(1996) 04 KAR CK 0044

Karnataka High Court

Case No: Writ Petition No''s. 19870/92 and 24190 of 1995

Rajatha Enterprises		APPELLANT
	Vs	
Commissioner, Corporation of City of Bangalore		RESPONDENT

Date of Decision: April 8, 1996

Acts Referred:

- Constitution of India, 1950 - Article 265
- Karnataka Municipal Corporations Act, 1976 - Section 66

Citation: (1996) ILR (Kar) 1772 : (1996) 6 KarLJ 1

Hon'ble Judges: G.C. Bharuka, J

Bench: Single Bench

Advocate: Parasa Jain, for the Appellant; Ashok Haranahalli, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

G.C. Bharuka, J.
In these two Writ Petitions, petitioners are aggrieved by the mode and manner of levy and collection of the property tax by the respondent - Commissioner of Bangalore Corporation in respect of property No. 812/2 located on OTC Road, Bangalore. According to them, the assessment and demand of impugned tax is contrary to the provisions of the Karnataka Municipal Corporation Act, 1976 (''the Act'', in short) and the measures laid down for the said purpose by the Supreme Court in catena of decisions in this regard.

2. I may first set out the relevant undisputed facts. Property No. 812/1 which is a land measuring 6000 sq.ft. is owned by the Government. The Deputy Commissioner, Bangalore, invited offers for leasing out the said land with an object of permitting construction of the shopping complex cum school building on the basis of a plan approved by the Government. Pursuant to the said offer, which was 1n the form of a

tender notice dated 17.8.1978, property was leased out to the petitioners for a period of 26 years as per the Lease Deed dated 22.12.1979 on the terms and conditions contained therein. The petitioners thereafter demolished the old structure standing on the said property and after obtaining the necessary licence from the Bangalore Corporation, constructed the present six storied shopping complex-cum-school building. The said building was completed in stages during the year 1983-85. Since some controversy had arisen in respect of the regularity of the construction of the sixth floor, the issue was taken to the High Court in Writ Petition but ultimately the construction in question has been held to be in accordance with law by the Supreme Court in an appeal filed by the petitioner. The judgment is reported in Rajatha Enterprises Vs. S.K. Sharma and Others, . For the purpose of clarity it may be stated here that after the construction was taken-up over the lease-hold property the original No. 812/1 was assigned to the land and a new Number 812/2 was allotted to the new construction.

3. On completion of the first stage of the building the Corporation Authorities issued a special notice dated 15.11.1983 (Annexure-A) under Rule 9 of Part II of the III Schedule to the Act (hereinafter for short "the Taxation Rules") read with Section 147 of the Act proposing to assess the Annual Rateable Value (in short ''ARV'') of the super-structure at Rs. 33,500/-'' and that of the land at Rs. 1,96,200/-with effect from 1.10.1983. The petitioner were given an opportunity to file their objections, if any, to the proposed determination of ARV. Petitioners did not file any objection, thereby accepting determination of ARV. Subsequently, on further progress in the construction, another notice under the said provisions being dated 23.5.1984 (Annexure-B) was issued determining ARV of the building from Rs. 30,500/- to 1,28,000/-. This notice also remained unobjected by the petitioners whereby the ARV proposed attained finality. Again on further addition to the above structure, the petitioner was served with a 3rd special notice dated 5.2.1985 (Annexure-C) whereunder the ARV was raised to Rs. 8,19,000/- w.e.f. 1.10.1985. Though this notice was also duly served on the petitioner but despite grant, of opportunity, he did not find it necessary to file any objection to the proposed determination of ARV. As such the ARV proposed in the notice Annexure-C also became final. The first Writ Petition viz., 19870/92 has been filed on 2.7.1992, that is almost six years after the issuance of the last notice Annexure-C, assailing the validity of the requisition notices placed Annexure-B and C.

4. Subsequent to filing of the said Writ Petition, the petitioners were once again served with another special notice dated 17.2.1993 under Rule 8/9 of the Taxation Rules raising the ARV from Rs. 8,19,000/- to Rs. 43,66,514/- which was to be effective from 1.10.1989. The petitioner filed a detailed objection against this enhancement. Since according to petitioner the respondents without disposing of the said objection had initiated recovery proceedings, therefore he preferred W.P.No. 9212/94 before this Court. When the matter was taken up for hearing, the respondents gave an undertaking to this Court that the demands pursuant to the

last special notice dated 17.2.1993 will not be enforced without finally deciding on the objections raised by the petitioner and accordingly the Writ Petition was disposed of on 7.7.1994 in terms of the undertaking leaving all other contentions of the parties open. Admittedly, the objections filed by the petitioner to the last notice has not yet been disposed of.

5. Mr. Ashok Haranahalli, learned Counsel appearing for the Corporation has categorically stated that as undertaken in the earlier Writ Petition, no recovery proceedings are being pursued against the petitioner pursuant to the last special notice. But still the second Writ Petition being W.P.No. 24190 of 1995 has been filed for directing refund of taxes collected pursuant to Annexures B & C since according to the petitioners the property tax realised pursuant to those assessments is contrary to the law laid down by the Supreme Court and as such they are entitled to the refund of the same in terms of Article 265 of the Constitution of India.

6. Sri Paras Jain, learned Counsel appearing for the petitioner has questioned the validity of the impugned special notices at Annexures ''B'' & ''C'' by raising the following contentions:-

(I) The ARV of the property in question can be determined only on the basis of the fair-rent determined or determinable under the provisions of the Karnataka Rent Control Act, 1961 (in short the "Rent Act").

(II) The ARV once determined cannot be revised except in pursuant to a general revision contemplated under the Act unless there is some addition to the building.

(III) Since the impugned special notices issued under the provisions of the Taxation Rules do not disclose the basis for making enhancement in the ARV, the same are void, abinitio and are as such unenforceable.

(IV) Under the Act and the Rules it is only the Commissioner who has the power to determine ARV and the function being quasi-judicial in nature, could not have been delegated by him to his subordinate officers and as such the impugned notices having been issued by the officers other than the Commissioner are invalid in law.

(V) The cess recoverable under various Acts by the Corporation can be only 23% and not 31% as has been levied against the petitioner in the present notices at Annexures B & C.

7. Re. Contention-I : In order to properly appreciate the contentions raised by Sri Paras Jain that the measure for determining the property tax under the Act can only be the fair rent determined or determinable under the Rent Act, let me first notice the relevant provisions under the Act having bearing on levy and determination of such tax.

8. Section 103 of the Act provides for the taxes which can be imposed by the Corporation and Section 109 thereof sets out the method of assessment of the

same. The said provisions to the extent the same are relevant for the present purpose read as under:

"Section 103. Taxes which may be imposed.-

Subject to the general or special orders of Government, a corporation shall,-

(a) after observing the preliminary procedure required by Section 104, and

(b) with the sanction of the Government and at rates not exceeding those specified in Schedules III, IV and VIII levy any one or more of the following taxes:

(i) a tax on buildings or lands or both situated within the city (hereinafter referred to as the property tax).

(ii) ... ...

... ..."

"Section 109. Method of assessment of property tax. - (1) Every building shall be assessed together with its site and other adjacent premises occupied as appurtenances thereto unless the owner of the building is a different person from the owner of such site or premises.

(2) The rateable value of a building or land shall be deemed to be the gross annual rent at which such building or land may at the time of assessment reasonably be expected to let from month to month or from year to year less a deduction in the case of buildings only of sixteen and two thirds per cent of such annual rent and the said deduction shall be in lieu of all allowance for repairs or on any other account whatever:

Provided that.... ...."

9. A plain reading of Sub-section (2) of Section 109 of the Act clearly provides that subject to the deductions prescribed therein, the rateable value of the building or land shall be deemed to be the gross annual rent at which such building or land may at the time of assessment reasonably be expected to let from month to month or year to year.

9a. In the case of Motichand Hirachand and Others Vs. Bombay Municipal Corporation, , on construing a similar provision it has been held that "the measure for purposes of rating is therefore the rent which the hypothetical tenant looking at the building as it is, would be prepared to pay". Therefore, it cannot be disputed that where the property is already tenanted, it requires no speculation about the fixation of rent u/s 109(2) of the Act. This provision on being construed in isolation and on its plain meaning, clearly suggests that in case of properties which are tenanted, the actual rent received has to form the basis for determining the rateable value. This is, however, subject to the condition that the apparent contractual rent is not a subterfuge to defeat the provisions of the Act, in which case the assessing

authorities, on the basis of the cogent materials brought on record, and after giving a fair hiring to the owner, can determine the rent at which the building is reasonably expected to be let out.

10. The Supreme Court in Patel Gordhandas Hargovindas Vs. Municipal Commissioner, Ahmedabad, after examining various Municipal Acts and also the law on the subject in England has said that annual value or rateable value of land or building is arrived at by one of the three modes, namely (i) actual rent fetched by land or building where it is actually let, (ii) where it is not let, rent based on hypothetical tenancy, particularly in the case of buildings, and (iii) where either of these two modes is not available, by valuation based on capital value from which annual value has to be found by applying a suitable percentage.

11. Neither Section 109(2) of the Act nor any other provision under this Act or any other statutory provisions makes the determination of rateable value dependent on the fair rent determined or determinable under the provisions of the Rent Act. But, nonetheless, the Apex Court in several of its judgments to be noticed hereinafter, has declared that the fair rent alone can be the basis for determining the property tax irrespective of the actual rent received. In the case of Srikant Kashinath Jituri and others Vs. Corporation of the City of Belgaum, , it has been observed that the said principle has been evolved by courts by a process of interpretation.

12. Now, let me try to understand as to what had prevailed with the Apex Court to hold that it is only the fair rent which has to form the legal yardstick for assessing the property tax. The declaration of law in this regard can be traced in the cases of Dewan Daulat Rai Kapoor and Others Vs. New Delhi Municipal Committee and Others, , and Mrs. Shiela Kaushish Vs. Commissioner of Income Tax, Delhi, . In the latter case it was noticed that the landlord cannot reasonably be expected to receive from a hypothetical tenant anything more than the standard rent determinable under the provisions of the Rent Act and this would be so equally whether the building has been let out or is self-occupied by the owner. It was also been held that the standard rent determinable under the provisions of the Rent Act and not the actual rents received by the landlord from a tenant would constitute a correct measure of the annual value of the building.

13. In the case of New Delhi Municipal Committee Vs. M.N. Soi and Another, , it has been held thus:

"It is not the actual rent received by the landlord but the ''hypothetical rent which can reasonably be expected if the building is to be let'', which has to be the legal yardstick of a ''reasonable expectation'' in an ''open market''. The municipal authorities cannot take advantage of the defiance of the law by the landlord. Rating cannot operate as a mode of sharing the benefits of illegal rack renting indulged in by rapacious landlords for whose activities the law prescribes condign punishment. The prudence of the landlord has to be assumed and judged by normal standards to

determine his ''reasonable expectation.''

14. Recently the Supreme Court in the case of Morvi Municipality Vs. State of Gujarat and others, , while examining the validity of Rule 99(1) of the Gujarat Municipalities Act, 1963 providing for determination of the property tax has on review of its earlier judgments succinctly summarised the principles emerging from the said judgments in the following manner:

"2. It is not necessary for us to go into a detailed discussion of the pros and cons of the question since the question is no longer res integra. The decisions of this Court rendered in the The Corporation of Calcutta Vs. Sm. Padma Debi and Others, ; Corporation of Calcutta Vs. Life Insurance Corporation of India, ; The Guntur Municipal Council Vs. The Guntur Town Rate Payers'' Association etc., and Dewan Daulat Rai Kapoor and Others Vs. New Delhi Municipal Committee and Others, have consistently held that it is not the value of occupation of the property to the tenant, but the rental income from it to the owner which is to be taken into consideration while estimating the reasonable return that a landlord can expect from his property. It has also been held there that wherever the rent is restricted on account of the operation of the rent restriction legislation, the outer limit of the reasonable rent that can be expected from the property stands defined by such restriction....."

15. Therefore, from a review of the judicial pronouncements made on the subject, it is clear that the fair rent can play as a measure for determining the property tax only if the property in respect of which the property tax is to be assessed is subject to a rent control legislation. If it is found that there is no restriction on fixation of rent in respect of a building, then, the rent payable in respect thereof will be the contractual rent only - may be hypothetical or actual.

16. Now let us turn to the provisions of the Rent Act to ascertain as to whether at the material time to which the impugned assessments pertain, the provisions of the said Act were applicable to the property under consideration.

"Section 2(2): Parts II and III of this Act shall be applicable to the areas specified in Schedule I:

Provided that the said Parts shall not apply to building constructed after the first August 1957 for a period of five years from the date of construction of such building."

"Section 3 : (a) In this Act, unless the context otherwise requires -

(a) "building" means any building or hut or part of a building or nut other than a farm house, let or to be let separately for residential or non-residential purposes and includes -

(i) the garden, ..."

"PART-III : Provisions Regarding Rent Section 14 : Fixation of fair rent, etc.: (1) The landlord or tenant of any building, other than a building in respect of which the fair rent has been fixed either before or after the coming into operation of this Act, may make an application to the Controller for fixing the fair rent of the building.

XXX XXX XXX

(6) In fixing the fair rent of a building which has been constructed after the first day of April 1947, the Controller may take into consideration the rental value of the building as entered in the property tax assessment book of the local authority for the year in which the building was constructed:

Provided that where no such records are available, the Controller may fix the fair rent calculated on the basis of six per cent per annum of the aggregate amount of the reasonable cost of construction and the market price of the land comprised in the building on the date of the commencement of the construction."

17. From the above provisions, it is clear that Part-Ill of the Rent Act which provides for fixation of fair rent does not apply to buildings constructed after 1.8.1957 which includes part/s thereof like different floors for a period of five years from the date of construction of such building.

18. In the present case, the impugned assessments pertain to the period which falls within five years from the date of construction of the building. Therefore, the rent restrictions envisaged under the Rent Act have no application to this, building. As such None of the decisions which have laid down that the fair rent has to be the basis for determining the property tax and not the actual rent received, can have any application to buildings having age upto five years.

19. Recently a Division Bench of the Delhi High Court in the case of Government Servants Co-operative House Building Society Ltd. and Others Vs. Union of India and Others, , after considering all the relevant judgments of the Supreme Court on the subject as noticed above, has held that -

"13. It is again unnecessary for us to quote in detail these judgments as the principle laid down is the same that in respect of a building subject to rent control legislation, the landlord cannot claim to recover from the tenant anything more than the standard rent and his reasonable expectation must, therefore, be limited by the measure of the standard rent recoverable by him. However, in respect of a building not subject to any such rent control legislation the actual rent payable by a tenant to the landlord would afford reliable evidence of what the landlord reasonably expect to get from a hypothetical tenant, unless the rent is inflated or depressed by reason of extraneous considerations, such as, relationship, expectation of some other benefit and the like. There would ordinarily be, in a free market, close approximation between the actual rent received by the landlord and the rent which he might reasonably expect to receive from a hypothetical tenant."

20. Accordingly, the contention raised on behalf of the petitioner that since in the present case the tax has been levied on the basis of actual rent received, is unsustainable in law, has to be unhesitant rejected having been formulated on a complete misconception of judicial pronouncements made on the issue.

21. Re : Contention No. II: The provisions for revision of assessment of property tax are provided in Section 148 of the Act and the Rules 8 and 9 of Part-II of the Act. The said Rules read as under:

"Section 148. Corporation to revise taxes:-

(1) The Corporation shall revise any tax imposed by it once every five years and whenever enhancement of the rate is evidenced necessary, shall levy the enhanced rates after observing the procedure prescribed for the imposition of taxes.

(2) Notwithstanding anything in Sub-section (1), the Government may, at any time, direct the Corporation to revise any tax imposed by it and the Corporation shall so revise after observing the procedure prescribed for the imposition of taxes."

22. The relevant Taxation Rules as contained in Part II of the Schedule III to the Act, reads as under:

"Rule 6: An assessment once made shall continue in force until it is revised and until the revised assessment takes effect.

Rule, 8: The Commissioner may, after giving notice to the parties concerned and hearing their objections, if any, amend the property tax assessment books at any time between one general revision and another by inserting therein or removing therefrom any property or by altering the valuation of any property or the amount of tax. Such amendment shall be deemed to have taken effect on the first day of the half year in which it is made:

Provided that when the amendment is made in any half year after the demand notice for that half year has been issued, it shall have effect only from the succeeding half year.

Rule 9: In every case in which between one general revision and another, Commissioner assesses any property for the first time or increases the assessment on any property otherwise than in consequence of a general enhancement of the rate at which the property tax is leviable, the Commissioner shall intimate by a special notice to the owner or occupier of such property that a petition for revising the assessment will be considered if it reaches the Corporation office within thirty days from the date of service of such notice."

23. The Scheme contemplated under the aforesaid rules clearly provides that this contention is ex-facie misconceived because Section 148 read with Rules 8 and .9 clearly empowers the Commissioner to revise the tax between one general revision and the other, by issuing a special notice to the owner or occupier of the property.

But such a revision can only be for some cogent reason justifying the increase or alteration of the property tax. In the present case, successive revisions have been made because of gradual additions made in the building by raising of new floors. Therefore, such revisions cannot be said to be illegal or unauthorised.

24. Re: Contention No. III: This Contention also do not merit any serious consideration because the impugned special notices had been issued for increase of the property tax based on actual rent received by the petitioner on floor wise competition of the building. From the original records which have been produced before this Court by Mr. Ashok Haranahalli, learned Counsel for the respondents, it is quite clear that the petitioners had the full knowledge of the basis on which the enhancements were sought to be made. It bears out from the records that pursuant to notices issued to the tenants under, Section 117 of the Act, they had furnished full details of the rents which were being paid by them. The said fact has not been disputed by the petitioner in these Writ Petitions. As such, this objection also stands rejected.

25. Re: Contention No. IV: Sri Paras Jain, learned Counsel appearing for the petitioners assails the impugned notices and the determination of the property tax thereunder, which has already acquired a finality, on the ground that the same has been issued by the Assistant Revenue Officer who had no competence to issue special notices like the impugned ones. According to him, the Commissioner is the only competent authority to issue such notices to finally inflict the tax liability on the property owner and power being quasi judicial in nature cannot even be delegated to any other officer of the Corporation. In support of his contention, he has placed reliance on a judgment of this Court in SHAILAJA UPPUND v. COMMISSIONER ILR 1990 KAR 1687. On the other hand, Mr. Ashok Haranahalli appearing for the respondent submits that if the judgment of this Court relied on by the petitioner is read in its proper perspective, it cannot be carried to the extent it is so sought on behalf of the petitioner. In the alternative he brings to my notice the amendment made in Section 66 of the Act by Act No. 35 of 1994 (w.e.f. 1.4.1994) and submits that, in this view of the matter now there being a specific provision authorising the Commissioner to delegate his powers specified under Schedule three namely Taxation Rules, of the Act, the objection raised has lost its very foundation.

26. Paragraph.4 of SHAILAJA''s case (supra) which is relevant for the present purpose reads as under:

"4. In a batch of cases which came up before this Court in WPs. 880 of 1986 and connected cases reported in THE CITIZENS FORUM AND ORS. v. STATE OF KARNATAKA AND ANR., this Court had occasion to deal with the delegation of this quasi judicial power of revision vested in the Commissioner under the Municipal Corporation Act. This Court has held (MPCJ) that it is the Commissioner who is required to perform the quasi judicial functions under Rule 11 of the Taxation Rules and that this power cannot be delegated to anybody else."

27. Therefore, in the aforesaid judgment, no independent reasons have been set out for holding that the quasi judicial functions of the Commissioner under the Taxation Rules cannot be delegated except purporting to cull out the said principle from the earlier judgment of this Court in the case of THE CITIZEN FORUM AND ORS. v. STATE OF KARNATAKA 1986(2) KarLJ 240.

28. In the case of Citizen Forum (supra) relevant discussions on the issue under consideration is at paragraph 14 which is to the following effect:

"14. Under Rule 11 of the Taxation Rules actual hearing of the objections to the notices issued u/s 67 of the Act in regard to the enhancement of rateable valued is the Commissioner, required to perform any quasi judicial function. That is not delegated. Therefore, I do not find much force in this contention either."

Therefore, even in this case, the Court has not in so many words said that the power of the Commissioner under Rule 11 of the Taxation Rules being quasi judicial in nature cannot be delegated. Rather, since on facts it was found that there was no delegation in favour of any officer, that question was not even gone into. It is a well established rule of precedents that "a decision" as observed by Lord Halsbury in QUINN v. LEATHEM (1900) All ERR. 1 is an authority for what it decides and not what logically can be deduced therefrom.

29. Apart from the above, Section 66 of the Act, which authorises the Commissioner to delegate his ordinary powers reads as under:

"66. Delegation of Commissioner''s Ordinary Power - Subject to the rules made by the State Government, the Commissioner may delegate to any officer of the Corporation subordinate to him, any of his ordinary powers, duties and functions including the powers specified in Schedule III."

The last expression "including powers specified in Schedule III, has been inserted by the Karnataka Act No. 35 of 1994 and has been brought into force with effect from 1.6.1994.

30. In view of the said amendment, the legislature has now made it unambiguously clear that the Commissioner can delegate all powers which he is required to perform under Schedule III, namely the Taxation Rules, to any Officer of the Corporation subordinate to him.

31. Moreover, it is not an absolute or inflexible rule of constitutional law that quasi-judicial functions can never be delegated. Law of delegation operates equally on all statutory functions whether legislative, judicial, quasi-judicial or administrative. The principle founding sub-delegation is that a delegate on whom a statutory power or function is conferred cannot further delegate that power/function unless he has been authorised to do so by the legislature, either expressly or impliedly. This principle is based on the maxim ''delegatus non potest delegare''. The correct rule of interpretation in this regard as stated in ''Principles of

Statutory Interpretation'' by Justice G.P. Singh (4th Edition, P.550) is:

"a discretion conferred by a statute is prima facie intended to be exercised by the authority on which the statute has conferred it and by no other authority, but this intention may be negatived by any contrary indications found in the language, scope or object of the statute."

In the case of Bombay Municipal Corporation Vs. Dhondu Narayan Chowdhary, it has been held that;

"It goes without saying that judicial power cannot ordinarily be delegated unless the law expressly or by necessary implication permits. In the present case, the amendment of Section 68 does indicate the intention that the judicial or quasi-judicial powers contained in Chapter VIA were expressly intended to be delegated. To the delegation as such there can be no objection."

32. Apart from the said legal aspect, what is more important on the facts of the present case is that, pursuant to the said notices served upon the petitioner, he had opted not to file any objections which would have required any adjudication by exercise of the quasi-judicial functions. Therefore, for this reason alone even if it be conceded that during the period under consideration, it was only the Commissioner who was competent to decide the objections filed by way of Revision Petition, since that occasion never arose, this issue becomes just academic. In the facts of the present case, it is not in dispute that the said notices had been issued by the Revenue Authorities pursuant to the specific delegation made in this behalf in their favour by the Commissioner who was empowered to do so u/s 66 of the Act.

33. Re: Contention V: This contention has been raised on the basis of a judgment of this Court in the case of J.C. RUDRA SHARMA v. STATE OF KARNATAKA AND ANR. 1988 (3) KarLJ 509, in paragraph 2 whereof it has been held that:

"2. The total amount of tax liability of a property owner within the jurisdiction of a local authority when added will be 23%. Accordingly, the cess has been levied, but as is obvious in excess."

34. Mr. Ashok Haranahalli, learned Counsel appearing for the respondent has brought to my notice the respective provisions of the State Accounts under which the cess is leviable. From the reading of the relevant provisions of these Acts the total cess recoverable comes to 31%:

1. Karnataka Compulsory Primary Education Act. (Section 16)	-	15%
2. Karnataka Health Cess (Section 30)	-	10%
3. Karnataka Libraries Act (Section 30)	-	3%
4. Karnataka Prohibition of Beggary Act. (Section 31)	-	3%

35. In the above view of the matter, the judgment of this Court in the case of J.C. Rudrasharma v. State of Karnataka and Anr. (Supra) is clearly per incuriam and as such has no binding effect. Accordingly, it is held that the petitioner has rightly been directed to pay 31 % cess under the impugned notices.

36. For the aforesaid reasons, in my opinion, the objections raised by Sri Paras Jain challenging the impugned notices on the ground of lack of authority in the Assistant Revenue Officer cannot be sustained.

37. For the reasons stated above, the present Writ Petitions are dismissed with Cost of Rs. 5,500/- recoverable by respondent-Corporation under the provisions of the Act.