
(1971) 10 AP CK 0004

In the Andhra Pradesh High Court

Case No : Writ Petition No. 4119 of 1970

The Nizam Sugar Factory Ltd.

APPELLANT

Vs

The Bodhan Municipality, Bodhan and Others

RESPONDENT

Date of Decision : 14-10-1971

Acts Referred:

Andhra Pradesh Municipalities Act, 1965 — Section 87(3)
Hyderabad District Municipalities Act, 1956 — Section 102(3)

Citation : AIR 1972 AP 173

Hon'ble Judges : Vaidya, J;Sriramulu, J

Bench : Division Bench

Advocate : B.I. Seshu and A. Venkatramareddy, for the Appellant; Omprakash Misra and Govt. Pleader, for the Respondent

Judgement

Vaidya, J.—The petitioner herein owns two sugar factories at Bodhan within the limits of the Bodhan Municipality. Nizamabad District. There was a quinquennial revision of taxes in the year 1960 by the Bodhan Municipality. After the said revision the petitioner was intimated u/s 120 of the Hyderabad District Municipalities Act, 1956 on 30-1-1964 by the Executive Officer that the petitioner was assessed to a sum of Rupees 1,87,726-12 ps. from 1-4-1960 to 31-3-1964 to the property tax on factory buildings including the value of plant and machinery. The petitioner was also assessed to tax on agricultural lands. Against the said order of intimation the petitioner preferred an appeal C. M. A. No. 8 of 1964 in the Court of the District Judge. Nizamabad contending that the Municipality had no power or jurisdiction to levy property tax on plant and machinery and include the same in the value of the factory buildings. The said appeal was dismissed by the District Judge.

2. Against the said judgment and decree C. R. P. No. 1322 of 1965 was preferred to this Court. This Court by its judgment and decree dated 5-8-1968 dismissed the said revision without going into the merits as it came to the conclusion that the appeals before the District Court were premature. Subsequently on

19-12-1968 the Bodhan Municipality issued a Bill demanding payment of Rs. 2,56,197-27 being the property tax due for the years 1962-63, 1963-64 , 1966-67,1967-68 and 1968-69 till the end of 31-3-1969 assessed not only on buildings and land but also on plant and machinery. As the bill did not contain the details of tax levied on various item like buildings. lands, plant and machinery the petitioner company wrote letters for details as to the quantum of tax on buildings, plant and machinery separately. Without furnishing any details as to the break up of tax on buildings, plant and machinery. the Bodhan Municipality issued a bill No. A-311054 dated 20-11-1969 for a sum of Rs. 3,06,176-30 ps. being the tax for the year 1969-70. The bill was accompanied by a letter bearing the same date, in which it was stated that the amount of Rs. 1,76,465-30 paid by the petitioner was deducted out of the grand total of Rupees 5,24,289-33 and that the balance to be paid was Rs. 3,47,824-03. The petitioner company by its letter dated 20-12-1969 informed the Secretary of the Bodhan Municipality the details for which the amount of Rs. 1,76,465-30 ps. was paid and also requested he Municipality to furnish full details as to the quantum of tax on buildings, plant and machinery. The Secretary of the Municipality by his letter dated 11-2-1970 furnished the necessary details. According to the details given in the aforesaid letter the property tax payable on plant and machinery for the years 1969-70 will come to Rs. 3,19,731-70. The total tax as demanded in their bill dated 21-11-1969 on factory buildings plant and machinery was Rs. 4,99,790-30. After deducting the sum of Rs. 3,19,731-70 payable on plant and machinery, the balance of tax namely Rs. 180058-60 towards the property tax on buildings alone was paid in two instalments.

3. In this writ petition only the levy on plant and machinery is challenged on the ground that the provisions in the Hyderabad District Municipalities act which was succeeded by the Andhra Pradesh Municipalities act enabling the Municipalities to levy property tax on plant and machinery is outside the legislative power given in Item 49 of List II of the Seventh Schedule of the Constitution of India. Under List II in Item 49 of Sch. 7 of the Constitution of India the State Legislature is empowered to levy tax on lands and buildings. There is no other item in 7th Schedule which empowers the State legislature to levy tax on plant and machinery. The State Legislature therefore has no authority to legislate in regard to the tax on plant and machinery. The question of this nature came up for consideration before the Supreme Court in New Manek Chowk Spinning and Weaving Mills Co. Ltd. and Others Vs. Municipal Corporation of The City of Ahmedabad and Others, . Rule 7 (2) of the rules framed under the Bombay Provincial Municipal Corporations act of 1949 empowers the Municipality to levy tax on plant and machinery by providing that all plant and machinery contained or situate in or upon any building or land and belonging to the owners specified from time to time by public notice by the Commissioner shall be deemed to form part of such building for the purpose of fixing the rateable value. Their Lordships of the Supreme Court held that the State Legislature, which had power to levy a tax only on land and building could not levy tax on plant and machinery

contained in or situate on the building even though the machinery was there for the use of the building for a particular purpose. Rule 7 (2) therefore was held to be beyond the legislative competence of the State.

4. The vires of the provisions of Section 87(3) of the Andhra Pradesh Municipalities Act came up for consideration before a Division Bench of this Court consisting of Gopal Rao Ekbote and Venkateswara Rao, JJ., in W. A. No. 125 of 1968 and batch. By the decision D/- 6-3-1970 the learned Judges after referring to the decision of the Supreme Court referred to above held that the provisions of section 87(3) of the Andhra Pradesh Municipalities Act are ultra vires as they are outside the competence of the State Legislature. The provisions of Sec. 87 (3) of the Andhra Pradesh Municipalities Act read:

"All furniture and all plant and upon any building or land shall be included in determining the valuation under this section".

The provisions of Section 102 (3) in the Hyderabad District Municipalities Act read as follows:-----

"All plant and machinery contained or situate in or upon any building or land and belonging to any of the classes specified from time to time by public notice by the Committee, shall be deemed to form part of such building or land for the purpose of fixing the rateable value thereof under sub-section (1)".

5. The aforesaid provisions in the Hyderabad District Municipalities Act is in pari materia with the provision in Section 87 (3) of the Andhra Pradesh in Section 87 (3) of the Andhra Pradesh Municipalities act though the wording of the two provisions is different. The effect of Section 102 (3) of the Hyderabad District Municipalities Act is that the value of the plant and machinery is included for determining the rateable value of the building in which the plant and machinery is situated or contained. The decision of the Court in regard to Section 87 (3) of the Andhra Pradesh Municipalities Act applies with all its vigour to the provisions of Section 102 (3) of the Hyderabad District Municipalities Act. We have, therefore, no hesitation in holding that the provisions of Section 102 (3) of the Hyderabad District Municipalities act are also ultra vires being outside the ambit of the power of the State legislature.

6. In the result, the provisions of Section 87 (3) of the Andhra Pradesh Municipalities Act, in so far as they relate to the plant and machinery which are questioned before us and the provisions of Section 102 (3) of the Hyderabad District Municipalities Act are ultra vires and no demand for tax can be made including the value of the plant and machinery. Therefore the demand of the Bodhan Municipality for Rs. 3,19,731-70 ps. which relates to the tax on plant and machinery is illegal and void. The Municipality is hereby restrained from collecting the aforesaid amount of tax from the petitioner-Company.

7. In the result the writ petition is allowed with costs. Advocate's fee Rs. 100/-.

Petition allowed.
