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(2007) 04 GUJ CK 0004

In the Gujarat High Court

Case No : Special Civil Application No''s. 5885 and 7661 of 1997

Kotda Deyodar Gram Panchayat APPELLANT

Vs

State of Gujarat and Others RESPONDENT

Date of Decision : 03-04-2007

Acts Referred:
Gujarat Gram and Nagar Panchayats (Taxes and Fees) Rules, 1964 — Rule 3, 4

Citation : (2007) 3 GLR 1848

Hon'ble Judges : R.S. Garg, J

Bench : Single Bench

Advocate : Ketan Shah, for the Appellant; isha Parikh AGP and K.B. Pujara, for Respondent Nos. 3 - 4, for the Respondent

Judgement

R.S. Garg, J.—Heard Mr.Ketan Shah, learned Counsel for the petitioner, Ms.Nisha Parikh, learned Assistant Government Pleader for the respondent No. 1 State, None for the respondent No. 2 and Mr.K.B. Pujara, learned Counsel for the respondent Nos.3 and 4 in Special Civil Application No. 5885 of 1997 and Mr.K.B. Pujara, learned Counsel for the petitioner and Mr.Ketan Shah, learned Counsel for the respondent in Special Civil Application No. 7661 of 1997.

2. Kotda Deyodar Gram Panchayat was a Gram Panchayat duly constituted under the provisions of Gujarat Panchayats Act, 1961 (since repealed) and according to the petitioner, would be deemed to be duly constituted under the provisions of Gujarat Panchayats Act, 1993. The Panchayat decided to impose octroi on the goods brought within local limit of the Panchayat and thereafter, made a proposal for the same. The Panchayat issued a public notice on dtd.28/12/1996, in accordance with Rule 3 of Gujarat Gram and Nagar Panchayats Taxes and Fees Rules, 1964 (Sthe Rules for short). It passed resolution in its meeting dtd.23/2/1996. For proper appropriate of rival contention, Rule Nos. 3 and 4 of the Rules are required to be appreciated, which read a under:

Rule 3. Procedure for levying tax or fee.- Before deciding to levy a tax or fee every panchayat shall observe the following procedure, namely:

(a) It shall be resolution passed as its meeting, select a tax or fee which is proposes to levy and in such resolution shall specify the rate at which it is to be levied.

(b) For the purpose of inviting objections and suggestions in that behalf, it shall then notify to the public, by means of public notice affixed at the office of the panchayat and at the Chavdi or Chora of the gram or nagar, or at some conspicuous places in the gram or nagar, the proposal together with that part of these rules which relates to that tax or fee specifying a date not earlier than one month after the date of such notification on or after which the panchayat shall take the proposal into consideration. The fact of the notification of such proposal shall, as soon as my be, be announced either by beat of drum in the gram or nagar or, by publishing it at some conspicuous places in the gram or nagar or in at least one local Gujarati Newspaper circulating in the area of the panchayat.

(c) 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 or suggestion in writing to the Panchayat on or before the date specified in the notice published under Clause (b) or orally on the day or days on which the panchayat considers the proposal.

(d) On or after the date fixed under Clause (b), the panchayat shall consider all objections and suggestions received by it under Clause (c) and may unless the proposal is dropped select a tax or a fee and decide the rate at which it is to be levied.

Rule 4. Final publication of rules relating to tax or fee to be levied.-

(a) Where a panchayat so decided to levy any tax or fee, the rules in that part of these rules which relate to such tax, fee together with a notice stating the tax or fee to be levied and the rate thereof shall be published by it by affixing copy thereof in the office of the panchayat. The fact of such publication shall, as soon as may be, be announced either by beat of drum in the gram or nagar or by affixing it at some conspicuous places in the gram or nagar or by publishing in at least one local Gujarati Newspaper circulating in the area of the panchayat. The tax or fee shall accordingly be levied from the date which shall be specified in the notice and which shall not be earlier than one month after the date of publication of the notice.

3. After passing resolution, the Panchayat was required to invite objections and suggestions in that behalf and it was then required to inform to the public by means of a notice at the office of the Panchayat and at the Chavdi or Chora of the Gram or Nagar or at some conspicuous place in the Gram or Nagar, the proposal together with that part of these rules which relates to the tax or fee specifying a date not earlier than one month after the date of such notification on or after which the Panchayat shall take the proposal into consideration.

4. A public notice was issued on 28/2/1996 and the last date for submission of

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the objections was 30/3/1996. It appears that on 25/3/1996, the private respondents filed their objections which were heard and decided on 25/3/1996 itself. On 30/3/1996 i.e. 30th day from the date of the publication of the notice, the Gram Panchayat made a final resolution. The petitioners being aggrieved by the said order-cum-resolution, preferred an appeal to the District Panchayat Committee, which allowed the appeal holding that the provisions of Rule Nos.3 and 4 of the Rules were not observed in their true spirit.

5. The Panchayat being aggrieved by the said order passed in the appeal, preferred Revision Application No. 341 of 1997, which was dismissed by the Deputy Secretary on 18/6/1997. Being aggrieved by the said order, the Panchayat has filed the present writ application.

6. It is to be noted that the Panchayat had prayed for grant of an ad-interim order which was granted by this Court on 8/8/1997 staying effect and operation of the orders passed by the appellate and revisional authority. On 15/9/1997, Thakker Jagdishbhai Jayantilal petitioner of Special Civil Application No. 7661 of 1997 issued a notice to the Panchayat requesting it not to levy octroi without complying statutory provisions of final publication of the notice, the District Development Officer, District Panchayat, Banaskantha on 8/10/1997 sent a letter to the Panchayat that procedure as required in law, shall have to be complied with by the Panchayat. However, on 11/10/1997, without making final publication of the notice, and giving date, from which octroi was to be levied as required under the rules, the Panchayat informed all the concerned that levy of octroi had become applicable w.e.f. 9/10/1997. Being aggrieved by the said notice dtd.11/10/1997, Thakkar Jagdishbhai Shahtilal filed Special Civil Application No. 7661 of 1997 challenging inter-alia imposition of octroi and for refund of the amount which has been illegally recovered by the Panchayat.

7. Clause (b) of Rule 3 of the Rules provides that objections are to be invited and the proposal together with that part of these Rules which relates to that tax or fee specifying a date not earlier than one month after the date of such notification on or after which the Panchayat shall take the proposal into consideration.

8. If the notice was issued on 28/2/1996, then 30 days would expire on 30/3/1996. On or before 30/3/1996, the Panchayat could not assume any jurisdiction to take up the resolution nor could consider the said resolution before expiry of 30 days. Once the law requires a particular thing to be done in particular manner, then such a thing is required to be done in that manner only and not otherwise. Trite law is, in the matter of taxing statute or taxing law, each and every provision of law, rules or circulars are to be understood as those are and there is no scope for any relaxation. Once the law says that there should be a clear notice of 30 days and only thereafter, the Panchayat would be entitled to take up the issue for consideration, then, on or before 30/3/1996, the Panchayat could not take up the issue for consideration.

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9. In the present matter, submission of Mr.Ketan Shah, learned Counsel for Kotda Deyodar Gram Panchayat is that upto 30/3/1996, none other than the private respondents filed their objections and as the objections filed by the private respondents were heard and decided, this small irregularity should not come in the way of the Kotda Deyodar Gram Panchayat. Placing reliance upon the judgment of the Hon''ble Supreme Court in the matter of Municipal Board, Sitapur Vs. Prayag Narain Saigal and Firm Moosaram Bhagwan Das, , it is submitted that if there is no proper publication of the proposal or there are some irregularity or if fresh objections are not invited, then too, the resolution passed by the Panchayat would not become bad. The judgment in the said matter takes into consideration the provisions of Section 135(3) of U.P. Municipalities Act, 1916, which provides that the Board has power to levy tax and procedural defects cannot be recorded as fundamental or invalidating imposition, if no substantial prejudice is caused thereby to the inhabitants of the Municipality.

10. In the opinion of this Court, the said judgment would not apply to the facts of the present case, because, in the present case passing of the final resolution on 30/3/1996 was not a small irregularity, the resolution was passed after assumption of the jurisdiction which otherwise the Panchayat was not entitled to assume within a period of 30 days from the date of the publication of the notice. The Panchayat could assume jurisdiction on 31st day of the publication of the proposal. If last date for filing the objections was 30/3/1996 then the Panchayat could assume jurisdiction to dispose of all the objections on 30/3/1996 and take further proceedings on 31/3/1996 only and not before that Sub Rule(d) of Rule 3 of the Rules clearly provides that on or after the date fixed under Clause (b), the Panchayat shall consider all objections and suggestions received by it under Clause (c) and may unless proposal is dropped, select a tax or a fee and decide the rate at which it is to be levied.

11. From perusal of Sub clause (d) of Rule 3 of the Rules, it is clear that the Panchayat could assume jurisdiction on or after the date fixed under Clause (b) 30/3/1996, the Panchayat was to consider the objections received by it under Clause (c) and only thereafter it could pass a final resolution.

12. In the present case, the Panchayat rejected the objections on 25/2/1996 and passed a final resolution on 30/3/1996, both these actions run contrary to Rule 3(d) of the Rules. Non-observance of the Rules was not only an irregularity, but, in fact, would go to the root of the case and cause, because, the Panchayat could not assume any jurisdiction in its favour before completion of 30 days.

13. Rule 4 of the Rules clearly provides that where a Panchayat so decided to levy any tax or fee, the Rules in that part of these Rules which relates to such tax fee, together with a notice stating tax or fee to be levied and the rate thereof shall be published by it by affixing copy thereof in the office of the Panchayat. The fact of such publication shall, as soon as may be, be announced either by beat of drum in the Gram or Nagar or by affixing it at some conspicuous places in the Gram or Nagar or by publishing in at least one local Gujarati news paper as

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circulating in the area of the Panchayat. Tax or fee shall accordingly be levied from the date which shall be specified in the notice and which shall not be earlier than one month after the date of publication of the notice.

14. Once it is held that Rule 4 of the Rules is mandatory, then, tax or fee shall be leviable only on the 31st day of the publication of the notice.

15. In the present case, undisputedly, no publication was made, there was no beat of drum, nothing was done and a simple intimation was issued on 11/10/1996 that octroi has come in force w.e.f. 9/10/1996. This hasty action on the part of the Gram Panchayat was absolutely illegal and was in the teeth of the Rule 3 and 4 of the Rules.

16. The Panchayat Appeal Committee and Revisional Authority, after giving their due consideration to the facts of the case and in view of violation of the mandatory provisions of the Rules, have held that the resolution was bad and it could not be made a final resolution. The orders passed by the appellate and revisional authority came to be challenged in Special Civil Application No. 5885 of 1997. This Court granted stay of the effect and execution of the orders passed by those two authorities and immediately after 8/8/1997, the Panchayat started thinking that in view of the stay granted by the High Court, they were not required to do anything. Unfortunately, in their zeal to implement the resolution to collect octroi, the Panchayat did not bother to look into Rule 4 of the Rules which provides that fees / tax would be leviable after 30 days of the publication of the final resolution. If Rule 4 of the Rules is not observed then that would not be an irregularity, but it would be an absolute illegality. Undisputedly, either after 30/3/1996 or 8/8/1997 (the date of stay order granted by the High Court), the Panchayat did not issue any final notice in accordance with Rule 4 of the Rules. If this is the correct position, then, because of the violation of the Rule 4 of the Rules, octroi could not be levied nor could be collected.

17. The Panchayat probably thought that if they have observed Rule 3 of the Rules, then they are not required to observe Rule 4. The law is otherwise.

18. As the action of the Panchayat in imposing octroi is patently illegal and as recovery started w.e.f.9/10/1996 was contrary to the Rules, the Panchayat cannot be allowed to retain the amount and cause unjust enrichment in their own favour.

19. At one time, it was sought to be submitted by Mr.Mr.Ketan Shah, learned Counsel for the petitioner of Special Civil Application No. 5885 of 1997 that as the private respondents had taken part in the auction proceedings wherein right to collect octroi was auctioned, the private respondents would not now be entitled to challenge the subsequent proceedings of recovery.

20. In the opinion of this Court, the argument is patently illegal. It is to be noted that much before notice dtd.11/10/1996, the respondents had already challenged passing of the resolution and imposition of octroi, therefore, even if

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they had taken part in the auction proceedings, no adverse inference can be drawn against them, as the private respondents did not withdraw their objections before taking part in the auction proceedings.

21. On one side, the petitioner wants to say that the respondents are estopped by their conduct but, on the other hand, it forgets to look into their own conduct, they not only violated Rule 3 and 4 of the Rules but after obtaining stay order, acted in very high handed manner and even did not issue notice under Rule 4 of the Rules.

22. Special Civil Application No. 5885 of 1997 filed by the Kotda Deyodar Gram Panchayat deserves to and is accordingly dismissed. Interim relief granted earlier is hereby vacated. No costs.

23. However, Special Civil Application No. 7661 of 1997 filed by Thakker Jagdishbhai Jayantilal deserves to and is accordingly allowed. Rule is made absolute. No costs.

24. In view of the findings recorded by this Court that Kotda Deyodar Gram Panchayat was not entitled to recover the octroi, Thakker Jagdishbhai Jayantilal petitioner of Special Civil Application No. 7661 of 1997 would be entitled to refund of the amount which has been recovered by Deyodar Gram Panchayat petitioner of Special Civil Application No. 7661 of 1997, under the cover and authority of octroi. The said amount shall be refunded by the Deyodar Gram Pancayat within a period of three months from today, if the same is not refunded within the period aforesaid, then the Deyodar Gram Pancayat would be liable to pay interest at the rate of 12% p.a. on the said amount from the date of recovery till its payment.

25. Mr.Ketan Shah, learned Counsel for Kotda Deyodar Gram Panchayat submits that the stay granted in favour of Kotda Deyodar Gram Panchayat in Special Civil Application No. 5885 of 1997, be extended for some time.

26. Taking into consideration the totality of the circumstances and the manner in which the Panchayat has acted, I do not think that the interim stay granted earlier, deserves to be continued. The prayer for extension of the stay is rejected.

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