VISAKHAPATNAM MUNICIPALITY

v.

KANDREGULA NUKARAJU & ORS.

August 29, 1975

[A. N. RAY, C.J., K. K. MATHEW AND Y. V. CHANDRACHUD, JJ.]

Andhra Pradesh District Municipalities Act (6 of 1965) ss. 3, 81, 83 *and Schedule* 9, *Clause* 12—*Scope of—Inclusion of new areas within municipality—Imposition of property tax on residents of those areas without following procedure in s.* 81—*Propriety.*

Under s. 4(1)(c) of the District Municipalities Act, 1920, the State Government declared its intention to include within the limits of the appellant-municipality the local areas comprised in two villages. The 1920-Act was repealed by the Andhra Pradesh Municipalities Act, 1965 which came into force on April 2, 1965. Section 3(1)(b) of the 1965-Act corresponds to s. 4(1)(c) of the repealed Act. Under s.3(3), the Government may include within a municipality a local area after considering any objections submitted by the residents of the local area. Under s. 3(4) the provisions of the 1965-Act *come into force in that area* on the first April, if that is the date of the notification under sub-s. (3) and in any other case, the first day of April immediately succeeding. The State Government, in exercise of its power under s. 3(3) of the 1965-Act, issued the notification in March 1966 including within the limits of the appellant municipality the areas comprised in the two villages with effect from April 1, 1966. In 1970, the Municipal Council after considering objections, passed a resolution for levying property tax on land and buildings in the two villages with effect from October 1, 1970, but, the municipality issued notices to the respondents, who were residents of those two villages, demanding the property tax from them from April 1, 1966 the date of inclusion of the villages. The respondents thereupon challenged the levy and the High Court upheld the challenge.

In appeal to this Court, it was contended that the appellant-municipality was entitled to demand the tax even from April 1, 1966, under cl. 12 of Schedule 9 of the 1965-Act. This clause provided that any tax which was being lawfully levied by the municipal council at the *commencement of the* 1965-*Act* and which may be lawfully levied under that Act shall continue to be levied by the council unless the Government by general or special order directs otherwise.

Dismissing the appeal to this Court,

HELD: (1) The inclusion of the two villages within the limits of the appellant municipality is in order, because, under cl. 13 of Schedule 9 of the 1965-Act the notification issued under s. 4(1) of the 1920-Act must be deemed to have been issued under s. 3(1) of the 1965-Act. [547 D-F]

(2) However, clause 12 of Schedule 9 cannot justify the imposition of the tax under the repealed Act of 1920, from April 1, 1966, on property situate in the newly included areas. [548 B-C]

(a) The clause is of a transitional nature and its object is to authorise the levy of taxes which, at the *commencement of the* 1965-*Act*, were levied under the repealed law. That is, in the present case, if any tax etc. was being lawfully levied by the appellant on April 1, 1966, (which was the date of commencement of the Act in the two villages) and if it can be lawfully levied under the 1965-Act, it can continue to be levied. But on April 1, 1966, no tax at all was being levied by or on behalf of the appellant on the property situate in the two villages included within the municipality on that date. Therefore, the appellant had no occasion or power to direct that a property tax may continue to be levied on those properties, and hence cl. 12 has no application. [548 C-E]

(b) It cannot be urged that because the appellant was levying property tax on property situate within its limits (other than the 2 villages) the property tax was not being levied for the first time. *Qua* the two villages newly

A included in the municipal limits, the tax was being imposed for the first time, and therefore, it was incumbent upon the municipality to follow the procedure prescribed by the first proviso to s. 81(2), because, the residents of those areas had no opportunity to object to the imposition of tax or for the municipality to invite objections and consider them. [549 C-E]

(3) The first proviso to s. 81 requires that before passing a resolution imposing a tax for the first time the council shall publish a notice, invite objections
B and consider the objections received within the stipulated time. Since the procedure was not followed in regard to the period prior to October 1, 1970 the levy of property tax on the properties of the respondents for that period is without authority of law and consequently illegal. By s. 83, when a council determines to levy any tax for the first time or at a new rate the Secretary shall forthwith publish a notification in the prescribed manner specifying the rate and the date from which the tax shall be levied. Section 83 is expressly subject to s. 81 and under the latter provision no tax can be imposed for the first time
C unless the procedure prescribed therein is followed. [548G-549 B]

(4) When the State Government issued the notification declaring its intention to include the two villages within the limits of the municipality the residents had an opportunity to object, not to the imposition of the tax but only to "anything contained therein", meaning, anything contained in the notification, that is, to the inclusion within the municipality. The question of imposition of a tax within the included areas, arises only after the final notification under s. 3(3) followed by a resolution under s. 81(1). [547F-550 B]

D (5) It could not also be contended that mere inclusion of two villages within the municipal area automatically attracts the tax. On the contrary, what s. 3(4) provides is that once a notification including any area within a municipality is published under s. 3(3), the provisions of the Act, that is, ss. 81 and 83, shall come into force in that area from the first day of April, and hence, the procedure prescribed therein will have to be followed. [550 F-H]

Atlas Cycle Industries Ltd. v. *State of Haryana & Anr.*, [1972] 1 S.C.R. 127, explained.

E CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1157 of 1974.

Appeal by special leave from the judgment and Order dated the 20th June, 1973 of the Andhra Pradesh High Court in Writ Appeal No. 411 of 1973.

F. S. Nariman and *P. P. Rao*, for the appellant.

F *A. Subba Rao*, for respondents Nos. 1-10, 12-31, 33 and 36.

The Judgment of the Court was delivered by

CHANDRACHUD, J.—The Andhra Pradesh Municipalities Act, VI of 1965, (hereinafter called "the Act") came into force on April 2, 1965. Section 3(1)(a) of the Act empowers the State Government
G to constitute a local area as a municipality. Section 3(1)(b) empowers the Government, by notification in the Gazette "to declare its intention to include within a municipality any local area in the vicinity thereof and defined in such notification". Section 3(1)(c) confers power on the Government to exclude from a municipality any local area comprised therein and defined in such notification. Under
H section 3(2), any resident of a local area or taxpayer of a municipality, in respect of which a notification under section 3(1) is published, may, if he desires to object to anything therein contained, submit his objection in writing to the Government within six weeks from the

publication of the notification and the Government is under an obligation to take all such objections into consideration. Under section 3(3) after the expiry of the aforesaid period of six weeks and on considering the objections, the Government may by notification in the Gazette declare to be a municipality or include in or exclude from a municipality, the local area or any portion thereof. By section 3(4), the provisions of the Act come into force in or cease to apply to any municipality or part thereof, as the case may be, on the date of publication of notification under sub-section (3) if such date is the first day of April, or in any other case, on the first day of April immediately succeeding the date of publication of such notification.

Respondents 1 to 36 are residents of two villages called Ramakrishnapuram and Sriharipuram. Prior to the year 1966, the area comprised in these villages was not included within the municipal limits of the Visakhapatnam Municipality. Most of these respondents own properties situated within the limits of the two villages but they were not assessed to property tax under the Andhra Pradesh (Andhra Area) District Municipalities Act, 1920 which was in force until the introduction of the Act. They used to pay taxes to the village Panchayat.

In exercise of the powers conferred by the corresponding provision of the District Municipalities Act, 1920, namely section 4(1)(c), the Government of Andhra Pradesh declared its intention to include within the limits of Visakhapatnam Municipality the local area comprised in the villages of Ramakrishnapuram and Sriharipuram. The District Municipalities Act, 1920 was repealed by section 391(1) of the Act which, as stated earlier, came into force on April 2, 1965. On March 24, 1966 the Government of Andhra Pradesh acting in the exercise of powers conferred by section 3(3) of the Act issued a notification including within the limits of the Visakhapatnam Municipality the area comprised in the villages of Ramakrishnapuram and Sriharipuram with effect from April 1, 1966.

On March 24, 1970 and June 10, 1970 the Municipal Council declared its intention to levy property tax in the areas newly included within the municipal limits. After considering the objections, the Council passed a resolution on August 28, 1970 confirming the levy of property tax on buildings and lands situated within the municipal limits, with effect from October 1, 1970. However, the municipality issued notices to respondents 1 to 36 demanding property tax from them not from October 1, 1970 but from April 1, 1966, that is to say, with effect from the date when the villages of Ramakrishnapuram and Sriharipuram were included within the municipal limits. These notices would appear to have been issued on the supposition that taxes leviable under the District Municipalities Act, 1920 could be levied under clause 12, Schedule IX of the Act, unless the Government directed otherwise.

On January 24, 1971 respondents 1 to 36 filed writ petition 442 of 1971 in the High Court of Andhra Pradesh against the State of

A Andhra Pradesh and the Visakhapatnam Municipaliity asking for a declaration that the levy of property tax on their properties for the period prior to October 1, 1970 was illegal. The writ petition was dismissed by a learned Single Judge on the view that it was competent to the municipality, under the District Municipalities Act 1920, to levy property tax on properties situated in the newly included areas B from April 1, 1966 to October 1, 1970.

Respondents 1 to 36 filed writ appeal 411 of 1972 against the decision of the Single Judge, which was allowed by a Division Bench of the High Court by its judgment dated June 13, 1972. It held that the provisions contained in clause 12 of Schedule IX had no application and that it was incompetent to the municipality to impose the C property tax on the newly included areas without following the procedure prescribed by sections 81 and 83 of the Act. The correctness of that view is challenged by the Visakhapatnam Municipality in this appeal by special leave. The State of Andhra Pradesh is respondent No. 37 to the appeal.

The circumstance that whereas the preliminary notification declar- D ing the intention of the State Government to include new areas within the municipal limits was issued under the District Municipalities Act 1920, the final notification confirming that intention was issued under the Act presents no difficulty. In so far as relevant, Schedule IX clause 13 of the Act, read with clause 1, provides that any action taken under the District Municipalities Act, 1920 by any authority before the commencement of the Act shall, unless inconsistent with the E Act be deemed to have been taken by the authority competent to take such action under the Act. The preliminary notification, though issued under section 4(1)(c) of the 1920 Act must therefore be deemed to have been issued under section 3(1)(b) of the Act. The inclusion of the villages of Ramakrishnapuram and Sriharipuram within the limits of the Visakhapatnam Municipality is accordingly in order. F

The true question for our consideration is whether the property tax which could lawfully be levied under the District Municipalities Act, 1920 can be levied, after the repeal of that Act, on properties situated in the areas included within the municipal limits after the constitution of the municipality. Section 391(1) of the Act expressly G repeals the District Municipalities Act, 1920 from which it must follow that ordinarily, no action can be taken under the Act of 1920 after April 1, 1966 when the repeal became effective on the coming into force of the Act.

But counsel for the appellant municipality contends that clause 12 of Schedule IX of the Act keeps the repealed enactments alive for tax H purposes and therefore the municipality has authority to impose the property tax under the Act of 1920, notwithstanding its repeal by the Act. Schedule IX appears under the title "Transitional Provisions" and clause 12 thereof reads thus :

"12. Continuance of existing taxes, etc.—Any tax, cess or fee which was being lawfully levied by or on behalf of any council at the commencement of this Act and which may be lawfully levied under this Act, shall, notwithstanding any change in the method or manner of assessment or levy of such tax, cess or fee, continue to be levied by or on behalf of the council for the year in which this Act is brought into force, and unless the Government by general or special order otherwise direct, for subsequent years also."

This provision cannot justify the imposition of tax under the repealed Act of 1920 on properties situated in the newly included areas. In the first place, as the very title of Schedule IX shows, the provisions contained in the Schedule are of a transitional nature. They are intended to apply during the period of transition following upon the repeal of old municipal laws and the introduction of the new law. Some time must necessarily elapse before a municipality can act under the new law but taxes have all the same to be imposed and collected during the interregnum. The object of clause 12 of Schedule IX is to authorise the levy of taxes which, on the commencement of the Act, were levied under the repealed laws. The material date for this purpose is the date of the commencement of the Act, namely April 1, 1966 and the legality of the exercise of the power conferred by clause 12 is to be judged in reference to that date. In other words, if any tax, cess or fee was being lawfully levied by or on behalf of any council on April 1, 1966 and if it can be lawfully levied under the Act, it can continue to be levied notwithstanding any change in the method or manner of assessment or levy of such tax, cess or fee. On April 1, 1966 no tax at all was being levied by or on behalf of any council on properties situated in Ramakrishnapuram and Sriharipuram and therefore the appellant municipality had no occasion or power to direct that the property tax may "continue to be levied" on those properties. "Continuance of existing taxes", after the commencement of the Act being the theme of clause 12 and since the property tax was not levied by or on behalf of any council at the commencement of the Act on the properties situated in the two villages, clause 12 has no application.

Imposition of certain kinds of taxes is an obligatory function of municipal councils, under the Act. Section 81(1)(a) provides that every council shall, by resolution, levy a property tax, a profession tax, a tax on carriages and carts and a tax on animals. Under section 81(2) a resolution of a council determining to levy tax shall specify the rate at which and the date from which the tax shall be levied. The first proviso to this sub-section requires that "before passing a resolution imposing a tax for the first time" or increasing the rate of an existing tax, the council shall publish a notice in the prescribed manner declaring the requisite intention. The council has further to invite objections and it is under an obligation to consider the objections received within the stipulated time. By section 83, when a council determines, subject to the provisions of section 81, to levy any tax for the first time or at a new rate, the Secretary shall forthwith publish a

notification in the prescribed manner specifying the rate at which, the date from which and the period of levy, if any, for which, such tax shall be levied. Section 83 is thus expressly subject to section 81 and under the latter provision no tax can be imposed "for the first time" unless the procedure prescribed therein is followed. Since the procedure prescribed by the first proviso to section 81(2) was not followed in regard to the period prior to October 1, 1970 the levy of property tax on the properties of respondents 1 to 36 for that period is without the authority of law and consequently illegal.

It was urged on behalf of the appellant that the first proviso to section 81(2) would apply only when a tax was imposed "for the first time" and since the appellant was levying property tax long before its imposition on the properties of respondents 1 to 36, it was unnecessary to follow the procedure prescribed by the proviso. It is not possible to accept this submission. The Municipality might have been levying property tax since long on properties situated within its limits but until April 1, 1966 the villages of Ramakrishnapuram and Sriharipuram were outside those limits. *Qua* the areas newly included within the municipal limits, the tax was being imposed for the first time and therefore it was incumbent on the Municipality to follow the procedure prescribed by the first proviso to section 81(2). Residents and tax-payers of those areas, like respondents 1 to 36, never had an opportunity to object to the imposition of the tax and that valuable opportunity cannot be denied to them. It is obligatory upon the Municipality not only to invite objections to the proposed tax but also to consider the objections received by it within the specified period. Such period has to be reasonable, not being less than one month. The policy of the law is to afford to those likely to be affected by the imposition of the tax a reasonable opportunity to object to the proposed levy.

According to the appellant, the residents of Ramakrishnapuram and Sriharipuram had an opportunity to object to the imposition of the tax when the State Government issued a notification under section 3(1)(b) of the Act declaring its intention to include the two villages within the limits of the municipality. It is not possible to accept this submission either. When the State Government issues a notification under any of the clauses of section 3(1), any resident of the local area concerned or any tax-payer of the municipality can "object to anything therein contained" meaning thereby, anything contained in the notification. A notification issued under section 3(1)(b) contains only the declaration of the Government's intention "to include within a municipality any local area in the vicinity thereof and defined in such notification". The right of objection would therefore be limited to the question whether a particular area should, as proposed, be included within the municipal limits. It would be premature at that stage to offer objections to the imposition of any tax because it is only after the final notification is issued under section 3(3) that the question would at all arise as regards the imposition of a tax on the newly included areas. A notification under section 3(3) has to be followed by a

resolution under section 81(1) if the municipality wants to impose a tax, and for the resolution to be effective, the procedure prescribed by the first proviso to section 81(2) has to be followed. The appellant municipality short-circuited this mandatory procedure and thereby deprived respondents 1 to 36 of the valuable right of objecting to the imposition of the tax.

Finally, relying on section 3(4) of the Act, learned counsel for the appellant contended that the inclusion of the two villages within the municipal area attracts of its own force every provision of the Act with effect from the date on which the final notification is published by the Government under section 3(3). This argument is said to find support in a decision of this Court in *Atlas Cycle Industries Ltd.* v. *State of Haryana & Anr.*(1). Far from supporting the argument, we consider that the decision shows how a provision like the one contained in Section 3(4) cannot have the effect contended for by the appellant In the *Atlas Cycle* case, section 5(4) of the Punjab Municipality Act, 1911 provided that when any local area was included in a municipality, "this Act and.....all rules, bye-laws, orders, directions and powers made, issued or conferred under this Act and in force throughout the whole municipality at the time, shall apply to such areas". The industrial area within which the factory of the Atlas Cycle was situated was by a notification included within the municipality of Sonepat. The municipality thereafter purported to impose octroi duty on the goods manufactured, by the company without following the procedure corresponding to that prescribed by sections 81 and 83 of the Act. It was held by this Court that since section 5(4) of the Punjab Act did not, significantly, refer to notifications and since section 62(10) of the Punjab Act spoke of "notification" for the imposition of taxes, it was not competent to the municipality to levy and collect octroi from the company on the strength merely of the provision contained in section 5(4) of the Punjab Act. In the instant case, what section 3(4) provides is that once a notification including any area within a municipality is published under section 3(3), "The provisions of this Act shall come into force in, ... any municipality or part thereof.....on the date of publication of the notification under sub-section (3), if such date is the first day of April, or in any other case, on the first day of April immediately succeeding the date of publication of such notification". Thus, by section 3(4), once a notification is issued under section 3(3), all the provisions of the Act come into force. That means that sections 81 and 83, which are a part of the Act, would also apply to the entire Municipal area. It would then be obligatory for the municipality to follow the procedure prescribed in these sections. Taxes can be imposed under the Act only by passing appropriate resolutions under section 81. Section 3(4) does not provide that on the inclusion of a new area within a municipality, the resolutions passed by the municipal council before such inclusion will automatically apply to the new area. Plainly, such could not be the intention of the legislature in

(1) [1972] 1 S.C.R. 127.

A view of the importance which it has attached to the right of the citizens to object to the imposition of a proposed tax. Though, therefore, by reason of section 3(4) the provisions of the Act would apply to the new areas included within a municipality, it is not competent to the municipality to take recourse to the resolution passed for imposing tax on the old areas for the purpose of levying taxes on new areas. The procedure prescribed by sections 81 and 83 must be followed if
B a tax is proposed to be levied on the new areas.

For these reasons we confirm the judgment rendered by the Division Bench of the High Court and dismiss this appeal with costs.

C V.P.S. *Appeal dismissed.*