal has filed this petition challenging the validity of the rules sanctioned by the Government under its resolution dated 13th March, 1967 and also the amended rules sanctioned by the Government under its resolution dated 15th January, 1972, and framed by the respondent-Municipality for levying taxes on lands and buildings. He has also challenged the Assessment List in respect of the properties in question and has sought orders for preventing the respondent-Municipality from imposing, assessing and collecting the house tax and education cess pursuant to the impugned rules.

2. The respondent-Municipality was duly constituted under the provisions of the Gujarat Municipalities Act, 1963 (hereinafter referred to as the said Act"). u/s 99 of the said Act, subject to any general or special orders which the State Government may make and to the provisions of Sections 101 and 102 of the said Act, a Municipality is empowered to impose any of the taxes mentioned therein for the purposes of the said Act. Under Sub-section (2), it has been provided that, nothing in this Section shall authorise the imposition of any tax which the State Legislature has no power to impose in the State under the Constitution. The respondent-Municipality, in exercise of its powers of imposing taxes, passed a resolution u/s 101 of the said Act approving rules for the levy of taxes on buildings or lands or both within the limits of Gondal Nagarpalika. These rules

were sanctioned by the Government under the resolution dated 13th March, 1967 and were enforced by the Municipality from 1st April, 1968. Under the said Rules, which are at Annexure "A" to the petition, the Municipality fixes the rates of taxes on lands and buildings dividing the properties into two classes, namely, buildings or lands used for residential purposes and those used for purposes of trade, commerce, industry or business. Thereafter, rates of taxes were modified by amending Rule 3 of the said Rules. According to the petitioner, during the period from 1968 to 1972, the Municipality did not assess his properties since he was the Ex-Ruler enjoying privileges of exemption from local taxation under the Covenant entered into by the then native State of Saurashtra with the Government of India, and under the provisions of Article 362 of the Constitution of India. However, by resolution dated 12th January, 1972 at Annexure "C" to the petition, the State Government instructed the local authorities to withdraw the exemption from local taxation, if any, within their respective State areas which they may have granted to the former Rulers. Thereafter, the Chief Officer of the respondent-Municipality by his letter dated 24th February, 1972, requested the petitioner to furnish details of his properties for the purpose of preparing the Assessment List. Personal notices were also issued to the petitioner for filing objections to the valuation or assessment proposed in the Assessment List and thereafter, the Municipality had issued bills for recovery of the house tax in respect of the properties of the petitioner. It is contended that the petitioner used to file statutory appeals u/s 138 of the said Act against the bills which were issued in respect of the properties. In the appeals which were filed for the assessment years 1972-73 to 1977-78, the contention of the Municipality, that the appeals were not maintainable since they were filed without depositing the amount of tax, was upheld and these appeals were dismissed on 31st July, 1979. The Revision Applications filed against these orders were also unsuccessful. Ultimately, the respondent-Municipality issued Bill No. 3160 dated 20th September, 1979 (Annexure "E" to the petition) demanding the house tax for the current year and the arrears as also the education cess. According to the petitioner, the imposition and collection of taxes in respect of his property could not be done under the said rules inasmuch as these rules were not framed after following the procedure laid down under Sections 101, 102 and 103 of the said Act. It is contended that, when the notice dated 7-7-1966 at Annexure "G" was published in a daily newspaper on 12th July, 1966 as required by Section 101(b) of the said Act, the proposed rules were not appended with that notice and therefore the provisions of Section 101(b) were violated. It is also contended that the proposed rules were not kept at any conspicuous place as stated in the public notice. It is further contended that since, earlier, the petitioner was enjoying privileges of exemption from local taxation, he was not required to send any objections against the proposed rules and the Municipality could not have recovered any taxes without affording him an opportunity to file objections after the exemption was withdrawn. It is contended that the impugned house tax rules are ultra vires Articles 14, 19(1)(f) and 265 of the Constitution of India, in as much as the petitioner was being discriminated against as he was not given an

opportunity of raising objections as was given to other property holders. It is also contended that the Chief Officer of the respondent-Municipality had no authority or jurisdiction to include the amount of penalty u/s 16 of The Gujarat Education Cess Act, 1962 in the impugned Bill at Annexure "E" to the petition. It is pointed out in the petition that, earlier, a suit being Civil Suit No. 230 of 1979 was filed by the petitioner in the Court of Civil Judge (S.D.), Gondal but the ad interim injunction which was granted in his favour was vacated by the trial Court on 16-1-1980 and in the appeal which was filed against that order being Appeal No. 4 of 1980, the ad interim relief was vacated by the Appellate Court on 26th March, 1980. The petitioner has stated that he was advised to withdraw that suit and it has now been orally submitted before this Court that, that suit was withdrawn.

3. The first contention raised on behalf of the petitioner by the learned Counsel Mr. D.L. Kothari was that, at the time when the said rules were made by the respondent Municipality, the property of the petitioner was exempted from taxation by the local authority. He referred to the Instrument of Accession signed by the Rulers of "Salute" States in Kathiawar reproduced in Appendix II of the Saurashtra Code Volume II at page 825 and relied upon Clause 8 thereof which provided that nothing in the said instrument affect the continuance of the sovereignty of the Ruler in and over the State or save as provided by or under the instrument the exercise of any power, authority and rights enjoyed by him as Ruler of the State or the validity of any law which was in force in the State at that time. He also relied upon the Covenant entered into by the Rulers of Kathiawar State for the formation of the United State of Kathiawar which is reproduced in Appendix VII at page 841 of the Saurashtra Code Volume IT. He relied upon Articles XI and XII in support of his submission that the property of the petitioner could not be subjected to local taxes. Under Article XI, the Ruler of each Covenanting State was entitled to full ownership, use and enjoyment of all private properties belonging to him on the date of his making over the administration of the State to the Rajpramukh. Under Article XII, the Rulers and members of his family were entitled to personal privileges, dignities and titles enjoyed by them immediately before 15th August, 1947. In light of these provisions of the Covenant, it was submitted by the learned Counsel for the petitioner that if local taxes were to be imposed, it would have deprived the Ruler of his entitlement to full ownership, use and enjoyment of his property. It was submitted that, since the Municipality lacked jurisdiction to impose any taxes on the Ruler in view of the said covenant, the rules which were framed pursuant to the notice dated 8th July, 1966 were not applicable to the property of the petitioner and later on when, in 1972, the exemption was withdrawn, these rules could not have automatically applied to the said property and it was necessary to frame fresh rules in respect of the property of the petitioner so that he could be given an opportunity of raising objections against the proposed levy. It is difficult to agree with the submissions of the learned Counsel that the property of the petitioner was exempted from taxation and that the respondent-Municipality had

no authority to impose any tax u/s 99 of the said Act read with Article 362 of the Constitution of India. Article 362, which was repealed by the Constitution (26th Amendment) Act, 1971, read as under:

Art. 362. In the exercise of the power of Parliament or of the legislature of a State to make laws or in the exercise of the executive power of the Union or of a State, due regard shall be had to the guarantee or assurance given under any such covenant or agreement as is referred to in.... Article 211 with respect to the personal rights, privileges and dignities of the Ruler of an Indian State.

It will be noticed from the language of the said Article that the provisions thereof were of recommendatory nature and the Parliament and State Legislatures were required only to have due regard to the guarantee or assurance given under any covenant or agreement as was referred to in Article 291 of the Constitution with respect to the personal rights, privileges and dignities of the Ex-Ruler of an Indian State. It is clear that the said provision does not speak of any exemption from imposing taxes on the properties of the Ex-Rulers. Moreover, it has been provided in Article 363 of the Constitution that, neither the Supreme Court nor any other Court shall have jurisdiction in any dispute arising out of any provision of a treaty, agreement, covenant, engagement, sanad or other similar instrument which was entered into or executed before the commencement of this Constitution by any Ruler of an Indian State and to which the Government was a party and which has or has been continued in operation after such commencement, or in any dispute in respect of any right accruing under or any liability or obligation arising out of any of the provisions of this Constitution relating to any such treaty, agreement, covenant etc.,. From the combined reading of the provisions of Articles 362 & 363, it is clear that there was no exemption intended to be given under Article 362 of the Constitution for exempting the properties of Ex-Rulers and any dispute which the Ruler may raise on the basis of the covenants for claiming any such right is made non-justiciable. Apart from this, it is clear that it is too late in the day for the petitioner to claim any sovereign rights which were saved in Clause 8 of the Instrument of Accession on which reliance was sought to be placed by "his Counsel. Even Article XI of the covenant entered into by the Rulers of Kathiawar States for the formation of United State of Kathiawar only referred to the entitlement of the Ruler to full ownership, use and enjoyment of all private properties and did not speak of any exemption from taxation. It is, therefore, difficult to accept the proposition canvassed on behalf of the petitioner that the Municipality had no power to impose taxes in respect of the property of the petitioner u/s 99 of the said Act. Reliance placed on Sub-section (2) of Section 99, which lays down that nothing in this Section shall authorize the imposition of any tax which the State Legislature had no power to impose in the State under the Constitution, is wholly misconceived, because there was no such embargo placed on the legislative power of the State to impose tax in connection with the properties of Ex-Rulers under Article 362 of the Constitution as sought to be contended on behalf of the petitioner. In this connection, we may refer to the decision of the Supreme Court

in Sri Sudhansu Shekhar Singh Deo Vs. The State of Orissa and Another, in which the Supreme Court, in terms, held that the privileges guaranteed by Articles 4 and 5 of the Merger Agreement executed by the Ruler of Sonapur were personal privileges of the Ruler as an Ex-Ruler and those privileges did not extend to his personal property. In context of the provisions of Article 362 of the Constitution, the Supreme Court held that the said provision did not import any legal obligation enforceable at the instance of the erstwhile Ruler of a former Indian State. It was held that, if despite the recommendation that due regard shall be had to the guarantee or assurance given under the covenant or agreement, the Parliament or the Legislature of a State makes laws inconsistent with the personal rights, privileges and dignities of the Ruler of an Indian State, the exercise of the legislative authority cannot relying upon the agreement or covenant, be questioned in any Court, and that is so expressly provided by Article 363 of the Constitution. In Commissioner of Income Tax, Andhra Pradesh Vs. H.E.H. Mir Osman Ali Khan, , the Supreme Court negated the contention canvassed on behalf of the Nizam of Hyderabad that he had immunity from taxation under the Income Tax Act in view of the personal privileges given to him under Articles 3 & 4 of the Covenant. The Supreme Court held that, if during the assessment year an individual is assessable to tax, the fact that during the previous year he was not liable to tax at all because there was no Income Tax Act in the area to which the Act was extended or because that under an Income Tax Act in force therein during that year his income was exempted from tax or because of any other law, including International Law, he was so exempt from tax, would not be of any relevance. After the extension of the Act to the Hyderabad State the charge was under the Act and not under the provisions of the previous law. Thereafter, the charge as well as the manner of computation of income did not depend upon the pre-existing law but only upon the provisions of the Act. It was held that, his right to exemption, if any, under International Law during the accounting year was irrelevant to the question of taxation under the Act, as the said law ceased to apply to him during the assessment year. It is, thus, clear that the property of the petitioner was not exempted from taxation and therefore there is no substance in the contention that the Municipality could not have imposed tax on the property of the petitioner u/s 99(2) of the said Act. There is no dispute about the fact that, by the resolution dated 12th January, 1972 which is at Annexure "C to the petition, it was pointed out to the concerned authorities that with effect from 28th December, 1971, the recognition of Rulers of former Indian States was withdrawn and they ceased to be Rulers and their privileges stood terminated from that date. Orders in respect of personal privileges contained in the Government of Bombay resolution dated 16th November, 1951, as were applicable from time to time including those under the resolution dated 2nd February, 1959, were all cancelled. The Administrative Departments were, therefore, requested to take immediate steps to withdraw concessions granted to the former Rulers and the members of their family, under various Acts or Rules made in pursuance of the privileges enjoyed by the Rulers. The Panchayat and Health Department was requested to inform the Municipal

and Panchayat authorities to withdraw the exemption from local taxation, if any, within their respective areas, which they may have hitherto granted to the former Rulers. As has been held as above, there was no exemption granted to the petitioner in respect of his property from local taxes under the provisions of the Constitution. Even the provisions of the said Act did not provide for any such exemption nor did the rules framed by the Municipality for imposing taxes. It, however, appears that, after the issuance of the resolution dated 12th January, 1972, the Municipality started taking action for collecting taxes in respect of the property of the petitioner. It is, in this context that it was contended that, since the Municipality had for the first time started taking action for collecting taxes after the issuance of the resolution dated 12th January, 1972, the procedure for framing of rules should have been adopted by it afresh in respect of the property of the petitioner. It was contended that the said property was brought within the purview of taxation for the first time and therefore on the analogy of territorial extension of the Municipality, the procedure should have been adopted afresh as is done in respect of the extended area of the Borough. In our view, the analogy of the newly added area of a Municipal Borough is not at all apposite in the instant case for the simple reason that the property of the petitioner was already within the municipal limits and the petitioner, as an inhabitant of the area, could have raised objections earlier when notice was issued u/s 101(b) of the said Act irrespective of the fact whether he owned property or not. It will be noticed from Clause (c) of Section 101 of the said Act that any inhabitant of the Municipal Borough, who objected to the imposition of tax or the proposed rate or the classes of persons or property to be roads liable thereto or to any exemptions proposed, could, within one month from the publication of the notice, send his objections in writing to the Municipality. Therefore, as an inhabitant of the Municipal Borough, the petitioner was entitled to raise objections against the proposed levy on issuance of the notice u/s 101(b) of the said Act. Admittedly, the petitioner did not raise any objections at that time. Since the petitioner had ample opportunity to raise objections, being the inhabitant of the area like any other inhabitant, it cannot be said that a discriminatory treatment was meted out to him or that the provisions of Article 14 of the Constitution were violated in his case. In this view of the matter, we do not find it necessary to refer to the authorities cited on behalf of the petitioner which have bearing on the question of following of procedure of framing of rules or applying notifications for the purpose of imposition of taxes to the newly added areas of a Municipal Borough, since we are of the view that those authorities are irrelevant for the purpose of the point in issue.

4. It was argued on behalf of the petitioner that there was non-compliance with the provisions of Section 101(b) of the said Act, inasmuch as the proposed rules were not published along with the notice given in the newspaper, which is at Annexure "G" to the petition. The provisions of Section 101(b) of the said Act read as under:

101(b). When such resolution has been passed, the Municipality shall publish the

rules so approved with a notice in the form of Schedule I prefixed thereto.

It is clear from the wordings of the said provision that the publication of the rules approved by the Municipality with a notice is a mandatory requirement. However, the said notice does not lay down the manner of publication of such notice. Admittedly, there are no bye-laws providing the procedure for publication of notice and rules u/s 101(b) of the said Act. There is no requirement by the Statute or any bye-law of the Municipality for publishing the rules in any newspaper. Since no particular mode of publication of notice and the proposed rules has been provided, the only aspect which remains to be examined is whether there was sufficient publication so as to meet the purpose underlying the provisions of Section 101(b) & (c) which is to enable the inhabitants to file their objections if they so desire within the stipulated time from the publication of the said notice. It was contended that the respondent-Municipality had not established that it had actually kept the rules at the places indicated in the notice and despite the petitioner's having brought on record of this petition a copy of the affidavit filed in the Suit (at page 116) in which it was stated by one Chhaganlal that he had not read any such rules at the places mentioned in the notice on 12-7-1966 or thereafter, no effort was made by the Municipality to prove by producing a report of any officer to show that the proposed rules were actually kept at those places. It is difficult to accept this contention of the petitioner for the reasons which follow. Admittedly, the public notice dated 7-7-1966 which was given in the newspaper ("Nutan Saurashtra" on 12-7-1966 as per Annexure "R/1") indicated that the proposed rules approved by the Municipality u/s 101(a) of the said Act were kept for perusal by the public at the office of the Municipality, Veri Darwaja, Chakkar Naka, Town Hall and Shri Bhagwatsinhji Library. A copy of the notice which is brought on record by the petitioner along with his affidavit-in-reply (at page No. 126 of the Paper Book) shows that below the notice an endorsement was made on 8-7-1966 by the Chief Officer of the Municipality indicating that four copies of the proposed rules were being sent for displaying them at the aforesaid 4 places mentioned in the said endorsement. It is clear to us from the said endorsement that steps were taken by the respondent-Municipality to see that the proposed rules along with the notice were placed at the aforesaid 4 places. The said endorsement lays down sufficient basis for a presumption that the said official act was duly performed and the proposed rules and notice were in fact placed at the aforesaid 4 places indicated in the endorsement. It may also be noticed from the reply filed by the respondent-Municipality to an application made under Order XI, Rule 18 of the CPC in a suit which was filed by the petitioner, a copy of which is brought on record by the petitioner, it was stated by the Municipality that necessary steps for publication of the proposed rules were duly taken by the Chief Officer for publishing them at the said public places. The affidavit of one Chhaganlal which was filed in the suit and on which reliance was placed on behalf of the petitioner only states that the said person had not himself seen or read the notice and had not seen it displayed at the aforesaid places. The fact that Chhaganlal had not

himself seen or read the notice cannot lead to an inference that the notice and proposed rules were not placed at those places as per the endorsement made below the said notice under which four copies of the proposed rules along with the notice were sent for being displayed for the public so that they can raise objections if any. It is also significant to note that no one save the petitioner had ever challenged the fact that the notice and the proposed rules were kept at the aforesaid 4 places which were mentioned even in the public notice given in the newspaper. It is also significant to note that the objections were in fact received against the proposed rules and were forwarded to the Government as stated in para 13 in the affidavit-in-reply of the respondent. It is clear that, unless the rules were published, objection could not have been received for being forwarded to the State Government. Admittedly, the State Government sanctioned the rules after considering the objections which were forwarded to it. It is also significant to note that, in an earlier petition which was filed in a representative capacity, being Special Civil Application No. 718 of 1973, admittedly, no such contention was raised alleging non-publication of the rules at the places indicated in the public notice. If the proposed rules were not really kept at those places, it is reasonable to assume that the petitioners of that petition filed in a representative capacity challenging the Assessment List, would have raised such contention. At this distant point of time, we cannot expect the respondent-Municipality to furnish a detailed account of the manner in which the proposed rules were pasted at the four places indicated in the notice where they were forwarded by the Chief Officer for being kept for the public. On the facts and circumstances on record, we are satisfied that the notice and the proposed rules were duly published at the places which were mentioned in the public notice. In this view of the matter, the decision of this Court in *Gokaldas Amarshi v. Porbandar City Municipality* (1971) XII GLR 603, on which reliance was placed on behalf of the petitioner, cannot help the petitioner since in that case the main question was that though the notice stated that a copy of the rules was appended to the notice, the rules were not in fact so appended and that was the basic fact which was kept in mind by the Court while deciding that matter. In the present case, the rules were in fact appended with the notice as is mentioned in the notice and the endorsement below it of the Chief Officer, which is at page 126 of the Paper Book. In *Rajkot Municipal Corporation v. Sonik Industries* reported in (1980) XXI GLR 838, a Full Bench of this Court, after considering *Gokaldas's* case (*supra*) and the decisions of the Supreme Court, reiterated the following two principles namely: "(I) The notification of the proposal to levy a particular tax is mandatory, and (2) The manner of publication of such notice is directory and if the actual notice as published substantially complies with requirements of law they can be said to be complied with and the publication will be considered proper publication." In the appeal from the said decision, the Supreme Court in *Sonik Industries, Rajkot Vs. Municipal Corporation of the City of Rajkot*, held that the mode of publishing the rules were the matter for directory or substantial compliance. It is sufficient if it is reasonably possible for persons affected by the rules to obtain with fair diligence, knowledge of those rules through the mode

specified in the notice. Applying these principles, we are satisfied in the present case that the proposed rules along with the notice were duly published at the places mentioned in the notice and it was reasonably possible for the inhabitants of the Municipal Borough to obtain knowledge of those rules through the modes specified in the notice. Even if no presumption, as can be raised u/s 226(3) of the said Act, is raised because no bye-laws were being framed by the Municipality for publication of such general notices, the facts and circumstances of the case clearly indicate that the proposed rules along with the notice were duly published by the Municipality at the relevant time, as held in *Y.S. Parihar Vs. Chintaman Madhavsa Kha tri*, in context of the provisions of Section 154(3) of the Bombay District Municipalities Act, 1901, which were similar to those of Section 226(3) of the said Act, the language of Sub-section (3) of Section 154 was mandatory only in respect of a presumption to be drawn in case the Bye-law has been framed. Sub-section (3) of Section 226, in our view, does not debar any other kind of proof on the point of publication. As we have found above, the notice and the rules were duly published by the respondent-Municipality and the question of any presumption u/s 226(3) cannot arise in the present case since, admittedly, no bye-laws have been framed laying down mode of publication of public notice. Therefore, this authority, on which reliance was sought to be placed on behalf of the petitioner is of no assistance.

5. The learned Counsel for the petitioner relied upon the decision of this Court in *Lalitaben Jethalal Sangani v. Keshod Nagar Panchayat* and Ors. Special Civil Application No. 1213 of 1966 decided on 22-4-1970 on the question of publication of the notice, but as can be seen from the said decision it turns upon the interpretation of the provisions of Rule 3(b) of "The Gujarat Gram and Nagar Panchayat Taxes & Fees Rules, 1964," which provided that for the purpose of inviting objections or suggestions in that behalf, the Panchayat shall notify to the public the proposal together with a part of that rules which relates to that tax or fee by beat of drum in the "gram" or "nagar" and by means of a notice affixed in the office of the Panchayat and at the "gram", "chavdi" or "chora" and publishing in at least one local Gujarati newspaper circulating in the areas of Panchayat.... This Court, while construing Rule 3(b) held that the notice under that rule must set out the proposal to levy the particular tax and it must also set out that particular part of the rules which related to the tax or fee and this was not done while publishing the notice in "Jai Hind" newspaper since part 5 which related to the tax was not set out in that notice. Therefore, this decision cannot help the petitioner. Reliance placed on the decision of this Court in Second Appeal No. 105 of 1969 decided on 30th August, 1973 *Surya Cinema v. Morvi Municipality* is also misconceived because in that case, as held in paragraph 5 of the Judgment, the notice itself was not accompanied by a copy of the rules. In the present case, the notice was accompanied by a copy of the rules and therefore this decision also cannot help the petitioner. There is, therefore, no substance in the contention raised on behalf of the petitioner that there was non-compliance with the provisions of Section 101(b) of the said Act.

5.1. The learned Counsel for the petitioner had initially contended that the Assessment List was not prepared by the Chief Officer but was prepared by a Government Officer which according to him was not permissible under the law. However, at the conclusion of his arguments, the learned Counsel stated that he did not press the said contention in view of the fact that a consent order was already passed by this Court in Special Civil Application No. 718 of 1973 which was a petition filed in a representative capacity and in which the Assessment List was challenged. The learned Counsel had also argued initially that the objections from the applicants were not disposed of as the Assessment List could not be authenticated, but at the end of his arguments, he stated that he did not press the said point because the appeals filed by the petitioner were disposed of and it was stated on behalf of the petitioner on 31-5-1974 that whatever decision was given in the appeal will be accepted by the petitioner. Since the said contention is given up, we do not deal with it.

5.2. The learned Counsel for the petitioner also stated that he did not press the contention regarding the validity of bills except to the extent that the Chief Officer could not have imposed any penalty under the provisions of Section 15 of the Gujarat Education Cess Act. 1962. As regards this contention, it will be noticed from paragraph 25 of the petition ? that it was contended by the petitioner that the Chief Officer had no authority or jurisdiction to include the penalty amount in the impugned Bill. Nowhere was it contended that the penalty was imposed by the Chief Officer or it was not imposed by the local authority. It will be seen from the provisions of Section 15(3) of the Gujarat Education Cess Act that the collection of tax and the recovery of penalty under that Act on behalf of any local authority shall be made by the appropriate authority appointed to collect the property tax on behalf of such local authority under the law under which the local authority is constituted. Merely because the amount of penalty is included in the bill which was sent by the Chief Officer, it cannot be inferred that the penalty was imposed by the Chief Officer. Since no contention was raised on the record of this case that the penalty was not imposed by the local authority or that it was imposed by the Chief Officer in contravention of Section 16 of the Gujarat Education Cess Act, the respondent-Municipality never had any opportunity to deal with any such contention until it was orally canvassed on behalf of the petitioner. It is clear to us that there is no basis for such contention since the only point which was raised in the petition was that the Chief Officer had no authority to include the said amount in the impugned bill at Annexure "E" to the petition. The impugned Bill only calls upon the petitioner to pay the taxes and the amount of penalty mentioned therein and there is no indication at all that the penalty was imposed by the Chief Officer and not by the local authority. There is, therefore, no basis for the contention canvassed on behalf of the petitioner on this count also. The learned Counsel for the petitioner had initially raised a contention on the aspect of annual letting value with reference to the rules and the finding that no such contention was raised in the petition, he stated that he did not press that point having bearing on Rule 6 of the said Rules.

5.3. The petitioner has sought to challenge the Rules framed by the Municipality as far back as in 1968 in a petition filed in the year 1980, i.e., after a gross delay of over 12 years. These rules had remained in operation in respect of the properties of the inhabitants of the respondent-Municipality for over a decade when the petition was filed and no one appears to have objected against these rules on the ground that the proposed rules along with the notice were not published. We find that this gross delay on behalf of the petitioner alone is a sufficient ground for disposing of the matter. He have, however, also considered the matter on merits and have found no substance in it. No other contention was raised before on behalf of the petitioner.

6. For the above reasons, there is no substance in this petition, which deserves to be dismissed. We find from the record that, interim relief was granted in favour of the petitioner in terms of paragraph 29(g) restraining the respondent-Municipality from taking any steps for recovery of House Tax and Education Cess under the impugned notice and therefore the amount of House Tax and Education Cess have remained outstanding against the petitioner. The said interim relief is hereby vacated and we find it proper to direct the petitioner to pay interest at the rate of 12% per annum on the amount which was due to be recovered from him in respect of the said property by the respondent-Municipality from the date on which it fell due till the payment thereof or its realisation. Rule is discharged with no order as to costs.

7. At this stage, the learned Counsel for the petitioner orally applies for certificate under Article 133 of the Constitution for appeal to the Supreme Court. In our view, this case does not involve any substantial question of law of general importance which needs to be decided by the Supreme Court and therefore the said request is rejected. The learned Counsel further prays for continuing the interim relief which was operative till today and which is vacated today. We do not find any reason to continue that interim relief.