(2008) 11 GUJ CK 0049

In the Gujarat High Court

Case No : Letters Patent Appeal No. 670 of 2008 in Civil Application - For Vacating Interim Relief No. 6934 of 2008 in Special Civil Application No. 8187 of 2008 with Civil Application No. 7710 of 2008 in Letters Patent Appeal No. 670 of 2008 with Special Civil App

Shree Khambhat Taluka Sarvajanik Kelavani Mandal — APPELLANT

Vs

Khambhat Nagarpalika and Another — RESPONDENT

Date of Decision : 19-11-2008

Acts Referred:

Gujarat Municipalities Act, 1963 — Section 101, 102, 103, 108, 109

Citation : (2009) 30 GLH 2 : (2009) 2 GLH 30 : (2009) 1 GLR 562

Hon'ble Judges : K.S. Radhakrishnan, C.J;Akil Abdul Hamid Kureshi, J

Bench : Division Bench

Advocate : Prakash K. Jani, for the Appellant; Dilip B. Rana, for Respondent 1 and Manisha Lavkumar, Asstt. Government Pleader for Respondent 2, for the Respondent

Judgement

K.S. Radhakrishnan, C.J.—The question that has come for consideration in this case is whether the District Collector, in exercise of the powers conferred u/s 258(1) of the Gujarat Municipalities Act, 1963 (for brevity ''the Act''), can interfere with the demand notice issued by the Nagar Palika u/s 132(2) of the Act, for recovery of property tax.

2. The Executive Committee of Khambhat Nagar Palika passed a Resolution No. 190 assessing 198 property holders and demanding property tax, which included the second respondent as well. Before enforcing the levy of tax, opportunity was given to all the property holders to file their objection. Consequently, second respondent filed his objection on 21.3.2006. Most of the property holders paid the tax demanded, however, some of the property holders filed objections. Objection filed by the second respondent was considered by the Nagar Palika and the same was rejected. Thereafter, bills at Annexure "B" collectively were issued to the second respondent, demanding property tax outstanding prior to 31.3.2007 and for the period from 1.4.2007 to 31.3.2008. In spite of receipt of

the bills, no amount was paid by the second respondent. Consequently, Nagar Palika issued attachment warrant to second respondent Trust, in exercise of powers conferred u/s 133(1) of the Act. Second respondent then deposited an amount of Rs. 1,65,048/- and Rs. 4,55,359/- for the entire period of assessment made by the Nagar Palika.

3. Second respondent then preferred an Appeal No. 9 of 2008 before the District Collector, as provided u/s 258 of the Act, challenging Resolution No. 190 dated 10.3.2006 passed by the Nagar Palika, after a period of more than two years. Few others however, approached the Judicial Magistrate u/s 138 of the Act. District Collector however, entertained the appeal preferred by the Trust and issued notice to the Nagar Palika. District Collector also issued an order on 13.6.2008 directing Nagar Palika to hand over charge of the Chief Officer to Mamlatdar, Khambhat. District Collector then granted stay of the Resolution dated 10.3.2006 and directed the Nagar Palika to appear before him on 25.6.2008. Aggrieved by the above mentioned orders, Nagar Palika has approached this Court seeking a writ of certiorari to quash the orders passed by the District Collector, exercising powers u/s 258 of the Act, and also for the consequential reliefs, contending that the District Collector has no jurisdiction u/s 258 of the Act to interfere with the actions taken by the Nagar Palika for levy of property tax.

4. Learned Single Judge passed an interim order on 23.6.2008 expressing a prima-facie view that District Collector has no power u/s 258 of the Act to interfere with the demand of tax to be levied by the Nagar Palika. Aggrieved by the same, second respondent has come up with this appeal. When the matter came up for hearing today, we called for file of Special Civil Application No. 8187 of 2008, and heard Counsel at length.

5. Learned Counsel appearing for the appellant Mr. Prakash K. Jani submitted that the District Collector has got ample powers u/s 258(1) of the Act, to interfere with the order passed by the Nagar Palika, if it is unlawful. Learned Counsel submitted that appellant is a Charitable Trust registered under the provisions of the Bombay Public Trusts Act, and at no point of time Nagar Palika had imposed any property tax on the properties owned and occupied by the Trust. Learned Counsel submitted that when the Nagar Palika has acted contrary to the provisions of the Act, the Collector can always examine the legality or otherwise of the orders, in exercise of the powers conferred u/s 258 of the Act. Learned Counsel also submitted that the Nagar Palika has also not followed the mandatory provisions of Sections 101 102 103 of Chapter XIII before demanding tax. In support of the contention, learned Counsel placed reliance on the decision of the Bombay High Court in Municipality of Ankleshwar v. Chhotalal Ghelabhai Gandhi 1954 BLR 547 and in Gopal Mills Co. Ltd. v. The Broach Borough Municipality 1955 BLR 300.

6. Learned Counsel Mr. Dilip Rana appearing for the Nagar Palika placed considerable reliance on the Full Bench decision of this Court in Parshottambhai

G. Chavda v. State of Gujarat 1998 (1) GLH 519 and also took us to various provisions of Chapter IX of the Gujarat Municipalities Act, 1963 and submitted that if the second respondent is aggrieved by any action taken by the Nagar Palika u/s 132 of the Act, remedy open to him is to prefer an appeal u/s 138 of the Act before the Judicial Magistrate. Learned Counsel further submitted that when a specific remedy of appeal is provided under the Act, the Collector cannot exercise powers u/s 258(1) of the Act and therefore, learned Single Judge has rightly upheld the principle laid down by the Full Bench of this Court and took the view that Collector has committed illegality in exercising powers u/s 258(1) of the Act.

7. The subject relating to imposition of tax is dealt with in Chapter VIII of the Act, which includes demand of property tax as well. The recovery of claims in respect of taxes including property tax is dealt with in Chapter IX of the Act. Section 132 of the Act says that when any amount which by or under any provisions of the Act, is declared to be recoverable in the manner provided in the Chapter, the Chief Officer shall, with the least practicable delay, cause to be presented to any person liable for the payment thereof, a bill for the sum claimed as due. Section 132(2) of the Act deals with the contents of the bill. For easy reference, we may extract Section 132 of the Act in it''s entirety.

132. (1) When any amount,-

(a) which by or under any provisions of this Act, is declared to be recoverable in the manner provided by this Chapter, or

(b) which, not being leviable under Sub-section (1) of Section 127 or payable on demand on account of a toll, is claimable as an amount or instalment on account of any other tax which now is imposed or hereafter may be imposed in any municipal borough, shall have become due, the chief officer shall, with the least practicable delay, cause to be presented to any person liable for the payment thereof a bill for the sum claimed as due.

(2) Every such bill shall specify the period of which, and the property, occupation or thing in respect of which the sum is claimed and shall also give notice of the liability incurred in default of payment and of the time within which an appeal may be preferred as hereinafter provided against such claim.

(3) If the person to whom a bill has been presented as aforesaid does not, within fifteen days from the presentation thereof, either-

(a) pay the sum claimed as due in the bill, or

(b) show cause to the satisfaction of the chief officer why he is not liable to pay the same, or

(c) prefer an appeal in accordance with the provisions of Section 138 against the claim,

the chief Officer may cause to be served upon the person liable for the payment of the said sum a notice of demand in the form specified in Schedule IV, or to the like effect.

8. Thus, Section 132(3) of the Act says that if the person to whom a bill has been presented does not within 15 days from the presentation thereof either pay the sum or show cause to the satisfaction of the Chief Officer why he is not liable to pay the same, or prefer an appeal u/s 138 of the Act, notice of demand of sum has to be made by the Chief Officer in the form specified in Schedule IV thereof. Section 133(1) of the Act says that a person on whom notice of demand has been served under Sub-section (3) of Section 132 does not within fifteen days from the service of such notice pay the sum demanded in the notice, such sum with all costs of the recovery may be levied under a warrant signed by the Chief Officer in consultation with the President in the form specified in Schedule V or to the like effect by distress and sale of the movable property or the attachment and sale of immovable property of the defaulter. The mode in which the warrant has to be issued is also mentioned in the above referred statutory provision. Section 138 of the Act enables aggrieved party to prefer an appeal before the Judicial Magistrate, if aggrieved by any claim included in the bill under Sub-section (1) of Section 132 of the Act. The decision of the Magistrate on such appeal is also subject to revision by the Court to which appeals against the decision of the Magistrate ordinarily lie. For easy reference, Section 138 of the Act is extracted below:

138. (1) Appeals against any claim included in a bill presented under Sub-section (1) of Section 132 may be made to any Judicial Magistrate or Bench of such Magistrates by whom under the direction of the Sessions Judge such class of cases is to be tried.

(2) No such appeal shall be entertained unless-

(a) the appeal is brought within fifteen days next after the presentation of the bill complained of; and

(b) in the case of a tax on buildings or land or both an application in writing stating the grounds on which the claim of the municipality is disputed has been made to the executive committee within the time fixed in the notice given u/s 108 or 109 of the assessment or alternation thereof, according to which the bill is prepared, and

(c) the amount claimed from the applicant has been deposited by him in the municipal office.

(3) The decision of the Magistrate or Bench of Magistrate in any appeal made under Sub-section (1) shall, at the instance of either party, be subject to revision by the Court to which appeals against the decision of such Magistrate or Bench ordinarily lie.

9. It is clear from the above mentioned statutory provisions that if a person is aggrieved by a bill issued by the Nagar Palika under Sub-section (1) of Section

132 of the Act, he can prefer an appeal before the Judicial Magistrate u/s 138(1) of the Act and further revision u/s 138(3) before the Court to which appeal against the decision of the Magistrate ordinarily lie. When specific statutory remedy is provided under the Act, in our view, District Collector was not justified in invoking powers u/s 258(1) of the Act, to interfere with the claim made by the Nagar Palika u/s 132(1) of the Act. Even otherwise, Section 258 of the Act confers no power on the District Collector to interfere with the steps taken by the Nagar Palika to recover tax under the provisions contained under Chapter VIII, read with Chapter IX of the Act.

10. Section 258 of the Act falls under Chapter XVI of the Act, which carries sub-title "Control". Section 257(1) of the Act says that the Collector or any Officer of the Government authorised by the State Government by a general or special order shall have powers to enter on and inspect, or cause to be entered on and inspected, any immovable property occupied by the Municipality or any institution under its control or management or any work in progress under it or under its direction. The Collector is also bestowed with the power to call for any return, statement, account, report or record which he may think fit to require such municipality to furnish. Section 258(1) is extra-ordinary power conferred on the Collector, which reads as follows:

258. (1) If, in the opinion of the Collector, the execution of any order or resolution of a municipality, or the doing of anything which is about to be done or is being done by or on behalf of a municipality, is causing or is likely to cause injury or annoyance to the public or to lead to a breach of the peace or is unlawful, he may by order in writing under his signature suspend the execution or prohibit the doing thereof and where the execution of any work in pursuance of the order or resolution of the municipality is already commenced or completed direct the municipality to restore the position in which it was before the commencement of the work.

(2) When the Collector makes any order under this Section he shall forthwith forward to the municipality affected thereby a copy of the order with a statement of the reasons for making it and also submit a report to the State Government along with copies of such order and statement.

(3) Against the order made by the Collector under Sub-section (1) the municipality may prefer an appeal to the State Government within thirty days from the date on which it receives a copy of the order. The State Government may on such appeal being preferred rescind the order or may revise or modify or confirm the order or direct that the order shall continue to be in force, with or without modification, permanently or for such period as it may specify:

Provided that the order shall not be revised, modified or confirmed by the State Government without giving the municipality reasonable opportunity of showing cause against the order.

The above Section says if in the opinion of the Collector, the execution of any order or resolution of a municipality, or the doing of anything which is about to be done or is being done by or on behalf of a municipality, is causing or is likely to cause injury or annoyance to the public or to lead to a breach of the peace, or is unlawful the Collector can exercise his powers. Thus, only if the action of the Nagar Palika is causing or is likely to cause injury or annoyance to the public or to lead to a breach of the peace or is unlawful, then the Collector can exercise his powers u/s 258(1) of the Act. The demand and collection of property tax cannot be characterized as unlawful so as to cause injury or annoyance to the public or leads to a breach of peace or unlawful. Such a situation has not arisen in this case. Here, Nagar Palika has not taken any decision so as to cause injury or annoyance to the public or to lead to a breach of the peace or has done anything to be characterized as unlawful. We therefore, hold that the District Collector has committed an error in interfering with the demand notice issued by the Nagar Palika u/s 132(1) of the Act.

11. We have gone through the Division Bench judgment of the Bombay High Court, which was dealing with the Bombay District Municipal Act, in the case of Municipality of Ankleshwar v. Chhotalal Ghelabhai Gandhi (supra). The facts that we get in that judgement are entirely different and are not applicable to the facts in the instant case. The Full Bench of this Court in Parshottambhai G. Chavda v. State of Gujarat (supra) was of course dealing with the scope of Section 258(1) of the Act, but in a different context. While examining the scope of above mentioned provision, the Legislature has conferred certain powers on the Collectors, Directors and on State Government. When actions are taken by the municipalities it is the power and duty of the statutory authorities and the officers to supervise and control such actions. They can scrutinize such actions and works and decide their legality. The Court held that in light of Chapter XVI (Control), one has to construe the expression ''work''. The Full Bench also opined that when the expression ''work'' used in Sub-section (1) of Section 258 of the Act is considered, interpretation of that expression must be made keeping in mind the provisions of Chapter XVI and not the provisions of Chapter XI. The principle laid down by the Full Bench as such is not applicable to the facts of the present case, which has been examined in the light of different facts situation, based on different statutory provisions contained in Chapters IX and XVI. We are therefore, inclined to dismiss Letters Patent Appeal and allow Special Civil Application No. 8187 of 2008, and set aside orders passed by the District Collector. Order accordingly.

12. Consequently, Civil Application also stands disposed of.