
(2010) 06 MP CK 0008

In the Madhya Pradesh High Court

Case No : Writ Petition No. 1360 of 2003

Jabalpur Paschim Vyapari Sangh

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 23-06-2010

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Madhya Pradesh Municipal Corporation Act, 1956 — Section 80

Citation : (2011) 2 MPHT 492 : (2010) 3 MPLJ 554

Hon'ble Judges : Sanjay Yadav, J

Bench : Single Bench

Advocate : Sanjay Agrawal, for the Appellant; R.P. Tiwari, Government Advocate and Anshuman Singh for respondent Nos. 2 to 4, for the Respondent

Final Decision : Dismissed

Judgement

Sanjay Yadav, J.

Sanjay Agrawal, learned counsel for the petitioner.

Shri R. P. Tiwari, learned Government Advocate for respondent-State.

Shri Anshuman Singh, learned counsel for respondents 2 to 4.

The decision to enhance the lease rent of the shops leased out to the members of the petitioner by the Jabalpur Municipal Corporation is being challenged in the present writ petition filed under Article 226/227 of the Constitution of India.

Undisputed facts are that, the members of the petitioner's Association are the tenants of the Municipal Corporation Jabalpur occupying different shops located near Bus Stand Jabalpur leased out to them on the terms and conditions stipulated in the lease agreements executed between the respective tenants and the Municipal Corporation, Jabalpur.

A specimen lease agreement is filed as Annexure P/6. It is submitted that similar agreement exists in respect of other tenants. It is also stated at Bar that after

the expiry of term of lease as stipulated in the document Annexure P/6, no fresh agreement has been entered between the tenants and the Municipal Corporation, Jabalpur.

Be that as it may. The controversy raised in the present petition is in respect of the enhancement of lease rent which emanates from the Resolution No. 220 dated 23-11-2001 passed by the Mayor-in-Council enhancing this rent from Rs. 530/- per month to Rs. 850/- per month made effective from January, 2002. This resolution by the Mayor-in-Council was later on ratified by the Municipal Corporation vide its Resolution No. 8 dated 26-2-2002 which stated :

It is this decision which is being questioned as arbitrary and without any authority.

At the outset, be it noted that initially the petitioner challenged the resolution dated 23-11-2001 by the Mayor-in-Council; however, by way of amendment the petitioner put forth his challenge to the Resolution dated 26-2-2002, whereby the decision by Mayor-in-Council has been ratified. The petitioner has thus confined his arguments to the legality of the resolution dated 26-2-2002.

It is urged that, there is no statutory provisions, Rules or Bye laws which empowers the Municipal Corporation to enhance the lease rent. The learned counsel for the petitioner further submits that, an agreement having been entered into between the tenants and the Municipal Corporation and the term regarding enhancement of the lease rent being delineated therein, it is beyond the powers of the Municipal Corporation to enhance the lease rent outside the term of contract.

Controverting the contention, it is contended by learned counsel for the respondents, that it is not only within the power of Municipal Corporation to let out shops on lease but also to fix rent thereof and enhance the same From time to time. This power, it is urged, is drawn from section 80 of M. P. Municipal Corporation Act, 1956 (hereinafter to be referred as the Act of 1956).

It is further submitted by learned counsel for respondent that, though the lease agreement which has been placed reliance upon i.e. Annexure P-6, has expired however, the stipulation contended therein Clause 14 makes applicable the change which is effected from time to time and the petitioner who has placed reliance on the term of agreement is bound by the said condition.

It is further urged that, since 1991 the rent which was fixed was not enhanced and it was only in the year 2001 that a decision was taken by Mayor-in-Council by Resolution No. 220 dated 23-11-2001 to enhance the rent from Rs. 530/- to Rs. 850/- per month. It is urged that, it is neither arbitrary nor is beyond powers of Mayor-in-Council and Municipal Corporation.

It is contended that, powers so exercised by Municipal Corporation regarding the lease rent being incidental to powers to grant lease is neither erroneous nor arbitrary.

Learned counsel for respondents to substantiate the submission have placed reliance in the judgment rendered by the Apex Court in *Luxmi Tea Company Limited Vs. Pradip Kumar Sarkar*, and in *Deepak Theatre, Dhuri vs. State of Punjab and others*, 1992 (1) Supp. SCC 684.

Having considered the rival submission the issue which crops up for consideration is as to whether it is within the powers of Municipal Corporation to enhance the lease rent in respect of the shops let out to respective tenants.

Since the petitioner has placed reliance on the agreement Annexure P-6, the term whereof has already expired and no right flows therefrom in favour of either of the parties of the contract; even then Clauses 5, 6 and 14 of the said agreement is of some relevance in respect of the issue which crops up for consideration in the petition.

The said clauses are in the following terms :

The fair reading of the aforesaid clauses reveal that, there is renewal clause as well as the clause which binds the parties in respect of the applicability of the provisions contained in the M. P. Municipal Corporation Act, 1956 Baazar By-laws 1982 and decision taken by the Corporation from time to time. There is no iota of doubt that provisions contained under the Act of 1956 which is applicable and the decision taken thereunder from time to time by the Municipal Corporation is as much as binding on the petitioner as the term of contract, if any.

Section 80 of the Act of 1956 provides for :

80. Provisions governing the disposal of municipal property or property vesting in or under the management of Corporation. - (1) No streets, lands, public places, drains or irrigation channels shall be sold, leased or otherwise alienated, save in accordance with such rules, as may be made in this behalf. (2) Subject to the provisions of sub-section (1) - (a) the Commissioner may, in his discretion, grant a lease of any immovable property belonging to the Corporation, including any right of fishing or of gathering and taking fruit, flowers and the like, of which the premium or rent, or both, as the case may be, does not exceed five hundred rupees for any period not exceeding twelve months at a time; Provided that every such lease granted by the Commissioner, other than the lease of the class in respect of which the Mayor-in-Council has by resolution exempted the Commissioner from compliance with the requirements of this proviso, shall be reported by him to the Mayor-in-Council within 15 days after the same has been granted;

(b) with the sanction of the Mayor in Council, the Commissioner may by sale or otherwise grant a lease of immovable property including any such right as aforesaid, for any period not exceeding three years at a time of which the premium or rent or both, as the case may be, for any one year does not exceed three thousand rupees;

(c) with the sanction of the Corporation the Commissioner may lease, sell or

otherwise convey any immovable property belonging to the Corporation.

(3) The Commissioner may -

(a) in his discretion dispose of by sale, letting out on hire or otherwise, any movable property belonging to the Corporation not exceeding five hundred rupees in value; (b) with the sanction of Mayor-in-Council, dispose of by sale, letting out on hire, or otherwise any movable property belonging to the Corporation not exceeding five thousand rupees in value;

(c) with the sanction of the Corporation, sell, let out on hire or otherwise convey any movable property belonging to the Corporation.

(4) The sanction of the Mayor-in-Council or of the Corporation under sub-section (2) or sub-section (3) may be given either generally for any class of cases or specifically in any particular case.

(5) The foregoing provisions of this section shall apply to every disposal of property belonging to the Corporation made under or for the purpose of this Act:

Provided that -

(i) no property vesting in the Corporation in trust shall be leased, sold or otherwise conveyed in a manner that is likely to prejudicially affect the purpose of the trust subject to which such property is held : 1. no land value of which may be prescribed shall be sold or otherwise conveyed without the previous sanction of the Government and every sale, or other conveyance of property vesting in the Corporation shall be deemed to be subject to the conditions and limitations imposed by this Act or by any other enactment for the time being in force."

A close reading of section 80 would thus reveal that it is within the powers of the Corporation to lease out property belonging to the Corporation and the power to fix the lease rent and change it from time to time being incidental thereof it cannot be said with certitude that the Corporation has no powers to fix/amend the lease rent.

In this context a reference can be had of the observation in Luxmi Tea Company Limited (supra) :

(9).....Whatever may fairly be regarded as incidental to the objects for which the Corporation was created is not to be taken as prohibited. The incidental power is one that is directly and immediately appropriate to the execution of the specific power created and not one that has a slight or remote relation to it. Furthermore, the want of an express enumeration of powers does not exclude such incidental powers as are reasonably necessary to accomplish the corporate purpose. The mere creation of a corporation was alone sufficient, in the absence of prohibition, to confer upon such corporation all those powers which are regarded as incident to corporate existence..... (10) SUFFICE it to say in this behalf that what has been stated above with regard to residuary, implied

or incidental powers is calculated to accomplish the objects, the corporate purpose or corporate existence of the corporation.....

Similarly case in Deepak Theatre, Dhuri (supra) their Lordships were pleased to observe :

3. It is settled law that the rules validly made under the Act for all intents and purposes be deemed to be part of the statute. The conditions of the licence issued under the rules form and integral part of the statute. The question emerges whether the word regulation would encompass the power to fix rates of admission and classification of the seats. The power to regulate may include the power to licence or to refuse the licence or to require taking out a licence and may also include the power to tax or exempt from taxation, but not the power to impose a tax for the revenue in rule making power unless there is a valid legislation in that behalf. Therefore, the power to regulate a particular business or calling implies the power to prescribe and enforce all such proper and reasonable rules and regulations as may be deemed necessary to conduct the business in a proper and orderly manner. It also includes the authority to prescribe the reasonable rules, regulations or conditions subject to which the business may be permitted or conducted. A conjoint reading of section 5, section 9, Rule 4 and condition 4-A gives therefore, the power to the licencing authority to classify seats and prescribe rates of admission in the cinema theatre. Though the right to fix rates of admission is a business incident, the appellant having created an interest in the general public therein, it has been become necessary for the State to step in and regulate the activity of fixation of maximum rates of admission to different classes, as a welfare weal. Thereby fixation of rates of admission became a ligitimate ancillary or incidental power in furtherance of the regulation under the Act. Access to and admission into theatre is a facility and concomitant right to a cine goer public. Classification of seats and fixation of rates of admission according to paying capacity of a cine goer is also an integral power of regulation. Power to fix rates of admission includes power to amend and revise the rates from time to time. The statute vests that power in the licensing authority subject to control by the State Government. The fixation of the rates of admission has thus become an integral and essential part of the power and regulation of exhibition of cinematograph.

At the costs of repeation it is observed that in the case at hand since it is within the power of the Municipal Corporation to cause lease of Corporation property implicit is the power of the Corporation to fix as well to amend the lease rent.

In view of above, no interference is warranted in respect of decision taken by Municipal Corporation of enhancing the lease rent of the shops leased out to the members of the petitioner's association.

In the result the petition fails and is hereby dismissed in limine. However, no costs.