
(1961) 07 KL CK 0007
In the High Court Of Kerala
Case No : O.P. No. 573 of 1958

Muhammed Sayed

APPELLANT

Vs

Municipal Council, Attingal and Another

RESPONDENT

Date of Decision : 04-07-1961

Acts Referred:

Travancore District Municipalities Act, 1116 — Section 16, 78

Citation : (1961) KLJ 1276

Hon'ble Judges : M.A. Ansari, C.J;T.C. Raghavan, J

Bench : Division Bench

Advocate : T.N. Subramonia Iyer, S. Subramonia Iyer, P.R. Balachandran, for the Appellant; M.M. Abdul Kadir, for the Respondent

Final Decision : Dismissed

Judgement

Raghavan, J.—The owner of certain buildings, situated within the limits of the Attingal Municipality, seeks to quash the proceedings of the Municipality enhancing the property tax from 41/2 to 71/2 per cent and also the demand notices issued to him by the Municipality by a writ of certiorari or other appropriate writ. He also prays for the issue of a writ of mandamus to restrain the Municipality from levying or collecting the enhanced tax. There are various allegations in the affidavit in support of the petition. They are mainly: that the provisions of sections 78 and 79 of the Travancore District Municipalities Act, which are mandatory, have not been complied with; that there was no preliminary notification as required by Section 78 of the Act and thus opportunity to raise objections had been denied to the petitioner; that the publication in the newspaper and the gazette has been done not by the Municipal Council as required by Section 78, but only by the Commissioner, which is illegal; and that the exemption of buildings whose annual rental value is less than Rs. 36/- is discriminatory, as such classification is not based on any intelligible differentia. The Municipal Council and the Commissioner thereof are the 1st and the 2nd respondents respectively and the 2nd respondent has filed a rejoinder traversing

the several allegations made in the affidavit of the petitioner. We do not think it is necessary to recapitulate the several averments in the said counter-affidavit. We would hereinafter only narrate a few facts necessary for the appreciation of the main questions involved in the writ petition.

2. The Municipal Council passed a resolution on 8th November 1957 proposing to raise the property tax from 41 to 71/2 per cent. The said resolution proposed also to exempt completely from the taxation buildings whose rental value did not exceed Rs. 36/- per annum. The resolution was published in a Malayalam Daily, namely "Kerala Kaumudi" dated 11th December 1957 and was also published in the Gazette dated 17th December of the same year. Ultimately, on 24th January 1958 the Municipal Council finalized the proposals and demand notices were thereafter issued to the petitioner and others.

3. Regarding the exemption of buildings below the annual rental value of Rs. 36/- from taxation no serious argument has been advanced before us. The main contention relates to the effect of the provisions of sections 78 and 79 of the Travancore District Municipalities Act. It is urged that the provisions are mandatory and unless those provisions are strictly complied with, the taxation that follows will be without jurisdiction and illegal and will have to be quashed. First proviso to Section 78 lays down that before passing a resolution imposing 4 tax or toll for the first time or increasing the rate of an existing tax or toll, the Council shall publish a notice in the Gazette and at least in one Malayalam or Tamil newspaper having circulation in the Municipality of its intention, fix a reasonable period not less than one month for submission of objections, and consider the objections, if any, received within the period specified. In the case before us the publication of the proposal of 8th November 1957 is such a preliminary notification. This appears to have been published in the Malayalam Daily, "Kerala Kaumudi" on 11th December 1957 and in the Gazette dated 17th December 1957. By the aforesaid notification objections appear to have been invited from the public and no objection having been filed till 23d January 1958, the Council passed the resolution imposing the tax at its meeting held the next day. The two objections raised before us regarding this notification are: that the notification did not fix a period not less than one month for submission of objections, the time fixed in the notification being only 30 days and that the notification was subscribed by the Commissioner of the Municipality and not by the Council as contemplated by the proviso already referred to. On both these points there is an authoritative decision of the Supreme Court in *The Poiner Motor (Private) Ltd. v. The Municipal Council, Nagercoil* (Civil Appeals Nos. 499 to 502 of 1958). Identical questions appear to have been raised before the Supreme Court in the aforesaid appeals, which arose out of a case from the Nagercoil Municipality, regarding the interpretation of sections 78 and 79 of the District Municipalities Act and Kapur J. who spoke for the Court, observes thus:

But in order to decide whether this portion of the proviso is a mandatory provision, it is convenient to see the object for which it has been enacted. u/s

78, the procedure is laid down for the levying of a new tax, which has to be done by a resolution. But in the proviso, it is stated that before such a resolution can be passed, a notice to that effect has to be published in the official gazette and also in one Malayalam or Tamil newspaper having circulation within the Municipality. Then comes the period for inviting objections. The object of notifying in the Gazette and local Newspaper is both to give notice to the public and particularly to the persons who are likely to be taxed and to invite their objections. For this purpose, the proviso requires a reasonable period of not less than one month to be given. The object of the provision is to give reasonable time and opportunity and it is given as a guidance that reasonable time would be a month. The use of the words "reasonable period" before the words "not being less than one month" is significant. If sufficient time has been given for the invitation of the objections which only just falls short of the period mentioned in the proviso, then it would serve the object of the legislature. The provision in regard to time in the context must be held to be directory and not mandatory.

4. The test to be applied in such cases appears to be this: Is the publication of the notification intended to be a condition precedent to the exercise of jurisdiction by the Municipality to impose the tax or fee or is it only intended to give notice to the persons likely to be affected and to invite their objections? If it appears from the provisions of the Statute that the Legislature intended the former, then the notification is mandatory, on strict compliance of which alone the Municipality will be competent to exercise its jurisdiction to tax or impose a fee. If, on the other hand, the provisions of the particular Statute reveal that the Legislature intended the notification only to serve the purpose of giving notice to the public and particularly to the persons who are likely to be taxed and to invite their objections, then the provisions regarding publication are only directory and substantial compliance is sufficient. This has to be decided with reference to the provisions of the particular Statute. The aforesaid principle is revealed in the following passage in the judgment of the Supreme Court:

The power of the Municipality to levy the tax does not depend upon a period prescribed for notice for objections. The power to tax is derived from the Statute; the provisions relating to the length of notice inviting objections and publication are merely procedural.

5. The other objection raised is also answered by the decision of the Supreme Court. Kapur J. points out that u/s 16 of the Act the executive authority, namely the Commissioner, shall carry into effect the resolutions of the Council and therefore when he got published a notification of the resolution of the Council u/s 78 of the Act to impose a tax, he was only acting within his powers and was not exercising any authority, which he did not possess. Thus both the contentions fail and therefore, we dismiss the writ petition but, in the circumstances, without costs.