

(2000) 04 BOM CK 0021

In the Bombay High Court

Case No : Writ Petition No. 5344 of 1999

M. Sector Industries Charitable Trust

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 28-04-2000

Acts Referred:

Constitution of India, 1950 — Article 226, 243Q, 243ZF
Maharashtra Municipal Councils Nagar Panchayats and Industrial Township Act, 1965
— Section 341F, 341M

Citation : (2000) 3 ALLMR 306 : (2002) 1 BomCR 725

Hon'ble Judges : D.S. Zoting, J;B.H. Marlapalle, J

Bench : Division Bench

Advocate : Arvind Bobde and Talhar, for the Appellant; Naresh Patil, for Jalgaon Municipal Council, respondent No. 7, Sanyal and S.S. Dande for respondent Nos. 3 to 5, K.B. Choudhary, A.G.P. for respondent Nos. 1, 2 and 6, for the Respondent

Final Decision : Dismissed

Judgement

B.H. Marlapalle, J.—Heard Mr. Arvind Bobde, learned Senior Counsel and Mr. R.B. Raguwanshi, learned Counsel for the petitioners, Mrs. A.S. Rasal and Mr. K.B. Choudhary, learned AGP for the State, Mr. Naresh Patil and Mr. Sanyal, learned Counsel for the Jalgaon Municipal Council and the Maharashtra Industrial Development Corporation, (M.I.D.C. for short) respectively.

2. Rule. Rule taken up for final hearing forthwith.

3. Both these petitions raise common questions of law and hence, they are being disposed of by a common judgment.

4. The petitioner establishments claim to the Industrial Units located in the M.I.D.C. area, Jalgaon, represented through their Association/Charitable Trust. They claim that :-

(a) in view of the provisions of Articles 243-Q and 243-ZF of the Constitution of India, there has to be a separate industrial township and the industrial area

cannot be a part of the Municipal area;

(b) the Municipal Council has no authority in law to levy property tax on these industrial units and such taxes can be levied only by the M.I.D.C.;

(c) there cannot be double taxation in the eyes of law and only one agency i.e. M.I.D.C. is entitled to levy taxes;

(d) if regards be had to the provisions of section 341-F and 341M of the Maharashtra Municipalities, Nagar Panchayats and Industrial Townships Act (Municipalities Act for short) and section 17 of the Maharashtra Industrial Development Act (M.I.D. Act for short), the Municipality cannot levy any taxes on the petitioner- units; and

(e) the notification dated 11-9-1987 issued under the Municipalities Act extending the boundaries of the Jalgaon Municipal Council is illegal and ultra vires the provisions of the Constitution as well as section 64 of the M.I.D. Act.

5. It would be desirable to reproduce the prayers in both the writ petitions:-

WRIT PETITION NO. 5344/1999

"(b) By appropriate writ, order or direction, the respondents Nos. 3 to 5 may please be directed to provide basic amenities in Sector "M" of M.I.D.C. Jalgaon, as contemplated u/s 17 of the Maharashtra Industrial Development Act, 1961 r/w 2-C of the lease agreement, and to collect necessary charges thereafter.

(c) By appropriate writ, order or direction, the respondents Nos. 1 and 2 may please be directed to establish Industrial Township for Jalgaon M.I.D.C. Area.

(d) By appropriate writ, order or direction, it may please be declared that the respondent No. 7 Jalgaon Municipal Council has no authority to levy and collect any taxes or service charges from the Unit Holders of the petitioner trust."

WRIT PETITION NO. 1099/2000

"(B) By appropriate writ, order or direction this Hon"ble Court please be declared that the action of respondent No. 7 in Extending the boundaries of Jalgaon Municipal Council over the M.I.D.C. area Jalgaon and other consequential actions are ultra vires, to the provisions of M.I.D. Act, 1961, bad in law & unconstitutional and also may please be declared that the action of respondent No. 5 in respect of handing over the M.I.D.C. area in respect of maintenance be declared ultra vires to the section 64 of the M.I.D. Act.

(C) By appropriate writ, order or direction to the respondents herein that unless & until the M.I.D.C. Jalgaon is declared as a Industrial Township in Official Gazette it be declared that Jalgaon M.I.D.C. area is governed by M.I.D. Act."

6. The Jalgaon Municipal Council as well as the M.I.D.C. have filed affidavit in reply and opposed the petitions. The M.I.D.C has contended that it is not levying any taxes on the petitioner-Units and it is only collecting fees/charges for the

water supply and it is the Municipal Council alone which has the authority in law to levy property taxes as contemplated u/s 105 of the Municipalities Act. The Jalgaon Municipal Council has submitted that as soon as that notification extending the boundaries of the Jalgaon Municipal Council was issued by the State Government on 11-9-1987, it has started levying property tax on the petitioner-Units and it does not charge any water tax as is evident from the bills annexed to the petition. It is further submitted that the petitioner-Units did not challenge the authority of the Municipal Council in levying property taxes for more than ten years and it was only for the first time in 1998 that such a challenge has been raised and the notification issued on 11-9-1987 has been challenged in these petitions.

7. Undoubtedly, if any of the petitioners are aggrieved by the property tax bills issued by the Municipal Council, there is an alternate and efficacious remedy of filing an appeal before the lower Court under the provisions of the Municipalities Act and this Court has consistently held that such aggrieved parties must resort to such a remedy available at the doorsteps. We were informed that the Municipal Council has already issued notices for auction of the petitioners properties on account of non-payment of taxes and therefore, by order dated 24-4-2000, we noted the undertaking given by the Municipal Council not to proceed with these auction proceedings until further orders. The issues as raised by the petitioners listed by us in para No. 2 above from Sr. Nos. (b) to (d) can be gone into by the lower Court in an appeal to be filed by the petitioners and it would be, therefore, desirable that we confine the scope of these petitions only in respect of Issue Nos. (a) and (e) in the said para.

8. By the 74th Amendment, Chapter IX-A was incorporated in the Constitution of India w.e.f. 1-6-1993 and Article 243-Q deals with the Constitution of Municipalities. Proviso to sub-clause (1) of Article 243-Q reads as under :-

"Provided that a municipality under this Clause may not be constituted in such urban area or part thereof as the Governor may, having regard to the size of the area and the municipal being provided or proposed to be provided by an industrial establishment in that area and such other factors as he may deem fit, by public notification, specify to be an industrial township."

Article 243-ZF of the Constitution provides that any provision of any law relating to municipalities in force in a State immediately before the commencement of the Constitution (74th Amendment) Act, 1992, which is inconsistent with the provisions of Part IX-A shall continue to be in force until amended or repealed by a competent legislature or other competent authority or until the expiration of one year from such commencement, whichever is earlier. The petitioners have placed reliance on the following judgments of the Apex Court.

Mafatlal Industries Ltd. and Others Vs. Union of India (UOI) and Others, . ICICI Vs. State of Maharashtra and Others, .

9. It has been contended on behalf of the petitioners that as per the proviso to

Clause 1 of Article 243-Q, an existing industrial area which is part of the Municipal Council is required to be separated and specified as an industrial township by amending the Municipalities Act within the period of one year from 1-6-1993 and as the State Government has failed to comply with the said requirement, the township is deemed to be separated from the municipality automatically. So far as the existing industrial area which is a part of the Municipal Council as on 1-6-1993 is concerned, we are afraid, no such deeming provision could be read into the proviso of Article 243-Q of the Constitution and it is only an enabling provision which empowers the Governor to specify a particular area to be an industrial township, having regard to the size of the area and municipal services being provided or proposed to be provided by an industrial establishment in that area and such other factors as he may deem fit. This provision does not, per se, provide that an industrial area must be specified as an industrial township by a public notification by the Governor and the Municipalities Act must be amended accordingly, in case where the industrial area is already a part of the Municipal Council as on 1-6-1993. The Government of Maharashtra has issued a Resolution on 9th June, 1993 stating therein that while establishing a new Municipal Council/Corporation or while extending the boundaries of the existing Municipal Council/Corporation, the Industrial township where the civic amenities are being provided by the M.I.D.C. or any other agency shall not be included in the Municipal Council/Corporation limits for a period of 25 years from the date of establishment of such Municipal Council or Corporation. In the instant case, there is no doubt that the M.I.D.C. is supplying only water and it is charging fees for the same alone. The property taxes are being collected by the Municipal Council right from 1987 and there is no industrial establishment providing municipal services or proposing to provide such services to the area where the petitioner units are located and the Municipal Council has specifically taken a plea that all the municipal services except water supply are being provided by it to the said industrial area. Under these circumstances, we hold that the proviso to Clause 1 of Article 243-Q of the Constitution does not come into play in the case of the Municipal Council at Jalgaon and the contentions on Issue No. (a) are, therefore, rejected. The enunciations as relied upon by the petitioners are not applicable in the Acts of the present petitions.

10. The challenge to the G.R. dated 11-9-1987 has been raised after about 11 years and that too based on the 74th Amendment to the Constitution which came into force on 1-6-1993. Once we have rejected the contentions of the petitioners on Issue No. (a) above, the challenge raised to the legality of extending the municipal boundaries in 1987 does not survive.

11. The petitioners have an alternative and efficacious remedy to challenge the property tax bill by filing an appeal under the provisions of the Municipalities Act and the issue numbers (b) to (d) and any other issues could be raised in such an appeal.

12. In the result, the petitions are dismissed and rule discharged. The petitioners

are at liberty to approach the lower Court by way of an appeal and the interim order passed by this Court on 24-4-2000 shall be operative for a period of four weeks from today. In case any of the petitioner-Industrial units which have filed appeals already, we direct that the stay petitions in these appeals be decided within a period of two weeks from today. Parties to bear their own costs and act on the basis of a steno copy of this order duly authenticated by the Court Shirestedar.