

(2002) 08 MP CK 0049
In the Madhya Pradesh High Court
Case No : Writ Petition 2151 of 2001

M.P. Co-operative Housing Society and Another	APPELLANT
Vs	
State of M.P. and Others	RESPONDENT

Date of Decision : 06-08-2002

Acts Referred:

Madhya Pradesh Municipal Corporation Act, 1956 — Section 132
Madhya Pradesh Municipality (Determination of Annual Letting Value of Building/Land)
Rules, 1997 — Rule 10, 6, 8, 9

Citation : (2002) 4 MPHT 252 : (2003) 2 MPJR 82

Hon'ble Judges : A.K. Mishra, J

Bench : Single Bench

Advocate : Sanjay K. Agrawal, for the Appellant; Shashank Shekhar, Government Advocate for Respondent No. 1 and Ajay Mishra, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Arun Mishra, J.

Petitioners in this writ petition are assailing the imposition of the property tax under self assessment scheme and imposition of urban development cess and education cess my Municipal Corporation, Bhopal.

Petitioner No. 1 is Housing Co-operative Society registered under the provisions of M.P. Co-operative Societies Act, 1960. Petitioner No. 2 H.K. Rabra is a member of the society. The object of the society is to provide residential plots to its members. Municipal Corporation, Bhopal, is duly established Corporation under the M.P. Municipal Corporation Act, 1956 (hereinafter referred to as "the Act"). Section 132 of the Act provides the taxes which can be imposed under the Act. Petitioner submits that u/s 133 of the Act Corporation by resolution at the time of final adoption of the budget estimates and for the next financial year may impose any of the taxes or fees specified in the Act or increase the rate of taxes or fees already imposed. Section 136 deals with the imposition of the property

tax. There are certain exemptions granted u/s 136 of the Act. Section 138 prescribes the procedure for determination of annual letting value of land or building. Petitioners submit that property tax has to be determined on the basis of the annual letting value in accordance with Section 138 of the Act. The final authority vests in the Municipal Corporation. The composition of Municipal Corporation is prescribed u/s 9 of the Act. The State Government in exercise of powers conferred u/s 423 read with Section 133 of the Act has made Rules for determination of the annual letting value of the lands and buildings. The Rules are called as M.P. Municipalities (determination of Annual Letting Value of buildings/lands) Rules, 1997. Rules have been amended time to time. Rule 6 of the Rules of 1997 requires the Corporation to adopt a resolution at the time of commencement of financial year and not later than six months therefrom for imposition of property tax at a rate which should not be less than six percent and more than 10%. Rule 10 deals with self assessment of property tax. Rule 11 provides for scrutiny of return and with a penal clause.

Petitioners' case is that Municipal Corporation, Bhopal, did not pass any resolution as required u/s 132 of the Act read with Rule 6 of the Rules, 1997 for prescribing the rate of property tax and the mode and manner in which the Municipal area was proposed to be divided in four zones. Mayor in Council of Municipal Corporation, Bhopal, passed a resolution on 14-4-2000 whereby the Municipal area of Bhopal was divided in four zones and the rate on which the property tax was sought to be imposed in said zones was also prescribed. Petitioners submit that Mayor in Council has no authority in law to pass any resolution in regard to imposition of property tax or for matter divisional or municipal area in different zones. The said resolution was published in newspapers P-2 and P-3. Objections were preferred which were not considered by the Appeal Committee. The Mayor in Council passed the resolution on 23-2-2001. As per resolution a final notification P-4 was published. Petitioners further submit that mayor in Council has also levied urban development cess and education cess as per receipt P-6.

Petitioners further submit that the criteria prescribed for determination of annual letting value is unreasonable and arbitrary. The manner of dividing Municipal area of Bhopal in different zones is illogical, irrational and improper in as much as areas having immense commercial value have been clubbed together and kept in one zone. The well developed commercial area has been clubbed with up commercial developed area. Some instances have been given in para 5.20.

Petitioners further submit that the urban development cess was imposed by the State Government for the first time under an Act of the State Legislature known as the M.P. Upkar Adhiniyam, 1983. Section 6 of the Act provides that all buildings situated within the limits of the Municipality shall be subject to levy of urban development cess at the rate of 5% of the annual rental value. The rate of tax would be half of the prescribed rate in case the building is in the occupation of the owner. Section 7 of the Act provides that the amount of cess would be

realised by the concerned Municipality or development authority shall be deposited with the State Government as per the prescribed procedure. Petitioners submit that the State Govt. has not made any Rules or prescribed procedure for deposit of the said tax with the State Govt. though the Corporation recovers the development cess but the same is not being deposited with the State Govt. as a result of which the amount of tax which has been levied for urban development has not been utilized for the purpose for which it is levied is authorised.

The Municipal Corporation, Bhopal, has also charged education cess at the rate of 3% of the annual letting value. The State Govt. by memo dated 9-5-1995 directed handing over of its schools situated in municipal areas to the concerned municipalities. In order to meet out the burden of managing the said schools the State Govt. issued a memo P-7, dated 7-10-1999 directed imposition of education cess at the rate of 5% of the annual letting value. The State Govt. issued a memo P-8 dated 17-5-2000 directing that the amount of education cess should be 5% of the property tax and not 5% of the annual letting value. Another circular P-9 issued on 27-9-2000 by the State Govt. directing that the education cess be charged on the basis of annual letting value of the property as directed by circular dated 15-3-2000. Petitioners submit that imposition of education cess is not only unlawful but also arbitrary and excessive. The impugned levy under the garb of education cess is being levied purportedly u/s 132 (6) (o) of the Act. The said provision empower the State Govt. to issue directives regarding imposition of tax and not cess. There is no provision under Municipal Corporation Act for imposition of any sort of cess much less cess on education. The cess is different from tax. Cess can be levied only for a particular purpose and the entire amount recovered as cess has to be utilized for the said purpose only and none else. The Corporation is spending meager amount though it is collecting huge amount as education cess. The approximate income is 4.5 crores. The budget is not reflecting the correct position. Thus, the imposition of property tax, development cess and education cess be quashed.

A return has been filed by the Municipal Corporation. The case of the Corporation is that imposition of property tax is provided u/s 132 of the Act. Section 133 of the Act provides the procedure for imposition of taxes and fees. Section 135 of the Act provides for imposition of Property Tax and it provides the slab for imposition of property tax. It further provides that every Municipal Corporation is empowered to charge and levy the property tax at the rate of not less than 6% and not more than 10% of the Annual Letting Value as determined by the Corporation for each financial year. The sole discretion has been vested in the Municipal Corporation to decide the rate of property tax within the slab fixed u/s 135. It has power to exempt u/s 136 of the Act. Rule 3 of the Rules contemplates that the entire Municipal area will be divided or classified into various zones keeping in view various factors enumerated therein for the determination of Annual Letting Value of those areas. Rule 4 contemplates that in every zone the houses situated be divided/classified on the basis of their quality of construction and their use. Rule 5 of aforesaid Rules provides that the Municipal Corporation

would decide/fix the Annual Letting Value of every zone keeping in view the classification as contemplated in Rule 4 and would publish the rates so fixed as provided in the Rule 5 itself. Sub-rule 2 of the Rule 5 provides that in case any house/land owner has any objection, the same can be raised within 30 days and the same shall be decided by the Corporation as provided in the Rule 5. As per Rule 6 Municipal Corporation would finally pass the resolution to fix and notify the rates of property tax for the next financial year.

It is further the case of respondent/Corporation that Section 37 of the Act of 1956 provides for constitution of Mayor-in-Council. Sub-sections (6) and (7) of Section 37 provides that the Mayor-in-Council shall perform such functions and conduct such business as may be prescribed. For the conduct of business and discharge of functions of Mayor-in-Council the State Government exercising the powers conferred on it by Section 37 and Section 73 read with Section 433 of Act of 1956 has made rules named "Madhya Pradesh Municipalities (Conduct of Business of the Mayor-in-Council/President in Council and the Power and functions of the Authorities) Rules, 1998. Rule 9 of the Rules 1998 specifically empowers the Mayor-in-Council to exercise all the powers and discharge all the functions contemplated u/s 138 of the Act of 1956. Thus, the power of determinations of Annual Letting Value has been vested in the Mayor-in-Council. The Mayor-in-Council exercising the powers so conferred on it has passed a resolution dated 23-2-2001 for the determination of Annual Letting Value for the year 2001-2002. The Mayor-in-Council classifying the Municipal area into various zones, prescribed various rates of Annual Letting Value according to the quality of construction and the use of the premises in question. Resolution R-1 was passed on 23-2-2001. It was notified and notice R-2 was published. After determination of Annual Letting Value, the Municipal Corporation passed the resolution on 31-3-2001 regarding the fixation of rate of property tax u/s 135 of the Act of 1956. The Municipal Corporation fixed the rate of 10% of Annual Letting Value for the recovery and levy of property tax. The house owners were given all the exemption and relaxations as contemplated u/s 136 of the Act of 1956. The resolution of the Corporation R-3 was passed on 31-3-2001. The standing order No. 22/2001R-4, dated 16-5-2001 was published by the Commissioner. Certain representations were received with respect to the imposition of property tax at the rate of 10% and education surcharge. The Mayor-in-Council reconsidered the entire matter in its meeting held on 25-5-2001 and after due deliberations the Mayor-in-Council recommended certain changes in the tax structure and also recommended certain reduction. The Mayor-in-Council, in regard to property tax proposed that in place of one single slab of 10% the following slabs be fixed :--

Annual Letting Value Rate of Property tax (1) upto 6,000 Zero (2) 6,001 to 12,000 6% of Annual Letting Value (3) 12,001 to 20,000 8% of Annual Letting Value (4) More than 20,001 10% of Annual Letting Value Mayor-in-Council also recommended for reduction in the rate of education surcharge and recommended that in place of earlier notified rate of 3% the same be levied at the reduced rate

of 1% of the annual letting value. As per resolution dated 25-5-2001 passed by the Mayor-in-Council the resolution was placed before the Mayor for approval. The Mayor approved the reduction suggested and directed to give necessary benefits to the public. Thereafter the decision was placed before the Municipal Corporation on 30-5-2001 and the Municipal Corporation has also approved the decision taken and approved the reduced rate of property tax and education surcharge.

It is further case of the respondents that education cess has been imposed pursuant to 74th Amendment of Constitution as Corporation is responsible to manage and maintain all the Government schools situated within its local area. The public duty requires substantial recurring expenditure. The State Government has issued circular dated 15-3-2000 conveying the decision to transfer the management and maintenance of all the Government schools to local bodies. Consequently the corporation has been empowered to impose education cess at the rate of 5% of the Annual Letting Value. The proposal to impose the education cess was put up before Municipal Corporation. After necessary approval by the Commissioner, the Municipal Corporation approved the proposal and resolved for the imposition of education cess as per Resolution No. 4 (R-9), dated 24-4-2000. The collection of urban development cess is under M.P. Upkar Adhiniyam, 1981. As per Sub-section (2) of Section 7 of the Act the urban development cess so collected is credited to the accounts of State Government.

Shri Sanjay K. Agrawal, learned Counsel for the petitioner, raised three fold submissions with respect to the property tax. His first and foremost submission is that Municipal Corporation has passed no resolution in the matter of imposition of property tax. The second submission is that resolution of the Mayor-in-Council dividing Bhopal in four zones is unreasonable and arbitrary. The third submission is that determination of Annual Letting Value is also improper. Realisation of the urban development cess is challenged on the ground that though it is realised under the M.P. Upkar Adhiniyam, 1981, but till today nothing has been paid to the Government. As such when the Corporation is not making payment to the Government, is not entitled to recover it. Submission of the petitioner is that Corporation is not spending the amount on the schools. Thus, the collection of the education cess is bad in law. There is no "quid pro quo" in the cess realised and the services rendered. The State Govt. could not direct the imposition of such education cess. It could not be made mandatory to be imposed by the Corporation.

Shri Ajay Mishra, learned Advocate appearing for the Municipal Corporation, submits that procedure of the imposition of the property tax has been duly followed and the Corporation has passed the resolution. The objects raised have been taken into consideration and decided and rates reduced. The Mayor-in-Council has not exceeded the jurisdiction and has acted within the purview of the powers conferred on it under the statutory provisions. Education cess has rightly

been imposed by the Corporation as it is a duty enjoined to maintain the schools falling within the Municipal area. The Corporation is spending the amount and had also deposited the amount of urban development cess with the State Government. The services are being rendered. It is not open to contend that the services are not being rendered. Thus, the petition is misconceived and deserves to be dismissed.

Shri Shashank Shekhar, learned Counsel for respondent No. 1, has supported the stand taken by the Municipal Corporation.

First set of submissions raised by learned Counsel for petitioner is in relation to the imposition of property tax. It is submitted that Municipal Corporation has not passed the resolution be examined. Sub-section (1) of Section 132 of the Act, 1956 provides that Corporation shall, subject to any general or special order which the State Government may make in this behalf, impose in the whole or in any part of the Municipal Area, property tax subject to provisions of Sections 135, 136 and 138 of the Act. Section 133 of the Act provides imposition of taxes and fees. The Corporation is empowered to impose tax and fees by a resolution, at the time of final adoption of the budget estimates for the next financial year, subject to the provisions of this Act and subject to such limitations and conditions, as may be prescribed by the State Government in this behalf. Section 134 deals with recovery of taxes. Section 135 deals with imposition of property tax. The property tax shall be charged and levied at the rate not less than six percent and not more than ten percent of the Annual Letting Value, as may be determined by the Corporation for each financial year. Section 136 deals with the exemptions from the payment of property tax. Section 138 has been substituted by M.P. Act 18 of 1997 w.e.f. 21-4-1997 and entirely new provisions have been made. Section 138 deals with determination of Annual Letting Value of land or building. The Annual Letting Value of any building or land, whether revenue paying or not, shall be determined as per the resolution of the Corporation adopted in this behalf, on the basis of per square foot of the built up area of a building or per square foot of land, as the case may be, taking into consideration the area in which the building or land is situate, its location, situation, purpose for which it is used, its capacity for profitable user, quality of construction of the building and other relevant factors and subject to such rules, as may be made by the State Government in this behalf. The State Government has framed the Rules under Sections 37 and 73 read with Section 433 of the Act of 1956 called M.P. Municipalities (The Conduct of Business of the Mayor-in-Council/President in Council and the Powers and Functions of the Authorities) Rules, 1998. As per Rule 9 of the Rules the Mayor-in-Council in addition to the powers vested in it under the M.P. Municipal Corporation Act, 1956 or the rules bye-laws made thereunder, shall exercise the powers vested in the Corporation under Sections 57 (1), 61, 62, 71 (1), 137 (1), 138, 142 (1), 176 and 189-A of the Act, 1956.

Section 37 of the Act deals with the Constitution of Mayor-in-Council. Thus Mayor-in-Council is authorised to determine the Annual Letting Value as prescribed u/s

138 of the Act, 1956.

Mayor-in-Council determined the Annual Letting Value as per rates mentioned in notice R-2. Municipal Corporation accepted the same as per resolution R-3 on 31-3-2001 and determined the rate to be 10%. Standing order No. 22/2001, dated 16-5-2001 R-4 was issued. From the standing order it is clear that the Annual Letting Value of any building or land, whether revenue paying or not, shall be determined as per the resolution of the Corporation adopted in this behalf, on the basis of per square foot of the built up area of a building or per square foot of land, as the case may be, taking into consideration the area in which the building or land is situate, its location, situation, purpose for which it is used, its capacity for profitable user, quality of construction of the building and other relevant factors and subject to such rules, as may be made by the State Government in this behalf. The Mayor-in-Council in regard to property tax proposed that in place of one single slab of 10% it be divided in four slabs from zero, 6%, 8% and 10% of Annual Letting Value as per resolution (R-5) passed by Mayor-in-Cou"ncil depending upon the Annual Letting Value mentioned above. Standing order (R-6), dated 25-1-2001 has been issued pursuant thereto. The Municipal Corporation on 30-5-2001 has accepted it and standing order (R-6) has been issued. Thus, the procedure prescribed has been followed. The relevant considerations have been looked into and followed while deciding the matter. There is no violation of Section 132 or that of Section 138 and Mayor-in-Council has not exceeded the jurisdiction. It cannot be said that it has acted irrationally or in arbitrary manner while determining the property tax.

Counsel for respondents has challenged the imposition of education cess on the ground that State Govt. could not issue a mandatory direction for imposition of education cess. Education cess can be levied as per Section 132 (6) (o) of the Act, 1956. The State Govt. has directed the maintenance of the Govt. Schools to be made by local bodies, it becomes necessary for such local bodies to have resources, hence education cess has been imposed. It is not in dispute that such cess could be imposed by the State Gcvt. and whenever any other tax which the State Govt. has power to impose under the Constitution of India can be imposed by Corporation with the prior approval of the State Govt. The Corporation has taken the decision to impose 1% of the education cess on the Annual Letting Value, it has modified its previous resolution which was for 3%. There is authority conferred on it by the State Govt. as per Rule 7. It has followed the procedure as per Rule 8. Thus it cannot be said that imposition of education cess is illegal or arbitrary in any manner. The Corporation has indicated that it had spent the amount on the maintenance of the schools and the matter connected therewith. Thus, I find no merit in the submission of the Counsel for petitioner that amount collected is not being spent.

The next submission is about the imposition of the urban development cess, that has been imposed under M.P. Upkar Adhiniyam. Learned Counsel for petitioner submitted that the Corporation is not remitting the urban development cess to

the State Govt. The submission cannot be accepted as stand has been taken in the return that amount is being credited in the fund of the State Govt. and respondent No. 1 has not raised any objection that it is not being credited. In any case the imposition and realisation cannot become bad on the ground raised by the petitioner. The realization is a matter between Corporation and State Govt. The Corporation is involved in the urban development activities. The submissions raised by the learned Counsel for the petitioner is devoid of substance.

Learned Counsel has relied upon a decision of Municipal Board, Hapur v. Raghuvendra Kripal and Ors. (1966) 1 SCR 950, and submits that mandatory provisions must be fully complied with and imposition of tax not included in Section 128 of the Act, cannot be authorised. Submission of learned Counsel that things must be done in the four corners as permissible by the law. In the instant case, the property tax, education cess and urban development cess have been imposed as per procedure prescribed by statutory provisions and vires of provision have not been challenged in the instant writ petition. Action has been taken in accordance with the provisions. Thus, I find no infirmity in the imposition and realisation of property tax, education cess and urban development cess.

Resultantly, writ petition is dismissed. However, in the facts and circumstances of the case, costs on the parties.