

(1982) 08 GUJ CK 0031
In the Gujarat High Court

Kalavad Vanik Sangh and Others

APPELLANT

Vs

Kalavad Nagar Panchayat

RESPONDENT

Date of Decision : 25-08-1982

Acts Referred:

Constitution of India, 1950 — Article 226

Gujarat Gram and Nagar Panchayats (Taxes and Fees) Rules, 1964 — Rule 13, 13(2)

Gujarat Panchayats Act, 1961 — Section 178, 178(6)

Citation : (1982) GLH 1084 : (1983) 1 GLR 78

Hon'ble Judges : R.C. Mankad, J

Bench : Single Bench

Judgement

R.C. Mankad, J.—Petitioners who are residents of Kalavad town in Jamnagar district have filed this petition challenging the action of the respondent Kalavad Nagar Panchayat (hereinafter referred to as the "respondent Panchayat") in demanding and collecting tax on buildings and lands (house-tax) from them from April 1, 1975 to March 31, 1979.

2. Facts leading this petition briefly stated are as under. By a resolution dated October 12, 1973, the respondent Panchayat decided to impose tax on buildings and lands with effect from April 1, 1973. It is not in dispute that necessary formalities of publication etc. as required by the Gujarat Gram and Nagar Panchayats Taxes and Fees Rules, 1964 (hereinafter referred to as the "Rules") were complied with. Objections received from the inhabitants of Kalavad town in response to the public notice were considered by the respondent Panchayat and thereafter a resolution was passed by it to impose tax at the rate of 6 per cent per annum on the annual letting value of the buildings and lands, with effect from April 1, 1974. Final notice dated March 24, 1974 along with rules was duly published. Thereafter the respondent panchayat by its resolution dated May 25, 1974 decided to levy tax on buildings and lands at the rate of 3 per cent of the annual letting value of the buildings and lands instead of 6 per cent as earlier resolved. By a resolution dated October 7, 1975, the respondent Panchayat further decided to impose the said tax with effect from April 1, 1975 instead of

from April 1, 1974 as stated earlier. It is not in dispute that after this decision to levy tax at 3 per cent of the annual letting value of the buildings and lands with effect from April 1, 1975 was taken, necessary formalities as required by the Rules were complied with. A notice dated February 15, 1975 imposing tax as stated above along with the rules was also duly published.

3. By a further resolution dated May 2, 1979, on which the petitioners mainly rely, the respondent Panchayat unanimously resolved to impose tax on buildings and lands with effect from April 1, 1979 instead of April 1, 1975. The ground for changing the date from April 1, 1975. to April 1, 1979 given in the resolution was that there was delay in preparation of the assessment list. However, when the respondent Panchayat issued bills for recovery of the tax on buildings and lands, demand for tax has raised from April 1, 1975. A copy of one of such bills issued by the respondent Panchayat on February 12, 1980 is at Annexure "B" to the petition, wherein Rs. 720/- are demanded for the period from April 1, 1975 to March 31, 1979 in respect of the property bearing No. 2650 of one Jashwantrai D. Ravani. According to the petitioners, similar bills were issued to all the residents of Kalavad town who were liable to pay tax on buildings and lands under the resolution referred to above. Petitioners contend that the demand for the tax for the period from April 1, 1975 to March 31, 1979 is illegal.

4. Respondent Panchayat has resisted the petition mainly on two grounds. First ground raised by it is that the petitioner has an alternative remedy by way of appeal under Sub-section (6) of Section 178 of the Gujarat Panchayats Act, 1961 (hereinafter referred to as the Act) and therefore, this petition is not maintainable. Secondly, it has contended that in view of the resolutions dated May 25, 1974 and October 7, 1974, it was entitled to levy tax on buildings and lands with effect from April 1, 1975. So far as the resolution dated May 2, 1979 on which petitioners place reliance is concerned, the respondent Panchayat contends that the resolution was beyond the authority or jurisdiction of the respondent Panchayat and therefore, it is illegal. It is pointed out that the District Development officer, Jamnagar had by his letter dated July 21, 1979 Annexure "4" to the affidavit-in-reply, had directed the respondent Panchayat to collect and recover tax on buildings and lands with effect from the date it decided to levy taxes and not from April 1, 1979 as per resolution dated October 7, 1974. Respondent Panchayat contends that levy and recovery of tax from April 1, 1975 is valid and legal.

5. I do not find any substance in the respondent Panchayat's objection that this petition is not maintainable inasmuch as the petitioners have not exhausted remedy of appeal available to them under Sub-section (6) of Section 178 of the Act. It is now well settled that even in a case where alternative remedy is available to the petitioner, this Court can in an appropriate case grant relief in exercise of its powers under Article 226 of the Constitution of India. In the instant case, as pointed out by the respondent Panchayat, the District Development Officer had written to it to levy tax from the date it was decided to

levy tax, that is April 1, 1975 as resolved by it on October 7, 1974. This letter of the District Development Officer which is produced along with the affidavit-in-reply is written on behalf of the District Panchayat of Jamnagar. In other words, it was under the direction of the District Panchayat, that the respondent Panchayat issued bills demanding tax with effect from April 1, 1975. It is not in dispute that the District Panchayat is the appellate authority before which the petitioners were required to prefer appeal u/s 178(6) of the Act if such appeal lay. In view of the decision taken by the District Panchayat, it was pointless for the petitioners to prefer appeal before it challenging the levy of tax with effect from April 1, 1975. Under these circumstances, in my opinion, the petition cannot be rejected on the ground that alternative remedy by way of appeal was available to the petitioners. I am taking this view without going into the question whether or not the petitioners could have preferred appeal before the District Panchayat u/s 178(6). It was contended on behalf of the petitioners that the petitioners were not challenging the levy of tax as such and their only contention was that levy could not be imposed with effect from April 1, 1975. Such contention, it was submitted, cannot be subject-matter of an appeal u/s 178(6) of the Act. However, as observed above, I do not consider it necessary to go into this question as in my opinion even assuming that the petitioners had an alternative remedy by way of appeal, this is a fit case where the Court should refuse to give relief to the petitioners on that ground alone, specially when as discussed hereafter, the action of the respondent Panchayat is patently illegal.

6. Chapter VIII of the Act deals with the subject of Taxation. We are concerned with Section 178 in Part II of this Chapter. Part II of this Chapter deals with taxation by Gram Panchayats and Nagar Panchayats. Sub-section (1) of Section 178 empowers a Gram Panchayat and Nagar Panchayat to levy all or any of the taxes and fees enumerated therein. One of such taxes is "tax on buildings (whether subject to payment of agricultural assessment or not) and lands (which are not subject to payment of agricultural assessment) within the limits of the gram, or as the case may be, nagar. The taxes and fees enumerated in Sub-section (1) of Section 178 are to be levied in the manner prescribed by Rules. The Rules prescribe the procedure for levying tax or fee. Rule 3 of the Rules, lays down that before deciding to levy a tax or fee every panchayat shall by a resolution passed at its meeting, select a tax or fee which it proposes to levy and in such resolution shall specify the rate at which it is to be levied. Clause (b) of Rule 3 prescribes the mode of inviting objections in this behalf. Clause (c) lays down that any inhabitant of the gram or nagar objecting to the levy of the tax or fee so proposed or desiring to make any suggestion may send his objection in writing to the panchayat on or before the date specified in notice published under Clause (b) or orally on the day or days on which the panchayat considers the proposal. Clause (d) of Rule 3 enjoins a duty on the panchayat to consider the objections and suggestions received by it under Clause (c). And it is after considering the objections and suggestions that the gram or nagar panchayat is required to take a final decision, in the matter of levy of tax or fee. After a

decision to levy tax or fee is taken, such a decision together with rules has to be published by a notice as prescribed by Rule 4. Rule 4 provides that tax or fee shall be levied from the date which is specified in the notice which shall not be earlier than one month after the publication of the notice. Rule 5 of the Rules prescribes procedure for filing of appeal under Sub-section (6) of Section 178 by a person aggrieved by a decision of the gram or nagar panchayat to levy tax. Part II of the rules deals with tax on buildings and lands. Rule 7 which falls under this Part II lays down that the rate of tax which a panchayat may levy on buildings and lands shall be such as may be fixed by it either on the capital value or on the annual letting value of the building or the land but not below the minimum and not exceeding the maximum rate specified in the Schedule annexed to Part II. Buildings and lands specified in sub-rule (2) of Rule 7 are exempt from levy of tax under Sub-rule (1). Rule 8 provides for the date from which the tax is effective. It amongst other things provides that tax shall be leviable for the year beginning on 1st April and ending on 31st March. Rule 9 deals with preparation of assessment list, and Rule 11 with publication of notice of time fixed for lodging objections. Rule 13 deals with consideration of objections to the assessment list and authentication of list. It reads as under:

13(1) All objections to the assessment shall be considered and decided by the panchayat or the authorised Officer, as the case may be, on the date specified in the notice published under Rule 11 or on any later date and the decision of the panchayat or the authorised Officer, as the case may be, shall be communicated to the person objected to the assessment.

(2) The panchayat shall cause to be made in the assessment list all amendments necessitated by the decision of the panchayat or the authorised Officer, as the case may be, under Sub-rule (1) or of district panchayat in appeal and the list so amended shall be authenticated under the signature of the Sarpanch or the authorised Officer, as the case may be.

Rule 14 provides that the entries in the list authenticated under the last preceding rule shall be conclusive evidence of the amount of the tax leviable. Rule 15 provides for amendment of assessment list. Rule 17 lays down that it shall not be necessary to prepare a new assessment list every year, subject to the condition that the assessment list shall be completely revised not less than once in every four years, the panchayat may adopt the valuation and assessment contained in the list for any year, with such amendments as may be deemed necessary, for the year immediately following. Provisions of Rules 9 and 16 are made applicable every year as if a new assessment list had been completed at the commencement of the official year. Rule 19 provides for time limit for authentication, and it lays down that as far as may be, the assessment list for every year shall be authenticated in the manner provided in Rule 13 not less than the 31st July of the year to which the list relates. Rule 21 lays down that the tax shall be recovered by the Sarpanch or by any other person duly authorised by the panchayat in this behalf. This is broadly the scheme for levy of

tax on buildings and lands u/s 178(1) of the Act and the Rules.

7. Provisions regarding levy of tax on buildings and lands contained in the Act and the Rules are in all material respects identical with the provisions of the Bombay Municipal Boroughs Act, 1925 (hereinafter referred to as the "Boroughs Act"). Chapter VII of the Boroughs Act, makes detailed provisions in regard to Municipal taxation. This Chapter is divided into several part bears an appropriate heading. The first part is headed "Imposition of Taxes". Under this part comes Sections 73 to 77-A. Section 73 enumerates the taxes which may be imposed by a Municipality and it provides that the Municipality may impose any of these taxes subject to the provisions of Sections 75 and 76 and also subject to any general or special orders which the State Government may make in that behalf. Clause (i) of Sub-section (1) of Section 73 provides for imposition of a rate on buildings or lands or both situate within the Municipal Borough. Section 75 prescribes the procedure which must be followed before a Municipality can impose a tax. Broadly speaking this procedure is identical with the procedure which is laid down in Rule 3 of the Rules. Section 77 requires that sanctioned rules must be published by the Municipality together with a Notice reciting the sanction and the date and serial number thereof etc. etc. While publishing the rules, the Municipality has also to specify the date from which the rules shall come into force. These provisions correspond to Rule 4 of the Rules. Second part of Chapter VII of the Boroughs Act consists of Sections 78 to 89 which deals with assessment of and liability to rates on buildings and lands. These sections set out the procedure which must be followed for levy or rates on buildings or lands. These provisions are similar to the provisions made in Part II of the Rules. Section 78 deals with the preparation of the assessment list. When the preparation of the assessment list is completed, the Chief Officer is required u/s 80 to give public notice of the list and of the place where the list or a copy thereof could be inspected. Simultaneously, the Chief Officer has also to give public notice under Sub-section (1) of Section 81 of a date not less than one month after such publication before which objections to the valuation or assessment in such list shall be made. Sub-section (2) provides for the mode in which the objections must be made and Sub-section (3) provides for the hearing and disposal of the objections by the Standing Committee and the proviso to this sub-section permits the powers and duties of the Standing Committee to be transferred to any other Committee appointed by the Municipality or with the permission of the Commissioner to any officer or pensioner of the Government. When the objections are considered and disposed of, the assessment list with the modifications which may have been made consequent upon the decision on the objections has to be authenticated in the manner set out in Sub-section (4). The completion of the above procedure leads to certain important consequences set out in Sub-section (6) and it lays down that the assessment list having so completed as stated above, shall be conclusive evidence of certain matters stated therein.

8. It would thus be seen that the provisions regarding levy of tax contained in

the Act and the Rules are in all material respects identical with the provisions for levy of tax contained in the relevant provisions of the Boroughs Act. The provisions contained in the Boroughs Act, came up for consideration before this Court in the *Municipal Corporation of the City of Ahmedabad v. Jhaveri Keshavlal Lallubhai* 6 G.L.R. 228. The question which came up for consideration in that case was as to when does the liability of the rate-payers in respect of tax on open lands for any official year arise. The questions which were posed before the Court were : (1) Does it arise on the commencement of the official year by the force of the rule without anything having to be done by the Municipality; or (2) Does it arise on the preparation of the assessment List; or (3) Does it arise on the authentication of the assessment list? This Court held that before the Municipality can impose tax, it must comply with the procedure set out in Sections 75, 76 and 77 of the Boroughs Act and it is only after that procedure is complied with by passing of the resolution selecting the tax and the approval of the Rules prescribing the tax and the sanction of the Government to the Rules to be approved, that the Municipality can impose the tax. Such imposition can be made only by following the procedure set out in Sections 78 to 81 read with Sections 82 and 84. There can be no taxation unless the procedure set out in these sections is complied with and it is only when the assessment list is authenticated and the final step in this procedure is taken that the tax is imposed or levied and the liability of the rate-payer arises. This procedure must be a fortiori be completed before the expiry of the official year and the assessment list must consequently be authenticated before the official year is ended. The above decision rendered in the context of the provisions of the Boroughs Act, must apply with equal force in relation to the corresponding provisions of the Act and the Rules. There is, therefore, no doubt that there can be no imposition or levy of the tax unless and until a procedure set out in the Rules is followed. There is no dispute that the respondent Panchayat has complied with the procedure for levying tax on buildings and lands laid down by Rules 3 and 4. However, before the respondent Panchayat can impose tax, it must comply with the procedure set out in Rules 9 to 13 of the Rules and it is only after that procedure is complied that the respondent Panchayat imposes tax. There is nothing on record to show as to when the assessment list was authenticated as required by Rule 13(2). It is only when the assessment list is authenticated that the liability of the tax-payer arises. The resolution dated May 2, 1979, Annexure "A" on which the petitioners heavily rely shows that there was delay in preparation of the assessment list. However, we do not have the date on which the assessment list was authenticated.

9. Since the petitioners do not challenge levy of tax from April 1, 1979, it would appear that the assessment list was authenticated on that day or prior thereto, but the petition does not mention anything about the preparation and finalisation of the assessment list and the date on which the assessment list was authenticated. As already observed, the liability of the tax-payer arises only when the assessment list is authenticated as required by Rule 13(2). Therefore,

the crucial date for determining the liability of the tax-payer like the petitioners is the date on which the assessment list is authenticated. Therefore, the respondent Panchayat's claim that it is entitled to levy and recover tax with effect from April 1, 1975, cannot be accepted. Bills demanding tax with effect from April 1, 1975 prima facie appear to be illegal, since there is no evidence to show that the assessment list was authenticated so as to make levy of tax valid with effect from April 1, 1975. At the same time, in absence of any evidence or material on record to prove the date on which the assessment list was authenticated, the petitioner's plea that levy of tax upto March 31, 1979 is illegal also cannot be accepted. Validity of the demand for tax would depend upon the date on which the assessment list is authenticated.

10. In the result, this petition is partly allowed. Respondent Panchayat is directed to levy tax on buildings and lands only with effect from the year in which the assessment list was authenticated as required by Rule 13(3) of the Rules. Bills issued by the respondent Panchayat to the petitioners demanding tax with effect from April 1, 1975 are quashed.

11. Respondent Panchayat is restrained from recovering tax for the years prior to the year in which the assessment list is authenticated as stated above.

Rule made absolute to the extent stated above with no order as to costs.