

Ami Chand and ors. Vs. the State of Rajasthan and ors.

Ami Chand and ors. Vs. the State of Rajasthan and ors.

SooperKanoon Citation : sooperkanoon.com/759343

Court : Rajasthan

Decided On : Mar-28-1984

Reported in : 1984WLN(UC)115

Judge : M.C. Jain, J.

Appeal No. : S.B. Civil Misc. Writ Petition Nos. 149 to 153 of 1983

Appellant : Ami Chand and ors.

Respondent : The State of Rajasthan and ors.

Disposition : Petition allowed

Judgement :

M.C. Jain, J.

1. The petitioners are the residents of Banner. By these writ petitions they have challenged the levy of house tax in respect of the years 19-5-76, 1976-77, 1977-78, (9 78-79, 1979-,0, 1940-81 and 1981-82. In respect of these years the petitioner have been served with bills. The petitioner sought a relief for quashing the public notices issued on 21 -3-1982 & 1-7-1982 (Annexuxe 6 and Annexuxe 7, respectively), whereby the authenticated lists in respect of these years were published for inspection. After publication of those authenticated lists, bills were served on the petitioners.

2. The main ground, on which the levy of house tax is challenged in respect of the aforesaid years is that the provision of Sub-section (2) of Section 119 of the Rajasthan Municipalities Act, 1959 (hereinafter referred to as 'the Act') has not been complied with, Every year assessment lists were not prepared and published and authenticated, without which levy of house tax could not have been made The procedure for publication of the assessment list and their authentication is provided in Sections 116 and 117 of the Act and the provision regarding the amendment of the assessment lists is provided in Section 118 of the Act. Sub-section (2) of Sec 119 provides that the provisions of Sections 116, 117 and 118 shall however be applicable every year as if a new assessment list has been completed at the commencement of the official year and expression 'official year' has been defined in Section 3(20) of the Act to mean the year commencing on the first day of April. Admittedly compliance of the provision of Sub-section (2) of Section 119 of the Act was not made. From the perusal of the bills it would appear that levy of house tax prior to 1-4-1977 is not made and the petitioners have only been billed from 1-4-1977 to 31-3-1982, so it is not necessary to examine the question of levy of house tax for the years 1975-76 and 1976-77. For the remaining five years, the question of levy of houses tax needs to be examined.

3. The defence of the Municipal Board is that the Local Self Government of the State of Rajasthan stayed the recovery of house tax by its order No F 13(16) DLV/62/6025 dated 27-12-1977. Thereafter by order dated 5-3-1980 the said stay order was withdrawn, but again by its order dated 26 4-1980 the recovery of house tax was stayed, which was later on withdrawn by order dated 10 9-1981. After withdrawal of the stay order public notices under Sections 116 and 117(6) of the Act (Annexure 6 and Annexure 7, respectively) were issued and thereafter the petitioners were billed. The contention on behalf of the Board is that the recovery of house tax was suspended by the State Government, so assessment lists could not be prepared and after withdrawal of the said order in respect of the years the assessment lists were prepared and authenticated and were published and they were subsequently certified by the revising authority vide Annexure 7 dated 1-7-1982. The levy was only suspended by the State Government till the withdrawal of the suspension order and after withdrawal of the suspension order, the Municipal Board has authority to levy house tax in respect of those years in which the levy

remained stayed or suspended by the State Government.

4. The question arises as to how the period from 1977-78 to 1981-82 is to be considered? Whether on account of the stay order issued by the State Government, the levy of house tax remained suspended and after withdrawal of the stay order, is it competent for the Municipal Board to recover the house tax in respect of the years, in which the stay order was in operation? The matter can be viewed from two aspects. As already stated above, compliance of provision of Section 119(2) of the Act has not been made and according to the Municipal Board it could not have been complied with because of the stay order of the State Government. So in such a situation it should be taken that in respect of the past years as well, the official year will be official year, which will occur after the withdrawal of the stay order, that is, commencing from 1st April, 1982, or in any case 1st April, 1981.

5. It may be stated that in respect of the past years, their official years cannot be deemed to be the official year following after the withdrawal of the stay order by the State Government. The official year will remain the official year in respect of each year commencing from 1st of April and the assessment lists have to be completed at the commencement of the official year. When this has not been done and could not have been done, the levy of house tax in respect of the years 1977-73 to 1981-82 could not be made. Without compliance of the provision of Section 119(2), whether the levy of house tax can be made or not, there is a decision of the Supreme Court having direct bearing on the question. In *Municipal Corporation of City of Hubli v. Subba Rao Hanumantharao Prayag and Ors.* : [1976]3SCR883 ., the provisions of the Bombay Municipal Boroughs Act came up for consideration before the Supreme Court. The provision of Section 84(2) of that Act is analogous to the provision of Section 119(2) of the Act. The other provisions were also similar to the provisions of Sections 116, 117 and 118 of the Act. Their Lordships of the Supreme Court considered the provisions of Sub-section (2) of Section 84 (akin to Section 119(2) of the Act) and after stating the entire scheme of the provisions observed:

Now the scheme of Sections 78 to 81 is identical with that of Section 82 and in both cases what is contemplated first is a proposal to which objections are invited and after the objections are investigated and disposed of, the assessment list in the one case and the altered entry in the other are authenticated giving rise to liability in the rate-payer. It must follow a fortiori that if an alteration in the assessment list, in order to fasten liability on the ratepayer, is required to be made during the currency of the official year, equally, on a parity of reasoning, the assessment list, in order to give rise to the liability in the rate-payer, must also be authenticated before the expiry of the official year. More over, it is difficult to believe that the legislature did not intend that there should be any time-limit in regard to the levy of tax for an official year and that the tax should be legally livable at any time after the close of the official year. There is, in our opinion, sufficient indication in the various provisions of the Act to show that the authentication of the assessment list, in order to be valid and effective, must be made within the official year, though the tax so levied may be collected and recovered even after the expiry of the official year.

It would appeal from the above observations that the authentication of the assessment list, in order to be valid and effective, must be made within the official year, although the tax can be collected even after the expiry of the official year. It was further observed,

We are, therefore, of the view that the assessment list, in order to be effective in levying the tax, must be authenticated before the expiry of the official year and if it is not, the assessment list would be void and inoperative and not give rise to liability in the rate-payers to pay tax.

6. In case the assessment lists are not authenticated before the expiry of the official year, the assessment list would be void and inoperative and such assessment would not give rise to liability for payment of house tax.

7. In the light of the aforesaid decision the authentication of the lists, after withdrawal of the said order in respect of the past five years, cannot be said to be valid as the requirement is that the authentication of the lists should be done in the official year. Viewed from this point of view, the levy of house tax in respect of the

said five years is not valid.

8. The other aspect of the matter is that the orders of the Government cannot be construed in the sense that there was only suspension of the recovery of house tax. The State Government under Section 104 of the Act is empowered to stop the levy. The second proviso of Section 104(1) lays down that upon a representation made to it by and at the request of a Board, the State Government, if it is satisfied that circumstances exist which sufficiently provide the justification for a period not to levy, or to stop the levy of any of the taxes mentioned in the section may, by special order published in the official Gazette, along with the reasons for making such order, permit the Board not to levy, or stop the levy of any such tax. It would appear from the above provision that power is conferred on the State Government to stop the levy, of the tax on the annual letting value of building or land or both situated in the Municipality. The State Government having satisfied itself issued the orders stopping the levy of house tax. The house tax is in the nature of obligatory tax as provided under Section 104. The power to levy of which vests in the State Government and when the State Government itself stops it, the period during which it remained stopped, the Municipal Board, Banner, has no authority to recover the house tax in respect of the particular years during which the levy of house tax remained stopped by the State Government.

9. Thus, viewed from both aspects, no levy could be made by the Municipal Board in respect of the years 1977-78 to 1981-82.

10. The learned Counsel for the petitioners also urged that the Board had resolved not to levy house tax and instead resolved for enhancement of the rate of octroi. Octroi has been recovered by the Board at the enhanced rate and the citizens of Banner have paid the octroi duty according to the rates enhanced by the Municipal Board. As a result of enhancement of rate of octroi, the Board recommended to the State Government for not levying the house tax. The Municipal Board having acted in a particular manner by enhancing the octroi rate and recommending not to levy the house tax, it is not now open to the Municipal Board to recover the house tax. On the aforesaid question some case law has been referred to by the learned Counsel for the parties.

11. In this connection suffice it to say that the power to levy obligatory taxes vests in the State Government and not in the Municipal Board. Taxes other than obligatory taxes can be levied by the Municipal Board under Section 105 of the Act, but so far as the obligatory taxes are concerned and the house tax falls in that category, a power solely vests in the State Government. In accordance with the notifications issued by the State Government, the Board is required to recover the obligatory tax. The question of estoppel in any form, therefore, does not arise, as the powers to levy house tax does not vest in the Municipal Board. It is true that octroi rates have been increased and the Municipal Board resolved not to levy house tax and that was recommended to the State Government, but that was not acceded to by the State Government. As a matter of fact the Municipal Board was not competent as such to pass a resolution that house tax shall not be charged. In *Jit Ram Shiv Kumar v. State of Haryana* : [1980]3SCR689 , their Lordships observed as under:

(2) that the Municipal Committee had no authority to exempt the Fateh Market from the levy of octroi duty. When the Municipal Committee passed a resolution or issued a notification that no octroi duty would be levied, it was ultra vires of the powers of the Municipal Committee. When a public authority acted beyond the scope of its authority the plea of estoppel was not available to prevent the authority from acting according to law. It was in public interest that no such plea should be allowed.

(3) that the principle of estoppel was not available against the Government in exercise of legislative sovereign or executive power.

(4) that so far as the recommendation of the Municipal Committee to the Government to levy octroi duty was concerned though it was contrary to the representation it made to the buyers of the sites in the Mandi, the Municipality was not estopped as the representation made by it was beyond the scope of its authority. The levy of tax being for a public purpose i.e. for augmenting the revenues of the Municipality the plea of estoppel was not available. The order of the Government directing the levy of octroi in pursuance of the resolution of the Municipality could not also be challenged as it was in the exercise of its statutory

duty.

12. Thus the afore said contention of the petitioners in view of the decision of the Supreme Court, referred to above, have, no substance. As the levy of house tax in respect of the years 1976-78 to 1981-82 has been found to be invalid, the writ petitions deserve to be allowed.

13. Accordingly the writ petitions are allowed and the levy of house tax in respect of the years 1977-78 to 1981-1982 is declared illegal and bills served on the petitioners for the said periods are quashed. The costs shall be easy.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com