(1991) 09 AHC CK 0086

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 24285 of 1991

Krishi Utpadan Mandi Samiti — APPELLANT

Vs

State of Uttar Pradesh and Another — RESPONDENT

Date of Decision : 10-09-1991

Acts Referred:

Constitution of India, 1950 — Article 12, 226, 245, 246
Uttar Pradesh Municipalities Act, 1916 — Section 128(1), 129, 135

Citation : (1991) 2 AWC 87

Hon'ble Judges : V.N. Khare, J;M.P. Kenia, J

Bench : Division Bench

Advocate : B.D. Mandhyan, for the Appellant;

Final Decision : Dismissed

Judgement

V.N. Khare, J.—While dismissing this petition we directed that reasons for our judgment shall be delivered later on. We accordingly give our reasons for dismissal of this petition.

2. By means of this petition under Article 226 of the Constitution the Petitioner has challenged imposition of house and water tax by the Municipal Board, Kalpi District Jalaun and the relief sought there in is for quashing of the notices dated 8-6 1988, 30-1-1989, 17-10-1989, 26-10-1990 and 5-3-1991 respectively for demand of house tax for the years 1988-89, 1989-90 and 1990-91.

3. It appears that by the impugned notices the Respondent Municipal Board, Kalpi district Jalaun which is established and incorporated under the U.P. Municipalities Act (hereinafter referred to as ''The Act), imposed house tax within its limits u/s 128(1)(a) of the Act. u/s 128(1)(a) of the Act house tax is a tax on the annual value of the building, land or both. Admittedly, the Petitioner?s building and land falls within the limits of the Municipal Board, Kalpi. The Respondent Municipal Board assessed house tax on the annual value of the building of the Petitioner and sent the impugned notices of demand to the

Petitioner. However, it appears that initially the Petitioner ignored the impugned notices but subsequently when a threat was extended to it by the Board that the amount snail be realised by coercive means, the Petitioner has come up to this Court challenging the impugned notices.

4. Learned Counsel appearing for the Petitioner challenged the imposition of house tax and consequent notices of demand of house tax primarily on two grounds. The first ground of challenge is that the Petitioner being a local authority comes within the expression ''State'' within the meaning of Article 12 of the Constitution and, therefore, no house tax can be imposed on the Petitioner. The second ground of challenge is that the Petitioner?s land is exclusively used for agricultural purpose, therefore, no house tax and water tax, can be imposed on it u/s 129 of the Act and the impugned notices of demand for house tax and water tax are illegal and without authority of law

5. So far as the first submission of the Petitioner to the extent that it being a local authority comes within the meaning of expression ''State'' under Article 12 of the Constitution, is concerned, we need not go elaborately in this matter. Admittedly, the Petitioner is established and constituted under Uttar Pradesh Krishi Utpadan Mandi Samiti Adhiniyam and is a local authority and, therefore, is ''State'' within the meaning of Article 12 of the Constitution. But the question that arises for consideration is even if the Petitioner being a local authority is ''State'' within the meaning of Article 12 of the Constitution, can it claim immunity from imposition of house tax by the Municipal Board. An autonomous body, statutory authority or local authority created under an Act although may come within the expression ''State'' within the meaning of Article 12 of the Constitution but such bodies or local authorities, are not ''State'' within the meaning of that expression mentioned in other parts of the Constitution. The expression ''State'' as used in Part XI and other parts of the Constitution means ''State'' as mentioned in First Schedule of the Constitution. Chapter I of Part XI of the Constitution deals with distribution of legislative power. Article 245 of the Constitution provides that the parliament may make laws for whole or any part of the territory of India and Legislature of the State may make laws for whole or any part of the State Clause (1) of Article 245 of the Constitution provides that notwithstanding anything in Clauses (2) and (3) the parliament has exclusive power to make law with respect to any of the matter enumerated in list I in Seventh Schedule of the Constitution Clause (3) of the said Article further empowers the Legislature of any State of make laws for such State or any part thereof with respect to any of the matters enumerated in list II of Seventh Schedule of the Constitution. The power to impose tax on annual value of land or building is a power of ''State'' enumerated in list II of Seventh Schedule. This power to impose tax can be delegated to the local bodies. The State of Uttar Pradesh has delegated the power to impose tax on annual value of building or land on the Municipal Board throughout its territory. In exercise of that delegated power the Respondent Board has imposed house tax on the annual value of land and building situate within its territory. We have already observed that there is

no doubt that the Petitioner will be covered by the expression ''The State'' as defined under Article 12 of the Constitution but that is only for the purpose of Part HI of the Constitution. The definition of ''State'' contained in Article 12 of the Constitution is only intended to be used in the context of fundamental right conferred by Part III of the Constitution. Such rights are only intended to be enforced against the State and public authorities and such public authorities or local authorities cannot be treated or called as ''State'' for the purpose of Chapter t of Part XI of the Constitution. For the purpose of Chapter I of Part XI of the Constitution a ''Local'' Authority cannot be ''State'' It has no power to legislate on the matters enumerated in list II of Seventh Schedule under Article 246 of the Constitution. We are, therefore, of the opinion that the Petitioner not being ''State'' cannot claim immunity from the imposition of house and water tax by the Respondent Board. We, therefore, reject the first submission of the learned Counsel for the Petitioner.

6. As for the second argument of the learned Counsel for the Petitioner, it need not detain us any longer. A perusal of the impugned notices demonstrates that what the Municipal Board has imposed is house tax and not house-cum-water tax as alleged by the Petitioner.

7. Section 129 of the Act provides that imposition of tax under Clause (10) of Sub-section (1) of Section 128 of the Act shall be subject to the restriction that tax shall not be imposed on the land exclusively used for agricultural purposes unless water is supplied by the Board for such purposes. Clause (1) of Sub-section (1) of Section 128 empowers the Municipal Board to impose tax on the annual value of the building or land or both. The Petitioner has neither filed rules regarding imposition of tax nor any notification issued u/s 135 of the Act to show what kind of tax has been imposed by the Municipal Board. The impugned notices show that the Municipal Board has imposed house tax and not water tax. In view of this, the averment made in the writ petition that the Municipal Board has imposed water tax cannot be accepted. Since the Municipal Board has imposed house tax, the second argument of the learned Counsel has no legs to stand.

8. For the reasons enunciated above, the writ petition has no merit and must be dismissed.