IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 6577/2013
G.T.N. Industries Ltd. Vs. State of Maharashtra and Ors.

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

Mr. S. M. Patrikar, Advocate for petitioner.
Mr. A. J. Gohokar, A.G.P. for respondent Nos. 1 and 4.
Mr. V. A. Dhabe, Advocate for respondent No.3.

CORAM : ANIL L. PANSARE, J.
DATE : 30.07.2024

Heard Mr. S.M. Patrikar, learned counsel for the petitioner, Mr. A.J. Gohokar, learned A.G.P. for respondent Nos.1 and 4 and Mr. V. A. Dhabe, learned counsel for respondent No.3. None appears for respondent No.2, though served.

2. The petitioner – Factory is aggrieved by the order dated 06.06.2013 passed by respondent No.4-Divisional Commissioner, Nagpur in Case No.522/2013. The Divisional Commissioner has levied a lump sum tax of Rs.6,02,562/- for Units 'A' and 'B' and Rs.62,308/- for open land.

3. Having heard both the sides and having gone through the material placed before me, it appears that respondent No.3-Gram Panchayat, Khurajgaon and the petitioner - Factory had entered into an agreement for lump sum contribution in lieu of taxes levied on petitioner by the respondent No.3. Section 125 (1) of the Maharashtra Village Panchayats Act, 1958 (hereinafter referred to as the, "Act of 1958") provides that the factory and panchayat may arrive at such an agreement with sanction of the State Government. In the present case, the sanction of the State Government was not obtained.

4. In the earlier round of litigation, this Court, vide order dated 07.08.2012 passed in Writ Petition No.1720/2012, referred to Sections 124 and 125 of the Act of 1958 and took a view that the dispute under question will have to be processed in terms of Section 125 (2). Accordingly, the petitioner's request, as made on 23.11.2011, was forwarded to the Competent Authority i.e. Divisional Commissioner, Nagpur to pass a reasoned order, in accordance with law.

5. The Divisional Commissioner, after recording the submissions made by both the sides i.e. the petitioner and the Gram Panchayat, passed impugned order. The Divisional Commissioner referred to explanation (iv) of Rule 20 of the Maharashtra Village Panchayats Taxes and Fees Rules, 1960 (hereinafter referred to as the, "Rules of 1960"), to levy tax at the rate of Rs.1.80 per Sq. Ft. on the built up area of the building.

6. Rule 20 of the Rules of 1960, as was then existing, provides minimum and maximum rates of taxes for various types of buildings/constructions. The schedule showing rate of tax on building reads thus:

SCHEDULE

(See rule 7)

I Rate of tax on building

SI. No.	Type of building	Rate of taxation per square foot (in paise)					
		Village Panchayats in Tribal and Hilly area		Village Panchayats in General area		Village Panchayats just adjacent to Municipal Council or having population more than 3000	
1	2	3		4		5	
		Min	Max	Min	Max	Min	Max
1	Hut or Mud houses -						

	(i) Roof of grass	5	40	10	60	15	75
	(ii) Roof of sheet or mangalori tiles	10	60	15	75	20	90
2	Bricks or stone house built in clay	20	75	25	120	30	150
3	Pucca house in stone, brick and line or cement - (i) Roof of sheet or mangalori tiles (ii) R.C.C. Type house	 30 40	 100 150	 40 50	 150 175	 50 60	 180 200
4	New R.C.C. type house	80	250	90	300	100	400
5	Royal houses built up by marble or granite	120	350	140	400	160	500

7. The Divisional Commissioner has referred to explanation (iv) of Rule 20, which provides for tax on building used for industries and business shall be double to that of the residential buildings of the same type. Accordingly levied rate at Rs.1.80 per Sq. Ft. as applicable to New R.C.C. Type House.

8. As stated earlier, schedule provides for rate of taxes on building for various types of places namely, hut or mud house with roof of grass or with roof of sheet or mangalori tiles, building consisting of bricks or stone house built in clay, pucca house in stone, brick and line or cement, Roof of sheet or mangalori tiles and R.C.C. type house, new RCC type house and royal houses built up by marble or granite. Various rates are provided for these structures which ranges from minimum 10 paise to maximum 400 paise per Sq. Ft.

9. In the present case, the Divisional Commissioner has applied the rate of taxes for new R.C.C. type house.

10. Counsel for the petitioner submits that construction of factory is old and, therefore, these rates could not have been applied, to which the learned A.G.P., by taking aid of second explanation of Rule 20 of the Rules of 1960, submits that the construction made for small and big factories with the help of

iron poles, angles and sheets shall be included in the R.C.C. slab type house.

11. The submissions of the learned A.G.P. do not find any evidence in support, in the sense, there is nothing on record to show that the construction of the factory or part thereof has been made with the help of iron poles, angles and sheets. Even the order of Divisional Commissioner does not refer to the type of construction of the factory.

12. Learned counsel for respondent No.3 – Gram Panchayat, has invited my attention to the joint measurement of the factory premises which is signed by the Gram Panchayat, the petitioner and the engineers of the Public Works Department, etc. Perusal of the same, however, show that it refers to only measurement of construction and not the type of construction. There is, thus, nothing on record that describes nature of construction for which the taxes are to be levied.

13. In the circumstances, the matter will have to be relegated back to the Divisional Commissioner to pass a reasoned order which should, inter alia, indicate the nature of construction or type of building and the taxes imposed thereon. I am informed that the factory consists of various structures, which may fall in different categories of the schedule under Rule 20 of the Rules of 1960. It will be appropriate for the Divisional Commissioner to have an inspection report as regards the nature of construction and its measurements, to enable him to apply his mind while imposing the taxes.

14. Accordingly, the impugned order dated 06.06.2013 passed by Divisional Commissioner, Nagpur in Case No.522/2013, is quashed and set aside.

Case No.522/2013 is relegated back to the Divisional Commissioner, Nagpur for decision afresh, in accordance with the provisions then existing as also in accordance with what has been said in this order.

Corrected as per Hon’ble Court’s order dated 06.08.2024

Parties shall appear before Divisional Commissioner, Nagpur on 19.08.2024.

15. The petition is disposed of in above terms. No order as to costs.

(Anil L. Pansare, J.)

Kahale