

Radhakisan Rathi Vs. Additional Collector, Durg and Others

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Court : Supreme Court of India

Decided On : Apr-19-1995

Reported in : AIR1995SC1540; JT1995(6)SC166; 1995(3)SCALE184; (1995)4SCC309; [1995]3SCR510; 1995(2)LC346(SC)

Judge : P.B. Sawant and; S.B. Majmudar, JJ.

Acts : Assam Land Revenue Re-assessment Act - Rule 64; Assam Rural Panchayat Act - Sections 2, 10, 131(1), 132, 139, 158, 159 and 377; [Constitution of India](#) - Article 136

Appeal No. : Civil Appeal No. 597 with C.A. Nos. 598 of 1975, 665-66 and 667 of 1981, 5102 of 1995 (S.L.P. (C) No

Appellant : Radhakisan Rathi

Respondent : Additional Collector, Durg and Others

Judgement :

ORDER

S.B. Majmudar, J.

1. Leave granted in Special Leave Petition (C) No.7533 of 1980.
2. All these civil appeals raise a common question for our consideration. The appellants contend that their cinema theatres are situated within the local limits of

various Municipalities and Corporations constituted under the Madhya Pradesh Municipalities Act, 1961 (hereinafter referred to as 'Municipalities Act') and the Madhya Pradesh Municipal Corporations Act, 1956 (hereinafter referred to as 'Corporations Act') respectively. On these cinema theatres these municipalities have imposed cinema taxes. Still they are made liable to pay theatre tax as imposed by the concerned Janapada Panchayats within whose territorial limits these theatres are situated. These Panchayats are functioning under the provisions of the Madhya Pradesh Panchayats Act, 1962 ('Panchayats Act' for short). The appellants in Civil Appeals No. 597/75 & 598/75 have their cinema theatres situated at Rajnandgaon town of Durg District. Appellants in Special Leave Petition No. 7553/80 have their cinema theatres situated in Raipur town of Raipur District. Appellants in Civil Appeal No.665/81 and 667/81 have got their cinema theatres situated in Indore town. Appellant in Civil Appeal No.666/81 has its cinema theatre located in Ujjain town, while appellants in Civil Appeal No.668/81 have their cinema theatres in Bhopal town. It is not in dispute that apart from being situated in the concerned towns of Madhya Pradesh governed by the relevant provisions of the Municipalities Act or the Corporations Act, as the case may be, these theatres are also situated within the territorial limits of Janapada Panchayats functioning under the Panchayats Act. Appellants contend that once cinema taxes are imposed on cinema theatres by concerned local authorities they cannot be taxed by Janapada Panchayats by way of theatre tax. This contention was highlighted before the High Court in writ petitions filed by these writ petitioners. This common contention was rejected by the Division Bench of the High Court which took the view that Janapada Panchayats were competent to levy theatre tax on the concerned theatres owned by the appellants. That has brought the appellants in appeal before this Court after getting leave to appeal under Article 136 of the [Constitution of India](#).

3. We have heard the learned Counsel for the respective parties. In our View the grievance made by the appellants is not well founded. The Municipalities Act provides for municipal taxation as laid down in Chapter VII of the Act. As per Section 127(xx) a theatre or show tax can be imposed by the concerned Municipal Council. Similar such taxing power is available to Municipal Corporations of Bhopal and Indore. The appellants do not contest this position. On the contrary

they submitted that because they are paying theatre or show tax to the concerned municipal authorities the Janapada Panchayat cannot impose theatre tax on the very same theatres under the Panchayats Act. This contention has to be examined in the light of the provisions of the Panchayats Act. The preamble of the Panchayats Act shows that it is an act to consolidate and amend the law relating to Constitution and organisation of Panchayats as units Local Government in rural areas in Madhya Pradesh. Sub-section (2) of Section 1 lays down that it extends to the whole of Madhya Pradesh. Section 2 is a dictionary section. Sub-section (iii) of Section 2 thereof defines 'Block' to mean such area in a district as the State Government may, by notification, declare to be a block under Section 103, Gram panchayat is defined by Clause (x) to mean 'gram panchayat' established under Section 10, Clause (ix) defines 'Gram Sabha' as one established under Section 3. Clause (xii) defines 'Gram Sabha Area' to mean the area comprised within the village or villages for which a gram sabha is established. Clause (xiv) defines 'Municipal Law' to mean a law for the time being in force for the organisation and administration of municipalities, town areas, notified areas or municipal corporations in the State. Clause (xxii) defines 'Panchayat' which includes a Gram Panchayat, A Janapada Panchayat and a Zilla Panchayat. Clause (xxxii) defines 'tax' which includes a tax, toll, cess, rate fee or other impost leviable under this Act, but does not include a fine. Chapter II of the Act deals with Gram Sabhas. As per Section 3(1) the State Government may, by notification, establish a Gram Sabha for a village or a group of adjoining villages having population of 1000 or more. As per Section 10(1) for every Gram Sabha there shall be a Gram Panchayat constituted in accordance with the provisions of this Act. Chapter IX deals with Janapada Panchayats. As per Section 103(1) the State Government may by notification divide a district into blocks. Section 104 is relevant for our present purpose along with its proviso. It is, therefore, extracted in extensio:

104. Incorporation of Janapada Panchayat. (1) For every block, there shall be Janapada Panchayat having jurisdiction over the block: Provided that, unless otherwise expressly provided in this Act, every Corporation, Municipality, Town Area, or Notified Area shall with respect to the functions which a Municipal Corporation, a Municipal Council, Town Area Committee, or a Notified Area Committee discharges under the Municipal Law from a separate administrative

area.

4. Chapter X deals with functions of Janapada Panchayat. Sub-section(1) of Section 130 lays down that subject to the provisions of this Act and subject to general or special orders as may be issued by the State Government, it shall be the duty of a Janapada Panchayat, as far as the Janapada Panchayat fund at its disposal will allow to make reasonable provision for the matters mentioned in the Sub-section. Those matters refer to community development, agriculture, animal husbandry and fisheries, health and sanitation, education, social education, communication and public works, cooperation, cottage industries, women and child welfare, social welfare, emergency relief, collection of statistics, self-help programme and general. In addition to these, functions as per Section 131(1), the State Government may also entrust to Janapada Panchayat the execution in the block, of the community development scheme including measures relating to the functions enumerated in Section 130. As per Section 132 Janapada Panchayat shall have power to do all acts necessary or incidental to the carrying out of the duties entrusted to it under Section 130. Chapter XI deals with Janapada Fund and property. Janapada Panchayat Fund is dealt with in Section 139. As per Clause (vi) of Sub-section(2) of Section 139, amongst others, the Janapada Panchayat Fund can consist of proceeds of any tax, rate fee, etc. which the Janapada Panchayat may under any law levy. Chapter XIII deals with imposition of taxes and fees and recovery of claims by Janapada Panchayat. Section 157 deals with levy of taxes and fees. It will be apposite to reproduce the Section verbatim.

157. Levy of taxes and fees. - Subject to the provisions of this Act and to such conditions and exceptions as may be prescribed, every Janapada Panchayat shall impose the following taxes, namely: -

(a) a toll on new bridges constructed by the Janapada Panchayat;

(b) a tax on theatres, theatrical performances and other shows for public amusement.

Section 158 provides that the State Government may by rules made under this Act, regulate the imposition, assessment and collection of taxes mentioned in Section 157 and matters ancillary thereto. As per Section 159 any person aggrieved by the imposition of any tax imposed under Section 157 may appeal to prescribed authority in such manner and within such time as may be prescribed, and his decision shall be final. Chapter XV deals with administration of justice and Constitution of Conciliation Boards and Nyaya Panchayat. Section 376 deals with separate administrative units. It is located in Chapter XVIII dealing with miscellaneous matters. The said section is also material for our present purpose. Hence it is reproduced in extensio.

376. Certain areas to form separate administrative units - (1) Unless otherwise expressly provided by or under this Act, every local authority established or constituted under the Municipal Law shall, with respect to the functions which such authority discharges under such law, form a separate administrative unit.

(2) Nothing contained in Chapter XV shall apply to any area within the jurisdiction of a local authority established or constituted under the Municipal Law.

Chapter XIX deals with establishment of Gram Sabha for areas ceasing to be municipalities, notified area or town areas. Section 377 deals with the effect of establishment of Gram Sabha for local area which ceases to be Municipal Committee. It lays down when any local area ceases to be a municipality, a notified area or a town area by virtue of a notification issued under the Municipal Law and immediately following such cessation a Gram Sabha is established under Section 3 for such area, then, as from the date of the establishment of Gram Sabha the consequences that are indicated in the Section will follow.

5. In the light of the aforesaid relevant provisions of the Panchayats Act we have to consider the question posed for our decision. It is obvious that a cinema theatre situated within the territorial limits of local municipality or a corporation can be taxed by the concerned municipality in exercise of its powers under the relevant Municipal Act. But if the same theatre is also situated within a block duly constituted under the Panchayats Act it would fall within the territorial limits of the concerned Janapada Panchayat constituted for that block as laid down by Section

103 read with Section 104 of the Panchayats Act. Once that happens the concerned Janapada Panchayat would obviously be entitled to invoke its taxation powers under Section 157 for the area within its jurisdiction and if a theatre is situated within that area then obviously Section 157 would get attracted for imposing the twin types of taxes mentioned by Section 157 which are permissible to be imposed by the Janapada Panchayat. It is now well settled that the same subject matter can be covered by taxation nets imposed by different competent taxing authorities and there will be no double taxation involved in such case. We may refer in this connection to the decision of this Court in the case of Sri Krishna Das v. Town Area Committee, Chiragaon : [1990]183ITR401(SC) .

Para 30 of the report at page 654 lays down as under.

30. Where more than one legislative authority, such as the State legislature and a local or municipal body possess the power to levy a tax, there is nothing in the Constitution to prevent the same person or property being subject to both the State and municipal taxation or the same legislature exercising its power twice for different purposes. In Avinder Singh v. State of Punjab the State of Punjab in April 1977 required the various municipal bodies in the State to impose tax on the sale of Indian made foreign liquor @Re. 1 per bottle w.e.f. May 20, 1977. The municipal authorities, having failed to take action pursuant to the directive the State of Punjab directly issued a Notification under Section 90(5) of the Punjab Municipal Corporation Act, 1976 and similar provision of the Municipal Act, 1911. The petitioner challenged the constitutional validity of the said statutes and the levy on the, inter alia, ground of double taxation. Krishna Iyer, J. speaking for the Court held: (SCC p.144, para 4)

There is nothing in Article 265 of the Constitution from which one can spin out the Constitutional vice called double taxation (Bad economics may be good law and vice versa). Dealing with a somewhat similar argument, the Bombay High Court gave short shrift to it in Western India Theatres. Some undeserving contentions die hard, rather survive after death. The only epitaph we may inscribe is: Rest in peace and don't be reborn! If one the same subject matter the legislature chooses to levy tax twice over there is no inherent invalidity in the fiscal adventure save

where other prohibitions exist.

It may be mentioned that it is easy to visualise that on a cinema theatre situated within a local area the concerned Municipal Council or the Corporation, as the case may be, may impose cinema tax as permissible under the Municipal Act but on the same theatre entertainment tax can be imposed by the State Govt. in exercise of its separate legislative power and there would be no occasion for the cinema owner to submit that the theatre is subjected to double taxation. Learned counsel submitted that they do not make grievance about double taxation. But their grievance is a limited one, namely, the Panchayats Act is concerned with only rural areas and, therefore, theatres situated in urban areas like Municipal Council or the Corporation limits cannot be covered by the tax net available under the Panchayats Act. It was submitted that the Janapada Panchayat may impose tax only in rural areas comprised in the block and forming part of Gram Panchayat or any other rural area not governed by concerned Municipalities Act. It is not possible to agree with this contention. It is true as submitted by Advocate Shri Gambhir and other council for the appellants that the preamble of the Panchayats Act refers to rural areas for which the Act is enacted. But the term 'rural area' is nowhere defined in the Act. It is not a term of art. It is for the State Government in exercise of its power under Section 103 of the Act to divide a district into blocks. Once that is done as per Section 104(1) there shall be a Janapada Panchayat for every block, having jurisdiction over the block. As we have noted earlier, the theatres belonging to all the appellants are situated within the blocks falling within the territorial jurisdiction of the concerned Janapada Panchayats. It is precisely for that reason that the Janapada Panchayats have imposed theatre tax on these theatres situated within their jurisdiction as per Section 157(b) of the Act. It is also necessary to keep in view that none of the appellants have challenged the formation of blocks as made by the State Government by issuing notifications under Section 103 of the Act. They have however, pinned their faith on the proviso to Sub-section (1) of Section 104 of the Act. In our view the said proviso cannot help the appellants. All that it provides is that if any corporation, municipal town area or notified area is also situated in the block then for the purpose of discharging the functions of the concerned municipality under the Municipal Law the said municipality will be treated as a separate administrative area meaning

thereby the concerned local authority will be entitled to discharge its functions under the relevant Municipal Law in connection with that area which may also form part and parcel of the block as constituted under Section 103 of the Panchayats Act. But only because such municipality has to function as a separate administrative area for discharging its own functions under the Municipalities Act it cannot be urged that the taxing powers of the Janapada Panchayat for that area as flowing from Section 157 is excluded. There is no such express ouster of taxing power of the Janapada Panchayat for any area falling within its block where any local authority is discharging its functions under its own Act. The only express ouster is found in Section 376(2) which clearly excludes applicability of Chapter XV to area falling within the jurisdiction of a local authority established or constituted under the Municipal Law. If the Chapter XIII regarding taxing power of Janapada Panchayat were also to be excluded for such an area, there would have been a similar provision in Sub-section (2) of Section 376 excluding the applicability of Chapter XIII also to any area within the jurisdiction of local area established under the Municipal Law. In the absence of such exclusion, the legislative intention appears to be clear that the taxing power under Chapter XIII as conferred on Janapada Panchayat for imposing any tax within the territory of the block under its jurisdiction is not excluded and can be exercised. Question whether the concerned area included in the block as per notification of the State Government under Section 103 is a rural area or semi-urban area or urban area pales into insignificance in the absence of any challenge to such notification including the alleged urban or semi-urban area within the block as constituted under Section 103. The learned Counsel for appellants then vehemently submitted that as per the Constitution (73rd Amendment) Act, 1992, Part IX is included in the Constitution under the caption 'The Panchayats'. According to this provision, the panchayat can consist only of rural areas, while municipalities may consist of urban areas as laid down by Part IX-A. That is neither here nor there. We are concerned with the controversy which arose during the time the Panchayats Act, 1962 held the field and when Janapada Panchayats constituted thereunder were effectively functioning. The period during which the impugned tax was imposed by Janapada Panchayats is from 1971 upto 1978 only. During that period, therefore, it cannot be said that the provisions of the Panchayats Act, 1962 which were

applicable could not authorise the concerned Janapada Panchayat to impose theatre tax under Section 157 (b) on cinema theatres situated within the territorial limits of the blocks in the concerned districts, within the jurisdiction of Janapada Panchayats. We may in this connection, also profitably refer to the various functions of Janapada Panchayat under the Panchayats Act a paramedical superstructure of authorities is visualised by the Legislature. At the grass roots level are formed village panchayats consisting of a village or group of villages. The intermediate tier is consisting of Janapada Panchayats which function in blocks. Their jurisdiction extends over blocks within the district, while at the apex are district level Zilla Parishads. It is not in dispute that Zilla Parishads have no taxing power. It is equally not in dispute that Gram Panchayat can have taxing power as available to them for taxing the subjects within their local limits by imposing taxes on persons and properties within their local limits as laid down by the Panchayats Act. So far as the intermediate authority like Janapada Panchayat is concerned it has only two types of taxing powers as laid down by Section 157. It is trite to say that all the taxes levied by Janapada Panchayat will form part of Janapada Panchayat Fund which has to be utilised for discharging the statutory functions of Janapada Panchayat as laid down by Section 130. A mere look at the provisions of Section 130 shows that Janapada Panchayat can carry out its socio-economic functions in any part of the block within its jurisdiction and that way even includes local area of municipalities falling within the block. It is also obvious that a municipality can consist of areas which are within the revenue limits of a district, which in turn may get divided into blocks for the purpose of Panchayats Act by notification issued by State Government under Section 103 of the Panchayats Act. As per Sub-section (iv) of Section 130(1) the Janapada Panchayat can undertake expansion of existing medical and health services and bring them within the reach of the people. It may establish primary health and maternity centers. It may ensure systematic vaccination. It may control epidemics. It may supervise work in Govt. dispensaries and hospitals. It may enlist peoples' participation for the improvement of such dispensaries and hospitals. In the field of education as laid down by Sub-section (v) of Section 130(1) the Janapada Panchayat may maintain primary and basic schools. It may establish adult education and adult literacy centers. It may make provision for improvement of accommodation with people's participation. As

laid down by Sub-section (vi) of Section 130(1) in the field of social education the Janapada Panchayat is entitled to establish information and recreation centers. It can establish youth organisations, Mahila Mandals and Farmers' Clubs. It may establish and popularise libraries. It may encourage physical and cultural activities. In the field of communication and public works as laid down by Sub-section (vii) of Section 130(1) the Janapada Panchayat may construct roads within its jurisdiction but other than Gram Panchayat roads. It may render such assistance as may be necessary for formation and maintenance of village roads which serve as feeders. In the field of cooperation as laid down by Clause (viii) of Section 130(1) the Janapada Panchayat may establish industrial, farming, marketing and multi-purpose societies in order to serve the maximum number of families. It can also encourage thrift and small savings. In the field of women and child welfare as enjoined in Clause (x) of Section 130(1) the Janapada Panchayat may implement schemes specially designed for the welfare of children and women and in particular the establishment of women and child welfare centers, literary centers, crafts and tailoring and dress making centers and the like. In the field of social welfare as laid down by Clause (xi) the Janapada Panchayat may engage in maintenance of disabled beggars and control of vagrancy. It may strengthen voluntary social welfare organisation and coordinating their activities. It may propagate temperance and prohibition. In the field of collection of statistics as per Clause (xiii) the Janapada Panchayat may compile such statistics as may be found necessary either by the Janapada Panchayat, the Zilla Panchayat or the State Government. As per Clause (xiv) the Janapada Panchayat can resort to self-help programme in formulating and executing suitable programmes for stepping up production and for raising incomes and standards of living for the improvement of sanitation and for the amenities of the people. As laid down by Clause (xv) dealing with general provisions the Janapada Panchayat is entitled to organise and regulate markets, fairs and melas. It can also provide for welfare of backward classes and can discharge any other function with the approval of the State Government. The aforesaid various provisions regarding the functions of the Janapada Panchayat show that Janpad Panchayat can undertake the aforesaid activities even within the local limits of municipalities which may also form a part and parcel of the block area within the jurisdiction of the concerned Janapada

Panchayats. To some extent the functions of Municipalities and Janapada Panchayats may overlap but the functions for the welfare of the public even though overlapping can harmoniously co-exist and can be discharged in cooperation with each other. It is also to be kept in view that the local authorities like municipalities or corporations are more concerned with providing civic amenities to the public residing within their territorial limits. The functions of Janapada Panchayats are more expensive in nature and they include socio-economic functions which may strictly not be confined to merely providing civic amenities to the residents of the area. Consequently, it cannot be held that for exercising such comprehensive socio- economic functions as laid down by Section 130, the Janapada Panchayat cannot impose tax on theatres under Section 157 if these theatres are situated within its territorial limits of block as constituted by the State Government under Section 130. We, therefore, find no fault with the reasoning of the High Court which held the said taxing power of the Janapada Panchayat over theatres belonging to the appellants. Reliance placed by learned Counsel Sh. Gambhir on the decision of the Assam High Court in the case of Garganarayan Barman v. State of Assam, AIR (1958) Assam 20 cannot be of any assistance to the appellants for the simple reason that the Assam High Court was concerned with the question whether the expression 'town land' as defined in Section 2(xi) of the Assam Land Revenue Re-assessment Act and Rule 64(a) of the Rules framed under the Assam Regulation 1 of 1886 is something quite distinct from the words 'town area' as used in the Assam Rural Panchayat Act. As the scheme of the said provisions is entirely different from the scheme with which we are concerned, the aforesaid decision based on a different scheme cannot advance the case of the appellants.

6. Before parting we may mention that in Civil Appeal No. 598/75, I.As. are moved for bringing on record the heirs of deceased appellants being I.As 1 to 3 of 1995. They will stand granted. Mr. Gambhir also submitted that in case of Rajnandgaon municipality some part of the local area forming part of that municipality is not included within the block under Section 130 of the Panchayats Act and only some revenue numbers have been included within the block. In this connection, he invited our attention to page 22 of the paper book wherein it is shown that in the district of Durg, Patwari Halka Nos. 49,1 to 32 and 35 to 38 are only included in

the block for which Rajnandgaon Janapada Panchayat is constituted. When we enquired of Shri Gambhir whether the theatres belonging to the appellants are situated within that block area, he frankly stated that the theatres are situated in halka 37 which is included within the block. If that is so, it is difficult to appreciate how non-inclusion of any other area falling within the Rajnandgaon municipal limits in the block can help the appellants. It is obvious that for the local area of Rajnandgaon which is within the municipal limits but which is not included in the constituted block under Section 130 of the Act, the Janapada Panchayat may not have any jurisdiction to impose tax but so far as the appellants' theatres are concerned as they are situated under Patwari halka 37 which forms part of the Rajnandgaon Block as per notification under Section 130 of the Panchayats Act the appellants' theatres have to bear the theatre tax imposed by the Janapada Panchayat.

7. In the light of the above discussion, we find no substance in any of the contentions raised on behalf of the appellants. The result is that these appeals fail and are dismissed. However, in the facts and circumstances of the case there will be no order as to costs.