
(2012) 12 AP CK 0066

In the Andhra Pradesh High Court

Case No : Writ Petition No"s. 10050, 10359, 23691, 23692, 23693 and 34562 of 2012

Smt Nazneen P. Bapooji rep by her GPA Sri K.J. Reddy

APPELLANT

Vs

The CEO, Secunderabad Cantonment Board and Others

RESPONDENT

Date of Decision : 06-12-2012

Acts Referred:

Cantonments Act, 1924 — Section 66, 67, 68, 72
Cantonments Act, 2006 — Section 12, 73, 75, 76, 77
Constitution of India, 1950 — Article 226

Citation : (2013) 2 ALD 484 : (2013) 1 ALT 467

Hon'ble Judges : M.S. Ramachandra Rao, J;Goda Raghuram, J

Bench : Division Bench

Advocate : S. Malla Rao, for the Appellant; Y.V. Ravi Prasad SC, for the Respondent

Final Decision : Allowed

Judgement

M.S. Ramachandra Rao

1. Heard Sri D. Prakash Reddy, learned Senior Counsel appearing for Sri S. Malla Rao, Counsel for petitioner in Writ Petition No. 10050 of 2012, Sri Krishna Koundinya, learned Senior Counsel appearing for Sri K. Srikanth, counsel for petitioners in W.P. Nos. 23691, 23692, 23693 of 2012, Sri Sunil Ganu, learned counsel representing on behalf of Sri M. Papa Reddy, counsel for the petitioner in W.P. No. 10359 of 2012, Sri V.V.N. Narayana Rao, learned counsel for the petitioner in W.P. No. 34562 of 2012 and Sri Y.V. Ravi Prasad, learned counsel for the respondents/Secunderabad Cantonment Board and it's Chief Executive Officer. All the petitioners in these writ petitions own properties within the jurisdiction of the Secunderabad Cantonment Board (for short "the Board") constituted under the erstwhile Cantonments Act 1924 (for short "the 1924 Act") which was later repealed and replaced by the Cantonments Act, 2006 (for short "the 2006 Act"). The grievance in all these writ petitions is against the action of

the Chief Executive Officer of the Board purporting to Triennially Revise for the period from 1-4-2009 to 31-3-2012, the property tax assessment in respect of the properties of the petitioners in exercise of the powers conferred on him u/s 80 of the Cantonments Act, 2006 read with Sections 75 to 79 of the Act under separate notices dt. 22.2.2012, 22.2.2012, 27.6.2012, 27.6.2012, 27.6.2012 and 9.10.2012 respectively.

2. The contention of the petitioners is that the properties of the petitioners were being assessed to property tax from time to time by the appropriate authorities under the erstwhile Cantonments Act, 1924; that taxes were being paid regularly; that the impugned notices were issued proposing Triennial Revision of the assessment for the period 1-4-2009 to 31-3-2012; that they had submitted representations/objections opposing the said revision; and that in the said objections they have specifically contended that the Chief Executive Officer of the Board inherently lacks jurisdiction to do the Triennial Revision of Assessment proposed by him.

3. It is contended that the Cantonment Board falls under Clause I category as its population exceeds more than 50,000, that in view of the provisions of Section 12 of the Act such Clause I category Cantonment Board consists of the following members:

- i) The Officer commanding the Station as Ex. Officio
- ii) The District Magistrate or an Executive Magistrate
- iii) The Chief Executive Officer
- iv) The Health Officer Ex. Officio
- v) The Executive Engineer Ex. Officio
- vi) Three military officers nominated by name by the Officer Commanding the Station.
- vii) Either members elected under the Act.
- viii) In Addition thereto, Member of Parliament and Member of Legislative Assembly are also members of the Board.

4. The contention of the petitioners is that the 2006 Act came into force on 13-9-2006, that as per clause (c) Section 360 of the said 2006 Act, all assessments made by the Board shall insofar as they are not inconsistent with the provisions of the 2006 Act continue to be in force and be deemed to have been made under the provisions of the 2006 Act unless and until they are superseded by any assessment made by the Board constituted under the said provisions. The petitioners also rely upon clause (f) of Section 360 and contend that all rates, taxes until and unless they are varied by the Board constituted under the 2006 Act continue to be levied at the same rate at which they were being levied by the Board immediately before the commencement of the 2006

Act. According to the petitioners, their respective properties were being assessed to tax by the Cantonment authorities under the provisions of 1924 Act; that the petitioners were regularly paying the same; that the original assessment made was revised by the Board on the lapse of over three years prior to coming into force of 2006 Act and such revised tax had been paid by the petitioners; that after Act 2006 came into force, there was no consideration of any Triennial revision of the existing tax or revision thereof by the elected Board of the Secunderabad Cantonment Board nor was there any resolution for any revision of the property tax under the provisions of the 2006 Act; that the impugned notices in these writ petitions do not refer to any such resolutions having been passed in the manner provided u/s 317(2) of the 2006 Act; and in any event the hike in property tax is highly excessive, irrational and in violation of the provisions of the 2006 Act. They also contend that the Chief Executive Officer has no jurisdiction under the impugned show cause notices issued in February 2012/June 2012/September 2012 to make any such Triennial Revision. Therefore, they contend that the impugned show cause notices should be quashed and the Chief Executive Officer of the Board be restrained from recovering the amounts mentioned therein from the petitioners.

5. Counter affidavits have been filed by the Chief Executive Officer of the Board in W.P. No. 10050 of 2012 and 10359 of 2012 and the same were adopted in other writ petitions. In the said counter, he denies the allegations made by the petitioners and contends that the impugned show cause notices are valid; that Annual Rental Value has been fixed as per the provisions of Section 73 of the 2006 Act; that u/s 75 of the 2006 Act, he can cause an assessment list of all buildings or lands in the Cantonment area; that u/s 76 of the 2006 Act, he can revise the existing rates of the property tax by giving a public notice and accordingly public notice has been issued for revision of the assessment list. It is further contended that as the property tax is already in existence or collected from the properties owned by the petitioners, no personal notice is required to be given to the owners of the properties except a public notice. Reference is made to the provisions of Section 76 and 77 of the 2006 Act which entitle (i) the owners of the properties to submit objections for the revision of the assessment made to the buildings, (ii) for an enquiry by the Chief Executive Officer into the said objections after providing an opportunity to the person concerned, and (iii) for disposal of the said objections.

6. It is further contended in the counter affidavit that after considering the objections made u/s 76 of the 2006 Act, the assessment list shall be authenticated by the signatures of the Executive Officer and the President of the Board and that u/s 79 of the Act 2006, after obtaining the necessary approval, the Chief Executive Officer can amend the assessment list of any property which has been erroneously valued or assessed through fraud, accident or mistake whether on the part of the administration or assessees. He also referred to Section 80 of the 2006 Act and contended that the Chief Executive Officer of the Board is empowered to prepare the assessment list and revise the same for

every three years by providing reasonable opportunity to the persons concerned by following the procedure laid down in Sections 75 to 79 of the 2006 Act.

7. It is further stated in the counter that the petitioners in their written objections (to the impugned show cause notices) have also raised objections regarding lack of jurisdiction of the Chief Executive Officer to proceed with the Triennial Revision of assessment and that having submitted to the jurisdiction of the Chief Executive Officer by filing objections, the petitioners ought not to have approached this Court before the Chief Executive Officer had passed appropriate final orders. He contends that the petitioners ought to have waited till the finalization of the proceedings before the Chief Executive Officer.

8. It is also stated that Section 360(2)(f) of the 2006 Act has no application to the facts of the present case and that it should be so construed to make it effective, that an interpretation to the Act which would fail to achieve its manifest purpose should be avoided and that a construction which would reduce the legislation to futility should be avoided.

9. It is contended by the respondents that the properties of the petitioners since inception were being assessed to property tax imposed by the Board and the same was being varied from time to time by the Chief Executive Officer by exercising the power available to him u/s 68 of the 1924 Act, that at the time of commencement of the 2006 Act, property tax was already being collected from the petitioners and was being revised by the Chief Executive officer. So it is sought to be contended that Section 360(2)(f) of the 2006 Act would apply only if the taxes were imposed by the Board but not if the taxes were being revised by the Chief Executive Officer. It is asserted that the Chief Executive Officer is competent authority and can amend assessment list.

10. We have considered the respective submissions of the parties. 11. Before dealing with the respective submissions, it is pertinent to note that the relevant provisions of the 1924 Act and also 2006 Act.

12. Under 1924 Act, the provisions relating to assessment of the property tax are contained u/s 66 to Section 72. Section 66 of the 1924 Act provides that when tax assessed on the annual value of buildings or lands or both is imposed, the Executive Officer shall cause assessment list of all buildings or lands in the cantonment, or of both, as the case may be, to be prepared in such form and in such manner as the Central Government may by rule prescribe. Section 67 provides that when the assessment list has been prepared, the Executive Officer shall give public notice thereof, and of the place when the list or a copy of thereof may be inspected, and every person claiming to be the owner, lessee or occupier of any property included in the list, and any authorized agent of such person, shall be at liberty to inspect the list to make extracts there from free of charge.

Section 68 of the 1924 Act read as under:

68. Revision of assessment list :-

(1) The Executive Officer shall, at the same time, given public notice of a date, not less than one month thereafter, when the Board will proceed to consider the valuation and assessments entered in the assessment list, and, in all cases in which any property is for the first time assessed or the assessment is increased, it shall also give written notice thereof to the owner and to any lessee or occupier of the property.

(2) Any objection to a valuation or assessment shall be made in writing to the Executive Officer before the date fixed in the notice, and shall state in what respect the valuation or assessment is disputed, and all objections so made shall be recorded in a register to be kept for the purpose by the Executive Officer.

(3) The objections shall be inquired into and investigated, and the persons making them shall be allowed an opportunity of being heard either in person or by authorized agent, by an Assessment Committee appointed by the Board.

(4) The Assessment Committee shall consist of not less than three persons, and shall be necessary to appoint to the Assessment Committee any member of the Board.

13. As can be seen from the above, the revision of assessment contemplated by Section 68 is initiated by the Chief Executive Officer of the Board by giving public notice, but the objections (to the valuation or assessment) proposed are to be enquired into and investigated by the assessment committee appointed by the Board and not by the Chief Executive Officer.

14. From this it is clear that under 1924 Act, the revision of assessment in respect of the properties in the Secunderabad Cantonment Board (prior to coming into force of 2006 Act) were being done by the Board through its assessment committee and not by the Chief Executive Officer as contended by the respondent.

15. Admittedly, the 1924 Act was repealed by the 2006 Act which came effect from 14.9.2006. Section 360 of the 2006 Act deals with the repeals and savings and to the extent relevant is extracted below.

360. Repeals and saving :-

(1) The Cantonments Act, 1924 is hereby repealed.

(2) Notwithstanding the repeal of the Cantonments Act, 1924,-

...

(c) all budget estimates, assessments, valuations, measurements or divisions made by the Board shall in so far as they are not inconsistent with the provisions of this Act, continue in force and be deemed to have been made under the provisions of this Act unless and until they are superseded by any budget estimate, assessment, valuation, measurement or division made by the Board

constituted under the said provisions;

...

(f) all rates, taxes, fees, rents, fares and other charges shall, until and unless they are varied by the Board constituted under this Act, continue to be levied at the same rate at which they were being levied by the Board immediately before the commencement of this Act;

16. In view of the fact that the assessments/revisions of assessments were being made by the Board when the 1924 Act was in force, in our opinion, any revision of assessment of property tax after coming into force of the 2006 Act (in view of the provisions under Clause (c) and (f) of Section 360 of the 2006 Act) can only be made the Board and till such revision is authorized by the Board, the Chief Executive Officer cannot undertake any revision. The assessments made by the Board under 1924 Act continue to be in force and are deemed to have been made under the provisions of the 2006 Act unless and until they are superseded by any assessment made by the Board after the 2006 Act also unless varied by the Board.

17. It is not disputed by the respondents that the Board has not varied the rates or taxes or made any change in assessment in respect of the properties located within the cantonment area after the 2006 Act has come into force.

18. In this view of the matter, the contention of the respondent that he has got jurisdiction to revise the property tax in view of Sections 75 to 80 of the 2006 Act is not tenable. In our view, unless the Board decides to vary the assessments made in respect of the properties of the petitioners and others under the provisions of the 2006 Act, the assessments already made by the Board immediately before the commencement of the 2006 Act would continue.

19. No doubt, u/s 80 of the 2006 Act, the Chief Executive Officer is empowered to prepare the new assessment list at least once in three years and for this purpose the provisions of Section 75 to 79 of the Act 2006 can be invoked. But in the present case, the impugned show cause notices indicate that the proposed Triennial Revision of the assessment is for the period anterior to the show cause notice i.e. from 1.4.2009 to 31.3.2012. In our view, the Triennial Revision of assessment pursuant to the show cause notice issued in the year 2012 could only have be made for the three year period subsequent to the date of the said show cause notices. It is not permissible to make such a Triennial Revision for the period prior to the date of issuance of the impugned show cause notice.

20. We are also not impressed by the contention of the respondent that the petitioners, having filed the objections to the impugned show cause notice, have submitted to the jurisdiction of the Chief executive Officer, that the petitioners should have awaited for disposal of their objections before approaching this Court under Article 226 of the Constitution of India.

21. Considering the facts and circumstances of the cases, we are of view that

merely because the petitioners have filed objections before the respondent, they cannot be said to have been submitted to the jurisdiction of the Chief Executive Officer particularly when they have specifically raised an objection that the respondent inherently lacked the jurisdiction. Moreover even consent of the parties, in a situation where inherent lack of jurisdiction is alleged, cannot confer jurisdiction with a Court/authority. (See Kalabharati Advertising Vs. Hemant Vimalnath Narichania and Others, In Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, , the Supreme Court held that a writ under Article 226 of the Constitution can be entertained by the High Court in spite of existence of an alternative statutory remedy where authority against whom the writ petition is filed is shown to have no jurisdiction or had purported to usurp jurisdiction without any legal foundation. Similar view is also expressed in the judgment reported in Harbanslal Sahnia and Another Vs. Indian Oil Corpn. Ltd. and Others,

22. In view of the above, the impugned show notices are quashed and the respondents are restrained from taking any coercive steps to recover the amounts mentioned therein from the petitioners. However, this will not preclude the respondents to undertake revision of assessment of properties in the jurisdiction of the Cantonment Board in accordance with law. For the above reasons, all the writ petitions are allowed No costs.