**(2009) 06 KAR CK 0033**

**In the Karnataka High Court**

**Case No :** Writ Petition No. 16258 of 2007

The Sapthagiri Educational and Charitable Trust — APPELLANT

Vs

The Samandur Grama Panchayat — RESPONDENT

**Date of Decision :** 03-06-2009

**Acts Referred:**

Karnataka Panchayat Raj (Motion of no-confidence against Adhyaksha and Upadhyaksha of Grama Panchayat) Rules, 1994 — Rule 3, 5, 6, 6 (c)
Karnataka Panchayat Raj Act, 1993 — Section 199, 199 (1), 200, 201

**Citation :** (2009) ILR (Kar) 3165 : (2009) 5 KarLJ 583 : (2009) 3 KCCR 2236 : (2010) 8 RCR(Civil) 923

**Hon'ble Judges :** Ram Mohan Reddy, J

**Bench :** Single Bench

**Advocate :** Vardhaman V. Gunjal, for the Appellant; R. Sharathchandra, for R1 and R.V. Vijay, for R2, for the Respondent

## Judgement

Ram Mohan Reddy, J.—The petitioner, an Educational and Charitable Trust registered under the Indian Trust Act, with the sole object of eradication of illiteracy, poverty imparting sound education, upliftment of linguistic minority, Scheduled Caste and Scheduled Tribe etc., a non profit making Trust, purchased land measuring 6 acres 12 guntas in Sy. No. 61/5 of Gudnahalli, falling within the territorial limits of Samandur Grama Panchayat -1st respondent. According to the petitioner, the said lands were diverted to be used for non agricultural purposes by an order of the Deputy Commissioner under the Land Revenue Act and approved by the BMRDA. Having erected a building after obtaining necessary permission in accordance with law, the petitioner commenced an engineering college in the name of Sri Sai Engineering College.'' It is the allegation of the petitioner that the 1st respondent by notice dated 6.5.2004 Annexure-A addressed to the trust demanded Rs. one lakh as tax on the building for the year 2003-04, when responded to, stating that it was exempt from payment of tax, was visited with the order assessing the property to tax at Rs. 2,22,836/-. The petitioner aggrieved by the said notice and assessment order, filed an appeal before the Zilla Panchayat invoking Section 201 of the Karnataka Panchayat Raj Act, 1993, for short the Act, inter alia contending that being a charitable trust was entitled to exemption under Rule 6(c) of the Karnataka Panchayat Raj Act (Gram Panchayat Taxes and Fees) Rules 1994, for short Taxation Rules" and in addition, that the notice assessment and demand of tax did not comply with the procedure to levy tax on buildings and lands as set out in Chapter II of the Taxation Rules''. It is the further allegation of the petitioner that the Appellate Authority without addressing the contentions advanced in the appeal, by order dated 29.3.2007 Annexure-B dismissed the appeal.

2. The petition is opposed by filing on 15.12.2008 statement of objections dated nil, of the 1st respondent, inter alia, contending that the petitioner-institution in the guise of a Charitable Trust though exploits the society by demanding and collecting fees and donation from students, refuses to pay the land tax. The building, it is claimed, measures 1000 squares valued at crores of rupees and the tax demanded being very meagre, nominally covers expenses of the panchayat towards sanitary and maintenance. According to the 1st respondent, the demand for payment of tax for the years 2004-2008 is just and legal.

3. Learned Counsel for the petitioner points to Section 199 of the Act, providing for levy of taxes on land and building by the Gram Panchayat and exemption as may be prescribed while Rule 6(c) of Taxation Rules'', entitles, a charitable institution, having not let out the building for rent, to exemption from levy of tax under Sub-section (1) of Section 199 of the Act. Learned Counsel contends that the impugned notices and assessment order of the 1st respondent, are in gross violation of the procedure to levy taxes on building and lands, in Rules 3, 7 to 10 of Taxation Rules''. According to the learned Counsel, the Appellate Authority having failed to consider the contentions advanced by the petitioner over the illegality in levying the tax, and claim for exemption under Rule 6(c) of Taxation Rules'', has occasioned grave injustice calling forth interference.

4. Per contra, learned Counsel for the 1st respondent seeks to sustain the notices, assessment and order impugned as being well merited, fully justified and not calling for interference.

5. Indisputably, Section 199 of the Act controls the levy of taxes, rate etc., by Gram Panchayats. Sub-section (1) states that the manner and subject to such exemptions, as may be prescribed, the Gram Panchayat could levy taxes not exceeding the maximum rate specified in Schedule IV, upon buildings and lands not subject to agricultural assessment within the limits of the Panchayat area Schedule IV to the Act at Sl. No. 1 states that tax on building shall be at the maximum rate of 10% of the annual value (per annum) and the explanation states that the word ''annual letting value'' means the annual rent for which any building or land, exclusive of furniture or machinery contained or situated therein or thereon, might reasonably be expected to be let from year to year.

6. The State Govt. in exercise of the power conferred under Sections 199, 200

 

and 201 framed Taxation Rules'' which came into force in the year 1995. Rule 3 under Chapter II provides for procedure to levy tax on building and land. Sub-rule (1) states that every Gram Panchayat shall, before levying taxes on buildings and lands under Sub-section (1) of the Section 199, pass a resolution to levy the taxes; publish a notice of such resolution by affixing copies thereof on the notice board of the office of the Grama Panchayat and at other conspicuous places in the panchayat area, specifying therein, the rate of tax and the date not earlier than thirty days from the date of such publication, with effect from which, the said taxes shall be levied and also announce by beat of drum in the Panchayat area the fact of such publication. Sub-rule (2) provides that the taxes under Sub-rule (1) shall be levied for any year or part thereof and shall be paid for every quarter commencing from the 1st day of April, 1st day of July, 1st day of October, and 1st day of January of the year. Rule 5 provides for rate of tax to be levied on the building at 10% of the annual letting value of such building, per annum; while Rule 6 provides for exemptions. Sub-rule (c) of Rule 6 provides exemption for buildings and lands used solely for charitable or public religious purposes and not let out for rent, under Sub-section (1) of Section 199. Rule 7 states that the Secretary of the Gram Panchayat shall, as soon as may be after the publication of the notice of resolution under Rule 3 but not later than the 1st day of December, next following, prepare an assessment list relating to the buildings and lands in the Panchayat area showing the:

(a) serial number of each house or land;

(b) name of the owner and occupier, if any;

(c) annual letting value of the buildings; and

(d) amount of tax assessed thereon.

7. Rule 8 extends an opportunity for filing objections to the assessment list, when completed and notice published by affixing it on the notice board of the office of the Grama Panchavat, and also by beat of drum in the Panchayat area, stating that list is open for inspection at the office of the Grama panchayat and that objections will be considered and decided by the Grama Panchayat on a date which shall not be earlier than 30 days from the date of publication of the aforesaid notice. Rule 9 provides for inspection of assessment list whereby every person whose name appears in the assessment list, every person claiming to be the owner or occupier of any building or land, and the agent of any such persons shall be at liberty to inspect the list and to make extracts therefrom without any charge. Rule 10(1) states that all objections to the assessment shall be considered and decided by the Grama Panchayat on the date specified in the notice published under Rule 8 or any later date and the decision of the Gram Panchayat shall be communicated to the person objecting to the assessment.

8. In the facts of this case, the specific allegation of the petitioner that the levy and demand of tax over the building belonging to it, by the 1st respondent-Panchayat, did not comply with the Taxation Rules'', is well founded. This Court

 

on 22.4.2009, directed the Gram Panchayat to place on record the documents relating to the compliance of Rules 3 to 10 of the Taxation Rules'' in so far as it relates to the Immovable property belonging to the petitioner. Learned Counsel for the 1st respondent submits that despite reminders to his client, the records are not made available. The notices Annexures-A, C&D, much less the statement of objections of the 1st respondent to the writ petition do not disclose compliance of the aforesaid rules. Suffice it to state that the 1st contention of the learned Counsel for the petitioner, deserves acceptance that the levy and demand of building tax pursuant to notice Annexure A and followed by notices Annexures - C&D, deserves acceptance, as they stultify the statute and hence illegal, arbitrary and not Taxation Rules'' complaint.

9. Though, it is strenuously urged that the petitioner has put to use the building and land for a charitable purpose and not let out for rent, being a pure question of fact, must be established before the Gram Panchayat and not for a decision by this Court in exercise of writ jurisdiction under Article 226 of the Constitution of India. It is for the petitioner to lay relevant material as available in law, to establish that the building in question is put to charitable use, so as to fall under Rule 6(c) of the Taxation Rules'', for exemption from levy of tax for the said building. If the petitioner places such material before the 1st respondent-Gram Panchayat, with an appropriate representation, seeking exemption from payment of building tax, within one month from today, there is no reason to believe that the Gram Panchayat would not consider the petitioner''s request.

10. An examination of the order dated 29.3.2007 Annexure-B of the Executive Officer, Zilla Panchayath does not animate consideration of compliance of rule of law and hence, the reasons, findings and conclusions arrived at are illegal and arbitrary.

In the result, this petition is allowed in part The impugned demand notices Annexures- A, C and D and the order Annexure B of the Appellate Authority are quashed. It is needless to state that it is open for the Gram Panchayat to comply with the provision of the Taxation Rules'' to impose and collect from the petitioner the tax over the building in question, if the petitioner''s building is not entitled to an exemption, under Rule 6(c) of the Taxation Rules''.

The petitioner, is directed to deposit Rs. 1,50,000/- within one month from today, with the 1st respondent-Gram Panchayat, to be adjusted as against tax dues, if any, for the period from 2003 to 2009. It is made clear that if the 1st respondent exempts the building and land, belonging to the petitioner from levy of tax, the said sum shall be refunded to the petitioner.

 