
(2016) 08 MP CK 0059
In the Madhya Pradesh High Court
Case No : Writ Petition No. 3965 of 2005

M/s. Permal Wallace Pvt. Limited

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 30-08-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Madhya Pradesh Municipal Corporation Act, 1956 — Section 138(I-a), Section 421
Madhya Pradesh Municipality (Determination of Annual Letting Value of Building/Land) Rules, 1997 — Rule 3

Citation : (2017) AIR(MP) 12 : (2017) 2 MPLJ 442

Hon'ble Judges : Shri Sanjay Yadav, J.

Bench : Single Bench

Advocate : Smt. Shobha Menon, Learned Senior Counsel with Ms. A. Khare, Learned Counsel, for the Petitioners in Writ Petition No. 11337 of 2006; Smt. Shobha Menon, Learned Senior Counsel with Ms. A. Khare, Learned Counsel, for the Petitioners in Writ Petition No. 39

Final Decision : Dismissed

Judgement

Shri Sanjay Yadav, J. - The order passed in Writ Petition 3965/2005 shall lead to disposal of Writ Petitions No.5962/2006 and 11337/2006 as the issue raised in these petitions are similar.

2. Validity of standing order-dated 20.4.2004 passed by Commissioner, Municipal Corporation Bhopal and order-dated 19.5.2005 passed by Zonal Officer, Zone No.8 Municipal Corporation Bhopal are being called in question.

3. Vide impugned order-dated 19.5.2005, demand has been raised to the tune of Rs.77,88,635 (in WP-3965-2005) and similar demands raised in connected writ petitions towards property tax for the year 2004-2005.

4. Petitioner, a Private Limited Company registered under the Companies Act, 1956, was allotted Factory No. DW-200209 vide the order passed by Government of India, Director General of Technical Development, New Delhi dated 26.2.1964.

The petitioner was also granted an Industrial Licence bearing No. L/36(4)/7/60-L IND dated 22.2.1960. Petitioner also have a licence to work in accordance with Rule 5 of the M.P. Factories Rules, 1962 by the Government of Madhya Pradesh which, as per the petitioner, has been renewed from time to time. Besides, Office of Deputy Director, Town and Country Planning, Bhopal, issued certificate for industrial use for the occupation of petitioner.

5. That, petitioner has been subjected to Property Tax from time to time under the Madhya Pradesh Municipal Corporation Act, 1956 (hereinafter referred to as "1956 Act") as is imposed by the Municipal Corporation Bhopal.

6. That, for the period 1998-2000, petitioner deposited an amount of Rs.34,519/- towards property tax. Vide notice dated 10.9.2004, petitioner was called upon to deposit an amount of Rs.19,36,669/- as property tax. Petitioner preferred an appeal in accordance with Section 149 of 1956 Act to the competent authority i.e. District Judge Bhopal on 15.9.2004 against said demand on the ground that petitioner being an industrial unit cannot be made to pay the property tax as compared with other commercial establishments. The claim was denied by respondent-Municipal Corporation on the ground that since petitioner unit falls under Zone No.4, the tax is realized in accordance with Standing Order No.12/2004. The Appeal was disposed of on 7.2.2005 directing the Municipal Corporation to consider the objections raised by the petitioner and take a decision thereon after affording an opportunity of hearing.

7. On the representation being filed by petitioner that it be treated at par with other industrial units of the adjoining area. And, that it is not carrying out any commercial activity and, therefore, it be assessed in accordance with the factories situated in Govindpura Area i.e. Ward Nos.56 and 63 respectively. That, being a Medium Scale Industry and being located over free-hold land used for industrial purpose, the property tax for the building be assessed in accordance with the rates as made applicable to other industries.

8. The claim was turned down vide impugned communication dated 19.5.2005 that since petitioner's unit is located in Ward No.45 the rates prevalent therein (and not that of Ward No.56 and 63) would be applicable.

9. These facts have led the petitioner question the resolution and the rejection order.

10. It is contended that the property tax is realized from the petitioner as per rates applicable in Zone No.4 in accordance with the impugned Standing Order No.12/2004 dated 20.4.2004. It is the contention that the impugned standing order is illegal and invalid inasmuch as the same though is in exercise of powers under sub-section (1-a) of Section 138 of 1956 Act, but a draft resolution passed by the Corporation was suspended by the State Government in exercise of its powers under Section 421 of 1956 Act. In the wake thereof, it was beyond the competence of the Mayor to have invoked subsection (1-a) of Section 138 of 1956 Act.

11. It is next contended that being an industry, though situated within Zone No.4 and Ward No.45, it cannot be discriminated with other industries situated in Ward Nos.56 and 63.

12. The respondents have denied all the contentions. It is urged that after the direction by District Judge in appeal and after affording opportunity of hearing to petitioner and taking recourse to re-measurement of the premises in question, the impugned order-dated 20.4.2004 was passed. The petitioner instead of challenging the same in Appeal, has filed this petition under Article 226 of the Constitution of India which is not tenable, as the petitioner has an alternative statutory remedy. It is further contended that being located in Ward No.45 in Zone No.4, the rate fixed as per the stipulations contained in the Madhya Pradesh Municipality (Determination of Annual Letting Value "Building/Lands) Rules, 1997 (for short "Rules, 1997"), the petitioner cannot be treated to be of another ward or zone.

13. As to the contention regarding competence of Mayor to exercise the powers under Section 138(1-a) of 1956 Act in the wake of a resolution being suspended by the State Government under Section 421 of 1956 Act, it is contended that the Mayor being conferred with the powers by the legislature, is within its jurisdiction to have passed the resolution. On these submissions, it is urged on behalf of the respondents that the petition deserves to be dismissed.

14. After hearing learned counsel for the parties, the issues which crop up for consideration is as to whether in a case where the assessment of property tax is done zone-wise, the petitioner carrying out industrial activities can be treated as the establishment falling in another zone where the rate of property tax is different. And, whether the Mayor was within its competence to have passed the resolution in the wake of the fact that proceedings-dated 5.2.2004 of Municipal Corporation Bhopal, has been suspended by the State Government under Section 421 of 1956 Act.

15. However, before dwelling on these issues, preliminary objection raised by respondent-Municipal Corporation is taken up first.

16. True it is that against the demand of tax, petitioner has a remedy of Appeal under Section 149 of 1956 Act. That, it is mandatory to deposit property tax under Section 158 of 1956 Act. The fact remains that in the case at hand, petitioner has also questioned the resolution on the basis whereof, the property tax, which is under challenge, is being questioned. That, the Appellate Court under Section 149 though have a jurisdiction to adjudicate the dispute arising in respect of any land or any building to assessment or as to the basis or principle of assessment or as to the amount of tax assessed, it will, however, be beyond the jurisdiction of the Appellate Court under Section 149 to test the correctness of the resolution passed under Section 138(i-a) of 1956 Act. Therefore, the petitioner cannot be driven to seek remedy under Section 149 of 1956 Act.

17. Coming to the merits of the case. As to contention that it is beyond the

competence of the Mayor to have proposed and resolved the levy of property tax vide Permanent Order No.12/2004; the said order, as apparent, is in the exercise of the powers conferred vide Section 138(1-a) of 1956 Act, which mandates -

"138. Annual letting value of land or building.

?

(1-a) The Commissioner shall prepare the draft resolution under sub-section (1) for the next financial year and submit before the Corporation before 31st December of each financial year. In case the Corporation fails to adopt the resolution as required by sub-section (1) by 31st March of each financial year then the draft resolution prepared by the Commissioner shall be presented to the Mayor and the resolution as approved by the Mayor shall be deemed to be the resolution finally adopted by the Corporation.

Provided that if the Mayor does not approve the draft resolution prepared by the Commissioner by 30th April of the current financial year then the draft resolution as prepared by the Commissioner shall be deemed to be the resolution finally adopted by the Corporation."

18. This sub-section was inserted vide M.P. Act 29 of 2003 w.e.f. 25.8.2003 laying down the procedure that in case the Corporation fails to adopt the draft resolution as to annual letting value of any building or land prepared by the Commissioner, then it is to be presented to the Mayor and the resolution as approved by the Mayor shall be deemed to be the resolution finally adopted by the Corporation.

19. There can be various reasons where for the Corporation fails to adopt the resolution by 31st March of respective financial year.

20. In the case at hand, the reason as borne out from the impugned permanent order, is the suspension of meeting of the Corporation (and not the resolution as contended by learned counsel for petitioner). This fact would be evident from the recital of the permanent order. It stipulates :

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21. Apparently, the State Government in exercise of the powers under Section 421 of 1956 Act suspended the meeting-dated 5.2.2004 of the Municipal Corporation Bhopal. Subsection (1) of Section 421 empowers the State Government to suspend "? doing of any act which is about to be done ..". The expression, in the considered opinion of this Court, embraces the meeting of the Corporation. There being no material on record to suggest that the meeting which was convened on 5.2.2004 was only in relation to adopting of draft

resolution prepared by the Commissioner under sub-section (1) of Section 138 of 1956 Act. Even if it was, then also, the exercise of power by the Mayor under Section 138(1-a) stands justified and valid, as the Corporation had failed to adopt the resolution by 31st March. There is no cogent material available on record that even the exercise of powers by the Mayor under Section 138(1-a) of 1956 Act was suspended.

22. In view whereof, the contention that it was beyond the jurisdiction of the Mayor to have approved the resolution cannot be accepted and is negatived.

23. This leaves us to consider the next contention; whereby, the petitioner claims applicability of rate of property tax of Zone No.5 The draft resolution by the Commissioner which was finalised by the Mayor for the financial year 2004-2005 in respect of Zone No.1, 4 and 5, which we are concerned, with is in the following terms -

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24. Evidently, the determination of Annual Letting Value is in accordance with Rule 3 of 1997 Rules. Rule 3, 4 and 5 whereof provides for :

"3. Classification of Municipal area. - Every Municipality shall classify the Municipal area in more than one zone on the basis of, as far as possible, similar locations of the buildings and lands (as per square foot prevailing market value) situated therein.

4. Classification of buildings and lands. - The classification of buildings and lands situated in every zone shall be as follows -

(a) Quality of construction -

(i) Buildings having roof made of R.C.C./R.B.C. or stone;

(ii) Buildings having roof made of sheets of cements or iron or tiles;

(iii) Other semi-pakka or kuccha buildings which does not fall within sub-clause (i) and (ii).

(b) On the basis of use -

(i) Buildings/lands for the purpose of commercial or industrial;

(ii) Buildings/lands for the purpose of residential.

(c) On the basis of location -

(i) Buildings/lands situated at main road;

(ii) Buildings/lands situated at main market;

5. Rate of annual letting value. Every Municipality as per criteria described in Rule 4 shall fix separate rates for each type of houses and lands situated in each zone on the basis of their quality of construction, use and location for the purpose of determination of their annual letting value:

Provided that the land where cultivation is going on and the vacant land attached to the building (Marginal open space) shall be exempted for the purpose of calculation of annual letting value:

Provided further that apart from the criteria described in this rule or Rule 4 the municipality subject to the provisions of Sections 135, 136 and 138 of the Madhya Pradesh Municipal Corporation Act, 1956 in case of a Municipal Corporation and Section 126 and 127-A of the Madhya Pradesh Municipalities Act, 1961 in case of a Municipal Council or Nagar Panchayat, may also fix separate criteria."

25. That, Rule 2(g) of 1997 Rules defines "Commercial or Industrial" which means "such building or land on which any business is carried-out, shop is being run, workshop is established, trade, business is being done or any other similar activities are being conducted or reserved for such activities."

26. The validity of these Rules were subjected to challenge in *Sakshi Gopal Agrawal v. State of M.P.* 2004 (1) MPLJ 390, wherein while upholding its validity, a Full Bench of our High Court held -

"42. We have referred to the aforesaid decisions as the learned Counsel for the petitioner have urged with vehemence that the classification by zonal system is totally impermissible and the rent should be the sole criteria. In Section 126 of the Municipalities Act, it is noticeable that the Legislature has referred to determination of the annual letting value of land or building on the basis of per square foot of the built up area or per square foot of the land and while doing so the factors which are to be taken into consideration are the area in which the building or land is situate, its location, situation, purpose for which it is used, its capacity for profitable use, quality of the construction of the building and other relevant factors. Quite apart from the above, the Legislature has not made the criteria exhaustive and further stipulated subject to the rules, as may be made by the State Government in this behalf. Similar language has been used in Section 138 of the Municipal Corporation Act. Rule 3 of the Rules deals with the

classification of municipal area. Rule 4 of the Rules deals with classification of buildings and lands. It classifies the buildings on the basis of quality of construction, the basis of use, and the basis of location. Rule 5 deals with Rate of annual letting value. If the rules are understood in proper perspective and reflected in the logical prism, we have no hesitation in holding that the provisions which have been provided for classifying the buildings are reasonable, rational, acceptable and non-arbitrary. In fact, we may say without any scintilla of doubt that the provisions of the Bihar Act which were dealt with in the case of S.K. Sinha (supra) were almost *pari materia* with the provisions which are under challenge. It is contended by the learned Counsel for the petitioners that Rule 3 of the Rules stipulates that every municipality shall classify the municipal area in more than one zone on the basis of as far as possible, similar locations of the buildings and lands (per square foot prevailing market value) situated therein. Severe criticism has been advanced that there cannot be classification of the municipal area on zone basis. It is urged that if zone is accepted as the sole criterion it would lead to incurable anomaly as in a particular zone the buildings are not the same and the construction is not the same. At this juncture, we may state that the learned Counsel for the petitioners while urging the aforesaid submission with vehemence, in our considered opinion, had read Rule 3 in total isolation but the same is not to be read as if the singular rule governing the whole scenario. It has to be read along with Rule 4 which deals with classification of buildings and lands on three criteria, namely, quality of construction, the basis of use and the basis of location. That part, needless to emphasize the provisions in the main enactment are to be taken into consideration. Thus, classification of the municipal area on zone basis is not the sole governing formula for classification. As we have understood there will be classification of area by zone and thereafter there would be classification of building and land situated in the zone shall be done as per Rule 4 and the rates are to be determined. Thus, the submission made by the learned Counsel for the parties in this regard is totally sans substance."

27. In the case hand, as evident from the impugned communication dated 19.5.2005 that the Municipal Corporation has fixed the rate of annul letting value as per criteria described in Rule 4 i.e. as per location (zone-wise), quality of construction and on the basis of use. Since the determination of rate of annual letting value is in accordance with Rules 3, 4 and 5 of 1997 Rules and no provisions having been commended at that a building/land situated in one zone can be assessed on the basis of determination of rate fixed in another zone, the claim of petitioner for being determined as per rate prevalent in Zone No.5, cannot be acceded to.

28. Taking any view of the matter, the petition (WP-3965-2005) since does not merit consideration deserves to be and is hereby dismissed.

29. In view whereof, WP-5962-2006 and WP-11337-2006 are also dismissed. No costs.

30. Interim order, if any passed in any of the above matters stands vacated.