Municipal Council, Khurai and Another

Vs

Kamal Kumar & Another

Civil Appeal No. 974 of 1964

(A. K. Sarkar, M. Hidayatullah, J. R. Mudholkar JJ)

18.12.1964

JUDGMENT

MUDHOLKAR, J. -

In this appeal from the judgment of the Madhya Pradesh High Court the question which arises for decision is whether the assessment list of house tax and conservancy tax confirmed by the Municipal Council, Khurai, at a special meeting on February 24, 1964 is effective or is liable to be quashed on the ground that it was not made in accordance with the provisions of the Madhya Pradesh Municipalities Act, 1961 (hereafter referred to as the Act).

The material facts are not in dispute. On December 28, 1962 the Municipal Council by a resolution, appointed a Sub-Committee consisting of the Vice-President and two Members for hearing objections under section 138(2) of the Act against the new assessment which the Chief Municipal Officer would propose to make. On the 30th of that month the Chief Municipal Officer was directed to prepare the assessment lists for all the 11 words into which the municipal area has been divided. Up till then taxes were levied at the rate of Rs. 7-12-0 per cent. on the annual letting value of the house properties and building sites liable to be taxed. On March 3, 1963 the Council considered a proposal for introducing a slab system for assessing these properties. Upon that one of the members, Smt. Poonabai suggested a modification of the office proposal and her suggestion was accepted by the majority of the members of the Council. On March 6, 1963 the assessment list prepared by the Chief Municipal Officer in pursuance of the resolution was authenticated by him. It was then duly published that day under section 136 of the Act. Objections were also invited from the assesses. About 2,200 objections were lodged which were considered by the Sub-Committee between April 7, 1963 and April 14, 1963. In the meanwhile it would appear that a suit had been instituted by some of the assesses in which the validity of the resolution of March 3, 1963 varying the rate of tax and seeking a permanent injunction against the Committee restraining it from giving effect to the new basis of assessment. The Committee, it would appear, realised that it could not vary the old rates without obtaining the sanction of the State Government and, therefore, in the written statement filed on its behalf, made it clear that an early meeting would be held for deciding whether the resolution of March 3, 1963 should not be given effect to. That meeting was held on April 28, 1963 and there the resolution of March 3, 1963 was revoked and the old rate of assessment was reverted to.

Numerous complaints were made by assessees to the effect that the Sub-Committee had shown partiality in dealing with objections to assessments and had in fact shown favour to rich persons. The President of the Council enquired into the complaints and was satisfied that there was substance in them. In the meanwhile, however, pursuant to a decision of the Sub-Committee dated August 21, 1963 the assessment list as revised by the Sub-Committee was authenticated by the Chief Municipal

Officer as required by section 140 of the Act and was published on August 30, 1963. It would appear that notices of demand were also issued against the assessees on the basis of the revised list. The President had, in the meantime, intimated to the Collector that the Sub-Committee had shown partiality, particularly to rich assessees and invited him to suspend the revised list in exercise of his supervisory powers. On October 9, 1963 the Collector made the following order :

> "In exercise of the powers delegated to me under section 323 of the M.P. Municipalities Act, 1961 I hereby suspend the execution of the decision of the Sub-Committee appointed by the Municipal Council Khurai under Section 71(v) of the said Act for assessment of the House Tax and Latrine Tax vide its resolution No. 2 dated 28-12-1962, as the decision taken by the said Committee is not in conformity with the law, is detrimental to the interest of the Council and is causing annoyance to the public. The decision shall remain suspended until the assessment is properly revised afresh."

He forwarded a copy of the order to the Government of Madhya Pradesh and requested that his Order may be confirmed under section 323(2) of the Act. He made the following endorsement on the copy of the Order forwarded to the President of the Municipal Committee :

> "Copy forwarded to the President, Municipal Council, Khurai, for information and immediate necessary action in respect of the demand notices issued for recovery of the taxes. Apparently the assessment has not been properly made. No reasons for not accepting the overseer's valuation have been given and rich persons have been favour thereby. The Council has thus defaulted in performing the duty imposed on it under the said Act. The Council is, therefore, called upon to show cause for its failure as required under Section 327(1) of the said Act and to furnish its explanation within a period of 15 days to my office."

After receiving this communication the President caused a proclamation to be made bringing it to the notice of the assesses that the assessment list had been suspended and intimating to them taxes on the basis of the revised list should not be paid. The Government, acting upon the communication received from the Collector issued notice to the Council on December 2, 1963 under section 323(2) to show cause why the order passed by the Collector should not be confirmed. Eventually the Government confirmed the Collector's Order.

On December 29, 1963 the Council, at a special meeting, resolved that the assessment lists should be revised under section 141 of the Act. On January 7, 1964 the Council issued individual notices to 300 persons to show cause why the annual letting value of their properties should not be enhanced. The Council heard the objections between February 16, 1964 and February 20, 1964 and revised the assessments of some or all the persons to whom notices had been issued. On February 24, 1964 the Council, at a special meeting, confirmed the revised assessment as from April 1, 1963. Its resolution was authenticated on March 4, 1964 under section 140(1) by the Chief Municipal Officer and according to the Council the assessment list then became final.

It is after this that the writ petition out of which the present appeal arises was presented before the High Court by some of the assessees. It was supported before it on four grounds which have been summarised thus by the High Court in its judgment :

> "(1) The Municipal Council, Khurai, was not competent to appoint a Sub-Committee

for the purpose of hearing and deciding the objections made against the assessment list.

(2) The notice given for lodging objections against the assessment list was not in accordance with the provisions of the Act.

(3) The Municipal Council acted illegally and without jurisdiction in adopting a slab system with different and varying rates in disregard of the rate of Rs. 7/13/- per cent. at which the house tax had been initially imposed.

(4) When the execution of the decision of the Sub-Committee dated 21st August, 1963 was suspended (and subsequently revoked), it was not open to the Municipal Council to have recourse to section 141 of the Act for making limited amendments in the assessment list. The Municipal Council had to prepare an assessment list de novo in accordance with the provisions of the Act including those made by sections 137, 138 and 140 of the Act."

The High Court thought it unnecessary to consider the first three of these grounds because in its opinion the fourth ground was sufficient for granting relief to the assessees. According to the High Court the assessment list which had been confirmed by the Council on February 24, 1964 and sought to be given effect to was a valid assessment list because the Municipal Council gave notice only to 300 assessees and heard their objections and not the remaining 1900 assessees.

Before us it is contended bay Mr. Setalvad on behalf of the Council that an appeal had already been preferred by the respondents against the assessment list and, therefore, they were not entitled to any relief under Art. 226 of the Constitution. It is true that the High Court would not ordinarily entertain a petition under Art. 226 of the Constitution where an alternative remedy is open to the aggrieved party. Though that is so the High Court has jurisdiction to grant relief to such a party if it thinks proper to do so in the circumstances of the case. In the present case the High Court has chosen to exercise discretion in favour of the respondents and it would not be right for us to interfere with the exercise of that discretion unless we are satisfied that the action of the High Court was arbitrary or unreasonable. Nothing has been brought to our notice from which it could be inferred that the High Court acted arbitrarily in granting the writ prayed for to the respondents.

Coming to the merits, Mr. Setalvad contends that the list having been authenticated by the Chief Municipal Officer under section 140 it became final and, therefore, under section 141 of the Act it was open to the Municipal Council to amend the assessment list. Sub-section (1) of that section, without the proviso, is the only part which is relevant for our purpose and it reads thus :

"The Council may at any time, amend the assessment list by the inclusion, omission or substitution of any matter."

Mr. B. R. L. Iyengar for the respondents, however, contends that section 141(1) can be availed of only for correcting arithmetical errors or other similar errors and not for revising the taxes. Further, according to him, this provision is available only with respect to the amendment of a current list and that since the assessment list had not become final under section 142 it could not be amended under section 141. Then, according to him, the appropriate provision to which resort could be had was section 146 of the Act. Mr. Iyengar also raised a third argument, which is to the effect that since the assessment list had been suspended by the Collector under his Order to made under section 323 of

the Act the Council had no power to amend it under section 141. The final argument advanced by him was that the power of hearing objections or of revising the list could not be delegated to the sub-Committee and that, therefore, the revised list was bad in law.

It is not disputed before us that the procedure laid down sections 134, 135 and 136 of the Act for the assessment of buildings and lands to pay the tax was duly followed. It is also not disputed that 2,200 objections were lodged with the Municipal Council which were investigated and dealt with by the Sub-Committee appointed by the Municipal Council. Mr. Setalvad, therefore, contends that having followed this procedure the next step was the authentication of assessment lists by the Chief Municipal Officer as required by section 140(1). This procedure was also followed and, therefore, the assessment list became final and the Municipal Council had the power to amend it under section 141(1) of the Act. Mr. Iyengar, however, contends that the provisional assessment list which was prepared under section 134(1) of the Act and published under section 136 was upon the basis of the new rates of taxes which had been imposed by the Municipal Council on March 3, 1963. According to him, as the Resolution of March 3, 1963 was revoked on April 28, 1963 and the old rate of Rs. 7/13/- per cent. was reverted to it was necessary to publish a fresh assessment list on its basis. His further objection which we have already indicated is that the objections could be dealt with not by the Sub-Committee but by the Municipal Council as a whole. In view of these defects the assessment list did not become final by reason of its authentication by the Chief Municipal Officer under section 140. According to Mr. Setalvad these objections were not urged before the High Court. But that is not quite accurate. We have already quoted from the judgment of the High Court the summary of the grounds urged before it and the objections of Mr. Iyengar are to be found in the first two grounds. It is true that the High Court did not think it necessary to deal with these grounds upon the view which it took on the fourth ground which was urged before it. But that does not preclude us from considering those grounds. In our opinion, both the grounds are substantial and strike at the very root of the finality of the assessment list which was purported to be authenticated by the Chief Municipal Officer under section 140. The assessment list which has to be published under section 136 of the Act must contain full and accurate particulars specified in section 134(1) of the Act. Amongst those particulars are the following :

> (1) Valuation of the property based on capital or annual letting value, as the case may be, on which the property is assessed;
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> (2) the rate of tax, applicable;
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> (3) the amount of tax assessed thereon.

In view of the fact that the resolution of March 3, 1963 on the basis of which the list was published had been revoked, the particulars mentioned in the second and the third of the above items would necessarily be different from those which would be arrived at after taking into account the resolution of April 28, 1963. Under Art. 265 of the Constitution no tax shall be levied or collected except by authority of law. This clearly implies that the procedure for imposing the liability to pay a tax has to be strictly complied with. Where it is not so complied with the liability to pay the tax cannot be said to be according to law. The objections which the assessees had filed in pursuance of the notification actually published by the Chief Municipal Officer were based upon the list published under section 136 and not in pursuance of what the liability would be under the Resolution of the Municipal Council, dated April 28, 1963. Therefore, it cannot be said that the opportunity as contemplated by the Act was at all given to the assessees for lodging their objections as required by section 137 of the Act. Moreover, Mr. Setalvad was not able to point out to us any

provision of the Act or of the rules, except section 78, whereunder the Council could delegate its function of hearing and deciding objections to a Sub-Committee. Section 78 reads thus :

> "Any powers or duties or executive functions which may be exercised or performed by or behalf of the Council may, in accordance with the rules made under this Act, be delegated by the Council to the President or Vice-President or to the Chairman of the Standing or other Committees, or to one or more stipendiary or honorary officers, but without prejudice to any powers that may have been conferred on the Chief Municipal Officer by or under section 92."

Even assuming that under this provision the power of the Council of hearing objections could be delegated, the delegation can be sumably be only in favour of the persons mentioned in section 78 quoted above. It cannot be in favour of a Sub-Committee or a Committee. It is true that the Convenor of the Sub-Committee appointed by the Council was the Vice-President but the delegation was not to him alone but to the Sub-Committee. The two are not the same thing because while in one case the right to decide an objection would be solely exercisable by the Vice-President in the other it will be exercisable by the Sub-Committee as a whole. If there is unanimity amongst the members of the Sub-Committee no prejudice may be caused. But if the Vice-President is of one opinion and the other two members are of a different opinion the decision of the Sub-Committee cannot be said to be of the Vice-President at all. But to the contrary.

For these reasons we are of opinion that the assessment list authenticated by the Chief Municipal Officer was not prepared according to law and, therefore, the provisions of section 141 were not available to the Council. Upon the view we take we do not find it necessary to consider whether the reason given by the High Court is right or not.

The appeal is, therefore, dismissed with costs.

Appeal dismissed.

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