(1981) 11 AP CK 0010

In the Andhra Pradesh High Court

Case No : W.A. No. 228 of 1979

Rate Payers Association, Kovvur — APPELLANT

Vs

Commissioner and Special Officer, Kovvur Municipality — RESPONDENT

Date of Decision : 25-11-1981

Acts Referred:
Constitution of India, 1950 — Article 14, 309

Citation : AIR 1982 AP 235

Hon'ble Judges : Alladi Kuppuswami, C.J

Bench : Single Bench

Advocate : C. Poorniah, for the Appellant; D. Venkata Reddy for Municipalities, for the Respondent

Final Decision : Dismissed

Judgement

Alladi Kuppuswami, C.J.—This appeal is directed against the judgment of our learned brother Jeevan Reddy, J. dismissing the writ petition filed by the appellant association herein for the issue of a writ of certiorari to quash the special notices issued to the rate payers in Wards Nos. 5 to 8, 12 and 13 of Kovvuru town of West Godavari District as arbitrary, capricious, illegal and unenforceable.

2. The case of the appellant, the Rate Payers Association, Kovvuru as stated in the affidavit of its President is as follows: The association is registered under the Societies Registration Act and one of the objects of the association is to make representation to the Municipal Council and the Local Government to cater to the needs of the residents of Kovvuru town relating to sanitation, public health, communications etc. The writ petition was filed on behalf of all the tax payers of Kovvuru town.

3. In the year 1976 the Commissioner and Special Officer, Kovvuru issued special notice under the Andhra Pradesh Municipalities Act to all the owners of the buildings in Wards 5 to 8, 12 and 13 increasing the existing tax. The said

enhancement ranged between 30% to 700%. The enhancement was made without any basis and without following the procedure prescribed under the Act. No such notices were issued in regard to the owners of the buildings in Wards 1 to 4, 11 and 15 of the same town.

4. The special notices issued to the persons concerned can be divided into five broad categories, depending upon the reason given for the enhancement, which are as follows:

1. The previous assessment was low.

2. As per prevailing value and rental value.

3. As per the present value, as rent are increased;

4. As the value of the site has increased;

5. As the value of site and the rent has increased;

5. The case of the petitioner is that beyond this cryptic statement no particulars were given as to the increase in the value of the property or the rental value or why the assessment was considered to be low and why it should be increased. In the absence of particulars they were handicapped in the matter of making representation to the respondent against the notices, or in the matter of preferring appeals after orders were passed on considering their representations.

6. It was further contended that the action of the respondent in issuing the special notices with the object of increasing the tax in regard to owners of the buildings in Wards Nos. 5 to 8, 12 and 13, without issuing similar enhancement notices in regard to Wards Nos. 1 to 4 and 11 and 15 is discriminatory and opposed to Article 14 of the Constitution.

7. Our learned brother Jeevan Reddy, J. dismissed the writ petition rejecting the contention of the appellant that the notices did not contain adequate material to enable the owners or occupiers of the buildings to make representations. He however observed that the aggrieved parties had a remedy by way of preferring an appeal under R. 22 of the Rules contained in Schedule II of the A.P. Municipalities Act, to the appropriate authority. He therefore directed that the owners or occupiers may be permitted to prefer an appeal wherein they can put forward all their objections, including the material which they could not produce before the assessing authority, which is relevant for the purpose of the case. The authorities were directed to entertain the appeals, if preferred within 15 days from the date of the order. He further directed that there should be stay of collection of enhanced tax provided the persons concerned paid the pre-existing tax and 1/3rd of the enhanced tax due pending disposal of the appeals. This appeal is preferred against the judgment of Jeevan Reddy, J. as stated above.

8. Sri D. Venkata Reddy learned counsel for Kovvuru Municipality raised a preliminary objection, that the writ petition itself was not maintainable by the Rate Payers Association, on behalf of all the owners and occupiers of the

buildings in Wards Nos. 5 to 8, 12 and 13 of Kovvuru town. He drew our attention to certain decisions holdings that such a writ petition, at the instance of an association, is not maintainable. He also submitted that the same question was referred to Full Bench by Jayachandra Reddy, J., in W.P. No. 1098 of 1980 dated 5-12-1980. We are, however, disinclined to permit the respondent''s learned counsel to raise this objection at this stage. When the writ petition was filed by the Rate Payers Association, the respondent should have raised the question of maintainability of the writ petition at the earliest stage viz. when he filed the counter-affidavit. This would have enabled the petitioner to rectify the defect, if any, and if this objection has been sustained the rate payers, i.e. the occupiers or the owners of the buildings, could have preferred separate writ petitions, against the individual notices, questioning the special notices issued to each one of them. As no such objection was raised in the counter-affidavit, the Rate Payers Association was permitted to continue the writ petition, filed on behalf of the owners and occupiers of the buildings. Even at the stage of arguments no such contention was raised. It is only at the time of hearing of this writ appeal the question of maintainability of the writ petition is being raised for the first time. We are not therefore inclined to allow the respondent to raise this contention. In this view it is unnecessary for us to go into the question whether in these circumstances, the Rate Payers Association is entitled to maintain the writ petition on behalf of all the owners and occupiers of the buildings in Wards Nos. 5 to 8, 12 and 13 in regard to which we find there is some difference of opinion between decisions of this court.

9. Sri C. Poornaiah, learned counsel for the appellant, in support of his contention that the special notices issued are illegal and contrary to the rules, relied upon a decision of a Division Bench of this court in Tax Payers Association v. Special Officer Tirupathi, (1977) 2 APLJ 167 : (AIR 1977 NOC 360) in that case this court had to consider the validity of special notices enhancing the tax where the reason given for the enhancement was inadequate assessment. The learned Judges observed :

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The rate payers would not have any material before them at the time of presenting a revision petition or subsequently at the time of presenting an appeal against the decision of the Commissioner, these notices must be struck down. It is a mockery of all ordinary principles and rules of administration of law to allow these special notices to stand or to allow municipal authorities to issue special notices of this kind in this manner. All the necessary materials which would enable the assessee concerned to present a proper case in revision against the increase in assessment or against the increase in the annual rental value must be furnished in the special notice. Since this is not done the special notices in all these cases are quashed and set aside.

10. The learned counsel submitted that this decision was also followed by a Division Bench consisting of Sambasiva Rao and Narsing Rao, JJ. in Writ Petition

No. 4121 of 1976 dated 31-7-1977 and again by the same Bench in a subsequent decision. He also submitted that the decision has been followed by several single Judges of this court in other matters.

11. Sri D. Venkata Reddy learned counsel for the Municipality contended that this decision is not correct and requires reconsideration as it is opposed to an earlier Division Bench decision of this court in The Vijayawada Rate-payers Association, Bezwada and another Vs. The State of Andhra Pradesh and others, . In that case the Vijayawada Municipality issued the special notices mentioning the reason for the enhancement as ''since the previous tax levied is insufficient''. Considering the facts of that case the learned Judges observed (at p. 313) :

that the notices gave all the particulars of the assessment required by the owner of the building namely, the description of the property, the period for which the assessment was made, the annual rental value of the property and the amount of tax imposed. It also gave the reasons though in general terms, for increasing the amount of tax. The purpose of the notice was to inform the party concerned as to his liability so that he might have an opportunity to get it revised.

The learned Judges rejected the contention that the notices were not in compliance with the provisions of R. 9 of Schedule IV of the Madras District Municipalities Act, which is in pari materia with R. 11 of Schedule II of the Andhra Pradesh Municipalities Act.

12. Unfortunately this decision was not brought to the notice of the Division Bench, which decided the case in Tax Payers Association v. Special Officer Tirupathi (AIR 1977 NOC 360) (Andh Pra) (supra). After hearing the counsel on both sides at length we are inclined to take the same view as in the earlier Division Bench decision of this Court in The Vijayawada Rate-payers Association, Bezwada and another Vs. The State of Andhra Pradesh and others,

13. At this stage it is convenient to set out the relevant rules :

Rule 9. (1) Notwithstanding anything in R. 8 valuation officers shall be appointed by the Government in the case of any Municipality notified by the Government. The valuation officers shall exercise the powers, discharge the duties and perform the functions, of the Commissioner under these rules in so far as they relate to the complete revision of the assessment books under R. 8. On the issue of such a notification, for the term ''Commissioner'' wherever it occurs in these rules in so far as they relate to such complete revision and the hearing of revision petitions filed in connection therewith, the term ''valuation officers'' shall be deemed to have been substituted.

(2) (a) The Government shall appoint the valuation officers and sanction to them such establishment as the Government may deem necessary for the purpose of enabling the said officers to carry out their duties.

(b) The Government shall pay out of the Consolidated Fund of the State, the salaries, allowances, leave allowances, cost of training, pension and contributions, if any towards the provident or provident-cum-pension fund of the valuation officers and their establishment

(c) The Government shall recover from the council concerned the whole or such proportion of.

(i) the salary and allowances paid to the valuation officers and to their establishment and such contribution towards the leave salary and allowances, pensions or provident or provident-cum-pension fund of the valuation officers and of their establishment; and

(ii) the cost of training the valuation officers and their establishment as the Government may, by general or special orders, determine.

(3) The Commissioner shall, subject to the provisions of Rule 20, maintain the assessment books relating to the property tax in accordance with the valuation fixed by the valuation officer;

(4) The Commissioner shall when so requested by the valuation officers, make available to the valuation officers such staff as may be necessary for the exercise of the powers, discharge of the duties and performance of the functions of the valuation officers.

(5) The classification, methods of recruitment, conditions of service, pay and allowances and discipline and conduct of the valuation officers and the members of their establishment shall be regulated under Art. 309 of the Constitution.

10 (1) When assessment books have been prepared for the first time and whenever a general revision of such books has been completed the Commissioner shall give public notice stating that revision petitions will be considered, if they reach the Municipal Office within a period of sixty days from the date of such notice in the case of the Government or a Railway administration or a company and of thirty days from the said date in other cases. The notice shall be affixed to the notice board of the Municipal Office and on the same day be published in the Municipality by beat of drum:

Provided that in every case where there is an enhancement in the assessment, the Commissioner shall also cause intimation thereof to be given by a special notice to be served on the owner or occupier of the property concerned.

Provided further that, in every case where a special notice is required to be served on the owner or occupier under the first proviso the period of sixty days and thirty days referred to in this rule shall be calculated from the date of service of such special notice.

(2) Before the public notice under sub-rule (1) is given, it shall be open to the Deputy Director, the Director or the Regional Director of Municipal Administration to make a test check of the assessments made by the Commissioner. On the completion of the test check, such officer may give to the Commissioner such directions as he deems fit in regard to the correction of assessments and the

Commissioner shall carry out the directions before the public notice is given.

11. In every case which between one general revision and another the Commissioner assesses any property for the first time or increases the assessment on any property otherwise than in consequence of a general enhancement of the rate of which the property tax is leviable the Commissioner shall intimate by a special notice to the owner or occupier of such properly that a petition for revising the assessment will be considered if it reaches the Municipal Office within sixty days from the date of service of such notice in the case or the Government or a Railway Administration or a company, and within thirty days from the said date in other cases.

14. In this connection it has to be remembered that the notices for enhancement are issued to the owners and occupiers of the buildings. The reason for enhancement, in some cases was that the previous assessment was low, in others that the value of the property or the rental value of the property has gone up, and in other cases the enhancement of tax is due to the fact that additional constructions have been made. Whatever may be the reason in each of these cases, it is clear that the person concerned was aware of the increase in the property value or the rental value or the nature of the additional construction which he has made. We do not see any unfairness in not giving the particulars as to the increase in the property value or the rental value or the additional constructions made, as they are all facts within the knowledge of the persons concerned. It has been laid down in a number of decisions of this court as well as by Supreme Court that the principles of natural justice cannot be placed in a strait-jacket all that is necessary is that there should be fair play so that the person concerned should have an opportunity to make his representation and to state his case. Jeevan Reddy J. has very elaborately dealt with the matter and we agree with him entirely, that the absence of particulars, which are already known to the assessee does not vitiate the notices or violate the principles of natural justice.

15. Sri C. Poornaiah submits that as there is conflict between two Division Bench decisions of this court, the proper course would be to refer the matter to a Full Bench. We would have normally acceded to his request if the earlier Division Bench decision reported in The Vijayawada Rate-payers Association, Bezwada and another Vs. The State of Andhra Pradesh and others, had been brought to the notice of the later Division Bench But in the later Division Bench case no reference is made either to the earlier Division Bench decision, or any other decision on that point It is well settled that an earlier Division Bench decision has to be fallowed by subsequent Division Benches, unless they give adequate reasons for not accepting the earlier view in which case they should refer the case to a Full Bench.

16. Further, it has been brought to our notice that representations were made by most of the persons aggrieved by the special notices and those representations were considered personal hearings were given and in many cases assessments

were reduced. In some cases after orders were passed, appeals were preferred by those persons who felt aggrieved and the appeals are pending. As there is an adequate remedy by way of a representation (which is unfortunately termed revision in the rules) and an appeal on the ultimate orders passed after hearing the representations and such remedy has been availed by some of the persons aggrieved, we do not consider that this is a fit case for interference in a writ petition. The learned Judge was right in directing the appellate authority to dispose of the appeals preferred before it at an early date. He further went to the extent of permitting even persons who have not preferred appeals, to prefer appeals within 15 days from the date of the judgment and directed the authority to entertain such appeals without reference to any question of limitation. Such a direction is eminently reasonable in the circumstances of the case. Orders similar in nature have been passed by this court on prior occasions in a number of other matters, for example by Amareswari, J. in Writ Petn. No. 1494 of 1978 on 5-12-1978 which was confirmed in appeal by a Division Bench of this Court.

17. Sri C. Poornaiah also contended that the special notices issued to certain owners infringed Article 14 of the Constitution, as they are discriminatory, as these special notices are issued only in regard to the owners in Wards 5 to 8, 12 and 13 whereas no such notices were issued in regard to other wards.

18. The learned counsel for the Municipality however submitted that it was not the intention of the Commissioner to make any distinction between the wards, in respect of which special notices were issued, and the other wards. In the usual course the revision work was taken up and notices were issued in the first instance to the owners of buildings in wards Nos. 5 to 8, 12 and 13. This was intended to be followed in respect of the other wards also. In the meanwhile the appellant filed the present writ petition and questioned the validity of the notice as well as the authority of the Commissioner to revise the existing rate. In view of the pendency of the writ petition to the Commissioner naturally considered it not desirable to issue special notices to the owners of the buildings in the other wards, which would result in further litigation.

19. It is true that in view of his inaction no enhancement could be made in regard to other wards. Any such action, now would be barred by limitation as per rules. This consequence was brought about because of the attitude of the appellant in filing the writ petition. The association therefore cannot be allowed to complain of discrimination which was the unfortunate result of the conduct of the appellant itself in filing the writ petition and the writ appeal. We do not therefore see any substance in this contention of the appellant.

20. In the circumstances the writ appeal is dismissed. No costs.

21. Such of those, who have not preferred appeals against the special notices, would be permitted by the appellate authority to prefer appeals within one month from today. If such appeals are filed within the time, they will be considered and disposed of on merits. There will also be a direction to the respondent, in the

same terms as given by Jeevan Reddy, J. that there will be stay of collection of tax, pending disposal of the appeals, if any preferred, on condition the members of the appellant association pay the prevailing tax up-to-date and also 1/3rd of the enhanced tax.

