(1984) 03 P&H CK 0063

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 893 of 1977

Kishan Chand and Others APPELLANT

Vs

Municipal Committee, Sangat and Another RESPONDENT

Date of Decision : 21-03-1984

Acts Referred:
Punjab Municipal Act, 1911 — Section 62(10)

Citation : AIR 1984 P&H 384 : (1984) 2 ILR (P&H) 386

Hon'ble Judges : S.S. Sodhi, J;D.S. Tewatia, J

Bench : Division Bench

Judgement

S.S. Sodhi, J.—The matter here relates to the imposition of house tax by the Municipal Committee, Sangat.

2. On 30-12-1975, the Municipal Committee passed a resolution that house tax be imposed with effect from April 1, 1976. A copy of this resolution was sent to the State Government for publication in the Government gazette. A notification u/s 62(10), Punjab Municipal Act, 1911 (hereinafter referred to as ''the Act'') was issued on April 9, 1976 (Annexure P/3), but no date of enforcement of the house tax was mentioned therein. This omission was later rectified by a corrigendum issued on 20-10-1976 (Annexure P/4) whereby it was provided that the house tax shall come into effect from July 1, 1976. The requirement in this behalf under S. 62(10) of the Act is that the State Government "shall in the notification specify a date, not less than one month from the date of notification on which the tax shall come into force."

3. The contention of Mr. J. R. Mittal, counsel for the petitioners was twofold--one that the notification regarding the imposition of the tax was required to notify not only the imposition of such tax but also the date from which the tax would come into force and consequently the date of the notification in the present case must be taken to be that when the corrigendum, annexure P/4, was issued, that is, 20-10-1976, as it was only on that date that both these requirements stood fulfilled. The other limb of this argument was that the requirement that the tax

shall come into effect from a date not less than one month from such notification, was mandatory and consequently the imposition of house tax on 20-10-1976 with effect from July 1, 1976 was contrary to law and hence unenforceable.

4. The point canvassed was founded upon the judgment of the High Court of Mysore in Shimoga Distt. Chemists and Druggists Association v. The Shimoga City Municipal Council (1969) 1 Mys LJ 107. This was a case relating to the imposition of octroi duty. One of the important requirements of S. 97, Mysore Municipalities Act, 1964, was that the Municipality shall specify a date from which the tax was proposed to be levied and such date shall not be less than one month from the date of the publication of the notice. The notification here was issued on 1-2-1968 which provided that the revised rates of octroi would become leviable with effect from 1-3-1968. It was held that this was a date less than one month from the date of the publication and there was thus an omission to comply strictly with the provisions of Section 97 of the Act which rendered the proposed levy ineffective.

5. A similar view had been expressed in Shikkaripur Agri. Large Scale Co-op. Society Ltd. v. State of Mysore (1968) 2 Mys LJ 524, where it was held that the requirements of Section 97, Municipalities Act, that the notice should specify the date on which the tax becomes eligible and that the date shall be later than one month from the date of publication was mandatory.

6. To counter this challenge, Mr. H. S. Bedi, Deputy Advocate General, Punjab, pressed in aid sub-sec.(12) of Section 62 of the Act, which provides:--

"(12) A notification of the imposition of a tax under this Act shall be conclusive evidence that the tax has been imposed in accordance with the provisions of the Act."

Does this render imposition of the house tax here immune from attack on the grounds urged? Herein lies the controversy, now raised.

7. There was no provision like Section 62(12) of the Act in either of the cases of the High Court of Mysore referred to above. The Supreme Court, however, had occasion to consider a similar provision relating to conclusive evidence of imposition of tax in Municipal Council, Raichur Vs. Amar Chand Prasanna etc., . The challenge here was to the imposition of octroi duty on goods entering the municipal limits, on the ground that there was no valid resolution as required by law selecting the octroi duty for imposition and further that the model bye-laws had been altered by adding a tariff of storage fee in bonded warehouses without following the prescribed procedure and these model bye-laws could not, therefore, be deemed to have been validly adopted by the Municipal Committee. It was held that Section 97(2) Mysore Municipalities Act, 1964, prohibited any enquiry into the regularity of the procedure for the imposition of the tax after notice u/s 97(1) had been published. Section 97(1) and (2), Mysore Municipalities Act, 1964, being in the same terms as Section 62(10) and (12) of

the Act here.

8. Reference was also made to the earlier case of Municipal Board, Hapur Vs. Raghuvendra Kripal and Others, . wherein, dealing with the similar provisions of S. 135. U. P. Municipalities Act, 1916, it had been held that Section 135(3) thereof shut out enquiry into the procedure by which the tax had been imposed. Hidayatullah, J. speaking for the majority observed (at p. 696):--

"There is a difference between the tax and the imposition of the tax. The former is the levy itself and the latter the method by which the levy is imposed and collected. What the sub-section does is to put beyond question the procedure by which the tax is imposed, that is to say, the various steps taken to impose it."

It was accordingly held that S. 97(2) "makes the publication of the notice under S. 97(1) conclusive evidence that the tax has been imposed in accordance with the provisions of the Act and the rules made thereunder. The expression "imposed in accordance with the provisions of this Act", in our judgment, means "imposed in accordance with the procedure provided under the Act". All enquiry into the regularity of the procedure followed by the Municipal Council prior to the publication of the notice is excluded by Section 97(2)........."

9. Provisions similar to S. 62(12) of the Act were also contained in S. 78(8) of the C. P. and Berar Municipalities Act, 1922. These came up for consideration by the Supreme Court in The Berar Swadeshi Vanaspathi and Others Vs. The Municipal Committee, Shegaon and Another, , where the plea raised in challenge to the imposition of octroi duty was that objections to the proposed tax had not been considered on merits and, therefore, the procedure, as prescribed by S. 67 relating to the imposition of tax had not been complied with. Here again, it was held that the imposition of the Octroi having been notified under sub-s.(7), S. 67, it was conclusive evidence of the tax having been imposed in accordance with the provisions of the Act and it could not, therefore, be challenged on the ground that all necessary steps had not been taken.

10. Seen from another angle too, the same result follows. In Jagir Singh Mohinder Singh and Others Vs. State of Punjab and Others, , the validity of the notification relating to the enhancement of licence fee was questioned on the ground that it violated the provisions of clause (b) of sub-s.(10) of S. 62 of the Act, in that, it required that the notification shall specify a date not less than one month from the date of the notification on which the tax shall come into force. The impugned notification, which had been published on April 4, 1980, however, provided that the tax would be enforced with effect from April 1, 1980. Relying upon the provisions of S. 37 of the Act, D. S. Tewatia, J. held (at p. 320). "The only infraction, if any, was that the date of enforcement of the taxation proposal should have been separated by a month from the date of the notification. Such a defect, in my view, would not invalidate the enhanced licence fee in view of the provisions of S. 37 of the Act."

11. The issue raised thus stands concluded by the consistent view expressed by

the Supreme Court which indeed constitutes a binding precedent here. The infirmities in the procedure for the imposition of the house tax in this case thus stand cured by the provisions of S. 62(12) as also S. 37 of the Act and the tax imposed consequently warrants no interference in writ proceedings.

12. This writ petition is accordingly, hereby dismissed. There will, however, be no order as to costs.

D.S. Tewatia, J.

13. I agree.

14. Petition dismissed.