(2009) 02 AHC CK 0023

In the Allahabad High Court

Shiva Ji Smarak Samiti and Others APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 25-02-2009

Acts Referred:

Citation : (2009) 02 AHC CK 0023

Hon'ble Judges : Sudhir Agarwal, J;S. Rafat Alam, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Heard Sri B.N. Singh, learned Counsel for the petitioners, learned Standing Counsel for respondents No. 1 to 4 and P.I. Ansari, for respondent No. 5.

2. This writ petition as public interest litigation (in short "PIL") has been filed by the petitioners seeking following reliefs:

I. Issue an appropriate writ, order or direction to the respondent No. 6 to bring on record the alleged enhancement of house tax for the year 2005-2006, 2007-2008 in respect of ward No. 1 to 15 and quash the same.

II. Issue a further order of direction in the nature of mandamus commanding the respondents not to levy the house tax illegally, arbitrarily without due process of law from the residents of Nagar Panchayat Sikardrapur District Ballia and realize house tax as was fixed prior to 2005-2006 unless determined and revised in accordance with law.

III. Issue any other writ, order or direction which this Hon''ble Court may deem fit and proper in the circumstance of the case.

IV. Award cost of the writ petition.

3. The petitioner No. 1, Shiva Ji Smarak Samiti said to have been constituted to start agitational activities against the respondent No. 5 in respect of its activities of making house tax assessment. Petitioner No. 2 claims to be Vyasthapak of

petitioner No. 1. Besides, petitioners No. 2 and 3 in their own rights are also the persons against whom individual assessments in respect to house tax has been made by respondent No. 5 and thus in their individual capacity also they are aggrieved by the said assessment made for the year 2005-06 and 2007-08.

4. It is contended that a procedure for revision, enhancement or modification of house tax has been provided under the U.P. Municipalities Act and Chapter V contains detailed provisions prescribing the entire procedure for the said purpose but without following the same the respondent No. 5 has passed a resolution approving the revised assessment of house tax of the residents within the jurisdiction of respondent No. 5 and pursuant thereto house tax on the enhanced rate is sought to be realised from the petitioners and other residents of Nagar Panchayat Sikandrapur, District Ballia which is under challenge by means of this PIL.

5. This Court when inquired from learned Counsel for the petitioners that since there is an individual assessment of house tax of the concerned residents, writ petition as PIL is not maintainable in such matter, he placed reliance on the Apex Court''s decision in M.C. Mehta and another Vs. Union of India and others, ; Dr D.C. Wadhwa and Others Vs. State of Bihar and Others, ; BALCO Employees Union (Regd.) Vs. Union of India and Others, and Indian Banks'' Association, Bombay and Others Vs. Devkala Consultancy Service and Others, and contended that where there is a flagrant violation of the statutory provisions, writ petition as a PIL would be maintainable.

6. In our view, the submission is thoroughly misconceived. This writ petition is not liable to be entertained as PIL.

7. It is not disputed that after making inquiry into the valuation of the property of individual residents, a tentative assessment was made and a public notice was published on 19.09.2006 permitting the person concerned to file objections, if any, by 30.09.2006 in the office of Nagar Panchayat Sikardrapur District Ballia. It is not the case of petitioners that any objection was filed by them or anyone else. In the absence thereof the authorities passed resolution on 28.10.2006 making the assessment final.

8. A perusal of the list of the house tax assessment shows that it includes the assessment in respect to residential as well as commercial property. It thus cannot be said that the entire lot of residents are such who have no capacity to watch their interest by taking such legal recourse as permissible in law. It is admitted by learned Counsel for the parties that the assessment has not been challenged by any one by filing appeal under the statute which is admittedly a statutory remedy available to them.

9. It is no doubt true that in the matter of PIL the question of locus standi of the person approaching the Court has been diluted by a larger extent but has not been obliterated in its entirety. In para 32 of the judgement in Indian Banks'' Association (supra) the Court has clearly observed:

The rule of locus has been relaxed by the courts for such purposes with a view to enable a citizen of India to approach the courts to vindicate legal injury or legal wrong caused to a section of the people by way of violation of any statutory or constitutional right.

10. However, the aforesaid observation has to be read in the light of the subsequent observations made by the Apex Court in the same judgement and in particular to para 33 where the Apex Court has quoted the following from its earlier judgement in Guruvayur Devaswom Managing Commit. and Another Vs. C.K. Rajan and Others,

41. The courts exercising their power of judicial review found to their dismay that the poorest of the poor, the depraved (sic), the illiterate, the urban and rural unorganised labour sector, women, children, those handicapped by ''ignorance, indigence and illiteracy'' and other downtrodden persons have either no access to justice or had been denied justice. A new branch of proceedings known as ''Social Interest Litigation'' or ''Public Interest Litigation'' was evolved with a view to render complete justice to the aforementioned classes of persons. It explained its wings in course of time. The Courts in pro bono publico granted relief to the inmates of the prisons, provided legal aid, directed speedy trial, maintenance of human dignity and covered several other areas. Representative actions, pro bono publico and test litigations were entertained in keeping with the current accent on justice to the common man and a necessary disincentive to those who wish to by pass the real issues on the merits by suspect reliance on peripheral procedural shortcomings.

11. Moreover, a PIL cannot be allowed to be a device to by pass a lapse which an individual is guilty of or has failed to avail remedy and after the same having become barred by limitation etc., is trying to overcome by means of a PIL. We remind ourselves with the caution noticed by the Apex Court in Janata Dal Vs. H.S. Chowdhary and Others, in respect to PIL:

Only a person acting bona fide and having sufficient interest in the proceeding of PIL will alone have a locus standi and can approach the Court to wipe out the tears of the poor and needy, suffering from violation of their fundamental rights, but not a person for personal gain or private profit or political motive or any oblique consideration. Similarly, a vexatious petition under the colour of PIL brought before the Court for vindicating any personal grievance, deserves rejection at the threshold.

12. In Dattaraj Nathuji Thaware Vs. State of Maharashtra and Others, the Apex Court said:

The attractive brand name of public interest litigation should not be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not publicity oriented or founded on personal vendetta. As indicated above, Court must be careful to see that a body of persons or member of public, who approaches the Court is acting bona fide and not for personal gain or private motive or political motivation or other oblique considerations. The Court must not allow its process to be abused for oblique considerations by masked phantoms who monitor at times from behind. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives, and try to bargain for a good deal as well to enrich themselves. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busy bodies deserve to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs.

13. This has been quoted with approval by Apex Court in Divine Retreat Centre Vs. State of Kerala and Others, The Court has also observed that the public interest litigant must disclose his identity so as to enable the Court to decide that the informant is not a wayfarer or officious intervenor without any interest or concern.

14. In the case in hand it is not disputed that the procedure for alteration of house tax is prescribed in the statute. It is also not disputed that assessment once made under the statute can be challenged by filing statutory appeal before the appellate authority. Admittedly after making necessary inquiry in respect to the valuation of property of individual residents of Nagar Panchayat Sikandrapur a provisional assessment was made by the Municipality and notice was published on 19.09.2006 in daily newspaper "Aaj" inviting objections till 30.09.2006. Though learned Counsel for the petitioners submitted that the said notice also provides that the provisional assessment list of house tax can be inspected by 15.09.2006 though this notice itself was published on 19.09.2006 and thus there was no occasion for the residents to inspect the provisional house tax list but it is also true that there is no averment in the entire writ petition or the supplementary affidavits filed by petitioners that ever after 19.09.2006 the petitioners and in particular petitioners No. 2 and 3 sought to make any inspection in the office of Nagar Panchayat but they were refused to do so. It is also not stated anywhere that the petitioners No. 2 and 3 were not aware of the notice dated 19.09.2006 before the expiry of the last date prescribed for filing objections. Vaguely it is stated in the writ petition that the residents came to know about the revised assessment in the first week of August, 2008. Moreover the two of the petitioners namely, petitioners No. 2 and 3 are also the persons who are individually aggrieved by the assessment made by respondent No. 5 but they have not chosen to make any averment in the writ petition that they were not aware of the notice dated 19.09.2006. It also cannot be said that this notice was not read by the petitioners and the residents of Nagar Panchayat Sikandrapur.

15. That being so and the assessment having been finalised in the absence of any objection filed by the residents and it is also admitted that no appeal has been preferred against the final assessment, this writ petition under the cover of PIL cannot be entertained to by pass or cover up the said lapses on the part of

the petitioners.

16. We are thus clearly of the view that this writ petition is not a bona fide litigation for looking after violation of the fundamental rights of the residents in general but is a clock to cover up certain lapses on the part of the petitioners and in particular petitioners No. 2 and 3 as a result whereof the revised assessment made by respondent No. 5 has attained finality.

17. Moreover, it is nowhere stated that none of the residents of Nagar Panchayat Sikandrapur has deposited house tax on the rates as revised by respondent No. 5 by means of its resolution of 2006 and in the absence of any challenge by such persons who have accepted and deposited revised house tax, the petitioners cannot be permitted to hold their brief and challenge the revised assessment though they have not chosen to do so.

18. Besides, in the matter of house tax assessment where individual assessment has been made, the matter involves investigation into disputed question of fact and cannot be gone into in the writ petition filed as PIL.

19. In view of the aforesaid and in the entirety of the circumstances we are not satisfied that this writ petition as PIL is liable to be entertained and, therefore, in our view it deserves to be dismissed summarily. However, we make it clear that our order shall not deprive any residents of Nagar Panchayat Sikandrapur, District Ballia for availing remedy, if any, as available under law against the revised house tax.

20. In view of the above discussion this writ petition is dismissed. with costs which we assess as Rs. 500/-.

