

(1997) 04 KL CK 0006
In the High Court Of Kerala
Case No : O.P. No. 6027 of 1997

Vigilance Council, Thiruvalla and Others	APPELLANT
Vs	
Thiruvalla Municipality	RESPONDENT

Date of Decision : 03-04-1997

Acts Referred:

Kerala Municipalities Act, 1994 — Section 231, 232, 233, 234, 279

Citation : AIR 1997 Ker 350

Hon'ble Judges : P. Shanmugam, J

Bench : Single Bench

Advocate : K. Kochumol and K. Karjet, for the Appellant;

Final Decision : Dismissed

Judgement

P. Shanmugam, J.—Petitioners are public sector organisation and resident of Thiruvalla Municipality. They have objected to the proposal of the Municipality to increase the rate of property tax from 13% to 15%. The Municipality in reply has stated that the property tax in Thiruvalla Municipality was collected at the same rate of 13% over since 1978-79, and the Municipality is presently faced with heavy financial liabilities hampering the development activities. The O.P. is against this order.

2. The petitioners' case is that enhancement of rate of tax is excessive and the Municipalities is having sufficient funds to meet requirements.

3. Learned Counsel appearing on behalf of the petitioners strenuously pleaded that the Municipality has no jurisdiction to enhance the rate of tax in between the general revisions by referring to Section 238 of the Kerala Municipality Act. According to this the property tax will be assessed once in every 5 years and therefore the same principle should apply for the fixation of the rate of tax. She also submitted that the Municipality has no authority to revise the tax without prior permission of the Government. Sub-section 3 of Section 279 states that the Council shall not alter the rate of tax except with the previous sanction from the

Government. According to her general revision for the annual value was in the year 1994 and the rate of tax can also be revised only after 5 years.

4. Under Article 243X of the Constitution of India the legislature may authorise a Municipality to levy, collect and appropriate taxes. Section 230(1)(a) of the Kerala Municipality Act, 1994 authorises the Municipalities to levy property tax. Section 231 and Section 232 sets out the procedure for the imposition. The resolution of the Council shall specify the rate and date from which a tax can be proposed and finalised. The maximum and minimum rate of tax is set out u/s 233. Section 234 deals with the method of assessment.

5. Municipality is empowered to increase the rate of property tax and the petitioner has not stated as to how it is unauthorised and without jurisdiction. The petitioner has mixed up the issue of method of assessment, and its general revision with the rate of tax. There is no bar against fixing the rate of tax retrospective. The provisions of the Act enables the Municipality to decide the date from which the tax shall be levied. In this case there is a public notice dated 29-6-1996 for increasing of the rate with effect from 1-4-1996 and all the procedures for the imposition is satisfied. A tax is an imposition made for public purpose without reference to any service rendered or any specific benefit conferred upon the tax payer. A tax is paid for the common benefit to raise the general revenue. Therefore the contention that the Municipality is not providing corresponding services and deprived of property right guaranteed under Article 330A, have no force.

6. It has been well laid down principle that in the matter of taxation laws the Court permits greater latitude to the discretion of the legislature. The freedom of legislature is conceded not only in the choice of the article to be taxed but also as regards the manner and rate of taxation e.g. to prescribe different rates for different categories of persons or objects, (vide *Khyerbari Tea Co. Ltd. and Another Vs. The State of Assam*, . The Courts are to slow to interfere with the legislative direction in the matter of choice of a date for determining the basis of or commencement of liability for a tax, (vide *Empire Industries Limited and Others Vs. Union of India and Others*, . The Supreme Court in *D.G. Gose and Co. (Agents) Pvt. Ltd. Vs. State of Kerala and Another*, held that there is adequate procedure or machinery in the three Acts e.g. The Kerala Municipal Corporation Act, 1961 and The Kerala Municipalities Act, 1960 and The Kerala Panchayat Act, 1960 for the satisfactory and proper determination of the annual value of buildings.

7. Learned counsel for the petitioners right in contending that the property tax shall be assessed and the tax determined once in every 5 years. Assessment of the property tax is done in accordance with Section 234. But what Municipality has attempted is not the assessment of the property tax but the fixation of rate of tax. As per the proviso 2 of Sub-section 3 of Section 233 a Municipality is entitled to fix the rate of tax upto 25%. Thus there is a specific provision entitling the Municipality to levy the tax at such percentage of the annual value of the

building. The annual value of the building is determined once in 5 years according to Section 234 read with 238. The rate of tax or the percentage of tax based on the annual value is done u/s 233. There is no bar for the Municipality to revise the percentage of the annual value for the purpose of assessment. In so far as the financial rights of the local bodies are concerned unless there is specific provision against imposition this Court is not justified in interfering with the fixation of the rate of tax when the Act provides of the outer limit up to 25%. It is for the Municipality to determine the percentage within the 25%.

8. Even on the question of arbitrariness it should be seen that the rate of 13% was fixed in the year 1978-79. For the past 18 years there is no change in the rate of tax. Therefore it cannot be contended that the increase in 13% to 15%, after 18 years is arbitrary I do not find any grounds to sustain the said argument.

9. The reasons stated in Ext. P4 by the Municipality for revising the rate of tax in my view cannot be said to be unfair and unjustifiable. The previous sanction of the Government for altering the rate of tax as per Sub-section (3) to Section 279 applies to a different situation. The said provision would apply only in a case where the Government had issued directions to the Municipality to levy a particular rate of tax. In which case in reference to such direction the Municipal Council cannot alter the rate of tax. This will not apply to the facts of the case.

For all these reasons I do not find any grounds to interfere with the enhancement of rate of tax. Accordingly, the Original Petition is dismissed.