(2004) 01 AHC CK 0146

In the Allahabad High Court

Case No : C.M.W.P. No. 1288 of 2003

Suraj Singh and Another APPELLANT

Vs

Nagar Ayukt, Nagar Nigam RESPONDENT

Date of Decision : 30-01-2004

Acts Referred:

Uttar Pradesh Nagar Mahapalika Act, 1959 — Section 172(2), 192, 193, 199, 200

Citation : AIR 2004 All 240 : (2004) 2 AWC 1293 : (2004) 2 UPLBEC 1893

Hon'ble Judges : Poonam Srivastava, J;M. Katju, J

Bench : Division Bench

Advocate : R.N. Bhalla, for the Appellant; S.F.A. Naqvi, for the Respondent

Final Decision : Dismissed

Judgement

M. Katju and Poonam Srivastava, JJ.—Heard learned counsel for the parties.

2. The petitioners have prayed for quashing of the impugned order dated 9.10.2003 (Annexure-5 to the writ petition) passed by the respondent, Nagar Ayukt, Nagar Nigam, Agra rejecting their representations dated 21.8.2002 and 8.1.2003. The respondent has directed the petitioners to deposit the arrears of Hoarding tax to a tune of Rs. 88,181 to the Nagar Nigam, Agra within a period of 15 days.

3. Counter and rejoinder-affidavits have been exchanged between the parties and are on record.

4. The petitioner No. 1 was working in the Nagar Nigam as Revenue Inspector in the Advertisement Department and retired in the year 1995. Before the petitioner No. 1 had retired, his son petitioner No. 2 Shishupal used to run two advertising agencies in the name and style of Vikram Advertisers and Hanuman Traders. The record shows that Shishupal was recorded as proprietor and Jai Narain as Manager for both the firms. The two firms stopped functioning in the year 1998. The petitioner No. 1 retired from the post of Revenue Inspector, Nagar Nigam, Agra and constituted a new firm in the name and style of Thakur

Art Studio, also dealing in advertising and putting up hoarding within the city.

5. The petitioner No. 1 filed a Writ Petition No. 11420 of 2003 for direction in the nature of mandamus directing the respondent to decide his representations dated 21.8.2002, 2.7.2002 and 8.1.2003 (Annexures-6, 7 and 8 respectively to the writ petition). A Division Bench of this Court disposed of the writ petition on 12.3.2003 with a direction to the concerned authority (Mukhya Nagar Adhikari in the present case) to decide the representations preferably within a period of six weeks from the date of production of a certified copy of the said order. In pursuance to the aforesaid direction, the impugned order has been passed rejecting the representations by a reasoned and well discussed order. The main ground for rejection of the representations of the petitioners is that both the petitioners are in arrears and have not paid hoarding tax from the year 1995 upto 31.4.2001. The demand by Nagar Nigam, Agra is against all the three firms namely Vikram Advertisers, Hanuman Traders and Thakur Art Studio, all run by both the petitioners.

6. The petitioners have claimed that the Nagar Nigam, Agra is entitled to charge the tax on hoarding only on the basis of rates fixed in accordance with Gazette Notification dated 30.10.1974, Annexure-1 to the writ petition. The petitioners have also claimed in paragraph 14 of the writ petition refund of Rs. 68,487 as they have paid tax in excess, for the period upto 31.3.2003. The petitioners have also claimed that the excess sum has been charged on the new rates whereas they are entitled to pay hoarding tax according to old rates fixed by the Nagar Nigam, Agra as notified in the Gazette Notification No. Da-30 Ba/11 (6)/31/9/36, dated 30.10.1974.

7. The respondent has filed a counter-affidavit stating therein that the Nagar Nigam has full power u/s 172 (2) (h) of the U. P. Nagar Mahapalika Adhiniyam (hereinafter referred to as the Adhiniyam) as also Section 192 of the Adhiniyam to realise tax on advertisements. The contention of the respondent in paragraph 4 of the counter-affidavit is that the tax on hoarding is to be levied as per the Government Order issued from time to time and rates on hoarding of various sizes were revised in the 20th session of Executive Committee of the Nagar Nigam which adopted the resolution on 23.3.1999. In the 20th session of the Executive Committee it was resolved that the rates of advertisement on hoarding of various sizes fixed previously were revised and rates were increased which were made applicable w.e.f. 23.1.1998. The respondent has calculated the hoarding tax according to the revised rate w.e.f. 23.1.1998 and there are no arrears which could be refunded as claimed by the petitioners. Copy of the resolution revising the rates of hoarding of various sizes in the 20th session has been annexed as Ahnexure-C.A.-1 to the counter-affidavit.

8. The argument of the learned counsel for the petitioner is that the tax imposed on hoarding in the year 1974 could not be enhanced unless it was made in accordance with Sections 199 to 203 of the Adhiniyam because the tax levied is u/s 172 (2) (h) of the Adhiniyam which states :

"(2) In addition to the taxes specified in Sub-section (1) the Mahapalika may for the purposes of this Act and subject to the provisions thereof impose any of the following taxes, namely :

(a)............................

(b)...............................

(c) ....

(d) ....

(e).............................

(f)............................

(g).............................

(h) a tax on advertisements not being advertisements published in newspapers."

9. Section 192 of the Adhiniyam provides that every person who erects, exhibits, fixes or retains upon or over any building, wall, hoarding or structure any advertisement to public view in any manner whatsoever, in any place, whether public or private shall pay for such advertisement which is so erected, exhibited, fixed, retained, or displayed to public view, a tax calculated at such rate and in such manner as provided under the Adhiniyam. It is thus evident that the tax on hoarding advertisement u/s 192 of the Adhiniyam is subject to a written permission of the Mukhya Nagar Adhikari. Section 193 (2) (ii) of the Adhiniyam, restricts such a permission to be granted in the event the tax, if any, is due in respect of advertisement and has not been paid.

10. A reading of Sections 172 (2) (h), 192 and 193 of the Adhiniyam makes it abundantly clear that advertisements within the city limits are liable to hoarding tax and could only be erected after a written permission of the Mukhya Nagar Adhikari has been granted and such a permission can be granted in the event the person concerned is not in arrears of any tax. The impugned order clearly details the arrears of tax on hoarding by the two petitioners and in the circumstances there is no illegality in refusing to grant permission to the petitioners. Hence, the representations of the petitioners have rightly been rejected vide order dated 9.10.2003.

11. The second challenge of the petitioners is that rates of tax on hoarding could not be revised unless and until the entire procedure provided under Sections 199 to 203 of the Adhiniyam has been followed. The notification dated 30.10.1974 annexed as Annexure-1 to the writ petition was issued after the procedure provided u/s 199 to 203 of the Adhiniyam was adopted in the year 1974 and it is only the revision of the rates which was done by a valid resolution in the 20th session dated 23.3.1998. Section 204 of the Adhiniyam prescribes for altering the tax and it is independent of Section 203 of the Adhiniyam where there is no requirement of publication in the official Gazette for alteration of rates of tax. In

the present case, the tax levied u/s 192 of the Adhiniyam has been altered by means of valid resolution and alteration of tax as provided u/s 204 of the Adhiniyam does not contemplate a notification in the Official Gazette. This argument of the petitioners is also not acceptable and they are liable to pay the tax on hoarding at the revised rates.

12. There is yet another relevant aspect which cannot be ignored. The petitioners have nowhere stated that they are realising the same amount from their clients/ customers who approached them for installing the hoardings for advertising their product as they used to realise in the year 1974. The Nagar Nigam has enhanced the tax and advertisers are free to proportionately increase their fee from their clients. It can hardly be expected that the Nagar Nigam will be able to meet out the day-to-day expenditure on the rates which were prevalent 30 years back. It is common knowledge that the rates have escalated to a great extent and advertisers have also started charging exorbitantly from their clients. As such there should be no reason as to why the Nagar Nigam should not be paid hoarding tax at the revised rates. This Court cannot interfere even on the equitable grounds as claimed by the petitioners.

13. For the reasons discussed above, there is no illegality in the impugned order dated 9.10.2003 and it does not call for any interference in exercise of discretionary powers under Article 226 of the Constitution. The writ petition is, therefore, dismissed. There shall be no order as to cost.

