R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5794 OF 2015

Shanmugam Balkrishnan Chettiar alias
S. Balan .. Petitioner

Versus

The Municipal Corporation of the City of
Pune & Ors. .. Respondents

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- Mr. R.D. Soni a/w Mr. V.R. Kasale i/by Ram & Co for the Petitioner
- Mr. R.S. Khadapkar for Respondent Nos. 1 and 2
- Mr. P.G. Sawant, AGP for the State

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CORAM : AKIL KURESHI &
B.P. COLABAWALLA, JJ.

DATE : NOVEMBER 6, 2019.

P.C.:

1. Rule. Rule is made returnable forthwith and by consent of the parties, matter is heard for final disposal.

2. The petitioner has challenged a resolution No. 2441 dated 2.2.2001 passed by respondent No. 1 - Municipal Corporation of Pune under which the Corporation decided to collect the fees for effecting changes in the records of the Corporation concerning the immovable properties. Under the said resolution, replacing the previous rule for collection of fees at fixed rate, the Corporation resolved to collect ad valorem charges for such purpose in a graded manner. As per the resolution, the fees for the applications would be as under:-

For first Rs. 500/- of rateable value	Rs. 500/-
Thereafter for each segment of Rs. 100/- of rateable value	Rs. 15/-
For first Rs. 500/- of rateable value, in case of matter involving family	Rs. 20/-
Thereafter for each segment of Rs. 100/- of rateable value, in case of matter involving family	Rs. 15/-

3. The petitioner by virtue of succession received certain immovable properties. The necessary changes in the Municipal records concerning such immovable properties, therefore, would have to be carried out. For such purpose, the petitioner would have to make an application to the concerned department of the Corporation and such application would be accompanied by prescribed fees. As per the impugned resolution dated 2.2.2001, such fees would be charged on the basis of rateable value of the property. We may record that the Corporation has passed subsequent resolutions modifying the rates at which such fees would be collected, nevertheless so far as the basic purport of the impugned resolution is concerned, the same remains unchanged.

4. The petitioner would point out that as per the impugned resolution of the Corporation, for various properties inherited by him, following fees were demanded on the basis of rateable values of the respective properties.

Property	Rateable Value	Old Owner	'Fees' demanded
Sai Hira Industrial Estate, Unit No. 1, City Survey No. 1130, Mundhwa, Pune	Rs. 3,43,450/-	Prakash Rasiklal Dhariwal	Rs. 51,950/-
Sai Hira Industrial Estate, Unit No. 2, City Survey No. 1130, Mundhwa, Pune	Rs. 3,04,000/-	Prakash Rasiklal Dhariwal	Rs. 46,025/-
Sai Hira Industrial Estate, Unit No. 3, City Survey No. 1130, Mundhwa, Pune	Rs. 3,40,200/-	Mrs. Indrani Balkrishnan Chettiar (wife of the petitioner, now deceased)	Rs. 50,975/-
Sai Hira Industrial Estate, Unit No. 4, City Survey No. 1130, Mundhwa, Pune	Rs. 3,43,450/-	Prakash Rasiklal Dhariwal	Rs. 51,950/-
Sai Hira Industrial Estate, Unit No. 5, City Survey No. 1130, Mundhwa, Pune	Rs. 2,94,650/-	Prakash Rasiklal Dhariwal	Rs. 44,625/- Rounded off
Sai Hira Industrial Estate, Unit No. 6, City Survey No. 1130, Mundhwa, Pune	Rs. 3,34,350/-	Mrs. Indrani Balkrishnan Chettiar (wife of the Petitioner, now deceased)	Rs. 50,100/- Rounded off

Sai Hira Industrial Estate, Unit No. 7, City Survey No. 1130, Mundhwa, Pune	Rs.3,43,450/-	Prakash Rasiklal Dhariwal	Rs. 51,950/- Rounded off
Sai Hira Industrial Estate, Unit No. 8, City Survey No. 1130, Mundhwa, Pune	Rs. 3,07,700/-	Prakash Rasiklal Dhariwal	Rs. 46,600/- Rounded off
Sai Hira Industrial Estate, Unit No. 9, City Survey No. 1130, Mundhwa, Pune	Rs. 3,36,250/-	Mrs. Indrani Balkrishnan Chettiar (wife of the Petitioner, now deceased)	Rs. 50,400/- Rounded off.

The case of the petitioner in brief is that the application of the petitioner is only for the purpose of making changes in the records of the Corporation indicating the rights and ownership of the holder of the property. The Corporation would be authorized to collect reasonable fees for the services rendered. However, the Corporation under the guise of collecting fees, cannot extract tax which is computed on the basis of rateable value of the property in question. In other words, the contention of the petitioner is that the charges levied by the Corporation for the said purpose, being in the nature of fees, the same should be commensurate to the services rendered. Collecting said charges at the ad valorum rate gives it the character of tax and demanding the same is therefore, without authority of law. Learned counsel for the petitioner relied on a decision of the Supreme Court in the case of **Calcutta Municipal Corpn. Vs. M/s. Shrey Mercantile Pvt Ltd**[1].

5. On the other hand, learned counsel for the Corporation opposed the petition contending that under the relevant statutory rules, it is within the powers of the Corporation to collect appropriate fees for maintaining the property records and for making necessary changes whenever the application for such purpose is made. Out attention was drawn to Rule 2 of Chapter VIII contained in Schedule D of the Maharashtra Municipal Corporation Act to show the source of the powers to collect such fees.

6. Sub-rule (3) of Rule 2 of Chapter VIII contained in Schedule D undoubtedly provides that for a valid notice for effecting changes in the property records, necessary fees as may be prescribed, shall have to be paid. This, however, does not conclude the contention raised by the learned counsel for the petitioner. We notice that an identical issue came up for consideration before the Supreme Court in case of Calcutta Municipal Corporation (supra). In the said case,

1 AIR 2005 SC 1879

the Calcutta Municipal Corporation had decided to collect the fees for similar purpose of making mutation entry in the property records and to collect ad valorum fees for such purpose based on rateable value of the property. The Supreme Court while upholding the decision of the High Court struck down such levy had made following observations:-

> "14. According to "Words & Phrases", Permanent Edition, Vol. 41 Page 230, a charge or fee, if levied for the purpose of raising revenue under the taxing power is a "tax". Similarly, imposition of fees for the primary purpose of "regulation and control" may be classified as fees as it is in the exercise of "police power", but if revenue is the primary purpose and regulation is merely incidental, then the imposition is a "tax". A tax is an enforced contribution expected pursuant to a legislative authority for purpose of raising revenue to be used for public or governmental purposes and not as payment for a special privilege or service rendered by a public officer, in which case it is a "fee". Generally speaking "taxes" are burdens of a pecuniary nature imposed for defraying the cost of governmental functions, whereas charges are "fees" where they are imposed upon a person to defray the cost of particular services rendered to his account.
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> 16. Therefore, the main difference between "a fee" and "a tax" is on account of the source of power. Although "police power" is not mentioned in the Constitution, we may rely upon it as a concept to bring out the difference between "a fee" and "a tax". The power to tax must be distinguished from an exercise of the

police power. The "police power" is different from the "taxing power" in its essential principles. The power to regulate, control and prohibit with the main object of giving some special benefit to a specific class or group of persons is in the exercise of police power and the charge levied on that class to defray the costs of providing benefit to such a class is "a fee". Therefore, in the aforestated judgment in Kesoram's case, it has been held that where regulation is the primary purpose, its power is referable to the "police power". If the primary purpose in imposing the charge is to regulate, the charge is not a tax even if it produces revenue for the government. But where the government intends to raise revenue as the primary object, the imposition is a tax. In the case of Synthetics & Chemicals Ltd. v. State of U.P. reported in [(1990) 1 SCC 109], it has been held that regulation is a necessary concomitant of the police power of the State and that though the doctrine of police power is an American doctrine, the power to regulate is a part of the sovereign power of the State, exercisable by the competent legislature. However, as held in Kesoram's case (supra), in the garb of regulation, any fee or levy which has no connection with the cost or expense of administering the regulation cannot be imposed and only such levy can be justified which can be treated as a part of regulatory measure. To that extent, the State's power to regulate as an expression of the sovereign power has its limitations. It is not plenary as in the case of the power of taxation.

21. Now coming to the question of challenge to the levy as arbitrary and discriminatory and violative of Article 14, we find that the functions of the corporation with regard to mutation remains the same, whether the applicant is a transferee under a conveyance or a lessee or a beneficiary under a will or an heir in the case of intestate succession. Once an application for mutation is made, the same is examined by the department and

> after hearing the objections, if any, the record is ordered to be changed. Ultimately, the exercise is for fiscal purpose. Similarly, the property valuation may be below Rs.50,000/- or above Rs.2 lacs, the function of the corporation in making the mutation entry remains the same. Similarly, whatever may be the cause of mutation, whether it is case of transfer or devolution, the activity of mutation remains constant in all the cases. The expenses incurred in all the cases also cannot vary, whatever be the value of the property or the cause of mutation. In the circumstances, there is no reason given for charging different rates depending on the value of the property and the cause of transfer. By doing so, the incidence of the levy falls differently on persons similarly situated resulting in violation of Article 14 of the Constitution. Moreover, the quantum of fees is disproportionate to the so called "services" which is one more circumstance showing arbitrariness in the levy of such imposition. So far as Article 14 is concerned, the Courts in India have always examined whether the classification was based on intelligible differentia and whether the differentia had a reasonable nexus with the object of legislation [See: Om Kumar v. Union of India reported in [(2001) 2 SCC 386].

The issue in hand thus squarely covered by the said judgment of the Supreme Court. Without further discussion, therefore, impugned resolution dated 2.2.2001 is set aside. Consequentially amended resolution bearing the charges for collection of fees are also set aside. Till the Corporation prescribes fresh rates for entertaining said application, the rates prescribed immediately prior to adoption of the impugned resolution shall prevail. The petitioner's pending application for mutation shall be entertained and decided upon the petitioner paying the fees as per said rates.

7. Rule is made absolute in the aforesaid terms.

[B.P. COLABAWALLA, J.] **[AKIL KURESHI, J]**

Ravindra M. Amberkar

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