(2013) 09 AP CK 0137

In the Andhra Pradesh High Court

Case No : Writ Petition No. 11988 of 2013

Sathyanarayana Saw Mill APPELLANT

Vs

Andhra Pradesh Industrial Infrastructure Corporation Ltd. RESPONDENT

Date of Decision : 19-09-2013

Acts Referred:

Citation : (2014) 2 ALT 288

Final Decision : Allowed

Judgement

Challa Kodanda Ram, J.—Since in all these writ petitions, the demand of property tax by the respondent Nos. 1 and 2-Andhra Pradesh Industrial Infrastructure Corporation is being challenged as arbitrary, illegal and unauthorised, they have been heard together and are being disposed of by this common judgment. For the sake of convenience a reference is being made to the facts as set out in the affidavit filed in W.P. No. 11989 of 2013 to dispose of all these writ petitions. The petitioner is a proprietary concern running M/s. Sathyanarayana Saw Mill situated in Plot No. 37, Wood Complex, Nellore, challenges the special notice of property tax No. PT/WC/Nellore under Assessment No. 2037/APIIC, dated 05.02.2013 issued by the Zonal Manager & Commissioner, Industrial Area, Local Authority, The Andhra Pradesh Industrial Infrastructure Corporation Ltd., (for short "APIIC "), Industrial Estate, Nellore, as arbitrary, illegal and without jurisdiction and seeks to set aside the same.

2. As per the averments in the writ affidavit, the premises of the industry is assessed to property tax under the Municipalities Act from the date of purchase of the industrial land from the 1st respondent-Corporation and has been paying property tax regularly. The tax that was being paid by the petitioner was Rs. 1,908/- till 31.03.2011, but by the impugned notice petitioner received a demand notice for Rs. 8,347/- with effect from 01.04.2011. There is no rational in increasing the property tax so steeply and petitioner has been advised the property tax that is sought to be collected by the 2nd respondent is ultra vires the powers conferred on them. The petitioner further submits that by virtue of

the powers vested in Section 389-B of A.P. Municipalities Act, 1965 (in short "Act-1965") had been issued G.O.Ms. No. 519, M.A., dated 21.09.1994, delegating the powers vested in the notified municipalities to exercise such powers and functions satisfied (sic. specified) in the notification. In the said Notification Sections 85 to 95 provisions relating to property tax were also mentioned. Since 1994 petitioner has been paying property tax to the 1st respondent-Corporation at Nellore. While the things stood thus petitioner received the impugned demand notice. On enquiry petitioner came to understand that the respondents 1 and 2 have revised the property tax steeply by applying the rates as applicable to the Corporation and on further enquiry petitioner was informed that with effect from 08.10.2004 Nellore Municipality has been made as a Corporation and thereby they are entitled to collect property tax as applicable to the Corporation. Petitioner had further stated that though Section 679(F) of the Greater Hyderabad Municipal Corporation Act, 1955 (in short "GHMC Act"), authorised the Government to transfer the powers of the Municipal Corporation to the APIIC, as a matter of fact there was no notification issued by the Government u/s 679(F) of GHMC Act, notifying the APIIC to enable them to exercise the powers as vested in the Corporation and as such the demand and collection of taxes by the APIIC in the purported exercise of the powers delegated to them is arbitrary and totally unauthroised. For these reasons, petitioner prays to quash the impugned notice. Petitioner further relies on the Judgment of the Division Bench of this Court in W.P. No. 360162 of 2010, dated 09.08.2011 whereunder similar contentions were raised in relation to Kadapa Municipal Corporation and this Court had allowed the writ petition setting aside the demand.

3. Rule nisi was issued in this Writ Petition and counter affidavit has been filed on behalf of the 1st respondent, sworn by General Manager (Law), APIIC, Hyderabad. In the counter affidavit it has been admitted that "No new notification has been issued by the Government u/s 679-F of the GHMC Act. However, the earlier notification issued u/s 389-B of the Act-1965 would continue to be in force in the new Corporation area."

4. When the matter was taken up for hearing Sri. P. Roy Reddy, learned counsel appearing for the respondents No. 1 and 2 would submit that the earlier Division Bench judgment requires reconsideration on account of the fact that it was not brought to the notice of the Division Bench, sub-section (3) of the Section 13 and Section 14 of the Act 1965 (sic. 1994), by virtue of the operation of the statute, notification issued under the Act-1965 would continue to be in force in the newly formed Municipal Corporation area until such notifications are repealed, under the provisions of the Andhra Pradesh Municipal Corporations Act, 1994 (in short "Act-1994") or under the provisions of the GHMC Act.

5. The learned counsel also would rely on the judgments reported in State of U.P. and Another Vs. Synthetics and Chemicals Ltd. and Another, ; M/s. A-One Granites Vs. State of U.P. and Others, ; Municipal Corporation of Delhi Vs.

Gurnam Kaur, and Arnit Das Vs. State of Bihar, , wherein the principles of per incuriam and sub-silentio were explained, which are exceptions to the rule of precedent.

6. We had given our anxious thought to the arguments of the learned counsel for the 1st respondent-Corporation and on due analysis of the relevant provisions, we are unable to agree with the submissions of the learned counsel for the respondent-corporation.

7. For better appreciation of the arguments, it may be relevant to refer the following provisions of the Andhra Pradesh Municipal Corporation Act, 1994 and Greater Hyderabad Municipal Corporation Act, 1955:

Section 2: Definitions:-In this Act, unless the context otherwise requires,-

(a) ''Corporation'' means a Municipal Corporation deemed to have been constituted u/s 3;

(d) ''larger urban area'' means such area as the Governor may, having regard to the population of the area, the density of the population therein, the revenue generated for local administration, the percentage of employment in non-agricultural activities, the economic importance or such other factors as may be prescribed, specify by notification for the purposes of this Act;

(h) ''words and expressions'' used in this Act but not defined shall have the meanings assigned to them in the Hyderabad Municipal Corporations Act (Act II of 1956) 1955.

Section 3: Specification of larger urban area:-

(1) Where a notification is issued by the Governor specifying an area as a larger urban area under clause (d) of Section 2, a Corporation shall be deemed to have been constituted for such area.

(2) The Governor may from time to time, after consultation with the Corporation, by notification in the Andhra Pradesh Gazette, alter the limits of a larger urban area specified in the notification issued under clause (d) of Section 2, so as to include therein or to exclude therefrom, the areas specified in the notification.

(3) The power to issue a notification under sub-section (2) shall be subject to such rules as may be made in this behalf and to previous publication.

(4) The Corporation shall, by the said name, be a body corporate, having perpetual succession and a common seal with power to acquire, hold and dispose of property and to enter into contracts and may by its corporate name, sue and be sued.

(5) Where any local area which is within the jurisdiction of any other local authority is included in a larger urban area for which a corporation is constituted, the Government may pass such orders as they may deem fit as to the transfer to the Corporation or disposal otherwise, of the assets or institutions of any such

local authority in the local area and as to the discharge of the liabilities, if any, of such local authority relating to such assets or institutions.

(6) Where any local area for which a Municipality is constituted under the Andhra Pradesh Municipalities Act (Act VI of 1965) 1965 is declared as a larger urban area and a Municipal Corporation is constituted, then the Municipality functioning immediately before such constitution shall be deemed to have been abolished and the said Act shall cease to apply to such larger Urban area.

(7) Where a Municipality stands abolished under sub-section (6), it shall be competent for the Government to pass such orders as they may deem fit as to the transfer to the Corporations or disposal otherwise, of the assets or institutions of the abolished Municipality and as to the discharge of the liabilities, if any, of such Municipality relating to such assets or institutions.

Section 5: Composition of Corporation:-

The Corporation shall consist of the following members, namely:-

(i) such number of elected members as may be notified from time to time by the Government in the Andhra Pradesh Gazette, in accordance with such principles as may be prescribed;

(ii) every Member of the Legislative Assembly of the State representing a constituency of which the concerned larger urban area or a portion thereof forms part;

(iii) every member of the House of the People representing a constituency of which the concerned larger urban area or a portion thereof forms part;

Provided that a member of the House of the People representing a constituency which comprises more than one larger urban area including a part thereof shall be the member of the Corporation constituted for one of the larger urban areas which be chooses; and he shall also have the right to speak in and otherwise to take part in the proceedings of any meeting of the Corporation constituted for the other larger urban area within the Constituency but shall not be entitled to vote at any such meetings;

(iv) every member of the Council of States registered as an elector within the larger urban area concerned ex-officio;

(v) five persons having special knowledge or experience in Municipal Administration co-opted by the Corporation;

Provided that the ex-officio member co-opted under this clause shall have the right to speak in and otherwise to take part in the meetings of the Corporation, but shall not have the right to vote;

(vi) two persons belonging to minorities to be co-opted as members of the Corporation in the prescribed manner by the members of the Corporation specified in sub-clauses (i) to (iv) from among the persons who are registered voters in the Corporation and who are not less than twenty-one years of age: Provided that the member co-opted under this clause shall have the right to speak in and otherwise to take part in the meetings of the Corporation with the right to vote.

Section 13: Andhra Pradesh Municipalities Act, 1965 not to apply on specification as larger urban area:-

(1) Subject to the provisions of subsections (2) and (3), the Andhra Pradesh Municipalities Act, 1965, shall, with effect on and from the specification of a local area or a smaller urban area for which a municipality is constituted as a larger urban area, cease to apply to such larger urban area for which a Municipal Corporation is constituted. (2) Such ceasor shall not effect:-

(@@a) the previous operation of the Andhra Pradesh Municipalities Act, 1965 in respect of the local area comprised within any newly specified larger urban area for which a Corporation is constituted;

(b) any penalty, forfeiture or punishment incurred in respect of any offence committed against the Andhra Pradesh Municipalities Act, 1965, or

(c) any investigation, legal proceedings or remedy in respect of such penalty, forfeiture or punishment, and any such penalty, forfeiture or punishment may be imposed as if this Act had not been passed

(3) Notwithstanding anything contained in sub-section (1), all notifications, rules, bye-laws, regulations, orders, directions and powers, made, issued or conferred under the Andhra Pradesh Municipalities Act, 1965 and in force in a municipality immediately before the specification of its local area as a larger urban area shall, so far as they are not inconsistent with the provisions of this Act continue to be in force in the larger urban area comprised within the'' Corporation until they are replaced by the notifications, rules, bye-laws, regulations, orders, directions and powers to be made or issued or conferred under this Act.

Section 14: Application of the provisions of the Hyderabad Municipal Corporation Act, 1955:-

(1) Save as otherwise expressly provided herein, all the provisions of the Hyderabad Municipal Corporations Act, 1955(Act II of 1956) (hereinafter in this section referred to as the said Act) including the provisions relating to the levy and collection of any tax or fee except Chapter V and Sections 380, 381, 382, 383, 384, 385 and 387 in Chapter XI thereof are hereby extended to and shall apply mutatis mutandis to a Corporation constituted under this Act and the said Act shall, in relation to the Corporation be read and construed as if the provisions of the said Act had formed part of this Act.

(2) For the purpose of facilitating the application of the provisions of the Hyderabad Municipal Corporations Act, 1955, to the Corporation, the Government may, by notification, make such adaptations and modifications of

the said Act and the rules and bye-laws made thereunder whether by way of repealing., amending or suspending any provisions thereof, as may be necessary or expedient and thereupon the said Act and the rules made thereunder, shall apply to the Corporation subject to the adaptations and modifications so made.

Section 16: Transitional Provisions:-

Where a municipality ceases to exist and a Municipal Corporation is constituted in its place under this Act,--

(1) all property, all rights of whatever kind, used, enjoyed or possessed by, and all interests of whatever kind owned by, or vested in, or held in trust by or for the Municipal Council, with all rights of whatever kind used, enjoyed or possessed by the said Council as well as all liabilities legally subsisting against the said Council, shall, on and from the commencement of this Act and subject to such directions as the Government may, by general or special order, give in this behalf, pass to the Corporation;

(2) all arrears of taxes or other payments by way of compounding of a tax, or due for expenses or compensation or otherwise due to the said Council at such commencement may be recovered as if they had accrued to the Corporation and may be recovered as if the said arrears or payments had become due, under the provisions of this Act;

(3) all taxes, fees and duties, which immediately before the commencement of this Act, were being levied by the said Council, shall be deemed to have been levied by the Corporation under the provisions of this Act and shall continue to be, in force accordingly until such taxes, fees and duties are revised, cancelled or superseded by anything done or any action taken under this Act;

Some of the relevant Sections of the Greater Hyderabad Municipal Corporation Act, 1955 also referred hereunder:

Section 2(9):-''the Corporation'' means the Municipal Corporation of the city''. Section 2(30):-''local authority'' includes Municipal Corporation, City and Town Municipalities, District Boards and Cantonment Board.

Section 5-Composition of Corporation: (1) Subject to the provisions of sub-section (2) the Corporation shall consist of such number of elected members as may be notified from time to time by the government in the Andhra Pradesh Gazette, in accordance with such principles as may be prescribed.

Section 88: Provisions regulating the corporation''s proceedings:-The corporation shall meet for the despatch of business and shall from time to time, make such bye-laws with respect to the summoning, notice, place, management and adjournment of such meetings, and generally with respect to the mode of transacting and managing the business of the corporation including the submission, asking and answering of questions u/s 122 as they think fit, subject to the following conditions:--

(k) except at a meeting called on a requisition of urgency or at the discussion at any meeting of a budget estimate, no business shall be transacted at any meeting other than the business specified in the notice given under clause (i) and any questions asked u/s 122 or urgent business not specified in the said notice which the Standing Committee, or the Commissioner deem it expedient to bring before the meeting, and no substantive proposition shall be made or discussed which is not specified in the said notice or in the supplementary announcement, if any, given under clause (j) or which is not in support of the recommendation of the Standing Committee or the Commissioner as the case may be, with reference to any urgent business brought by any of those authorities, respectively before the meeting;

Provided that no such urgent business as aforesaid shall be brought before any meeting unless at least three-fourths of the members present at such meetings, such three-fourths being not less than one-sixth of the whole number of members, assent to its being brought forward thereat;

(I) at a meeting called on a requisition of urgency and during the discussion at any meeting of a budget-estimate no business shall be transacted and no substantive proposition shall be made or discussed which does not directly relate to the business for which the urgent meeting was called, or to the budget-estimate as the case may be, and no proposition involving any change in the taxes which the Standing Committee proposes to impose or an increase or decrease of any item of expenditure in a budget-estimate shall be made or discussed at any meeting at which such budget-estimate is under consideration, unless such proposition is specified in the notice of the meeting 5[given] under clause (i) or in the supplementary announcement, if any, given under clause (j) or unless, in the case of an adjourned meeting, each of the conditions mentioned in the proviso to clause (m) has-been fulfilled.

Note: Section 88(a) to (j) and (m) to (t) have been intentionally omitted as they are irrelevant for the present.

8. Chapter VIII of the GHMC Act, with the hading Municipal Taxation dealing with the levying of taxes by the Corporation. Section 197 of GHMC Act, enumerates the tax which can be levied by the Corporation. u/s 198 of GHMC Act, which specifically sets out the method and manner that is required to be followed before imposing tax or varying rate of tax.

9. In view of Section 679-F, the provisions of GHMC Act, have to be read into the Act-1965, the procedure contemplated under various provisions referred to above have necessarily to be followed before the property tax can be imposed and demanded by the Corporation. Section 679-F of GHMC Act, reads as under:

Section 679-F: Power to transfer functions of the Corporation to the Andhra Pradesh Industrial Infrastructure Corporation:-

Notwithstanding anything contained in this Act, or in any other law for the time being in force relating to the Municipal Corporations, the Government may, in consultation with the Corporation and also the A.P. industrial Infrastructure Corporation, by notification in the A.P. Gazette, and subject to such restrictions and conditions including those relating to the remittance of such percentage of the property tax to the Corporation and to such control and revision as may be specified therein direct that any power or function vested in the Corporation by or under this Act shall be transferred to and exercised and performed by the Andhra Pradesh Industrial Infrastructure Corporation.

The following provision of the A.P. Municipalities Act, 1965 is also useful to extract hereunder:

Section 389B: Power of transfer functions of Municipalities to Andhra Pradesh Industrial Infrastructure Corporation:-

Notwithstanding anything contained in this Act, or in any other law for the time being in force relating to the Municipalities or the notified area Committees, the Government may, in consultation with any Municipality or the notified area Committee, as the case may be, and also the Andhra Pradesh Industrial Infrastructure Corporation, by notification in the Andhra Pradesh Gazette, and subject to such restrictions and conditions including those relating to the remittance of such percentage of the property tax to a Municipality or to a notified area Committee and to such control and revision as may be specified therein direct that any power or function vested in the Municipality or the notified area Committee by or under this Act shall be transferred to an exercised and performed by the Andhra Pradesh Industrial Infrastructure Corporation.

10. A reading of the above provisions would go to show that the Corporation is a juristic person with a body corporate consisting of both appointed and elected members from time to time and its business is to be conducted and controlled by the constituted body and the proceedings have to be conducted in terms of Section 88 of the GHMC Act. Now in terms of Section 679-F of GHMC Act, Government in consultation with the Corporation and also APIIC may issue a notification entrusting certain functions and powers in APIIC, the consultation of the Government with the Corporation is a mandatory requirement to be fulfilled before a notification can be issued u/s 679-F. In view of this mandatory requirement, notwithstanding Section 13(3) and Section 14 of the Act-1994, a notification is required to be issued u/s 679-F of the GHMC Act, by the Government in consultation with the Corporation. In the case on hand, admittedly, there is no notification issued after Nellore Municipal Corporation has been formed with effect from 08.10.2004. Section 13(3) of the Act-1994 is only a saving provision and is an exception to Section 13(1) of the Act-1994, which excludes operation of the provisions of the A.P. Municipalities Act.

11. One important aspect of the matter which should not be lost sight of the fact, the operation and intendment of the Sections 13 and 14 is only limited to and only to allow a limited operation of the Municipal Corporation Act, in the specified

larger urban area as notified u/s 3(1) of the Act-1994. In other words this pre supposes that the notified larger urban area is in fact in the municipality to which A.P. Municipalities Act would normally apply, but for a notification issued u/s 3 of the Act-1994. On and from the date of notification coming into force in a particular municipal area to the extent of the area declared to be a larger urban area by virtue of Section 3(6) read with Section 13 of Act-1994 would apply. In other words, notwithstanding the fact a particular local area is forming part is situated in and forming part of an area to which Municipalities Act would apply on a notification being issued u/s 3 of the Act-1994, shall be deemed to be forming part of the Municipal Corporation. The operation of a notification issued u/s 679-F of the GHMC Act, would come into play if such notification is issued after the Municipal Corporation has come into existence.

12. In the present case, Nellore Municipal Corporation (sic. Municipality) became Municipal Corporation with effect from 08.10.2004 and in that view of the matter Section 13 has no application inasmuch as it is not (sic.) nobody''s case that in (sic. any) particular local area or a smaller urban area has been notified as a larger urban area in exercise of the powers conferred u/s 3 of the Act-1994.

13. In the light of the discussion above we have no manner of doubt that in the absence of a notification issued u/s 3 of the Act-1994, after Nellore Municipal Corporation coming into existence, respondent Nos. 1 and 2 are not authorised to exercise any powers of the Municipal Corporation Act, and their actions are unauthorised and illegal. Further in the light of the statutory provisions as explained to us, we do not find any infirmity in the judgment of the Division Bench of this Court dated 09.08.2011 in W.P. No. 360162 of 2010, requiring us to reconsider and refer the issue to a larger bench. Accordingly, the writ petitions are allowed and the impugned demands are set aside. No order as to costs. Miscellaneous Petitions, if any, pending in these writ petitions shall stand closed.