

(1984) 12 KAR CK 0002
In the Karnataka High Court
Case No : Writ Petition No. 11686 of 1979

Municipal Commissioner

APPELLANT

Vs

Paul Monteiro

RESPONDENT

Date of Decision : 03-12-1984

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Karnataka Municipalities Act, 1964 — Section 106, 107, 142, 150

Citation : (1985) ILR (Kar) 3165 : (1985) 1 KarLJ 291

Hon'ble Judges : Rajasekhara Murthy, J

Bench : Single Bench

Advocate : H.G. Ramesh, for B.V. Acharya, for the Appellant; K.R.D. Karanth, for R-1, for the Respondent

Judgement

Rajasekhara Murthy, J.—In this Petition under Articles 226 and 227 of the Constitution of India, filed by the Mangalore City Municipal Council, Mangalore, the order dated 26th day of March 1979 passed by the Sessions Judge, Dakshina Kannada, Mangalore in CrI. Revision Petn. No.35 of 1978, is challenged.

2. The said revision was filed by one Paul Monteiro of Mangalore against the order of the I Additional Chief Judicial Magistrate, Mangalore, dated 13-6-1978 passed u/s 150 of the Karnataka Municipalities Act, 1964 (hereinafter referred to as the "Act").

3. The said order of the Magistrate arose out of an appeal filed by the said Sri Paul Monteiro u/s 150 of the Act. He had in the said appeal, challenged the notice of demand dated 23-8-1977 issued by the Mangalore-Municipal Council u/s 142 of the Act calling upon him to pay property-tax and other cases amounting to Rs. 944-38 P. for the assessment year 1976-77.

4. The appeal was dismissed by the Magistrate holding that the appeal filed by the appellant-petitioner was not maintainable on two grounds :

(i) that the appellant had never filed any written-objections when the tax was

initially imposed, and

(ii) that there was revision of tax subsequent thereto against which an appeal could be filed under the Act.

5. The District Judge, in the revision filed by the petitioner against the order of the Magistrate dismissed the appeal, set-aside the Order of the Magistrate and remanded the matter to him to dispose of the appeal on the available material.

6. Being aggrieved by the said order of the District Judge, this Writ Petition is filed by the Municipal Council on the primary ground that the appeal before the Magistrate was itself not maintainable and therefore the Order of remand by the District Judge was not called for.

7. The point that arises for my consideration in this Writ Petition is :

Whether the appeal before the Magistrate filed by the petitioner u/s 150 of the Act, was maintainable?

8. The facts that are relevant for the disposal of the Writ Petition are these :-

The first respondent-Paul Monteiro constructed a building in the City of Mangalore in the year 1971. The said building was let-out on a monthly rental of Rs. 350/- and was later occupied by the owner after it fell vacant. As was done in the previous years, the Municipality issued a notice of demand dated 23-8-1977 for the property-tax which was being collected on the basis of the monthly rental of Rs. 350/-. A demand was made to pay a sum of Rs. 944-38P. including other cesses. This demand was disputed by the Respondent-owner and he also filed an appeal before the Chief Judicial Magistrate, Mangalore, u/s 150 of the Act. It appears that the first respondent on receiving notice of demand objected to the said demand by way of written objections filed before the Municipal Council. It is not known whether the said objection has been disposed of in accordance with the procedure laid down under the Act. However, the Chief Judicial Magistrate disposed of the appeal before him by dismissing the same on the two grounds as already stated above. He rejected the contention of the owner that the property tax should be reduced since the tenant had vacated the premises and he had occupied it for himself for his own use and that the rental value of the building should be taken on the basis of Rs. 150/- per month and not Rs. 350/-. The second ground on which the appeal was rejected was on the question of maintainability of the appeal. The Learned Chief Judicial Magistrate held that the appeal filed was not maintainable since the appellant had not filed any objections when the property in question was assessed for the first time by the Municipality immediately after it was completed in the year 1971. Being aggrieved by the said order, the first respondent filed the Revision Petition before the District Judge, Dakshina Kannada.

9. The Learned District Judge observed that the Chief Judicial Magistrate had not considered the material produce before him in the proceedings as to the reasonableness of the property-tax levied. In this view of the matter, the revision

petition was allowed and the order of the Chief Judicial Magistrate was set aside and the case was remanded to him with a direction to consider the available evidence on record and dispose of the matter in accordance with law. This order of the Learned District Judge is challenged in this Writ Petition by the Municipal Council.

10. The only ground urged on behalf of the Municipal Council in this Writ Petition is that it was not open to the first respondent to file an appeal against the notice of demand having failed to object to the fixation of the annual retable value for purposes of property tax when it was first determined by the Municipal Council immediately after it was built. It is also urged that the Learned District Judge exceeded his jurisdiction in reappreciating the evidence on record and remanding the case to the Chief Judicial Magistrate to reconsider the evidence and pass a fresh order in accordance with law.

11. Shri Ramesh appearing for Shri B.V. Acharya for the Mangalore City Municipality has pointed out the relevant provisions of the Act dealing with the assessment of tax on buildings and other incidental matters.

12. Chapter VII of the Act deal with Municipal Taxation. u/s 94, the Municipal Council is authorised to levy taxation on buildings or lands or both, situated within the municipality. Sections 101 to 115 of the Act deal with assessment of tax on buildings and lands and recovery, etc. u/s 103 an assessment list of all buildings or lands is prepared by an Assessor appointed for this purpose. u/s 105, such list, when completed, is published as prescribed therein for the benefit of the persons concerned. Section 106 provides for revising the assessment list after it is published, provided the owner who is affected disputes the levy and files his objections in the manner provided under the Act. The Assessor will have to give the notice of the fixation of valuation and assessment when it is done for the first time or when the assessment is increased. The objections tiled by the owners shall be considered by the revising authority after giving an opportunity to the owners to be heard in person or by an agent. The list becomes an authenticated list after the objections are disposed of and amendments, if any, are effected after hearing the person concerned.

13. Section 107 provides for an alteration of the assessment list by the Chief Officer or the Municipal Commissioner, as the case may be. This alteration is only in respect of any building constructed, altered, added or reconstructed in whole or in part, after the preparation of the assessment list.

14. Section 150 of the Act provides for an appeal to the Magistrate against any notice of demand served on any owner u/s 143(3) or Section 148(1).

15. The Magistrate, as an appellate authority, under the Act may, on the basis of the evidence, decide whether the levy is justified or needs to be modified. There are certain restrictions to entertain an appeal u/s 150. The relevant provisions are extracted below :-

"150. Appeal to Magistrate.-(1) Appeals against any claim included in a notice of demand served under sub-section (3) of Section 142 or under sub-section (I) of Section 148 may be made to any Magistrate by whom, under the directions of the Government or of the District Magistrate, such class of cases is to be tried.

But no such appeal shall be heard and determined unless,-

(a) the appeal is brought within one month next after service of the notice complained of ; and

(b) an application in writing, stating the grounds on which the claim is disputed, has been made as follows,

that is to say :

(i) in the case of a tax on buildings or lands, to the assessor or the Chief Officer or the Municipal Commissioner, as the case may be, within the time fixed in the notice given u/s 106 or 107 of the assessment or alteration thereof, according to which the notice is prepared,

(ii) in the case of any other claim for which a notice of demand served has been presented under sub-section (3) of Section 142, to the municipal council within fifteen days next after the service of such notice; and

(c) the amount claimed from the appellant has been deposited by him in the municipal office."

16. It could be seen from the above provisions that an appeal can be entertained if it is brought within one month after the service of the notice of demand. The second condition is that an application in writing stating the grounds on which the claim is disputed, should have been made either to the Chief Officer or to the Municipal Commissioner, as the case may be, within the time fixed in the notice given of the assessment or alteration thereof, u/s 106 or Section 107. What is required to be done u/s 106 is already stated earlier.

17. The contention of the petitioner the Municipal Council is, that the owner in this case having failed to file his objections to the valuation and assessment when it was published in accordance with Section 106 and when the building was assessed for the first time, he cannot, at any time, during the successive years, object to the same. For this purpose reliance is placed on the provisions of Sections 106, 107 and 109. He further contends that as provided u/s 109, the Municipal Council need not prepare a new assessment list every year and the assessment list so prepared may be revised once in four years. Sub-Section (2) is important in order to appreciate the contentions of the petitioner. Section 109 is reproduced below :

"109. New assessment list need not be prepared every year - (1) livery part of the assessment list shall be completely revised not less than once in every four years, but it shall not be necessary to prepare a new assessment list every year ;

(2) The provisions of Sections 105, 106 and 107 shall be applicable to every year as if a new assessment list had been completed at the commencement of the official year.

(3) Where, in any year a new assessment list is prepared, or a list is revised, or the valuation and assessment, contained in the list for the year immediately preceding is adopted with or without alteration, such new, revised or adopted assessment list shall be authenticated in the manner provided by Section 106 at any time not later than the thirty-first day of July of the official year to which the list relates.

(4) Notwithstanding, anything contained in the preceding sub-sections, until the revision of an assessment list or any part thereof, the assessment list prepared and authenticated in accordance with the provisions of this Act shall continue to be the authenticated assessment list in force."

18. Under Sub-section (2) of the provisions of Sections 105, 106 and 107 are made applicable every year as if a new assessment list had been prepared and published at the commencement of the official year. Such list as is referred in Sub-section (2) is considered as the authenticated list for the purpose of Section 106 for each official year and continues to be an authenticated list until it is revised at the end of four years.

19. Shri K.R.D. Karanth, appearing for the owner-first Respondent, has strenuously contended that having regard to the scheme of the Act and the provisions dealing with the procedure for preparation of assessment list and other related matters, the owner can file his objections to the valuation and assessment after the assessment list is published u/s 106 and that such objections can be filed in any year in which it is published and public notice is given. According to him, the objections can be filed whenever a notice of demand is issued and the owner chooses to dispute the same. According to him, the owner is not prevented from filing objections on the notice of demand being issued to him during the second, third and fourth year of the demand even though he may not have filed any objections when the property was assessed for the first time.

20. Subject to the provisions of the Act dealing with the preparation of assessment list, the publication thereof, the objections to the said list and the considerations of the objections and the publication of the authenticated list, etc., the list so authenticated shall be accepted as conclusive evidence, as provided u/s 106(7) subject to any alterations that may be made u/s 107 and subject to the result of any appeal made u/s 150. The provisions of Section 109 are very important in this connection. By a fiction created by sub section (2) of Section 109 all the provisions of Sections 105, 106 and 107 are made applicable to an assessment list published every year. By the application of these provisions the list published every year at the commencement of the official year shall be construed as if a new assessment list had been completed at the commencement

of the each official year. Thus, all the procedure for revising the assessment list as provided u/s 106 are made applicable to the list so published every year thereby enabling the owner to object to the valuation and assessment on the publication of such list, every year.

21. Therefore, the owner in this case though he did not file his objections when the property was for the first time assessed on the basis of the monthly rent of Rs. 350/-, which it was fetching until it was occupied by the owner himself, can file objections to the notice of demand issued during the relevant year demanding the same property tax as was being collected in the earlier years. First Respondent owner has filed his objections immediately after receiving the notice of demand for the year in question, which appears to be still pending disposal by the revising authority, as contemplated u/s 106. However, since the recovery proceedings were initiated against the owner inspite of the objections filed, an appeal disputing the notice of demand and its correctness before the Magistrate as provided u/s 150.

22. There is substance in the contentions put-forward by Sri Karanth. Having regard to the scheme of the Act, the assessment list prepared under the Act for the first time, shall be an authenticated assessment list for a period of four years. Such authenticated list shall have to be published at the commencement of each subsequent official year and all the provisions of Sections 105, 106 and 107 are made applicable to such list which is published every year, as if a new assessment list had been prepared and published at the commencement of each official year.

23. It is not known whether the objections filed by the 1st respondent before the Municipal Council, a copy of which is annexed to the Memorandum of Appeal filed before the Chief Judicial Magistrate is disposed of. If the objections are disposed of, the respondent will get a right of appeal to the Magistrate u/s 150. If not, the Revising Authority will have to, dispose of the objections. In any event; the Magistrate will have to entertain the appeal.

24. Shri Karanth has, in support of his contention, relied upon two decisions of the Supreme Court;

(1) City Municipal Council, Mangalore and Another Vs. Frederick Pais etc.,

(2) Municipal Corporation, Indore Vs. Rai Bahadur Seth Hiralal and Others,

which was followed by the Supreme Court in the former decision.

25. The first case arose under the Mysore Municipalities Act, 1964. The Supreme Court was dealing with the levy of property-tax under the Mysore Act after the repeal of the Madras District Municipalities Act with effect from 1-4-1965. The question that arose was, whether the property tax could be continued to be levied under the Madras Act after its repeal by the Mysore Act. In the course of the Judgment their Lordships have observed that under the scheme of the Mysore Act, the Municipal Council has to determine the annual rateable value of

the building as provided by Section 101(2) of the Mysore Act. This is what the Supreme Court observed while dealing with the scheme of taxation:

"Those provisions show that the municipal tax is an annual tax leviable for a particular official year and the assessment list on the basis of which the tax is assessed is for such official year. This was the view expressed by this Court in *Municipal Corporation, Indore Vs. Rai Bahadur Seth Hiralal and Others*, while interpreting certain provisions of the Madhya Bharat Municipalities Act, 1954. No doubt the wording in the Madhya Bharat Act in Section 76, dealing with assessment list was slightly different, but, in our opinion, the principle enunciated in that decision regarding the municipal tax being an annual tax leviable for a particular official year and the assessment list, on the basis of which the tax is assessed having currency for each such official year, is applicable also to the interpretation of the Madras Act. No resolution passed by the Municipal Council regarding the levy of the property tax and the rate at which it is to be levied, having currency for the year 1966-67, has been brought to our notice-

The Supreme Court further observed:

"Normally, the municipal council will have to prepare a fresh assessment list, every year. By virtue of Section 124 of the Madras Act, the rules and tables embodied in Schedule IV have to be read as part of Chapter VI dealing with Taxation and Finance. Though, ordinarily, the Municipality would have to prepare a fresh assessment list every year, Rule 8 of Schedule IV permits the Municipal Council to continue the same assessment list for the next four succeeding years and to revise it once every five years and to revise it once every five years. But, in order to enable the Municipal Council to levy and collect a tax, it has to pass a resolution determining to levy a tax, the rate at which such tax has to be levied as also the date from which it shall be levied. That the tax is an annual tax is also borne out by Sub-section (2) of Section 82. If the contention of the learned Solicitor that the assessment list, once prepared, has to be adopted for live years is accepted, it will result in the annual value on a particular building or house being static for five years, during which a municipal council can go on adopting the assessment list prepared in an earlier year and the owner or occupier of the building being deprived of the right to object to the valuation regarding the annual value may have decreased for one reason or the other. It follows that the contention that the preparation of the assessment books amounts to imposing of a tax so as to justify the issue of the demand notice cannot be accepted."

The Supreme Court has also relied upon its decision in 1968 S.C.642. In that case the provisions of the Madhya Bharath Municipalities Act were involved. The Supreme Court was dealing with Sections 75,76 and 79 of the Madhya Bharath Act. Section 73 of the said Act provide for levy of taxation on houses or buildings on the basis of the annual letting value of the property. Sections 75 and 76 lay down the procedure for publication of the assessment list every year and other related matters. Sections 75 and 76 of the Madhya Bharath Act are analogous to

Section 106 of the the Karnataka Act.

26. The observations of the Supreme Court made in the course of its Judgment (supra) while dealing with a similar scheme in the Madhya Bharath Act in the matter of levy of property tax, fully support the contentions of Sri Karanth.

27. While dealing with Sections 75 and 76 of that Act this is what the Supreme Court has observed :

"Ordinarily the Municipal Corporation has to prepare a fresh assessment list every year. The legislature, however, as empowered by Section 79, as other State legislatures have similarly done in several Municipal Acts, to adopt the valuation and assessment contained in the assessment list prepared in on earlier year provided, however, that it prepares a fresh list once in every 4 years. But Sub-s. (2) of Section 79 provides expressly that when such a previous list is adopted for a particular official year it can be done subject to the provisions of Sections 75 and 76. In other words, an assessment list being for a particular official year when an assessment list is prepared in an earlier year is adopted it becomes the list for such subsequent year subject to the procedure laid down in Sections 75 and 76. The list so adopted has therefore to be published, has to invite objection and has to be authenticated in the manner prescribed by Section 76(6) after disposing of the objections, if any, and it is then only that it becomes u/s 76(6) conclusive evidence of the valuation and the tax assessed thereon for that particular official year. The word, "if" appearing in sub-section (2) of Section 79 is obviously a mistake and must be read as "as if" because the word "if" standing by itself makes no sense at all. Section 79 has to be construed to mean that though a Municipality need not prepare a fresh assessment list every year and need prepare such list once in every 4 years and can adopt an earlier assessment list such an adopted list becomes the assessment list for that particular year as if it was a, new list and to which Section, 75 and 76 apply".

28. In view of the two decisions of the Supreme Court referred to above, the contentions of Sri Karanth have to be upheld and the objection filed by the respondent before the Municipal Council to the demand notice issued for the year in question, has to be entertained and dealt with in accordance with the provisions of the Municipalities Act. The other provisions of the Act in the matter of appeal, etc., against any decision to be rendered, by the Municipality would also be applicable after the said objections are decided.

29. In this view of the matter, the order of the First-Additional Chief Judicial Magistrate, Mangalore, made in Mis. Case No. 42/1977 dated 13-6 1978 and the order passed by the District and Sessions Judge, Dakshina Kannada, Mangalore in C.R P. No. 35/1978 dated 26 3-1979 filed against the order of the Chief Judicial Magistrate, are to be set aside and the matter is remitted to the Court of the I Additional Chief Judicial Magistrate, Dakshina Kannada at Mangalore and he is directed to take back the appeal, M.C.No. 42 of 1977 to file and dispose it of in accordance with law and in the light of my observations made in this order.

30. It is ordered accordingly.

As a result, the Rule is made absolute. No costs.