Municipal Corporation Of Hyderabad vs P.N. Murthy & Ors on 30 January, 1987

Equivalent citations: 1987 AIR 802, 1987 SCR (2) 107, AIR 1987 SUPREME COURT 802, 1987 2 SCC 568, (1987) 1 JT 285 (SC), 1987 (1) UJ (SC) 325, 1987 (1) MCC 1, 1987 UJ(SC) 1 325, (1987) 1 APLJ 31, 1987 MCC 1 1, 1987 (1) SCC 568, 1987 TAXATION 87 (2) 5, (1987) 2 SCJ 54, (1987) 167 ITR 204, (1987) 1 RENCR 302

Author: M.P. Thakkar

Bench: M.P. Thakkar, B.C. Ray

PETITIONER:
MUNICIPAL CORPORATION OF HYDERABAD

Vs.

RESPONDENT:
P.N. MURTHY & ORS.

DATE OF JUDGMENT30/01/1987

BENCH:
THAKKAR, M.P. (J)
BENCH:
THAKKAR, M.P. (J)
RAY, B.C. (J)

CITATION:
1987 AIR 802 1987 SCR (2) 107
1987 SCC (1) 568 JT 1987 (1) 285
1987 SCALE (1)213

ACT:
Hyderabad Municipal Corporation Act, 1955 Section 197, 199, 202 & 204--Municipal Corporation allotting building under 'Low Income Housing Scheme'--Corporation whether prohibited from levying and collecting 'property tax' from allottees.

HEADNOTE:
The appellant-Municipal Corporation of Hyderabad constructed houses under "Low Income Housing Scheme" and allotted them to the respondents on hire purchase. The agreements

executed by the respondents in favour of the appellant provided (1) that the houses would remain, till the payment of the last instalment and execution of a conveyance in favour of the respondents, as the property of the Corporation; and (ii) that all Municipal taxes, water taxes and electricity charges would be borne by the allottees.

The appellant served demand notices on the respondents to pay house tax in respect of their houses. By that time, the instalments had not been fully paid. The respondents challenged 'the levy of tax on the ground that s.202(1) of the Hyderabad Municipal Corporation Act prohibits the levy of general tax in respect of the aforesaid houses, since they had not yet vested unto the allottees under the hire purchase agreement. A Single Judge negatived the plea of the respondents-allottees and upheld the validity of tax but the Division Bench in a Letters Patent Appeal took a contrary view. Hence this appeal by special leave.

Allowing the appeal,

HELD: (1) In order to attract s.202(1)(c) of the Hyderabad Municipal Corporation Act , a property must satisfy a dual test. The property must not only owned by the Corporation, it must also be in the occupation of the Corporation itself. It is in this sense that the word 'vesting' has been used. The expression 'vest' employed in s.202(1)(c) under the circumstances must of necessity be construed as vesting both in title as well as in possession. [113G-H]

Fruit & Vegetable Merchants Union v. Delhi Improvement Trust,

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A.I.R. 1954 S.C.p. 344 and Richardson v. Robertson, [1862] 6 L.T.p. 75, relied upon.

(2) The scheme underlying ss. 197, 199, 200 and 204 of the Act has to be read and construed in a meaningful, purposeful and rational manner. Section 197(1)(i) casts a legal obligation on the Municipal Corporation to levy taxes on lands and buildings. Section 199(1) makes it obligatory subject to the exceptions, limitations and conditions to levy a general tax, water tax, drainage tax, lighting tax/conservancy tax on the buildings and lands in the City of Hyderabad. Whilst the legislature makes it obligatory on the Corporation to levy the aforesaid taxes, in so far as general tax is concerned an exception is carved out under s.202(1) and the Municipal Corporation is relieved from the obligation of imposing taxes in respect of buildings which are specified in clauses(a) to (d). The exception is made on policy and principle. Not arbitrarily. Essentially the properties which are used for public purposes or for purposes of the community are exempted. Clause(d) makes it abundantly clear that the exemption will not be extended to properties belonging to the Central Government and State Government if the same are used for purposes of profit and not a public purpose. The user for the purposes of the community is the rationale of the thread of principle which

runs through all these three clauses viz. clauses (a), (b) and (d) for granting exemption. So far as clause(c), which has given rise to the present controversy is concerned, a different principle is at the bottom, different but no less rational. The philosophy underlying the exemption is rooted in pragmatism. In so far as buildings and lands which are the properties of the Corporation and are used for its own purposes it would be an exercise in futility to collect taxes from itself in order to augment its own resources. Surely the resources would not stand augmented when the Municipal Corporation collects the taxes from itself. [111D; 112A-F]

3. Section 204(1) which is a part of the packet of sections relating to this subject-matter clinches the issue in favour of the Municipal Corporation of Hyderabad. It, in terms, provides that property taxes shall be leviable primarily from the actual occupier of the premises upon which the said taxes are assessed, if such occupier holds the said premises immediately from the Government or from the Corporation. If the property taxes were not to be levied in respect of the property belonging to the Corporation which is used and occupied by allottees or other occupiers, there would be no point or purpose in making the provision in the aforesaid manner. The provision in terms applies to a situation where the buildings or the premises are in actual occupation of

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a person or body other than the Municipal Corporation itself. In such an event, the property taxes would be leviable primarily from the said occupier as if the said occupier holds the property from the Corporation itself. This leaves no room for doubt that the Corporation is entitled to impose taxes on the buildings which may be owned by itself but which may be in occupation of others. Otherwise, the provision contained in s. 204(1) would be rendered aimless and otiose. [113B-F]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 123(N) of 1973.

From the Judgment and Order dated 26. 10. 1972 of the Andhra Pradesh High Court in Writ Appeal No. 444 of 1968. B. Parthasarthy and G .N. Rao for the Appellant. B. Kanta Rao for the Respondents.

The Judgment of the Court was delivered by THAKKAR, J. Is the Municipal Corporation of Hyderabad prohibited from levying Municipal taxes from persons induct- ed by it in the property of its own ownership under the hire purchase agreement? The validity of levy of Municipal taxes by the Municipal Corporation of Hyderabad from allottees to whom the Municipal Corporation had allotted buildings con- structed under "Low Income Housing Scheme" launched by it was

questioned by the allottees. The learned Single Judge upheld the validity but the Division Bench in. appeal, Under Clause 15 of the Letters Patent. took a contrary view. The Municipal Corporation has preferred the present appeal, Appeal by Special Leave and has contended that the learned Single Judge was right in upholding the levy and the Divi- sion Bench was wrong in holding it invalid.

The facts giving rise to the writ petition instituted by the 72 allottees to whom the houses were allotted need to be stated briefly:--

> The Hyderabad Municipal Corporation started a scheme called Low Income Housing Scheme in 1957. In pursuance of that scheme, the Corpo- ration constructed several houses in various parts of the Hyderabad City including the locality of Malakpet. After the houses at Malakpet were completed, applications were invited from persons belonging to that group for the purpose of allotting these houses. The writ petitioners applied and the Corporation allotted the houses to them. They are occupying the houses since 1959. The writ petitioners executed agreements in favour of the Corporation. According to the terms of the agreement, the allottees were put in posses- sion of the houses allotted to them. The allottees were to pay 20% of the sale price as the first instalment and they were required to pay the balance in monthly instalments. The agreement specifically provides that the houses would remain, till the payment of the last instalment and execution of a conveyance in favour of the writ petitioners, as the property of the Corporation. The allottee has been strictly prohibited from selling or mort- gaging or otherwise disposing of the house or even to sublet or part with possession of the same. Even after the writ petitioners become owners of the houses, they are precluded from selling the same within five years of such date. The agreement further provides that all municipal taxes and water taxes and electrici- ty charges would be borne by the allottees. The writ petitioners were served with a demand notice on 31-12-1964 asking them to pay house taxes from 1-4-1961 onwards. The demand no- tice, which the writ petitioners received on 16-4-1965, required the writ petitioners to file objections, if any before 15 days of the receipt of the notice. The writ petitioners accordingly filed their objections on 29-4-1965. The principal contention of the peti- tioners was that the houses are not liable to be taxed as they vest in the Municipal Corpo- ration, and as the writ petitioners are not the owners of the houses, Negativing this contention, the Municipal Corporation served a notice dated 19-6-1966 demanding from the petitioners taxes for the period commencing from 1st April, 1961 to 31st March, 1965. It is this demand notice which has given rise to the writ petition, giving rise to the present appeal.
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> The challenge to the levy of taxes is built on the argument that inasmuch the houses under the hire purchase agreement have not yet vested unto the allottees, the property vests unto the Municipal Corporation and under the circumstances Section 202(1) of the Hyderabad Municipal Corporation Act (Act) prohibits the levy of the general tax in respect of these houses.

In order to deal with the plea of the allottees which was negatived by the learned Single Judge but sustained by the learned Judges of the Division Bench, the relevant provisions of the Act require to be noticed. They are:-

Sections 197(1)(i), 199(1), 202(1) and 204(1)' It is no doubt true that until all the instalments under the hire purchase agreement were paid, the allottees would not become the owners of the houses for the title would vest unto them only upon the payment of all the instalments as per the stipulation contained in the agreement. At the relevant point of time the instalments had not yet been fully paid. The title in regard to the houses therefore continued to vest unto the Municipal Corporation at the relevant time. The question then is whether Section 202(1)(c) makes it unlawful to levy general tax from the allottees of these buildings. The scheme underlying the aforesaid packet of provisions embodied in the Act deserves to be analysed in this context. Section 197(1)(i) casts a legal obligation on the Municipal Corporation to levy taxes on lands and buildings. Section 199(1) makes it obligatory subject to the exceptions, limitations

1. "Section 197(1)(i): For the purposes of this Act, the Corporation shall impose the following taxes namely: (a) taxes on lands and buildings; X X X X"

"199(1): The following taxes shall subject to exceptions, limitations and conditions herein provided be levied on buildings and lands in the City and shall hereinafter be referred to as property taxes, namely:- (a) a general tax;

(b) a water tax; (c) a drainage tax; (d) a lighting tax; (e) a conservancy tax;"

"202(1): The general tax shall be levied in respect of all buildings and lands in the city except;

(a) buildings and lands solely used for purposes connected with the disposal of the dead;

(b) buildings and lands or portions thereof solely occupied and used for public worship or for a charitable or educa- tional purpose;

(c) buildings and lands vesting in the corporation;

(d) buildings and lands vesting in the Central Government or state Government used solely for public purposes and not used or intended to be used for purposes of profit in re-

spect of which the said tax, if levied, would under the provisions hereinafter contained be primarily leviable from the Central Government or State Government as the case may be."

> "204(1): Property taxes shall be leviable primarily from the actual occupier of the premises upon which the said taxes are assessed if such occupier holds the said premises imme- diately from the Government or from the Corporation."

and conditions embodied in the relevant provisions, to levy a general tax, water tax, drainage tax, lighting tax and conservancy tax on the buildings and lands in the City of Hyderabad. Whilst the legislature makes it obligatory on the Corporation to levy the aforesaid taxes, in so far as gener- al tax is concerned an exception is carved out under Section 202(1) and the Municipal Corporation is relieved from the obligation of imposing taxes in respect of buildings which are specified in clauses (a) to (d). Evidently the exception is made on policy and principle. Not arbitrarily. Essential- ly the properties which are used for public purposes or for purposes of the community are exempted. For instance by clause (a) buildings and lands which are used for purposes connected with the disposal of the dead are exempted inas- much as the entire community is interested in such a user. The same principle is discernible in regard to clause (b) which provides for exemption in regard to lands or buildings solely occupied for public worship or for charitable or educational purpose. The same philosophy is discernible in the exemption accorded under clause (d) to properties be- longing to Central or State Government which are used solely for a public purpose. Be it realized that clause (d) makes it abundantly clear that the exemption will not be extended to properties belonging to the Central Government and State Government if the same are used for purposes of profit and not for a public purpose. The user for the purposes of the community is the rationale of the thread of principle which runs through all these three clauses (viz. clauses (a), (b) and (d) for granting exemption. So far as clause (c) which has given rise to the present controversy is concerned, a different principle is at the bottom: different but no less rational. The philosophy underlying the exemption is rooted in pragmatism. In so far as buildings and lands which are the properties of the Corporation and are used for its own purposes, it would be an exercise in futility to collect taxes from itself in order to augment its own resources. Surely the resources would not stand augmented when the Municipal Corporation collects the taxes from itself. How would one benefit by taking money from one pocket and put- ting it in another pocket of oneself? By transfering from one drawer of one's own cash box into another drawer of the same cash box? The whole purpose of levying tax is to aug- ment its resources and not merely to engage in an exercise in accountancy, by crediting in one account and debiting in another, which does not result in its resources being aug- mented in reality. In fact a sizable staff would have to be employed for making the valuation of the properties, for making assessment of the properties, and for making credit and debit entries in the relevant accounts. That is the obvious reason why buildings and lands which vest in the Corporation and which are in its own use and occupation are sought to be exempted from the levy. Of course clause (c) which provides for exemptions in respect of "buildings and lands vesting in the Corporation" is not very happily or perfectly worded. Had it been drafted with the care and precision to be expected from a perfect drafts- man (who exists only in theory and not in practice), there would have been no scope for the controversy. But then if the entire scheme is viewed in a common sense manner, so that the scheme makes sense, the matter cannot present any serious problem. Section 204(1) which is a part of the packet of sections relating to this subjectmatter clinches the issue in favour of the Municipal Corporation of Hydera- bad, the appellant herein. It in terms provides that proper- ty taxes shall be leviable primarily from the actual occupi- er of the premises upon which the said taxes are assessed, if such occupier holds the said premises immediately from

the Government or from the Corporation. If the property taxes were not to be levied in respect of the property belonging to the Corporation which is used and occupied by allottees or other occupiers there would be no point or purpose in making the provision in the aforesaid manner. The provision in terms applies to a situation where the build- ings or the premises are in actual occupation of a person or body other than the Municipal Corporation itself. 1n such an event the property taxes would be leviable primarily from the said occupier as if the said occupier holds the property from the Corporation itself. This leaves no room for doubt that the Corporation is entitled to impose taxes on the buildings which may be owned by itself but which may be in occupation of others. Otherwise, the provision contained in Section 204(1) would be rendered aimless and otiose. Surely the legislature was enacting a purposeful provision and not a purposeless provision without aim or object. For the aforesaid reasons we are of the opinion that the learned Single Judge was right in taking the view that the buildings and lands vesting unto the Corporation not only in title but also in possession (as polarized from those vest- ing in title only but not in possession) were exempted from the obligation imposed by the legislature to levy the property taxes. Buildings and lands which were merely owned by the Corporation but were in actual possession or under the actual use and occupation of some one else, that is to say persons or bodies other than the Corporation itself are not exempted. In order to attract Section 202(1)(c) a property must satisfy a dual test. The property must not only be owned by the Corporation, it must also be in the occupation of the Corporation itself. It is in this sense that the word 'vesting' has been used. And the proposition that the expression 'vest' is capable of being used in this sense, depending on the context in which it is emp-

loyed, is supported by the observations made by this Court in Fruit & Vegetable Merchants Union v. Delhi Improvement Trust, A.I.R. 1954 S.C.p. 344. It has been observed therein that the word vest:

> "is a word of variable import and a property must vest in title or may vest in possession or it may vest in a limited sense, as indicated in the context ..... "

Reliance has been placed in this context on a passage from Richardson v. Robertson, [1862] 6 L.T.p. 75 wherein it is stressed that the 'vesting' often means 'vesting' in posses- sion.

The scheme of the relevant sections has to be read and construed in a meaningful, purposeful and rational manner. The expression 'vest' employed in Section 202(1)(c), under the circumstances must of necessity be construed as vesting both in title as well as in possession. Be it realized that there can be no principle in exempting the tenants inducted by the Municipal Corporation in its property from payment of taxes if the terms of the lease so provide. Just as the tenants who occupy the properties belonging to private citizens have to pay property taxes if the terms of the agreement so provide, the tenants inducted by the Municipal Corporation in buildings owned by itself have to pay the property taxes if the agreement so provides. There can be no rational basis for exempting the tenants or persons inducted by the Municipal Corporation in its own buildings from payment of such taxes. The concerned provision therefore cannot be read in the manner suggested by the respondents. The learned Single Judge was perfectly justified in negativ- ing their contentions and in dismissing their writ petition. The learned Judges of the Division Bench were in error in reversing the learned Single Judge. We, therefore, allow this appeal, set aside the order passed by the Division Bench, and restore the order passed by the learned Single Judge dismissing the writ petition. There will be no

order as to costs.

M.L.A. Appeal allowed.