(1972) 09 P&H CK 0005

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ No. 846 of 1965

Bansi Lal and others APPELLANT

Vs

The State of Punjab and another RESPONDENT

Date of Decision : 29-09-1972

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (1972) 09 P&H CK 0005

Hon'ble Judges : Prem Chand Jain, J

Bench : Single Bench

Advocate : Kuldip Singh, for the Appellant; Harinder Singh for Advocate-General, Punjab and Mr. J.V. Gupta, for the Respondent

Final Decision : Dismissed

Judgement

Prem Chand Jain, J.—Bansi Lal and others have tiled this petition under Articles 226 and 227 of the Constitution of India, for the issuance of an appropriate writ, order or direction, quashing the Notifications issued by the Punjab Government dated 29th August, 1964 and 16th February, 1965 (copies Annexures ''D'' and ''F'' to the petition respectively). The facts of this case as given in the petition may briefly be stated thus:--

The petitioners are resident of Patiala City and own property within the limits of the town. The petitioners are rate-payers and are liable to pay tax which has been levied by the State of Punjab. In the town of Patiala there is a legally and regularly constituted Municipal Committee under the Punjab Municipal Act, 1911 (hereinafter referred to as the Act). The Punjab Government, vide Notification No. 10918-CI (6CI)-59/4090, dated 12th February, 1960, imposed house-tax on the buildings and lands in the town of Patiala from 1st April, 1960. Copy of the notification is attached with the petition as annexure ''A''. This tax was imposed by the Administrator as no elected Municipal Committee existed at the relevant time. Thereafter the Municipal Committee was elected which on 6th February, 1962, passed a resolution at its special meeting to the effect that the tax levied on private properties of Patiala City, except Government buildings, be withdrawn under the provisions of section 70 (2) (c) of the Act The Punjab Government, vide Memorandum No. 1173-6CI-62/6681, dated 14th December, 1952 confirmed the said resolution and exempted buildings and lands other than Government buildings, in Patiala City from the payment of the house-tax. Copy of the Memorandum is attached with the petition as annexure ''B''.

2. It is further stated that the Punjab Government repeatedly requested the Municipal Committee, Patiala, to exempt Government buildings also from payment of house-tax and finally proposed vide letter No. 7082-6C-63/34984, dated 30th September, 1963 that the said exemption be granted. The Municipal Committee, vide its resolution No. 548, dated 7th November, 1963, expressed its inability to exempt Government buildings from the payment of house-tax. Thereafter the Government vide Notification No 5728-ICI 64/29452, dated 29th August, 1964, in exercise of its powers under sub-section (1) of section 62-A of the Act directed the Municipal Committee, Patiala, to impose the house-tax, within the period of two months from the date of publication of the notification failing which action would be taken to enforce the direction under sub-section (3) of section 62-A of the Act. Copy of the Notification is attached with the petition as Annexure ''D'' The Municipal Committee, on receipt of the notification, resolved vide resolution No. 536, dated 5th September, 1964, that the house-tax be not imposed and the exemption already granted be allowed to continue. The Punjab Government vide Notification No. 11.7.51-ICI-64/5227, dated 16th February, 1965, imposed the house-tax in exercise of its powers conferred by sub-section (3) of section 62-A of the Act with effect from the 1st April, 1965 (copy of the notification attached with the petition as Annexure ''F''). As earlier observed, it is the legality and propriety of the notifications Annexures ''D'' and ''F'' which have been challenged by way of this petition.

3. Separate written statements have been filed on behalf of the State of Punjab and the Municipal Committee. In its return the State has sought to support Us action in issuing the impugned notifications while the Municipal Committee in its affidavit has supported the claim of the petitioner.

4. In this petition, vires of section 62-A of the Act have also been challenged; but Mr. Kuldip Singh, learned counsel for the petitioners, did not press the ground relating to the vires of section 62-A of the Act. He only raised the following two contentions:--

1. That u/s 62 A of the Act, the State Government could exercise its power of imposing tax only once and that power having been exercised once, could not be exercised again under that section, and

2. That the impugned notifications are not bona fide and the State Government''s action in issuing these notifications, is vindictive.

5. On the other hand, it is contended by Mr. Harinder Singh, learned counsel for the State, that power for the imposition of tax could be exercised u/s 62-A of the

Act by the State Government any time and that the only limitation in exercise of that power was where the tax had already been imposed by the Committee. With regard to the second contention, it was submitted by the learned counsel that the act of the State Government was not vindictive and that in order to nullify the effect of the discriminatory treatment meted out by the Municipal Committee, the impugned notifications were issued.

6. After giving my thoughtful consideration to the entire matter I am of the view that there is no merit in the contentions of the learned counsel for the petitioners. At this stage, for facility of reference, sections 62-A and 70 of the Act may be reproduced as on the interpretation of these two sections the decision of the contentions of the learned counsel for the petitioners, depends:--

62-A (1) The State Government may, by special or general order notified in the Official Gazette, require a Committee to impose any tax mentioned in section 61, not already imposed at such rate and within such period as may be specified in the notification and the Committee shall thereupon act accordingly.

(2) The State Government may require a Committee to modify the rate of any tax already imposed and thereupon the Committee shall modify the tax as required within such period as the State Government may direct.

(3) If the Committee fails to carry out any order passed under sub-section (1) or (2) the State Government may by a suitable order notified in the official Gazette impose or modify the tax. The order so passed shall operate as if it were a resolution duly passed by the Committee and as if the proposal was sanctioned in accordance with the procedure contained in section 62.

70. (1) A committee may exempt, in whole or in part, for any period not exceeding one year, from the payment of any such tax, any person who by reason of poverty may in its opinion be unable to pay the same, and may renew such exemption as often as may be necessary.

(2) A committee, by a resolution passed at a special meeting and confirmed by the State Government, may-(a) provide that all or any persons may be allowed to compound for taxes imposed under sub-clauses (c), (d) and (e) of clause (1) and under clauses (2) and (3) of section 61;

(b) abolish, suspend or reduce in amount any tax imposed under the foregoing sections; or

(c) exempt in whole or in part from the payment of any such tax, any person or class of persons or any property or description of property.

7. Mr. Kuldip Singh, learned counsel for the petitioners had contended that in the instant case the house-tax was imposed in the year 1960 by the State Government, that the private buildings were exempted from the said house-tax on the basis of the resolution passed by the Municipal Committee, that u/s 62-A of the Act the power of imposition of tax could be exercised by the State

Government only once, and that the power having been exercised by imposing house tax in the year 1960, the State Government had no jurisdiction to again impose house-tax under that provision. From the bare perusal of section 62-A, I find that under sub section (1) the State Government is authorised to require a Committee to impose any tax mentioned in section 61. This power can be exercised only if the tax is ''not already imposed''. These words'' simply mean a tax which does not exist as already imposed at the time when the State Government requests any Municipal Committee to impose the same. It is quite evident that at the time when the Municipal Committee was required to impose the impugned tax on private buildings, then there was no tax payable on such properties. In the instant case the private buildings were exempted from the tax which those buildings were liable to pay in the year 1962. The exemption was granted u/s 70 (2) (c). The effect of the exemption was that the tax no longer remained imposed on such buildings. In the Act there is no procedure prescribed for withdrawing the exemption once granted and, therefore, for imposing the tax again, issuance of fresh notification was essential after complying with the provisions of section 62-A. This being the clear legal position, the State Government acted within its jurisdiction to require the Municipal Committee to impose the house tax on the private buildings and in case of non-compliance by the Municipal Committee, to impose such tax within its powers under the Act as has been done in the instant case.

8. As earlier observed, at the time of the issuance of the impugned notifications, the tax imposed on private buildings in the year 1960 did not stand so imposed after the exemption was granted. There is no warrant for holding that a tax once imposed and later on exempted or withdrawn or cancelled cannot be reimposed u/s 62 A. The argument of the learned counsel for the petitioners is evidently fallacious and in no way holds good in the presence of the clear powers given to the State Government. In this view of the matter hold that the State Government rightly exercised its powers u/s 62-A of the Act in imposing the house-tax on the private buildings which were exempted in the year 1962.

9. Adverting to the second contention of the learned counsel for the petitioners, I find that, in the circumstances of this case, there is no merit in the same. It is correct that the Municipal Committee was asked by the State Government to exempt the Government buildings also and the Municipal Committee did not comply, but that itself would not lead to the conclusion that the action was vindictive. The State Government evidently found no justification to allow the exemption to continue in respect of private buildings. In this respect the stand taken by the State Government that in order to nullify the effect of the discriminatory treatment meted out by the Municipal Committee, the impugned notifications were issued, is both sound and reasonable. Moreover, considering the growing increase in the Municipal Committee expenditure as compared with the conditions existing at the time when the tax on private buildings was exempted, there appears hardly any impropriety or unfairness in the impugned action of the State Government.

10. No other point was urged.

11. For the reasons recorded above this petition fails and is dismissed; but in the circumstances of the case 1 make no order as to costs.