
(1994) 07 MP CK 0036

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 1173 of 1981

Western Coalfields Ltd.

APPELLANT

Vs

Notified Area Committee, Dongar-Parasia and Others

RESPONDENT

Date of Decision : 19-07-1994

Acts Referred:

Madhya Pradesh Municipalities Act, 1961 — Section 127, 127(A), 341(1), 7

Citation : AIR 1995 MP 46

Hon'ble Judges : U.L. Bha, C.J;M.V. Tamaskar, J

Bench : Division Bench

Advocate : K.P. Munshi, for the Appellant; V.K. Tankha, for the Respondent

Final Decision : Dismissed

Judgement

U. L. Bhat, C.J.—The petitioner is a company whose share capital is owned by the Government of India. It owns properties situated within the Notified Area Committee Dongar-Parasia, the first respondent. Second respondent is the Chief Municipal Officer of the first respondent. Annexure-1 is a copy of the demand notice dated 18-2-1981 issued by the second respondent calling upon the petitioner to pay house tax and lighting tax for the period from 1975-76 to 1979-80. Annexure-2 is a similar notice dated 18-2-1981 issued demanded house tax and lighting tax for the year 1980-81. Petitioner has filed the writ petition challenging these two demand notices on the ground of lack of competence. At an earlier stage the writ petition was allowed on the ground that the State Government had not published any notification imposing property tax or lighting tax in the notified area. It appears that only draft notifications were sent down to the committee. Respondents filed an application for reviewing the order on the ground that Area Committee is otherwise entitled to impose house tax and lighting tax. The application was allowed. We have heard the parties.

2. Learned counsel for the petitioner has submitted a written note today. On the basis of arguments advanced at the Bar, the following questions arise for consideration :

(1) Whether the first respondent is empowered to impose house tax and lighting tax for the period prior to 11-1-1980 ?

(2) Whether going by the provisions of the Panchayats Act, buildings belonging to the petitioner are leviable for house tax and lighting tax ?

(3) Whether the first respondent is empowered to levy these taxes for the period subsequent to 11-1-1980?

(4) Whether the petitioner, being a Government owned company, is exempt from payment of these taxes ?

3. Point No. 1. Dongar-Parasia was originally a Panchayat governed by the provisions of the M.P. Panchayats Act, 1962. With effect from 1-12-1974, it was constituted as a notified area u/s 340 of the M.P. Municipalities Act, 1961 (for short "the Act"). With effect from 10-12-1982, it became class-IV Municipality. It was upgraded as Class III Municipality in 1988.

4. Section 341(1)(a) of the Act states that the State Government may impose in any notified area any tax which can be imposed there by the Council if the notified area were a Municipality. Section 127(1)(i) enables a Municipal Council to impose a tax payable by the owner of houses, buildings or lands situated within the municipal limits with reference to annual letting value of the house, building or land, called property tax. There is a similar provision in Section 127(1)(xiv) regarding lighting tax. Going by Section 341(1)(a), property tax or lighting tax can be levied in a notified area where the State Government imposes the same. It is admitted on behalf of both the sides that the State Government has not issued any notification imposing any such tax in the notified area of the first respondent.

5. The respondents contend that for the period prior to 11-1-1980, the notified area was competent to impose house tax and lighting tax by virtue of the provisions of Section 81 of the M.P. Panchayats Act, 1962 read with Section 7 of the M.P. Municipalities Act, 1961 and Annexure-5 notification dated 17-11-1975 issued by the State Government and published in the official gazette on 9-1-1976.

6. Section 341(1)(f) of the M.P. Municipalities Act, 1961 empowers the State Government to extend to any notified area the provisions of any Section of this Act, subject to such restrictions and modifications, if any, as the State Government may think fit. By Annexure-5. In exercise of powers conferred by Section 341(1)(f), the State Government extended the provisions of Section 7 of the Act to first respondent Notified Area and three other Notified Areas with effect from the date of publication of the notification in the gazette. The extension of Section 7 to the first respondent, therefore, came into force with effect from 9-1-1976.

7. The relevant portion of Section 7(d) reads thus -

"7. Effect of establishing Municipality for local area which ceases to be Town Area or Panchayat -- When any local area ceases to be a Town Area under the Bhopal State Town Area Act, 1954 (XIV of 1954), or a Panchayat under the Panchayat Law and immediately following such cessation a Municipality is established u/s 5 for such area, then, as from the date of the establishment of the Municipality (hereinafter in this section referred to as "the specified date") the following consequences shall ensue, namely -

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(d) any appointment, notification, notice, tax, order scheme, licence, permission, rule, bye-law or form made, issued, imposed or granted under the Bhopal State Town Area Act, 1954 (XIX of 1954), or the Panchayat Law before the specified date, in respect of such local area shall, so far as it is not consistent with the provisions of this Act, continue to be in force and be deemed to have been made, issued, imposed or granted in respect of the Municipality until it is superseded or modified by any.....tax.....imposed under this Act."

If it can be interpreted that by virtue of the extension of Section 7 to the Notified Area Committee, since it was a Panchayat before it became a notified area, and following such cessation it became a Notified Area Committee, the consequences contemplated with ensue, and if, further, the erstwhile Panchayat was empowered to impose the tax, the demand would be lawful. Learned counsel for the contending parties sought to place before us rival interpretations of the provisions of the above Section. Petitioner's contention that this is not a case of cessation, but disestablishment has no relevance.

8. According to the learned counsel for the petitioner, Section 7 as it applies only to Town Areas under the Bhopal State Town Area Act, 1954 and the intention of Annexure-5 is to apply Section 7 to all Town Area Committees irrespective whether they were constituted under the Bhopal State Town Area Act, 1954 or under any other law. Incidentally, we may notice that the first respondent committee was constituted not under the Bhopal State Area Act, 1954 but under the M.P. Panchayats Act, 1962. Therefore, it is said on behalf of the petitioner that by virtue of Annexure-5 Section 7 has to be read as stating that "When any local area ceases to be a Town Area under the Bhopal State Town Area Act, 1954 or under the M.P. Panchayats Act, 1962.....". The applicability of Section 7. it is said, would be attracted only when the first respondent is upgraded as a Municipality. In such a case, tax imposed by the first respondent would not not cease to be in force after re-constitution of the Municipality.

9. According to the learned counsel for the respondents, the above would not be the correct interpretation. Section 7, it is pointed out, stipulates consequences when a local area ceases to be a Town Area or notified area or a Panchayat ceases to be Panchayat under the Panchayat Law and becomes a Municipality. Annexure-5 notification was issued almost immediately after the formation of the first respondent as Town Area and there would have been no purpose in issuing

such a notification at that state because its conversion to Municipality would not have contemplated that stage. Therefore, it is contended that in the application of Section 7 to the first respondent Town Area by Annexure-5, the word "Municipality" must be a areas as substituted by the word Town Area".

10. Section 340 of the Act empowers the State Government to constitute a local area to be a town area of notified area if it is not expedient to constitute a Municipality. Provisions of Section 5 under which Government is to constitute or declare a local area to be a Municipality are applicable to consitution of a local area as a notified area by virtue of Sub-section (2) of Section 340. Section 341 which immediately follows Section 340 empowers the State Government to extend to any notified area the provisions of any section of the Act. It is pertinent to notice that there is no separate statute governing notified areas or Notified Area Committees. Apart from Section 7 and Section 340, there are no independent provisions in the Act which would be applicable to notified areas or Notified Area Committees. This would mean that Notified Area Committees would not be able to discharge any functions at all. It is to enable the proper functioning of the Notified Area Committees that power is vested in the State Government u/s 341(1)(f) to extend to notified areas the provisions of any Section of the Act. A Notified Area Committee would not be able to function at all without extension of certain provisions of the Act. That was why Annexure-5 (relating to extension of Section 7) and Annexure-11 (relating to extension of several other provisions of the Act to Notified Area Committees) were issued. Annexure-11 extends to several Notified Area Committee various provisions of the Act including Section 127 which is the main taxation provision in the Act. It is, therefore, clear that the purpose of extending Section 7 to a notified area is to enable it to function properly in the aftermath of its formation as notified area and not in the aftermath of its further conversion into a Municipality. If what is aimed at is prevention of difficulties when a Notified Area Committee is to become a Municipality, the provisions of Section 7 as they are would suffice. As Section 7 reads, certain consequences will naturally follow when a local area ceases to be a town area of course under a particular statute and then a Municipality is established or a Panchayat ceases to be Panchayat and a Municipality, is established. Therefore, the contention of the respondents that with the extension of Section 7 to the first respondent, the Section must be read as if the word "Municipality" is substituted by the word "notified area is" tenable. As Section 7 stands, it would apply in relation to a Panchayat only when it becomes a Municipality and not when it becomes a notified area. This difficulty is sought to be got over by the State Government by issuing Annexure-5 notification. It would, therefore, mean that when a Panchayat ceases to be a Panchayat and becomes a notified area, the consequences enumerated in Section 7 would apply. Any tax imposed by the erstwhile Panchayat will, therefore, continue to be in force and will be deemed to have been imposed in respect of the notified area until it is superseded or modified.

11. Point No. 2. The question which next arises for consideration is whether the

erstwhile Panchayat had imposed house tax and lighting tax. If such taxes had been imposed these taxes would continue until withdrawn by the first respondent. There is an attempt made on behalf of the petitioner to submit that the erstwhile Panchayat had not imposed any such tax. Section 80 of the M.P. Panchayats Act, 1962 relates to power to levy cess on land. Section 81 relates to other compulsory taxes. Section 81(1)(a) and (c) are quoted as under:--

"81. Other compulsory taxes-- (i) Subject to the provisions of this Act and to such conditions and exception as may be prescribed, every Gram Panchayat shall impose the following taxes, namely-

(a) a tax on building of capital value exceeding one thousand rupees;

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(c) a lighting tax, if the Gram Panchayat has made lighting arrangement".

These taxes being compulsory taxes are taxes which are imposed by the erstwhile Panchayat. We, therefore, find that the first respondent was competent to impose these taxes on the petitioner.

12. Learned counsel for the petitioner contended that even assuming it to be so, by the time Annexure-1 notice was issued, the first respondent had ceased to be Notified Area Committee and had become Class IV Municipality and as such did not have competency to impose these taxes." We have already adverted to the provisions of Section 127(1)(i) and (xiv) enabling imposition of tax on buildings and lighting by Municipalities. Section 127(1)(i) relating to property tax contains the following proviso :

"Provided that property tax under this clause shall be imposed except in respect of class IV Municipality".

This would mean that after Notified Area Committee became a Class IV Municipality, it ceased to have power to impose property tax. By Annexure-1, property tax was demanded for the period of 1975-76 to 1979-80 during which period the local body was Notified Area Committee and not Class IV Municipality. The Notified Area Committee as successor of the Panchayat would be competent to recover property tax for the earlier period.

13. Point No. 3. Annexure-2 is a notice demanding tax for the period 1-4-1980 to 31-3-1981. Respondents rely on Annexure-11 in support of this demand. By Annexure-11 dated 24-11-1979 and published in the official gazette on 11-1-1980, the State Government extended to first respondent and certain other Notified Area Committees several Sections of the Act including Section 122 to Section 129. We have already seen that Section 127(1)(i) and (xiv) empowers imposition of tax on buildings called property tax and lighting tax. Therefore, even without any specific imposition by the State Government as contemplated in Section 341(1)(a), the first respondent would be competent to impose such taxes u/s 127 read with Annexure- 11. Annexure-2 demand is competent.

14. Point No. 4. The Proviso to Section 81(1) of the M. P. Panchayats Act, 1962, states that building tax shall not be levied on buildings belonging to the Union or State Government. There is a parallel provision of exemption in Section 127A of the M, P. Municipalities Act, 1961, respondents rely on the decision reported in Western Coalfields Limited Vs. Special Area Development Authority, Korba and Another, to rebut this contention. The petitioner herein was the appellant before the Supreme Court in the above case. The question which arose for consideration was whether building belonging to the present petitioner could be subjected to property tax under the Mines and Minerals (Development and Regulation) Act, 1957 and under the M. P. Nagar Tatha Gram Nivesh Adhiniyam, 1973 in relation to Special Area Development Authority. The 1973 Act rendered applicable to Special Area Development Authority the relevant provisions of the M. P. Municipal Corporations Act which contain a provision for exemption of buildings owned by the Government of India from property tax. The Supreme Court held that even though the entire share capital of the companies has been subscribed by the Government of India, it cannot be predicated that the companies themselves are owned by the Government of India, that companies which are incorporated under the Companies Act have a corporate personality of their own distinct from that of the Government of India, that lands and buildings are vested in and owned by the companies while the Government of India only owns the share capital, and the lands and buildings of the companies cannot be regarded as the property of the Government of India. Learned counsel for the petitioner points out that appeals filed by the petitioner against judgments of this Court taking a similar view are pending in the Supreme Court and that these cases have been referred to a larger Bench. Until the above decision is overruled by the larger Bench, this Court is bound to follow it. Therefore, we hold that the exemption clause referred to above is not applicable to the buildings or lands of the petitioner.

15. In the result, the petition is dismissed but without costs. Security deposit, if any, shall be refunded to the petitioner.