
(1981) 03 DEL CK 0012
In the Delhi High Court
Case No : Civil Writ Appeal No. 1151 of 1980

Gulraj Singh

APPELLANT

Vs

New Delhi Municipal Committee

RESPONDENT

Date of Decision : 02-03-1981

Acts Referred:

Citation : (1981) RLR 361

Hon'ble Judges : N.N. Goswamy, J;D.K. Kapur, J

Bench : Division Bench

Advocate : R.K. Malik and Kailash Mittal, for the Appellant;

Judgement

D.K. Kapur, J.

(1) Ndmc had resolved on 15.5.73 to impose Scavenging tax. Govt suggested certain modifications" After meeting them Govt. issued notification on 2.2.76. saying that the tax would be imposed w.e.f. 1.4.76. Ndmc, few days before this, had on 29.1.76 resolved to review the question. In a special meeting on 10.2.76, it resolved to drop the proposal and asked Govt. to revoke the notification. On 20.1.78, Ndmc resolved that as Govt. had not revoked notification of 2.2.76, Ndmc should go ahead with recovery of sca. tax w.e.f. 1.4.76. Demands were made from petitioner and others. Petitioner filed writ against it. It was held that notification of 2.2.76 was invalid as it did not give the minimum statutory period of 3 months of imposition of tax u/s 62(10). That the proposal to levy tax in 1976 was withdrawn by resolution of 10.2.76 and tax could not be imposed by resolution of 20.1.78. The latter was a new proposal requiring fresh notification. That S. 61(v)(e) shows that tax cannot be charged from the owner but only from the occupier., After giving above in detail judgment proceeds.

(2) In the present case, the bill addressed to the owner, who is a resident of Ludhiana and does not live in the property in question, is clearly Ultra vires. We would agree with the contention of the petitioner that in any case the petitioner is not liable to pay this tax unless he becomes the occupier of the building.

(3) The fourth point that arises in this case is whether the provisions of Sections 159 to 165 have come into operation for the purpose of levying scavenging tax. Section 159 enables the Municipality to undertake house scavenging generally. If such a notice is given, the occupier of any house or building may apply to the Committee to exclude his house or building from the notice. If such an application is made, then the Committee can consider whether the occupier's arrangements for house scavenging are sufficient to ensure proper scavenging without the Committee undertaking the same. Then there are other provisions regarding house scavenging. It appears from the Section and other Sections, that this tax is inter-connected with some extra services to be undertaken by the Municipal Committee for certain houses. It does not appear that the New Delhi Municipal Committee has taken any action under Sections 159 onwards in the present case. So, the fundamental requirement of clause (e). i.e., the undertaking by the Committee to do house scavenging does not seem to be fulfilled. Learned counsel for the Committee countered this whole contention by saying that Sections 159 to 169 were all provisions which had now become out-of-date. His submission was that house scavenging was undertaken or could be undertaken in the days of dry latrines. Now, the Municipal Committee had to do the house scavenging by the provisions of proper sewers and other facilities. He submitted that house scavenging the present day times was very different from what it was in 1911. So, the submission really amounts to saying whether the provisions of proper sewerage and clearance facilities is equivalent to house scavenging. We would prefer to leave this question open for the Municipal Committee to take such action as it deems fit u/s 159 of the Act, but only point out that the tax is interrelated with the services to be undertaken by the Committee but, we would leave the question as to how those services are to be undertaken in modern day conditions to be decided by the Committee itself.

(4) In view of the above discussion, we would hold that (a) the levy of the scavenging tax is not valid and has to be struck down as being charged contrary to the Act, We have given details as to how the tax can or could be levied by the Municipal Committee. We would further hold that the tax cannot be charged from the owner of the property but can only be charged from an occupier. So, in any event, the demand made against the petitioner who is not an occupier is invalid and has to be quashed. We would accordingly issue the writ as prayed and quash the demand. In view of the fact, that the learned counsel for the New Delhi Municipal Committee has stated that the Committee was ready to withdraw the demand, but we have heard both parties in view of the fact that a number of such demands have been raised, we would leave the parties to bear their own costs.