

(2002) 09 BOM CK 0046

In the Bombay High Court

Case No : Writ Petition No's. 547, 588 and 589 of 1988

Prakashchandra Panpalia and Another

APPELLANT

Vs

Village Panchayat

RESPONDENT

Date of Decision : 25-09-2002

Acts Referred:

Bombay Village Panchayats Act, 1959 — Section 129, 129(8)

Citation : (2003) 1 ALLMR 1061 : (2003) 3 BomCR 314 : (2003) 1 MhLj 573 : (2003) 1 MhLj 572

Hon'ble Judges : V.M. Kanade, J;R.K. Batta, J

Bench : Division Bench

Advocate : N.R. Saboo, for the Appellant; R.B. Pendharkar, for the Respondent

Final Decision : Allowed

Judgement

V.M. Kanade, J.—The petitioners, in these petitions, have challenged the demand notices issued by the respondent Village Panchayat, Mandawa, under Article 226 of the Constitution of India. Since the challenge, in all these three petitions, is on identical grounds, we propose to decide and dispose of these three petitions by common Judgment.

2. The petitioners, in Writ petition No. 547/88, are challenging demand notices dtd. 20-2-1988 annexed at Annexures "H and I" to the petition. By the said two demand notices the Sarpanch of the Village Panchayat, Mandwa had demanded an amount of Rs. 4544.00/- and Rs. 282.50/- respectively in respect of the property assessment tax for 30 years and 11 years respectively.

3. The petitioner viz. Shri kishan Panpalia in Writ Petition No. 588/88 is challenging the demand notice dtd. 11-3-1988 which was a notice demanding an amount of Rs. 5436.25/- with respect to the house assessment and public health tax for the period up to 1987-88.

4. The petitioner viz. Smt. Shantabai Panpalia in Writ Petition No. 589/88 is challenging the demand notice dtd. 20-2-1988 annexed at Annexure "E" and bill

dtd. 1-9-1987 annexed at Annexure "D", total amount of Rs. 7924.507- and Rs. 797- respectively for non payment up to 1-9-1987 and from 1-4-1987 to 31-3-1988.

5. The brief facts are as follows:

The petitioners' family in W. P. No. 54771988 was owning ancestral house situated at village Mandawa which was originally in Tiwasa Taluka. The house of the petitioner was earlier recorded in the name of the father of the petitioners and in the family partition of 1957 the house was allotted to the share of the petitioner No. 2. The Village Panchayat, Mandawa respondent in all these petitions, came into existence in the year 1962. The respondent is a Panchayat constituted under the Bombay Village Panchayats Act, 1958 and under the relevant provisions of the said Act, the respondent Panchayat has been empowered to impose various taxes. The procedure for imposition of taxes has been laid down in the Maharashtra Village Panchayats Taxes and Fees Rules, 1960. The power of imposition of tax is provided by Rule 3 (a) of the Tax Rules and for that purpose the Panchayat has to pass resolution before proposing to impose the tax and the rate has also to be made known to the public at large and an opportunity has to be given to the public to raise objection and thereafter final notification is published under rule 4. There is a provision to prefer an appeal under rule 5 and the Panchayat has to adopt the basis of tax either on capita! or on the annual letting value of the lands.

6. It is the case of the petitioners that they were served with the demand notice asking them to pay arrears of past 30 years. It is the case of the petitioners, in brief, that they have paid taxes as per the rates which were prevailing earlier and accordingly they have annexed receipts to that effect to their petitions. The petitioners in W. P. No. 547788 have annexed receipt at Annexure "E" and "F" which show that they had made payment for the year 1973-74 to 1981-82 @ Rs. 80/- per year which was the rate prevailing then and had paid total amount of Rs. 976/- and also Rs. 640/- which was the building tax for the year 1974-75 to 1980-81 @ Rs. 80/- per year. The receipt of this amount is not disputed by the respondent. However, it is stated in the reply that the rate of Tax was Rs. 375/- per year and not Rs. 80/- per year.

7. The petitioners have challenged the demand notices inter alia on the ground that u/s 129 of the Bombay Village Panchayats Act, 1958, the Village Panchayat cannot recover the tax beyond 3 years as provided by section 129, Sub-clause (8) of the Bombay Village Panchayats Act, 1958 (hereinafter referred to as "the said Act").

8. We have heard the learned counsel appearing on behalf of the petitioners and the learned Counsel appearing on behalf of the respondent at length. We have perused the writ petitions, annexures thereto and reply filed by the respondent. Under the said Act, under Chapter IX, the procedure for taxation and recovery of claims has been laid down. Section 128 of the said Act lays down the power of

Panchayat Samiti to increase taxation on Panchayat and Section 129 lays down the procedure for the recovery of taxes and other dues. Section 129 reads as follows :

"Section 129. Recovery of taxes and other dues.--(1) When any tax or fee has become due, a panchayat shall with the least practicable delay, cause to be presented to the person liable for the payment thereof a bill for the amount due from him, specifying the date on or before which the amount shall be paid.

(2) If any person fails to pay any tax or fee or any other sum due from him to a panchayat under this Act or the rules on or before the specified date of payment, the panchayat shall cause a writ or demand in the prescribed form to be served on the defaulter.

(3) The presentation of every bill under Sub-section (1) and the service of every writ of demand under Sub-section (2) shall be effected by an officer or servant of the panchayat in this behalf-

(a) by giving or tendering the bill or writ to the person to whom it is addressed; or

(b) if such person is not found, by leaving the bill or writ at his last known place of abode, if within the limits of the village, or by giving or tendering the bill or writ to some adult male member or servant of his family; or

(c) if such person does not reside within the limits of the village, and his address elsewhere is known to the Sarpanch or other person directing the issue of the bill or writ, then by forwarding the bill or writ, to such person by registered post, under cover bearing the said address; or

(d) if none of the means aforesaid be available, then by causing the bill or writ to be affixed on some conspicuous part of the building or land, if any, to which the bill or writ relates in the presence of at least two panchas.

(4) If the sum for which a writ of demand has been served is not paid within thirty days from the date of such service, the panchayat may levy such sum by distraint and sale of the movable property of the defaulter in the prescribed manner.

(5) Fees for-

(a) every writ of demand issued under Sub-section (2),

(b) every distress made under Sub-section (4),

(c) the costs of maintaining any livestock seized under Sub-section (4)

shall be chargeable at such rates as may be prescribed. (6) Notwithstanding anything contained in the foregoing Sub-sections, any tax or fee payable on demand in accordance with the rules shall be recoverable in such manner as may be prescribed. (7) If a panchayat is unable to recover a tax or fee or other sum

due to it as aforesaid, it may furnish to the Mamlatdar, Tahsildar or Naib-Tahsildar or Mahalkari a statement of the arrears due with a request for the recovery of the same and on receipt of such statement of arrears, the Mamlatdar, Tahsildar or Naib-Tahsildar or Mahalkari shall proceed to recover the same as an arrear of land revenue.

(8) (a) If a panchayat fails to recover any tax, fee or any sum due to it, or neglects to take action under Sub-sections (2) and (4) of this section. The Panchayat Samiti may apply to the Collector to recover the same as arrear of land revenue.

On receipt of such application, the Collector shall, after holding such inquiry as he thinks fit (and after ascertaining that three years from the date when the same has become recoverable have not elapsed) proceed to recover the sum as an arrear of land revenue unless such sum is, u/s 130, directed to be written off."

From the perusal of the section, it is clear that Sub-clause (1) of Section 129 lays down that as soon as any tax or fee becomes due, the Panchayat shall with the least practicable delay, issue a bill to the person liable for the payment for the amount due from him, specifying the date on or before which the amount should be paid. Sub-clause (2) lays down, if the said amount is not paid within a particular period, a writ of demand in the prescribed form should be served on the defaulter. The procedure for service of the said writ is laid down under Sub-clause (3), Sub-clause (4) states if the said amount is not paid within 30 days from the date of service of the writ of demand then the Panchayat is authorised to levy sum by distraint and sale of the disputed property in the prescribed manner. Sub-clause (5) lays down the fees which are to be levied for the purpose of service of writ of demand, distress etc.. Sub-clause (6) lays down that tax or fee which is payable on demand should be recovered in the manner which is prescribed. Sub-clause (7) lays down the procedure if the Panchayat is unable to recover the tax and it lays down that if the Panchayat is unable to recover the tax then information should be furnished to the Mamlatdar, Tahsildar or Naib-Tahsildar or Mahalkari who should proceed to recover the same as arrears of land revenue. Sub-clause (8) is the relevant provision where it is laid down that if a panchayat has failed to recover any tax, fee or any sum due or has neglected to take action under Sub-sections (2) and (4), then the Panchayat should apply to the Collector to recover the same as arrears of the land revenue. Sub-clause (8) further provides that the Collector shall hold an inquiry and shall also ascertain that the period of three years from the date when the said amount has become recoverable has not elapsed and then shall proceed to recover the same as arrears of land revenue.

9. Perusal of the said section clearly shows that Section 129 is self contained code which lays down the procedure for recovery of taxes. In the instant case, it is an admitted position that no procedure was followed by the respondent in issuing either writ of demand in prescribed form nor the Panchayat has taken any steps under Sub-clause (4) for the purpose of sale of the property of the

defaulter in the prescribed manner. Further, it is an admitted position that the Panchayat also had failed to recover the taxes and had not reported this fact either to the Mamlatdar or Tahsildar or Naib-Tahsildar or Mahalkari. As such no action was initiated by them for the purpose of recovery of the said tax as arrears of land revenue. Thus, in the instant case, in our view the provisions of Section 129, Sub-section (8) will be clearly applicable as it clearly prescribes the limitation of 8 years beyond which the taxes cannot be recovered. In the instant case, the dispute between the parties is regarding the quantum of tax. It is the case of the petitioners that tax was payable @ Rs. 80/- per year whereas according to the respondent it was at Rs. 380/- per year. Without going into the correctness of the rival claims, it is an admitted position that the demand which is made by the respondent is for recovery of tax beyond 3 years. In fact, in the case of the petitioners in W. P. No. 547/88 it is the demand for recovery of taxes for 30 years. In our view, in view of the clear provisions of section 129, Sub-clause (8), no recovery can be made from the petitioners for the period beyond 3 years. Therefore, at the highest the respondent would have claimed recovery of taxes for 3 years before the said demand notice was issued.

10. Shri Pendharkar, learned Counsel appearing on behalf of the respondent vehemently argued and submitted that the provision of Sub-section (8) of section 129 does not impose any limitation of 3 years to the recovery of tax. He has taken us through various provisions of the Act including the definition of Panchayat and Panchayat Samiti as also the provisions of Maharashtra Village Panchayats Taxes and Fees Rules, 1960. He also invited our attention to Rule 20 of the said Rules which was pertaining to the recovery of tax which states that the tax should be recovered by the Sarpanch or by any other person duly authorised by the Panchayat. He submitted that, therefore, under the said Rules, no limitation was prescribed.

11. Shri Pendharkar, learned counsel appearing on behalf of the respondent further submitted that all the 3 petitions should be dismissed on the ground that the petitioners had suppressed material facts and have made false statement in the petitions and, therefore, on that ground alone the said petitions are liable to be dismissed. He relied upon the Division Bench Judgment of this Court in the case of S.H. Motor Transport Co. Vs. Motilal and Others, and in the case of Satpalsingh Arora v. Santdas Prabhudas Malkani, reported in 1975 Mh.LJ. 292. He submitted that the petitioners had suppressed the fact that the notices were served on the petitioners from time to time and that they were about the resolutions being passed for increase in tax. He took us through the reply filed by the respondent in which the copies of the notices issued and the resolutions passed from time to time were annexed. He also submitted that one of the Resolution which is annexed to the petition is incomplete because the auditor's objection was not reproduced in the said resolution. He, therefore, submitted that the petitioners had not come to the Court with unclean hands. He drew our attention to the following paragraphs in the Judgment reported in S.H. Motor Transport Co. Vs. Motilal and Others, , particularly paras 6 and 7 which are

reproduced hereinbelow :

"6, When the learned counsel for the petitioner opened his case at the hearing, a preliminary objection was raised on behalf of respondent No. 1 that the petitioner has suppressed material facts and has obtained orders on misleading statement that the petitioner is not made liable to pay back wages or reinstatement by any order and on this ground the petition is liable to be dismissed. We have heard the parties on the preliminary objection as well as on merits and, in our opinion, there is considerable force in this preliminary objection raised on behalf of respondent No. 1, though we have not preferred to dismiss the petition upholding only the preliminary objection.

7. The petitioner has stated in paragraph 5 of the petition that the State Industrial Court had set aside the order of the Additional District Magistrate dated 4th August, 1960 by its order dated 10th September 1961. It is now admitted that this is not true. The order of the Additional District Magistrate directing reinstatement and payment of back wages on 4-8-1960 has never been set aside. The petitioner has also not made any reference to the second order of interim remand passed by the State Industrial Court on 14-11-1961. Actually as it is now clear and no longer disputed by the petitioner the State Industrial Court never finally decided the revision application until it was disposed of by its order dated 15-3-1962. During pendency of the revision applications, at the request of the petitioner himself, the State Industrial Court seems to have been persuaded to remit the matter twice to the Assistant Commissioner of Labour to give an opportunity to the petitioner to lead evidence and to record a clear finding as to whether Motilal was an "employee" within the meaning of the C. P. and Berar Industrial Disputes Settlement Act, 1947. All along the State Industrial Court was in seen of the case and what was required to be done by the Assistant Commissioner of Labour was to record a finding after recording evidence of both sides. The Assistant Commissioner of Labour in fact, submitted his findings on both the occasions. Somehow the petitioner either has not realised the relevance and importance of these facts or has deliberately omitted to (refer to them in the petition. The result of these omissions and an entirely untrue statement that the order of the Additional District Magistrate dated 4-8-1960 was set aside is that the petitioner purported to represent to this Court in the petition that there was no order of reinstatement or payment of back wages that the only finding that was recorded was that Motilal was an employee and yet the State Industrial Court had dismissed the revision application which had the effect of making the petitioner liable for back wages as well as reinstatement of respondent No. 1. We cannot but express too strongly our disapprobation of the utter lack of care and, therefore, bona fides displayed by the petitioner in this case in reciting the sequence of events as they took place when the proceedings were going on in the lower courts and in representing to this Court that the order of the Assistant Commissioner of Labour was set aside. We fail to see how any one having participated in the proceedings or having before him the copies of the orders of the various authorities could at all represent to this Court that the order of the

Additional District Magistrate was set aside. By no process of thinking or interpretation it could be said that there is any indication in the orders of any authorities that the order of the Additional District Magistrate was ever set aside or even put in suspense. We would have been justified in dismissing this petition upholding the preliminary objection on this short ground. Petitioners who invoke the extraordinary jurisdiction of the High Court under Article 226 and/or Article 227 of the Constitution are required to exercise utmost care, inform themselves fully of every stage of the proceedings that has taken place upto the date the petition is filed, give a full and true account of those proceedings, file all the necessary documents in support of their averments and then claim relief on the basis of facts disclosed in the petition. It is not open to a petitioner under Article 226 or Article 227 of the Constitution to pick and choose his own facts or to determine in advance what is relevant and material, omit to mention all material facts and proceeding and orders and the claim that he has acted bona fide even though he has made untrue statements, omitted to inform the Court of all the proceedings and the orders passed at different stages in the proceedings upto date and claim indulgence."

12. He also invited our attention to the Judgment of Division Bench of this Court reported in 1973 Mh.LJ. 292 (cited supra) and particularly to para 30 which reads as follows:

"30. That the petitioner becomes disentitled to any relief from this Court on making untrue statements before the Court is now well established. Under similar circumstances this Court held that the petitioner was disentitled to any relief, in a decision reported in S. H. Motor Etc. v. Motilal. On finding several facts suppressed or misstated this Court observed (see p. 591):

Petitioners who invoke the extraordinary jurisdiction of the High Court under article 226 and/or article 227 of the Constitution are required to exercise utmost care, inform themselves fully of every stage of the proceedings that has taken place upto the date the petition is filed, give a full and true account of those proceedings, file all the necessary documents in support of their averments and then claim relief on the basis of the facts disclosed in the petition. It is not open to a petitioner under article 226 or 227 of the Constitution to pick and choose his own facts or to determine in advance what is relevant and material, omit to mention any material facts and proceedings and orders and then claim that he has acted bona fide even though he has made untrue statements, omitted to inform the Court of all the proceedings and the orders passed at different stages in the proceedings upto date and claim indulgence. In State of Bombay vs. Morarji Chief Justice Chagla uttered a similar warning when he said (see p.332):

But it is not sufficient that a party should come to this Court and make out a case that a particular requisition order is not valid. In order to get that relief from the Court on a writ petition, not only must he come with clean hands, not only must he not suppress any material facts, not only must he show the utmost good faith but he must also satisfy the Court that the making of the order will do

justice and that justice lies on his side.

In *Ashok v. Dean, Medical College, Nagpur* (a decision to which my learned brother was a party) this Court observed;

In invoking the extraordinary jurisdiction of the Court a scrupulous regard to truthfulness of statements and averments in the petition or in the return is expected.

Having regard to the principle which is now well established, we think that we will be justified in dismissing this petition only upon the conduct of the petitioner which we have set forth above and the several misstatements showing want of bona fides in the petition, but as we have shown it is not necessary to rest our decision merely on that."

13. So far as the first submission of the learned counsel appearing on behalf of the respondent that there is no limitation prescribed by Section 129, Sub-clause (8) of the said Act is concerned, the same can not be accepted. Rule 20 of the said Rules reads as follows:

"20. Recovery of tax,--The tax shall be recovered by the Sarpanch or by any other person duly authorized by the panchayat in this behalf. A receipt for every such payment shall be given by the person receiving it."

The said Rule does not prescribe any limitation for recovery of tax. However, the said Rule is obviously subject of substantive provisions under the Act viz. Section 129 which pertains to the recovery of taxes as observed above. Secondly, the section 129 lays down the entire procedure for recovery of taxes. In the instant case, it is an admitted position that the Panchayat had neither issued writ of demand nor had taken steps for the sale of the property of the petitioner. The respondent also had not taken any steps for the recovery of tax as arrears of land revenue through Mamlatdar or Naib Tahsildar etc. as provided under Sub-clause (7) of section 129. The respondent having been failed to recover the said tax within the reasonable period, could not recover the tax beyond the period 3 years as prescribed u/s 129, Sub-clause (8). Thus, in our view the demand notices are patently illegal as they are clearly in breach of the provisions of Section 129, Sub-clause (8) of the said Act as they seek to recover taxes beyond three years.

14. We do not propose to decide the controversy regarding the quantum of tax as raised by the petitioners and respondent. Respondent would be at liberty to recover tax as enhanced, however, not beyond 3 years from the demand notice and that too after adjusting the amount already paid by the petitioners.

15. So far as the second contention of the learned counsel appearing on behalf of the respondent is concerned, the same also is not tenable and acceptable as in our view, we do not find that any patent false statement or suppression of fact has been made by the petitioners. We had asked the learned counsel appearing on behalf of the respondent to point out which particular paragraph or statement

in the paragraph was false. The learned counsel appearing on behalf of the respondent stated that in para No. 3, first four lines are false. Similarly, last 3 lines from the said para are also false. He further submitted that in para No. 3, last four lines are also false statement and lastly he stated that 3 lines in para No. 5 are false statement. The averments in three petitions are identical and, therefore, we propose to reproduce the alleged false statement from Writ Petition No. 547/88 which are reproduced hereinbelow.

"That the respondent appears to have imposed the property tax in the Village with effect from 1962-63. Even though the tax was imposed, the procedure for imposition of tax as submitted above, appears not to have been followed."

"In the said meeting, it was also resolved that a notice of the proposed levy of tax should be published by beat of drums, but in fact it appears that it was not published."

"Even though such Resolution were passed for assessment of the taxes, it appears that no further steps were taken by the Panchayat for revision of the assessment and the respondent by the Resolution No. 3 dated 8.2.68 decided to issue notices for recovery of taxes for the years 1961-62 to 1967-68."

16. A bare reading of the said statement in the petition, would clearly show that it cannot be said that they are false statements because the petitioner in the said backgrounds has mentioned that he did not have complete information about the imposition of taxes or the resolutions which were passed. From the perusal of the reply filed by the respondent under the notices which are annexed to the reply, it clearly demonstrates that the said notices were issued not in the name of the petitioner but in the name of his father. Therefore, it cannot be said that the said notices were either served on the petitioner personally. Therefore, it cannot be said that the petitioner has made false statement in the petition. Similarly, the submission that while annexing the Resolutions passed by the Panchayat, the relevant audit note was not typed and, therefore, there was a suppression of fact, also in our view does not amount to suppression of fact. It is possible that the copy of the resolution which is supplied to the petitioner did not contain the auditor's objection and, therefore, it can not be said that there is a deliberate suppression of fact. The second submission of the learned counsel appearing on behalf of the respondent, therefore, can not be accepted. There can not be any doubt regarding the propositions laid down by the Judgment cited by the learned counsel appearing on behalf of the respondent which is reproduced hereinabove. In fact, the Apex Court subsequently in catena of cases which are reported has in a strong terms deprecated the practice of suppression of facts and making false statements in the petition and has directed that stringent action be taken against such petitioner. However, in the instant case, we do not find there there is any such false statement made by the petitioners or any suppression of material fact.

17. In the result, the Writ Petitions are allowed. The demand notices which are issued against the petitioners are liable to be quashed and set aside. It is made

clear that the respondent shall be at liberty to recover tax 3 years prior to the date of the demand notices and as per the rate which is prevalent at the relevant period. The learned counsel appearing on behalf of the respondent was not in a position to state as to whether recovery for the subsequent years has been made or not. It is made clear that the interim relief which was granted was pertaining to the recovery of earlier arrears and interestingly while granting rule, this Court had granted stay of recovery for a period not exceeding 3 years only. The respondent is, therefore, at liberty to recover the tax upto 3 years prior to the issue of demand notices, if they have not already recovered the same.

18. The Rule is made absolute in terms of prayer Clause (a) in all the petitions subject to respondent's right to recover tax upto 3 years prior to the issue of the said demand notices. Under the circumstances, there shall be no order as to costs.