(1979) 10 MAD CK 0005

In the Madras High Court

Kwality Monuments APPELLANT

Vs

The Tahsildar and Others RESPONDENT

Date of Decision : 17-10-1979

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (1980) 1 MLJ 461

Hon'ble Judges : A. Varadarajan, J

Bench : Single Bench

Judgement

A. Varadarajan, J.—This writ petition has been filed under Article 226 of the Constitution of India for the issue of a writ of certiorari or any

other appropriate writ or order calling for the records relating to R.O.C. No. 25789 of 1977 B-2 on the file of the second respondent, (the

Collector of Dharmapuri) and quashing the order dated 23rd February, 1977 passed therein.

2. The petitioner partnership had taken 2-50 acres of land in Palacode Taluk on lease from the Government for purposes of quarrying on a rent of

Rs. 2,600 per annum for a period of ten years from 30th October, 1972 to 29th October, 1982. As per the terms of the lease, the petitioner paid

the entire amount. A lease deed dated 30th October, 1972 was entered into providing inter alia for immediate cancellation of the lease in case the

petitioner used the land for any purpose other than quarrying and also for termination of the lease by the issue of six months'' notice by either of the

parties thereto. The second respondent by his proceedings dated 23rd February, 1977 demanded payment of Rs. 11,700 as local cess at Rs.

0.45 per rupee on the entire rent of Rs. 26,000 for the full period of ten years and Rs. 39,000 as local cess surcharge at Rs. 1.50 per rupee of the lease amount. That notice issued in cancellation of an earlier notice dated 23rd February, 1977 whereby the petitioners have been asked by the

second respondent to pay a sum of Rs. 26,000 as deposit towards the local cess and local cess surcharge, in view of the fact that the question

relating to payment of local cess and local cess surcharge was pending consideration in this Court. The contentions urged on behalf of the

petitioners are: (1) that there must be a levy each year and there can be no demand on the basis of the rent paid for all the years since the lease can

be terminated even before the expiry of the period and the lease can be terminated by the issue of six months'' notice on either side; and (2) that

the local cess surcharge can be levied under Sections 115 and 116 of the Panchayats Act, 1959, only by the Panchayat Union concerned and not

by the Government.

3. In the counter-affidavit, it is contended that the levy of local cess surcharge is valid and constitutional and that necessary resolution has been

passed by the Panchayat Union Council concerned on 22nd April, 1974 for that purpose and that the local cess and local cess surcharge are also

collected by the Revenue Department. But, in the course of the arguments, it is conceded by the learned Counsel for the respondents that the

resolution dated 22nd April, 1974 is only for the purpose of reducing the rate of local cess surcharge to Rs. 1.50 per rupee of the land revenue. In

the counter-affidavit, it is further contended that the lease has been granted to the petitioner for a period of ten years, and, therefore, the local cess

and the local cess surcharge are demanded for the entire period on the basis of the entire lease amount. The further contention in the counter-

affidavit that the petitioner should have moved the Director of Industries and Commerce and the Government by appeals and that it has not

exhausted the alternative remedy and, therefore, the writ petition is premature and not maintainable was not pressed by the learned Counsel for the

respondents in the course of the arguments.

4. Having regard to the fact that the lease is terminable by six months'' notice by either side, the learned Counsel for the respondents conceded that

the demand for local cess and local cess surcharge can be made only upto the end of the current fasli, and that for the subsequent faslis, there must

be separate levy of the local cess and local cess surcharge. Therefore it has to be stated at the outset itself that the demand by the impugned order

could be confined only to the amount of local cess and local cess surcharge payable upto the end of the current fasli, 1389. Thus, the only ground

surviving for consideration is, whether the local cess and local cess surcharge can be levied only by the Panchayat Union Council concerned, and

not by the second respondent, the Collector of Dharmapuri.

5. In the course of the arguments, the learned Counsel for the petitioner submitted that there must be a separate levy of local cess by a separate

resolution and that one general resolution for that purpose is not sufficient.

6. I shall first consider the question whether, as stated earlier, there is a resolution for the levy of local cess surcharge of at 1 1/2 times the land

revenue. There is no substance in the contention that there should be a separate resolution for each person who is required to pay the local cess

surcharge. I am of the opinion that a single resolution levying local cess surcharge would be sufficient. The question then for consideration is,

whether a levy by way of resolution is necessary in the case of local cess. The local cess is payable u/s 115 of the Tamil Nadu Panchayats Act,

1958. Sub-section (1) of that section lays down that:

There shall be levied in every panchayat development block, a local cess at the rate of 45 naye paise on every rupee of land revenue payable to

the Government in respect of any land for every fasli.

The learned Counsel for the petitioner submitted that this sub-section is only a direction to the panchayat development block to levy local cess at

the rate of 45 naye paise on every rupee of land revenue payable to the Government in respect of any land for every fasli, and that a resolution for

levying local cess at the rate mentioned in that sub-section is necessary.

7. On the other hand, the learned Counsel for the respondents submitted that the section itself levies the local cess at the rate of 45 naye paise on

every rupee of land revenue payable to the Government in respect of any land for every fasli and that there is no need for a separate resolution for

that purpose. ""Levy"", according to the Chambers Twentieth Century Dictionary (New Edition 1972) means ""to raise, collect as an army or tax; to

call for; to impose ; to begin to wage"". Giving the meaning ""collect"" to the word ""levy"" in Sub-section (1) of Section 115 of the Tamil Nadu

Panchayats Act, 1958, used in the past tense, it will read that there shall be ""collected"" in every panchayat development block, a local cess at the

rate of 45 naya paise on every rupee of land revenue payable to the Government in respect of any land for every fasli. Therefore, I agree with the

learned Counsel for the respondents that no resolution for levying local cess u/s 115(1) of the Tamil Nadu Panchayat Act, 1958, is necessary and

that Section 115(1) of that Act itself is sufficient to collect the local cess at the rate of 45 naye paise on every rupee of land revenue payable to the

Government in respect of any land for every fasli.

8. The learned Counsel for the petitioner submitted that only the Panchayat Union Council can collect the local cess and local cess surcharge, and

that the second respondent was not entitled to demand the same by the impugned order. Section 115(3) of the Tamil Nadu Panchayats Act, 1958,

lays down that:

The provisions of the Madras Revenue Recovery Act, 1864(Madras Act II of 1864), shall apply to the payment and recovery of the local cess

payable under this Act, just as they apply to the payment and recovery of the revenue due upon the lands in respect of which the local cess under

this Act is payable.

Sub-section (4)(a) of that section lays down that:

Out of the proceeds of the local cess so collected in every panchayat development block, a sum representing four-ninths of the proceeds shall be

credited to the Panchayat Union (Education) Fund.

9. G.O. Ms. No. 1615, (L.A.) Rural Development and Local Administration, dated 1st October, 1960, deals with the monthly adjustment of

Local Cess to the Panchayat Union (General) Fund. At page 235 of the Manual on Panchayat Administration (1967 Edition), it is stated that the

local cess shall be collected along with the land revenue and shall be credited to the State accounts under the same head of account as the land

revenue and that it has also been the practice so far in respect of land cess. At page 237, it is stated that following the principles laid down for the

collection and adjustment to Panchayat Union Funds of Local Cess, the Government have decided and accordingly direct that the Panchayat

Unions shall be paid in advance of collection of local cess surcharge levied by them, and that such advance payments will be made with reference to the resolutions of the Panchayat Union Councils concerned, deciding to levy the Local Cess Surcharge and the notification in the District Gazette

for such levy. It is also stated that the Local Cess Surcharge is collectable along with the kist and the local cess during the kistabandi. Thus, it is

seen from the Manual of Panchayat Administration that both the local cess and the local cess surcharge are collectable along with the land revenue

by the Revenue Department and that they should be credited to the State accounts under the same head of account as the land revenue in

accordance with the usual practice. Therefore it is not possible to agree with the learned Counsel for the petitioner that the local cess and the local

cess surcharge could be collected only by the Panchayat Union Block concerned.

10. For the foregoing reasons, the writ petition is allowed only in so far as the impugned demand relates to the local cess and local cess surcharge

for faslis subsequent to the current fasli 1389, and the demand is restricted to Rs. 8,190 being the local cess at 45 naye paise in the rupee of the

lease amount upto the end of the current fasli and Rs. 27,300 being the local cess surcharge payable at Rs. 1.50 for every rupee of the lease

amount, aggregating to Rs. 35,490. The writ petition is dismissed in other respects. Having succeeded in part, the parties shall bear their respective

costs.