(2012) 01 AHC CK 0544

In the Allahabad High Court

Case No : Writ Tax No. 783 of 2009

Pandu Nagar H-2 Sudhar Samiti and Others APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 12-01-2012

Acts Referred:

Constitution of India, 1950 — Article 246X
Uttar Pradesh Municipal Corporation Act, 1959 — Section 119(1), 172(1), 172(3), 174, 537

Citation : (2012) 01 AHC CK 0544

Hon'ble Judges : R.K. Agrawal, J;B. Amit Sthalekar, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Connect and list alongwith Writ Petition (Tax) No. 1129 of 2011.

2. In Writ Petition (Tax) No. 1129 of 2011 wherein similar issue is involved, following order has been passed by this Court on 28.9.2011:

We have heard Shri Umesh Narain Sharma, Senior Advocate assisted by Shri Chandan Sharma for petitioner in Writ Tax No. 1455 of 2011 and Shri K.N. Tripathi, Senior Advocate assisted by Shri K.K. Roy in Writ Petition No. 1129 of 2011. Shri S.D. Kautilya appearing for Nagar Nigam, Allahabad has entered appearance in both the writ petitions and has filed counter affidavit in Writ Tax No. 1129 of 2011.

These writ petitions are directed against the alleged illegal, arbitrary and unreasonable enhancement of rates and assessments of the house tax made by the Nagar Nigam, Allahabad w.e.f. 1.4.2011. The petitioner in Writ Petition No. 1455 of 2011 has also challenged the order dated 21.9.2011 passed by the Principal Secretary, Urban Development, Lucknow whereby the execution of resolution Nos. 340 and 342 of the Municipal Corporation has been suspended by the State Government in exercise of its powers u/s 537 of the U.P. Municipal

Corporation Act, 1959.

It is submitted by Shri Umesh Narain Sharma and Shri K.N. Tripathi that the House Tax is imposed by the Municipal Corporation u/s 172 (1) of the Act, for which the assessment and levy is made under sub-section (3) of Section 172 of the Act. The powers to impose the municipal tax has not been delegated to Municipal Commissioner u/s 119 (1) (a) of the Act. The Municipal Commissioner can only determine the minimum monthly rates of rent u/s 174 (b) for which the method of assessment is provided under U.P. Municipal Corporation (Property Taxes) Rules 2000.

It is submitted that a GIS survey appears to have been carried out along with the survey of wards on the basis of which the Municipal Commissioner, without any authority from the Municipal Corporation, increased the rates of tax and made assessments, which have in many cases increased the House Tax to 10 to 20 times. There is no basis whatsoever nor would any GIS survey determine the extent of constructions. It could at the best indicate the areas, where new colonies have come up or new constructions have been made.

It is submitted that the elected body of the Corporation did not agree with the Municipal Commissioner both on increase of rates and the basis of assessment and consequently resolved by its resolution No. 342 dated 6.7.2011 to approve increase of House Tax only for 11% to 13%, after noticing that the Municipal Commissioner has not carried out the directions issued by the elected body to place the records before it. The House in its meeting resolved to cancel the revised assessments. The State Government had without considering the grounds on which it could act u/s 537 of the Act suspended the effect of the resolution passed by the Nagar Nigam.

In the counter affidavit filed by Shri S.D. Kautilya the basis of increase of rates and assessment has not been given. He has relied upon a strange procedure in which a notice was published for the house owners of the entire city to look into the website and the notice board of the Municipal Corporation to the increased rates and thereafter file objections. It is admitted that the notice published on the website and on the notice board of the Nagar Nigam did not give the basis of increase. Only increased value was indicated. The Municipal Commissioner has invited almost every house owner at Allahabad to read the notice board and to file objections. Instead of revising the rates and assessments by carrying out survey of the houses each house owner has been asked to look into the list and file objections. Such a procedure is neither provided nor can be conceived in a civilised society.

We direct the Nagar Nigam to produce the basis of increase of rates of rent and of asessments, and the reasons as to why it did not choose to accept the resolution of the elected body of the Municipal Corporation, which alone has the authority under Article 246-X of the Constitution of India to levy taxes. It will be open to the Municipal Commissioner to file a fresh better counter affidavit giving all these details.

Until further orders, the effect and operation of the impugned Government Order dated 21.9.2011 and notice dated 8.7.2011 shall remain stayed. We also stay the realisation of the increased house tax. It will be open to the house owners having properties in Municipal Corporation, Allahabad to continue to deposit the house tax at the rates on which they were assessed and were depositing the house tax prior to 1.4.2011.

Connect with Writ Petition No. 44856 of 2011 and list on 17.10.2011.

3. For the reasons mentioned in that writ petition, the petitioner is entitled for the interim relief on the same terms.