

(1968) 05 AHC CK 0024

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No's. 283, 284, 293 to 299, 3091, 3436, 3470, 3471, 3474, 3600, 3671, 3772, 3793, 3794, 3832, 3843, 3848, 3872, 3875, 3876, 3880, 3907, 3912, 3930, 3937, 3993, 4050, 4063, 4067, 4092 to 4094, 4095, 4290, 4291, 4300, 4309, 4339, 4

Motilal Padampat Sugar Mills Co. Private Ltd.	APPELLANT
Vs	
Nagar Mahapalika, Kanpur and Another	RESPONDENT

Date of Decision : 24-05-1968

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Municipalities Act, 1916 — Section 128(1)
Uttar Pradesh Nagar Mahapalika Act, 1959 — Section 148, 173(1), 199, 200, 201

Citation : AIR 1969 All 393

Hon'ble Judges : R.S. Pathak, J; Jagdish Sahai, J

Bench : Division Bench

Advocate : R.R. Agarwal, for the Appellant; N.D. Pant, for the Respondent

Final Decision : Dismissed

Judgement

Pathak, J.—This and the connected petitions under Article 226 of the Constitution and the connected revision applications u/s 115 of the CPC raise an important question as to the validity of a demand of general tax and water tax made by the Nagar Mahapalika of the City of Kanpur.

2. The facts are substantially similar in the several cases. They may be set out here as they arise in the instant writ petition.

3. The petitioner is the owner of house property in Kanpur. In proceedings under the U. P. Municipalities Act 1916, the Municipal Board of Kanpur prepared the quinquennial assessment list for the period 1958-63. The assessment list mentioned the annual value of the petitioner's building and the amount of tax assessed in respect of it. The rate at which the house tax and water tax were each assessed was 61/4 per cent of the annual value of the building.

4. The U. P. Municipalities Act, (which we shall for convenience refer to as "the

Act") was replaced by the U. P. Nagar Mahapalika Adhiniyam, 1959 (which we shall refer to as "the Adhiniyam"). The Adhiniyam came into force on February 1, 1960. In place of the Municipal Board, Kanpur a new body came into existence known as the Nagar Mahapalika of the City of Kanpur (which, for brevity, shall be referred to hereinafter as "the Mahapalika").

5. Admittedly, after the constitution of the Mahapalika no fresh assessment list was prepared for the period ending March 31, 1963. The quinquennial assessment list for the period 1958-63 was in force. The property tax was levied at 61/4% of the annual value and the water tax was also levied at the same rate. The Mahapalika, pursuant to the requirements of Section 173 of the Adhiniyam, passed a resolution fixing the aggregate of the property taxes to 15% of the annual value. While the rate of water tax continued to remain at 61/4%, the general tax was fixed at 83/4%. This was in respect of properties of an annual value up to Rs. 8,000/-. The aggregate percentage was fixed at 171/2 in the case of properties of an annual value between Rs. 8,000/- and Rs. 15,000/- and at 20% where the annual value stood above Rs. 15,000/-.

6. The Mahapalika issued a bill for Rs. 5,170.80 to the petitioner on account of "Samanya Kar" and "Jal Kar" for the year 1961-62 and the arrears of the said taxes in respect of the preceding year 1960-61. The petitioner says that before receipt of the bill it had no knowledge that an enhancement of the taxes was proposed. It is alleged that no notice of preparation of the assessment list or of the proposed enhancement in the rates of tax had been given by the Mahapalika. The petitioner says that in the circumstances it was unable to file any objection to the enhancement of the rates,

7. The petitioner filed an appeal u/s 472 of the Adhiniyam against the aforesaid demand. The appeal was allowed by the learned Judge, Small Causes, Kanpur on December 10, 1962. The Mahapalika, aggrieved by that order proceeded in appeal to the learned District Judge u/s 476 of the Adhiniyam. The appeal was allowed by the learned District Judge on May 15, 1963. He set aside the order of the Learned Judge, Small Causes, and restored the rates fixed by the Mahapalika. The petitioner now prays for certiorari.

X X X X X 8 to 12. The contentions of the tax Payer in all these writ petitions and revision applications may be briefly summarised. It is urged that the Mahapalika has no power to impose property taxes because there is no machinery under the Adhiniyam enabling it to do so. Further, it is said, the procedural requirements for altering the rates have not been fulfilled. It is pointed out that no notice was given to the tax payer. The alteration of the rates necessitated compliance with the procedure prescribed by Sections 199 to 203 and an alteration of the assessment list necessitated following the procedure set out in Sections 207 to 210.

It is submitted that the assessment list prepared under the U. P. Municipalities Act could not be altered under the provisions of the Adhiniyam, Section 577 (a)

of the Adhiniyam, it is pointed out, enables the taxes in force before the Adhiniyam came into operation to continue in force in so far as they are not inconsistent with the provisions of the Adhiniyam and, it is urged, there are a number of considerations, to which we shall refer hereafter, indicating that the taxes imposed under the Act were inconsistent with the provisions of the Adhiniyam. It is further contended that the power conferred upon the Mahapalika u/s 148 of the Adhiniyam to determine the rate of tax amounts to the delegation of an essential legislative power and is, therefore, ultra vires.

12A. The true position, it appears to us, is that the Mahapalika has levied general tax and water tax under the Adhiniyam at the rates mentioned above. It adopted the assessment list prepared under the U. P. Municipalities Act as an assessment list under the Adhiniyam. It altered the assessment list and made a demand of general tax and water tax on the basis of the amended assessment list. The taxes demanded by the Mahapalika are not the taxes levied under the U. P. Municipalities Act and, therefore Section 577 (a) need not be referred to. We are also of opinion that for imposing property taxes under the Adhiniyam it is not necessary that a specific machinery should be provided under the Adhiniyam for imposing those taxes.

13. We shall now set out our reasons.

14. The Adhiniyam contemplates two categories of taxes, namely, the taxes mentioned u/s 172 (1) and the taxes mentioned u/s 172 (2). Section 172 of the Adhiniyam provides:

" (1) For the purposes of this Act and subject to the provisions thereof and of Article 285 of the Constitution of India the Mahapalika shall impose the following taxes namely.--

(a) property taxes.

(b).....

(c).....

(2) In addition to the taxes specified In sub-section (1) the Mahapalika may for the purposes of this Act and subject to the provisions thereof impose any of the following taxes, namely;"

Section 172 (1) specifies those taxes which the Mahapalika is bound to impose. A duty to impose the taxes is created by the compulsive terms of the statute. No option is left to the Mahapalika in the matter. Those taxes include property taxes. Section 172 (2) enumerates a number of taxes which the Mahapalika may or may not impose. It is within the discretion of the Mahapalika, subject to the other provisions of the Act, whether it will impose those taxes or not,

15. Section 173 of the Adhiniyam declares:

" (1) For the purposes of Sub-section (1) of Section 172 property taxes shall

comprise the following taxes which shall, subject to the exceptions, limitations and conditions hereinafter provided, be levied on buildings and lands in the City--

(a) a general tax which may be levied, if the Corporation so determines, on a graduated scale.

(b) a water tax;

(c) a conservancy tax in areas in which the Mahapalika undertakes the collection, removal and disposal of excrementitious and polluted matter from privies, urinals and cesspools.

(2) Save as otherwise expressly provided in this Act or rules made thereunder, these taxes shall be levied on the annual value of buildings or land as the case may be:

Provided that the aggregate of the property taxes shall in no case be less than 15 per cent nor more than 25 per cent of the annual value of buildings or land or both assessed to such taxes."

16. The property taxes, therefore, comprise a general tax, a water tax, a drainage tax and a conservancy tax. The taxes are levied on buildings and lands in the City. The levy is measured by reference to the annual value of buildings or land as the case may be, and the aggregate of the property taxes is to be not less than 15% nor more than 25 per cent of the annual value.

17. We may now consider whether a machinery is necessary for the imposition of property taxes as has been provided in the case of non-compulsory taxes enumerated in Section 172 (2). In respect of the taxes set out in Section 172 (2) the machinery for imposing them is detailed in Sections 199 to 203. Section 199 provides for the framing of preliminary proposals. The proposals specify (a) the tax, (b) the persons or class of persons to be made liable and the description of the property or such taxable things or circumstances in respect of which they are made liable, (c) the amount or rate leviable from each such persons or class of persons and (d) any other matter referred to in Section 219 which the State Government requires by rule to be specified. It is apparent that the particulars required to be specified relate to matters considered essential for imposing the tax.

Now when we turn to the provisions relating to property taxes, it will be clear that the provision in respect of these matters has already been made by the Adhiniyam itself. The Mahapalika is under a duty to impose the property taxes. The imposition being mandatory, no proposal for imposing the taxes is necessary. Then, the property taxes are to be levied on all buildings and land subject to the exceptions, limitations and conditions provided in the Adhiniyam. As regards the rate, the minimum and the maximum are expressly declared by the Adhiniyam. It seems to us that the essential ingredients necessary for imposing a tax have already been expressly enacted in respect of property taxes in the Adhiniyam. It is, in our opinion, not correct to say that it was necessary to provide machinery

for imposing property taxes. That ground must fail.

18. The Mahapalika determines the rates at which the Mahapalika taxes are to be levied in a financial year. Section 148 reads:

"The Mahapalika shall, on or before, February 15 if it is an indebted Mahapalika but on or before March 15 otherwise, after considering the proposal of the Executive Committee, determine, subject to the limitations and conditions prescribed in Chapter IX the rates at which Mahapalika taxes referred to in sub-section (1) of Section 172 shall be levied in the next ensuing financial year."

The section envisages a proposal by the Executive Committee to the Mahapalika suggesting the rates of compulsory taxes for the next ensuing financial year. The Mahapalika considers the proposal and determines what should be the rates. The tax payer says that the determination of the rates by the Mahapalika, has been made subject to the limitations and conditions prescribed in Chapter IX, That, he says, brings in Section 204. Section 204 requires that when altering a tax in respect of the matters specified by Clauses (b) and (c) of Section 199 (1) the procedure prescribed by Sections 199 to 203 for the imposition of a tax shall be followed. Now, there is no alteration of tax here. As we have already pointed out, what the Mahapalika has done is to impose a general tax and a water tax under the Adhiniyam. In respect of those taxes Sections 199 to 203 do not apply at all. The property taxes are imposed, as it were, by the Adhiniyam itself. In order to levy those taxes, it is necessary to proceed with reference to an assessment list. The assessment list would ordinarily have had to be prepared under Sections 207 to 210 of the Adhiniyam. But Section 577 (d) provides that the assessments and valuations made under the U. P. Municipalities Act are deemed to have been made under the Adhiniyam "in so far as they are consistent" with the provisions of the Adhiniyam. Subject to the condition that they are consistent with the provisions of the Adhiniyam, the assessment list (which essentially specifies nothing more than the assessment of the annual valuation of buildings and lands described therein and the amount of taxes assessed thereon) prepared under the Act and the valuations upon which the assessment list is based, must be considered, by legal fiction, as made under the Adhiniyam. Therefore, treating the quinquennial assessment list for the period of 1958-63 as an assessment list made under the Adhiniyam, all that was necessary was to alter the rates specified thereunder. That alteration is affected by reference to Section 213 (1) (e). Section 213 (1) (e) declares:

"(1) The Executive Committee or a subcommittee thereof appointed in this behalf may at any time alter or amend the assessment list--

xx xx xx (e) where the percentage on the annual value at which any tax is to be levied has been altered by the Mahapalika under the provisions of this Act by making a corresponding alteration in the amount of the tax payable in each case;
"

It is contended that as the procedure under Sections 207 to 210 has not been

followed there is no effective and valid enhancement of the rates of the taxes. The question whether compliance with that procedure is necessary was a matter of some doubt, and for the removal of that doubt the U. P. Legislature enacted U. P. Act No. XXI of 1964, Section 19 of which inserted sub-section (1-A) in Section 213. Section 19 of the Amendment Act provided that sub-section (1-A) of Section 213 must be deemed to have always been inserted in Section 213.

19. Now, sub-section (1-A) says:

"For the removal of doubts it is hereby declared that it shall not be necessary to follow the procedure laid down in Sections 199 to 203 or in Sections 207 to 210 in respect of any alteration made under Clause (e) of Sub-section (1) as a result of a determination of the rate of tax u/s 148."

It is clear, therefore, that whenever any alteration has to be made in the assessment list as a result of a determination of the rate of tax u/s 148 it is not necessary to comply with Sections 207 to 210.

20. It is also significant that the proviso to Section 213 (1), while requiring one month's notice in the case of alterations or amendments proposed to be made under Clauses (a), (b), (c) or (d) of that sub-section, expressly omits reference to Clause (e).

21. We are of opinion that it was not necessary to give notice to the tax payer before fixing the rates of the taxes under consideration.

22. We have pointed out that Section 577 (d) of the Adhiniyam enables an assessment list prepared under the U. P. Municipalities Act to be treated as an assessment list made under the Adhiniyam provided it is consistent with the provisions of one Adhiniyam. It has not been shown to us how the assessments and valuations on the basis of which the assessment list has been prepared is inconsistent with the provisions of the Adhiniyam, The assessment list prepared under the U. P. Municipalities Act does not betray any material inconsistency with the provisions of the Adhiniyam. It has not been shown that in the cases before us the assessments and valuations contravene the limitation set by the Adhiniyam. Nor do we find any difference in the essential character of the taxes levied under the Adhiniyam and in consideration here from the character of the corresponding taxes levied under the U. P. Municipalities Act. It is pointed out that the taxes under the U. P. Municipalities Act have been imposed by reference to Clause (i) of Section 128 (1), namely "a tax on the annual value of buildings or lands or of both" and Clause (x) of Section 128 (1), namely "a water tax on the annual value of buildings or lands or of both." It is said that the property taxes under the Adhiniyam are taxes which u/s 173 (1) are levied on buildings and lands. It seems to us that there is no material difference between the two. A tax on the annual value of buildings Or lands or of both is not different from a tax on buildings and lands. The mere use of the disjunctive "or" in Clauses (i) and (x) of Section 128 (1) of the Act and the use of the conjunctive "and" in Section 173 (1) of the Adhiniyam does not alter the identical bases upon which

these taxes are levied.

23. Then it is urged that under the U. P. Municipalities Act house tax and water tax are optional taxes while under the Adhiniyam the levy is compulsory. It is also pointed out that there is no minimum fixed rate under the Act while Section 173 (2) of the Adhiniyam fixes a minimum of 15 per cent as the aggregate of the property taxes. We do not see how" the nature of the taxes is in any way different merely because the authority imposing the tax is given an option under one statute whether it will or will not impose the tax, and under the other statute is compulsorily bound to impose the tax. Nor do we see how the prescribing of a minimum rate for the levy of a tax can make any difference to the nature of the tax. The nature of the tax is to be determined by other considerations, the most important of which is the subject-matter of the tax. As to their nature therefore, it is clear that the property taxes levied u/s 173 (1) of the Adhiniyam are essentially of the same character as the taxes contemplated under the corresponding provisions of Section 128 (1) of the Act. The general tax mentioned in Section 173 (1) (a) of the Adhiniyam is a tax on buildings and lands and by virtue of Section 173 (2) it is levied on the annual value of such buildings or lands. It corresponds to the tax on the annual value of buildings or lands mentioned in Section 128 (1) (i) of the U. P. Municipalities Act. Section 173 (1) (b) of the Adhiniyam speaks of water tax. Water tax, like the general tax, is a tax on buildings and lands and by virtue of Section 173 (2) the levy is on the annual value of buildings or lands. So also, the water tax u/s 128 (1) (x) of the U. P. Municipalities Act is levied on the annual value of buildings or lands. When the aforesaid taxes imposed under the U. P. Municipalities Act are identical in nature with the corresponding property taxes set out in Section 173 (1) of the Adhiniyam, it is not possible to accept the contention that the said taxes under the Act are inconsistent with the provisions of the Adhiniyam.

24. It is further pointed out that u/s 140 of the U. P. Municipalities Act the definition of "annual value" means that in the case of certain specified buildings it is a proportion not exceeding 5% of the sum obtained by adding the estimated present cost of erecting the building to the estimated value of the land appurtenant thereto, whereas u/s 174 of the Adhiniyam the annual value in the case of those buildings is determined at a proportion not below 5% of the aggregate. It is also pointed out that the second proviso to Section 174 provides that in the case of owner-occupied buildings and lands the annual value for the purposes of assessment of property taxes shall be deemed to be 25% less than the annual value otherwise determined. Such a provision is absent from Section 140 of the U. P. Municipalities Act. It is urged upon this that the property taxes contemplated by the Adhiniyam are different from those envisaged by the Act. We are unable to agree. It seems to us that the considerations mentioned here do not affect the nature of the tax concerned but merely governs its quantification. It has long been recognised that the quality of a tax must not be confused with, its quantification.

25. The assessment list prepared under the U. P. Municipalities Act has been drawn up with reference to the house tax and water tax levied under that Act. In view of what we have said above, we are unable to hold that it is not consistent with the provisions of the Adhiniyam. By virtue of Section 577 (d) the Mahapalika is entitled to treat that assessment list as if it was made under the Adhiniyam and to proceed to amend it accordingly u/s 213 (1) (e) of the Adhiniyam.

26. The tax payer contends that the benefit of Section 577 (a) of the Adhiniyam is not available to the Mahapalika in the cases before us because the rates of the taxes levied under the U. P. Municipalities Act having been raised, it cannot be said that the tax levied under the Act continues in force. Reference has been made to Rama Krishna Ramanath Vs. The Janpad Sabha, Gondia, . The Town Municipal Committee, Amravati Vs. Ramchandra Vasudeo Chimote and Another, and C. Rajagopalachari Vs. Corporation of Madras, . The argument has no relevance if we bear in mind that the taxes in question here have been levied by the Mahapalika under the Adhiniyam. They are not taxes which have been levied under the U. P. Municipalities Act and, therefore, no question arises of their continuing in force by virtue of Section 577 (a).

27. An argument was faintly raised that the State Legislature has delegated essential legislative power to the Mahapalika u/s 148 of the Adhiniyam to determine the rate of tax. It is urged that the provision in the proviso to Section 173 (2) of the Adhiniyam declaring that the aggregate of the property taxes shall not be less than 15 per cent nor more than 25 per cent of the annual value does not provide sufficient norms and limitations governing the determination of the rates of the property taxes. Reliance has been placed upon the decision of the Supreme Court in Devi Das Gopal Krishnan and Others Vs. State of Punjab and Others, . In our opinion, that decision cannot govern the instant cases. In the case of a Municipal Corporation the position is very different from the case which was considered by the Supreme Court in M/s. Devi Das Gopal Krishnan Devi Das Gopal Krishnan and Others Vs. State of Punjab and Others, . The levy of a tax by a Municipal Corporation was considered by the Supreme Court in the Corporation of Calcutta v. Liberty Cinema AIR 1965 SC 5107 and this case was distinguished by the Supreme Court when deciding Devi Das Gopal Krishnan and Others Vs. State of Punjab and Others, . Since then the Supreme Court has held in Municipal Corporation of Delhi Vs. Birla Cotton, Spinning and Weaving Mills, Delhi and Another, there is no delegation of essential legislative power so long as the Legislature has made provision to achieve that reasonable rates of taxes are fixed by local bodies and if the method employed is sufficient to serve as an effective guidance for the purposes of fixing the rates of taxes. The circumstances, it is said, which must be taken into account are that the delegation has been made to an elected body responsible to the people including those who pay taxes, the Corporation has been assigned certain obligatory functions which it must perform and for which it must find money by taxation and the power of the court to function as a check on the power of the Corporation if the act of such a body is void for unreasonableness. Upon these

considerations, we are of opinion that the contention that essential legislative power has been delegated must be rejected.

28. Some minor submissions may also be noticed. It is urged that the resolution of the Mahapalika fixing the rate of tax speaks of "property tax" and not "general tax" and is, therefore, invalid. That is a question which the tax payer can agitate under the statutory remedies provided under the Adhiniyam against the assessment, Prima facie it seems to us upon a perusal of the impugned resolution that the Mahapalika had in mind the general tax when it referred to property tax.

29. Finally, in Civil Misc. Writ Petition No. 3091 of 1963 it has been pointed out that while the learned Judge, Small Causes, allowed the tax payer's appeal against the enhanced assessment of general tax as well as the levy of water tax, the appeal filed by the Mahapalika was allowed in to by the learned District Judge, without considering the case of the parties in respect of the levy of water tax. Now, if any one has a right to complain it is the Mahapalika. The order of the learned District Judge, read as a whole and along with the judgment in the leading case referred to by the learned District Judge, indicates clearly that he merely set aside the order enhancing the assessment of general tax and did not grant relief to the Mahapalika against the order of the learned Judge, Small Causes, quashing the levy of water tax. In case the order of the learned District Judge is ambiguous it is open to the tax payer concerned to apply to him for clarification of the order.

30. We hold that there is no substance in the grounds upon which the tax payer challenges the validity of the impugned levy.

Civil Misc. Writ Petitions Nos. 3671, 283, 284, 293, 294, 295, 296, 297, 298, and 299 of 1963 filed by the Mahapalika are allowed with costs. In these cases the order of the learned District Judge is quashed and he is directed to dispose of the appeals afresh in accordance with law. (Other writ petitions were dismissed with costs.).