

(1979) 04 MP CK 0008

In the Madhya Pradesh High Court

Case No : Miscellaneous Petns. No"s. 40 of 1973 and 181 and 192 of 1974

Mrs. Tara Malik

APPELLANT

Vs

The State of Madhya Pradesh and Another

RESPONDENT

Date of Decision : 21-04-1979

Acts Referred:

Cantonments Act, 1924 — Section 60

Constitution of India, 1950 — Article 372(2)

Madhya Pradesh Nagariya Sthawar Sampatti Kar Adhiniyam, 1964 — Section 4

Citation : AIR 1979 MP 188 : (1979) JLJ 625 : (1979) 24 MPLJ 555 : (1979) MPLJ 555

Hon'ble Judges : G.P. Singh, C.J.;B.C. Verma, J

Bench : Division Bench

Advocate : Gulab Gupta, for the Appellant; M.V. Tamaskar, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

G. P. Singh, C.J.

This order shall also dispose of Misc. Petns. Nos. 181 and 192 both of 1974.

The petitioner in Misc. Petn. No. 40 of 1973 is the owner of Block No. JFG HI forming part of Bungalow No. 9 of Kings-way situated within the limits of the Jabalpur Cantonment. The petitioners in Misc. Petn. No. 181 of 1974 are owners of the building known as Navneet Talkies which is also situated within the limits of the said Cantonment. The petitioners in Misc. Petn. No. 192 of 1974 are owners of the plot of land over which Navneet Talkies stands and which was leased out by them for construction of the cinema building. The petitioners in all these petitions which are filed under Articles 226 and 227 of the Constitution, pray that the extension of the Madhya Pradesh Nagariya Sthawar Sampatti Kar Adhiniyam, 1964, to Cantonment areas be declared ultra vires of the Constitution.

The Adhiniyam was enacted by the Madhya Pradesh State Legislature and it

came into force on 1st April 1964. Section 1 (2) of the Adhiniyam provides that it extends to the whole of Madhya Pradesh. As stated in Section 1 (4), the Adhiniyam applies to "all urban areas having population of ten thousand and above according to last census which the State Government shall by notification specify." The expression "urban area" as defined by Section 2 (h) means "the area comprised within the limits of a local authority and any other area of commercial or industrial importance having population of ten thousand or above according to last census." The expression "local authority" is defined by Section 2 (e) to mean "a Municipal Corporation, Municipal Council, Notified Area Committee, Town Area Committee or Cantonment Board, as the case may be, constituted or deemed to have been constituted under the law relating to local authority concerned." Section 2 (f) defines "owner" in respect of any land or building or portion thereof as including the person, who for the time being receives, or who would be entitled to receive, rent therefor, if the same were let. In the case of land held on lease for a term of not less than 30 years, the lessee for the purposes of the Adhiniyam is deemed to be the owner of the land. Section 4, which is the charging section, levies a tax on lands or buildings or both situated in an urban area at the rate specified in the table given in the section. Section 5 provides for determination and revision of annual letting value. Section 4-A allows set-off in tax in respect of lands or buildings or both situated in an urban area comprised within the limits of a Cantonment Board, to the extent of tax, if any, payable by the assessee in respect of the lands or buildings to the Cantonment Board under the Cantonments Act, 1924. Section 36(1) prohibits a local authority, to which the Adhiniyam is made applicable, to impose or recover property tax on the annual letting value of any land or building or both which is subject to tax under the Adhiniyam. Section 36(2) directs the State Government to pay every year to each local authority, to which the prohibition of Section 36(1) applies, from the consolidated fund of the State a grant-in-aid equal to 60% of the tax realised in respect of the lands or buildings or both situate within the limits of such local authority after making such deductions on account of collection charges as the State Government may determine. Sub-section (4) of Section 36 provides that nothing in that section is to apply to a Cantonment Board. Section 60 of the Cantonments Act, 1924, which deals with imposition of taxes authorises a Cantonment Board, with the previous sanction of the Central Government, to impose in any cantonment any tax which under any enactment for the time being in force, may be imposed in any municipality in the State wherein such cantonment is situated. The Municipalities in the State are governed by the Madhya Pradesh Municipalities Act, 1961; Section 127 of which authorises them to impose property tax. Sections 64 to 80 of the Cantonments Act deal with annual value of buildings, incidence of taxation, assessment lists etc. which are matters relating to imposition of property tax on lands and buildings within a cantonment area u/s 60 by the Cantonment Board.

The subject of "delimitation of cantonment areas, local self-Government in such areas, the constitution and powers within such areas of cantonment authorities

and the regulation of house accommodation (including the control of rents) in such areas" falls under Entry 3 of List I of the Seventh Schedule to the Constitution. The subject of "local Government, that is to say, the constitution and powers of Municipal Corporations, Improvement Trusts, District Boards, mining settlement authorities and other local authorities for the purpose of local self-Government or village administration" falls under Entry 5 of List II. Under Entry 49 of List II, the State Legislature has exclusive power to make laws with respect to "taxes on lands and buildings."

The argument of the learned counsel for the petitioners in these petitions is that as Cantonment Boards are authorised u/s 60 of the Cantonments Act, which is an existing law under Article 372(2) of the Constitution, to levy property tax which a Municipality is competent to levy under the Municipalities Act of the State and as the subject of cantonments falls under Entry 3, List I, the State Legislature has no power to impose taxes on lands and buildings within cantonment areas. We will assume for purposes of these petitions that the Cantonment Board, Jabalpur, has imposed property tax u/s 60 of the Cantonments Act, that the petitioners are paying property tax on lands and buildings in their possession to the Cantonment Board. There is also no difficulty in accepting the submission that the Cantonments Act is an existing law which continues to be in force under Article 372(2) of the Constitution and the Cantonment Boards have authority to levy property tax u/s 60 of the Act. Even so, we do not find any valid reason for holding that the State has no power under Entry 49, List II, to levy property tax in respect of lands and buildings within a cantonment area. Power to impose taxes on lands and buildings is exclusively conferred on the State Legislatures by Entry 49, List II. Entry 3 of List I dealing with cantonment areas does not authorise Parliament to confer power on Cantonment Boards to levy taxes on lands and buildings for the simple reason that a tax of this nature can only be levied by the State Legislatures under Entry 49, List II. The scheme of the entries in the List is that power to levy a tax is specifically conferred; power of taxation cannot be inferred from any general entry. The Constitution divides the topics of legislation into three broad categories : (a) entries enabling laws to be made, (b) entries enabling taxes to be imposed, and (c) entries enabling fees and stamp duties to be collected. It is not intended that every entry gives a right to levy a tax. The taxes are separately mentioned and in fact contain the whole of the power of taxation. Unless a tax is specifically mentioned it cannot be imposed except by Parliament in the exercise of its residuary powers. *The Second Gift Tax Officer, Mangalore etc. Vs. D.H. Nazareth etc.*, . On this principle, Entry 3 of List I cannot be construed to confer any taxing power on Parliament. Parliament can authorise the Cantonment Boards to levy only such taxes as it can itself levy in exercise of its power under the various entries relating to taxes or the residuary entry in List I. The taxing power exercised by the Cantonment Boards u/s 60 of the Cantonments Act is a power under an existing law and continues under Article 372 of the Constitution. That does not, however, take away the power of the State Legislature to levy property tax under Entry 49, List II in the exercise

of its exclusive legislative power. In the context of Entry 5, List II which deals with the topic of local Government, it has been held by the Supreme Court that the State Legislature can confer power of taxation on local authorities for purposes of Municipal administration but the power of taxation that can be delegated to local authorities can only be in respect of those taxes which the State Legislature itself is authorised to impose; (See *The Western India Theatres Ltd. Vs. Municipal Corporation of The City of Poona*, ; *Rama Krishna Ramanath Vs. The Janpad Sabha, Gondia*, ; *Corporation of Calcutta and Another Vs. Liberty Cinema*, and *Jothi Timber Mart and Others Vs. Corporation of Calicut and Another*, . In *Ram Krishna v. Janpad Sabha* (supra) while dealing with Entry 13 of List II of the Seventh Schedule to the Government of India Act, 1935, which corresponds to Entry 5 of List II of the Constitution, the Supreme Court observed :

"Merely because the Legislature is empowered under Entry to constitute local authorities and vest them with powers and jurisdiction it would not follow that these local bodies could be vested with authority to levy any and every tax for the purpose of raising revenue for the purposes of local administration. They could be validly authorised to raise only those taxes which the province could raise under and by virtue of the relevant entries in the Provincial Legislative List." On the same reasoning, Parliament in exercise of its legislative power under Entry 3, List I cannot confer on Cantonment Boards a power to levy a tax which it itself cannot impose. Parliament, therefore, cannot make a law under Entry 3, List I, conferring authority on Cantonment Boards to impose taxes on lands and buildings which is a subject falling under the State List exclusively. It is another matter that Cantonment Boards are still authorised to levy property tax u/s 60 of the Cantonments Act, which is an existing law continued by Article 372. The cantonment areas within the State are not Union enclaves or Union territories. The power of the State Legislature to legislate on matters falling within Lists 2 and 3 in respect of an area within the State is not affected simply because that area is declared to be a cantonment area under the Cantonments Act. The State Legislature is, therefore, competent to impose taxes on lands and buildings within the cantonment areas of the State, We are unable to hold that the Adhiniyam in so far as it extends to cantonment areas is invalid,

Learned counsel for the petitioners submitted that the Adhiniyam properly understood is a law imposing taxes on lands and buildings for the benefit of local authorities and that as Cantonment Boards are independently authorised under the Cantonments Act to impose a similar tax, it cannot be held that the State Legislature was competent to apply the provisions of the Adhiniyam to cantonment areas. The argument, in our opinion, is without any merit. A look at Section 36 of the Adhiniyam will show that only 60% of the net receipt of tax realised in respect of lands and buildings within the limits of a local authority is paid to it as grant-in-aid by the State Government. The remaining 40% is obviously utilised for purposes of the general revenues of the State. It is true that Section 36 (1) prohibits a local authority to impose or recover property tax

on lands and buildings after the commencement of the Adhiniyam; but as seen above, property tax realised under the Adhiniyam is not wholly for the purposes of the local authorities. A substantial portion of the realisations is utilised by the State Government for general revenues. As regards Cantonment Boards, there is no prohibition u/s 36 for them to impose or recover property tax if they are legally authorised to do so. This is the result of Sub-section (4) of Section 36 which provides that nothing contained in the section shall apply to a Cantonment Board. However, to avoid a heavy burden on the property owners, Section 4-A provides that where the tax is payable by the assessee in respect of lands or buildings or both, situate in an urban area comprised within the limits of a Cantonment Board, the assessee shall be entitled to set off in the prescribed manner to the extent of tax, if any, payable by him in respect of such lands or buildings or both to the Cantonment Board under the Cantonments Act. It is well settled that there is no guarantee against double taxation by the same or different authorities. A local authority, therefore, may impose property tax, if so authorised by the Act constituting it, and the same property may be subjected to property tax by the State Legislature for purposes of the general revenues of the State. As observed by the Bombay High Court in *Cantonment Board, Poona Vs. Western India Theatres Ltd.*, "instances are not wanting in this country in which taxes are levied twice upon the same thing, once for the benefit of the State Government and in the second instance for the benefit of the local Self-Government bodies, for example, the District Local Board or the Municipality." One of the instances which the learned Judges of the Bombay High Court quoted was the urban property tax levied in the City of Bombay for the purpose of Provincial Government and the house tax levied by the Municipality at Bombay for its own finances. The learned Judges agreeing with the view expressed by a Division Bench of this Court in AIR 1945 171 (Nagpur) pointed out that there was nothing in the Constitution which required them to hold that the tax was illegal on the ground that it involved double taxation in respect of the same subject-matter. Both these cases were referred to and followed by another Division Bench of this Court in *Delite Talkies Vs. The City of Jabalpur Corporation*, . Recently, in *Avinder Singh and Others Vs. State of Punjab and Others*, the Supreme Court observed that there was nothing in Article 265 of the Constitution from which one could spin out the constitutional vice called double taxation. In that case, the Court upheld the imposition of a tax on the sale of foreign liquor u/s 90 of the Punjab Municipal Corporation Act, 1976, for augmenting the resources of the Municipal Corporation, although the sale of foreign liquor was also taxed under the Punjab General Sales Tax Act, 1948, for raising revenue for purposes of the State. The imposition of tax under the Adhiniyam on lands and buildings within the cantonment areas by the Adhiniyam cannot be held to be invalid on the ground that such lands and buildings are also taxed by the Cantonment Boards under the Cantonments Act.

Learned counsel for the petitioners drew our attention to the Madhya Pradesh Nagariya Sthawar Sampatti Kar (Sansodhan) Adhiniyam, 1976 (Act No. 49 of

1976) by which the definition of "urban area" contained in Section 2 (h) has been substituted by new definition. The expression "urban area" as now defined means "the area of commercial or industrial importance having population of ten thousand or above according to last census and which is not comprised within the limits of a Municipal Corporation, Municipal Council, a Notified Area Committee, a Special Area Development Authority or a Cantonment Board." The effect of this change is that tax levied under the Adhiniyam does not now apply to lands and buildings situate within the limits of Municipalities or Cantonment Boards. The Amending Adhiniyam came into force on 1st April 1976. So, from 1st April 1976 lands and buildings within cantonment areas cannot be subjected to tax under the Adhiniyam. In the present petitions, however, we are only concerned with the period prior to 1st April 1976.

It was then contended by the learned counsel that the tax imposed under the Adhiniyam is a composite tax on lands and buildings and as in cantonment areas the petitioners cannot be owners of lands, they cannot be subjected to any tax under the Adhiniyam. Apart from the fact that all the petitioners described themselves in the petitions as owners of lands and buildings with which we are concerned in these petitions, the definition of owner as given in Section 2 (f) of the Adhiniyam includes the person who for the time being receives or who would be entitled to receive the rent of any land or building if the same were let. Even a lessee holding the lease for a term not less than 30 years is deemed to be an owner. The petitioners describe themselves as owners and do not make out a case that they would not be entitled to receive the rent if the lands and buildings in respect of which these petitions have been filed were let out. Further, it cannot be assumed that every land in cantonment areas vests in the Central Government. As held by the Calcutta High Court in *Secretary, Cantonment Committee Vs. Satish Chandra Sen*, the mere fact that certain lands are declared by the Government to be within a cantonment area does not vest their ownership in the Government unless it is shown that the lands were acquired by the Government for that purpose.

Learned counsel for the petitioners heavily relied upon a decision of a Division Bench of this Court in *Fateh Ali v. Cantonment Board*. Mhow, M. P. No. 493 of 1972, D/- 3-9-1975. The question involved in that case was whether in view of Section 36 (4) of the Adhiniyam, the Cantonment Board, Mhow, was entitled to impose property tax u/s 60 of the Cantonments Act. This question was answered by the Division Bench in favour of the Cantonment Board, obviously for the reason that Section 36 (4) makes the ban of Section 36 (1) inapplicable to a Cantonment Board. There is no doubt some discussion in the judgment about the power of the State Legislature to levy taxes on lands and buildings situate within cantonment areas. But that discussion is just an obiter and is not ratio decidendi of the case. The case is an authority only for the proposition that in view of Section 36 (4) the ban imposed by Section 36 (1) does not apply to a Cantonment Board. The decision in that case is not decisive of the question before us.

The petitions fail and are dismissed with costs. Counsel's fee Rs. 100/- in each case. The balance amount of security if any, be refunded to the petitioners.