

(2004) 09 RAJ CK 0074

In the Rajasthan High Court

Case No : .CSpecial Appeal (Writ) No. 1069 of 1999

Chittor Cement Works

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 24-09-2004

Acts Referred:

Rajasthan Municipalities Act, 1959 — Section 4, 4(1), 4(2), 4(4), 5

Citation : (2005) 3 RLW 1777

Hon'ble Judges : Dalip Singh, J;B. Prasad, J

Bench : Division Bench

Advocate : D.R. Bhandari and B.L. Purohit, for the Appellant; N.M. Lodha, A.A.G., for the Respondent

Final Decision : Dismissed

Judgement

B. Prasad, J.—The present appeal arises out of the decision of learned Single Judge of this Court whereby the writ petitions of the petitioners were dismissed. Petitioners in the writ petitions claimed that inclusion of the area of petitions' premises in the area of Chittorgarh Municipality is not affected by valid Notification. Unless a Notification is validly issued, the area as claimed by the respondents cannot form a part of Chittorgarh Municipality. Since the area cannot form the part of Chittorgarh Municipality, the municipal authorities in Chittorgarh has no right to impose tax in the nature of octroi on the goods which are transported.

2. Principal emphasis of the learned counsel for the appellants in this appeal is that learned Single Judge while deciding the writ petition has not dealt with the subject in right earnestness. The learned Single Judge has held that area comprised of the appellants' premises, has rightly been included within the boundaries of Chittorgarh Municipality limits. It is not in violation of the provisions of Section 4(2) and 6 of the Rajasthan Municipalities Act (hereinafter referred to as "the Act").

3. It would be relevant for us to refer to the statutory provisions. In this relation, a Notification for inclusion of an area in a municipality was first issued u/s 6 of the Act. By this Notification preliminary procedure is adopted. As and when such Notification is published u/s 6(1) objections can be fired. After that keeping in view the proposals and objections, as invited the State Government is to decide the propriety of the proposal. If the proposal is found in order, then Notification u/s 4(1) is issued. The law which governs the subject are Sections 4 and 6 of the Rajasthan Municipalities Act, 1959 which are quoted herein for ready reference:-

"4. Delimitation of Municipalities.-(1) Subject to the provisions of Sections 5 and 6, the State Government may, from time to time, by notification in the Official Gazette-

- (a) declare any local area to be a municipality;
- (b) define the limits of any municipality;
- (c) include or exclude any area in or from any municipality;
- (d) otherwise alter the limits of any municipality;
- (e) declare that any local area shall, from a date to be specified in the notification, cease to be a municipality:

(2) Every notification constituting a new municipality or altering the limits of an existing municipality shall clearly set forth the local limits of the area to be included in or excluded from such municipality, as the case may be.

(3) It shall be the duty of the municipal board in every municipality already existing and of every board newly established under this Act and of every board whose local area altered as aforesaid to cause at its own cost, to be erected or set up, and thereafter to maintain at its own cost, substantial boundary marks of such description and in such position as shall be approved by the Collector or any officer authorised by him in this behalf, defining the limits or the altered limits of the municipality subject to its authority, as set forth in the notification.

(4) When any local area ceases to be a municipality, the board established therein shall cease to exist, and the balance of the municipal fund and other property and rights vesting in such board shall, subject to all charges and liabilities affecting the same, vest in the State Government and the proceeds thereof, if any, shall be expended under the orders of the State Government for the benefit of the local area in which such board has jurisdiction.

(5) Notwithstanding anything contained in Sub-section (4) when any local area ceases to be a municipality and is included within the local limits of the jurisdiction of some other local authority, the municipal fund and other property and rights vesting in the board shall vest in such other local authority and the liabilities of the board shall be the liabilities of such other local authority.

(6) When any local area is excluded from a municipality and included in another

municipality such portion of the municipal fund and other property vested in the board of the first mentioned municipality shall vest in, and such portion of the liabilities thereof shall be the liabilities of, the board of the other municipality as the State Government may, after consulting the board of both municipalities, declare, by notification in the Official Gazette; provisions of this sub-section shall not apply in any case where the circumstances, in the opinion of the State Government, render undesirable the transfer of any portion of the municipal fund and properties or liabilities.

(7) When any local area is included in a municipality all rules and bye laws made, orders, directions and notices issued and powers conferred and in force throughout such municipality at the time when the said area is so included, shall apply thereto, unless the State Government otherwise directs, from the date of such inclusion.

6. Procedure preliminary to notification u/s 4.- (1) Not less than thirty days before the issue of any notification u/s 4 the State Government shall cause to be published in the Official Gazette, and to be posted in conspicuous spots or proclaimed by beat of drum in the area concerned, a proclamation amounting that it is proposed to constitute such local area to be a municipality, or to include or exclude it in or from any municipality, or to alter the limits of any municipality in a specified manner or to declare that such local area shall cease to be a municipality, as the case may be, and requiring all persons who entertain any objection to the said proposal to submit the same, with reasons therefore in writing, to the State Government within thirty days from the date of the said proclamation.

(2) No notification u/s 4 shall be issued by the State Government, unless the objections, if any, so submitted are in its opinion insufficient or invalid."

4. In the instant case a Notification u/s 6 was published by the respondent State Government vide Notification No. F.1(A)(7)LSG/78 dt. 13.05.1981 (Exhibit-1). After the publication of said Notification, the petitioners filed objections. The objections have been filed along with the writ petition as Exhibit-3. In these objections a detailed description of the area has been given by the petitioners describing every bit of the land which were considered to be included in the municipal area. This is also important to note here that in the objections so filed, there is not whisper that Notification Exhibit-1, issued in terms of Section 6 is vague or uncertain or is not capable of defining the area, which are as required to be included within the municipal limits of Chittorgarh.

5. The appellants were conscious of all the defects at the time when they filed the objections. All the objections which they conceived has been incorporated in the Annexure-3 filed with the writ petition. The learned counsel for the appellant was conscious of this fact. Learned counsel for the appellant, therefore, submitted that though the objections were filed, but it was not necessary to file any objection. Mere filing of objection will not deprive them to challenge the

validity of the Notification on all available grounds. The legality of the Notification itself can be challenged as a legislative Act. According to the learned counsel. It was not necessary to file any objection to any legislative act. Where the learned counsel wants to bring a legislative act into force, no objections are relevant. All we understand from the argument of the learned counsel is that having filed the objections, appellants now want to show that they are not wiser. After having become wiser, they want to say in the instant context if they have not raised the objections of vagueness then the same was not necessary. If Notification is vague then this objection can be raised even now. We will examine the argument advanced by the learned counsel qua the vagueness of the Notification hereinafter.

6. When we read the Notification Exhibit-1, we find that it delineates in its body that on the northern side of the Municipal Board, the limit shall stand extended upto village Chanderia including the area of power house, industrial area, Birla Cement Works Factory, Dalda Mills and residential areas of both the Chanderia villages. It is only the northern side with respect to which the present appellant is concerned. According to the learned counsel, in this description there is no geographical delineation of the boundary.

7. Learned counsel has relied upon the case of Kan Raj v. State of Rajasthan reported in RLW1979 84 wherein this court while considering the question of conversion of Panchayat Circle, Ahore into Municipal Board, Ahore held that proper delineation is necessary. According to our view, this case would not be of any help for the purpose of deciding the present controversy because while deciding the case of constituting a new Municipal Board what has to be looked into is provided in Section 4(1)(a). The cited case relates to the declaration of the local area into a new Municipal Board. In this case, the inclusion and exclusion of the area in the municipality was not the subject matter. Thus, the law laid down in relation to Section 4(1)(a) is not relevant. As far as present controversy is concerned, what has been delineated in Section 4(1)(c) is inclusion or exclusion of any area and not a local area. Definition of the local and expression regarding the term "local area" would not be relevant.

8. Learned counsel has next relied on the case of Diamond Sugar Mills Ltd. and Another Vs. The State of Uttar Pradesh and Another, In this case, the Hon"ble Supreme Court while considering the question of local area had dealt with the term "local area" and has laid down following law:-

"(11) Our task being to ascertain the limits of the powers granted by the Constitution, we cannot extend these limits by way of interpretation. But if there is any difficulty in ascertaining the limits, the difficulty must be resolved so far as possible in favour of the legislative body. The presumption in favour of constitutionality which was stressed by the learned counsel for the respondents does not take us beyond this.

(12)

(13) The etymological meaning of the word "local" is "relating to" or "pertaining to" a place. It may be first observed that whether or not the whole of the State can be a "local area", for the purpose of Entry 52, it is clear to be a "local area" for this purpose must be an area within the State. On behalf of the respondents it is argued that "local area" in Entry 52 should therefore be taken to mean "any part of the State in any place therein" So, the argument runs, a single factory being a part of the State in a place in the State is a "local area". In other words, "local area" mean "any specified area inside the State." The obvious fallacy of this argument is that it draws no distinction between the words "area" standing by itself and the phrase "local area". If the Entry had been "entry of goods into any area of the State...." some area would be specified for the purpose of the law levying the cess on entry. If the Constitution-makers were empowering the State Legislatures to levy a cess on entry of goods into any specified area inside the state the proper words to use would have been "entry of goods into the area...." It would be meaningless and indeed incorrect to use the words they did use "entry of goods into a local area." The use of the words "local area" instead of the words "area" cannot but be due to the intention of the Constitution-makers to make sure that the power to make laws relating to levy on entry of goods into any and every part of the state from outside that part but only to entry from outside into such portions of the state as satisfied the description of "local area". Something definite was sought to be expressed by the use of the word "local" before the word "area": The question is : what exactly was sought to be expressed?

9. When we go in details of the facts of this case, we come to the conclusion that here the local area was considered in the light of entire State. A factory was delineated by a local area. In the present context, it is not such a local area which is subject matter. What is relevant here is the area which is delineated in Section 4(1)(c) and not the local area as delineated in Section 4(1)(a). Thus, if at all the case of Diamond Sugar Mills (*supra*) is to be read in the context of the present case, then one has to consider how ambiguity is to be dealt with. If there is ambiguity, then that ambiguity has to be read in the favour of legislative body. Thus, this case is also of no guidance to the appellant.

10. Learned counsel has further relied upon another case reported in 1989 (2) RLR 589 in the matter of J.K. Synthetics Ltd. v. The Municipal Board, Nimbahera and Anr. In this case, we noticed that objections were invited in terms of Section 6 and were considered necessary to be submitted. To that extent this case goes against the appellant. Further this case on the law point says that after the inclusion of the area whether it would be necessary to issue a new Notification for levying octroi for that area. In this context, the facts would not govern the case as relied by the learned counsel for the appellant.

11. In the context of the aforesaid discussion, we see that Notification Exhibit-1 defines and delineates that in the north side to the boundaries of the Municipal Board, Chittorgarh, entire area upto Chandera village inclusive of power house,

industrial area, Birla Cement Works Factory, Dalda Mills is included in the Municipal area. These all areas are definable areas. In the case of Kan Raj (supra) the expression "geographical limits" was used. No such expression has been used by the Municipalities Act. If at all geographical limits are to be considered then the area will have to be defined in terms of longitude and latitude. It was neither the case of the appellant nor in any of the cases herein relied upon by the appellant has stated so. Therefore, the cases relied upon are of no consequence wherein geographical limits as definable as longitude and latitude are required to be dealt. The emphasis of the appellant advanced in his arguments is that at least Khasra numbers were to be given. Khasra numbers are revenue descriptions. They are not geographical descriptions. Therefore, the requirement of law fall short of being that specific. The law as has been understood by the appellant, appears to be more vague then the Notification itself. In the Notification we see a definite expression of north side. Opposing the Notification, appellant has filed objections. A perfect description of the whole area is available in the objections. It only shows that the appellants have understood the area in right earnestness. According to the petitioners, perception area has been incorporated in the objection filed by petitioners. What has been contended in the writ petition if true, then definitely the reply given on the record in relation to Notification u/s 6 would not have given in the terms in which it has been submitted. They only affected party which has tried to impugn the Notification is the appellant, nobody else in the village has considered the Notification vague. As far as the appellant's understanding is concerned, it reflects in the reply to the objections. We do not find any vagueness in the understanding of the appellant. If the same is perfect, then there does not lie any vagueness and if the Notification is not vague, then no challenge can be sustained as against the Notification. If the challenge cannot be sustained, then inclusion of area u/s 4(1)(a) and 6 cannot be challenged. Consequently, the Notification u/s 4(1) cannot be impugned. Notification is held valid consequent thereto. It is held that appellant is liable to pay the tax as demanded by the State.

12. Consequently, the special appeals having no force are hereby dismissed.