
(1965) 08 P&H CK 0012

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 110 of 1965

Mohan Lal Gupta And Others

APPELLANT

Vs

State of Punjab And Others

RESPONDENT

Date of Decision : 17-08-1965

Acts Referred:

Punjab Municipal Act, 1911 — Section 238

Citation : (1966) 1 ILR (P&H) 373 : (1965) 67 PLR 1050

Hon'ble Judges : Mehar Singh, J;Falshaw, J

Bench : Division Bench

Advocate : H.L. Sarin with Mr. V.P. Sood, for the Appellant; K.S. Kawatra, Assistant Advocate General and Mr. Gokal Chand Mital, for the Municipal Committee, Rohtak, for the Respondent

Judgement

Falshaw, C.J.—This is an appeal filed under clause 10 of the Letters Patent against the dismissal of a petition filed under Article 226 of the Constitution.

2. The petitioners are 31, rate payers of the Municipality of Rohtak. By a notification dated the 21st of May, 1958, at a time when the Municipal Committee of Rohtak had been suspended and its functions were being discharged by an Administrator appointed u/s 238 of the Punjab Municipal Act, the Punjab Government in exercise of its powers u/s 1(3) of the Punjab Town Improvement Act created an improvement trust for the Municipal Area of Rohtak. In July 1961 a fresh election was held for the Municipal Committee which actually began to function on the 10th of January, 1962.

3. In the meantime, by a notification dated the 30th of August 1961, the Punjab Government in exercise of its powers u/s 103(1) of the Town Improvement Act dissolved the Rohtak Improvement Trust as from the date of the notification. However, the Secretary to Punjab Government in the Local Government Department addressed a letter to the Deputy Commissioner at Rohtak dated the 23rd of October 1962 informing him that the Government had decided to reconstitute the Rohtak Improvement Trust immediately, and requesting him to

SUBmit a panel of six names of suitable persons for appointment by Government as members of the Trust under the provisions of section 4 of the Act. It was also pointed out in the letter that under the same section three members of the Trust were to be elected by the Municipal Committee. and the Deputy Commissioner was asked to send both his own panel of names for selection by Government and the decision of the Municipal Committee regarding its representatives by the 15th November 1962 at a special meeting of the Municipal Committee held on the 9th of November 1962, It was unanimously resolved that the Government should be requested not to reconstitute the Improvement Trust. Inspite of this the Government persisted with its intention and on the 10th January, 1963 announced the appointment of Maj. S.K. Mehta, already the Chairman of the Bhawani Improvement Trust, as the Chairman of the Rohtak Improvement Trust, and instructions were repeated to the Deputy Commissioner to submit his panel of names and to have its three representatives elected by the Municipal Committee. The present writ petition was filed by the 31 petitioners in April 1963 challenging the legality of the proposed re-constitution of the Trust on the grounds that the previous Trust had not properly been created, since it took place at a time when the Municipal Committee was under suspension, and that in any case, once the previous Trust had been dissolved, a fresh Trust could only be created after following the provisions of law applicable to the creation of a Trust.

4. The most important provision in the Act is section 1 which reads:

1. This Act may be called the Punjab Town Improvement Act,

2. It extends to the whole of Punjab.

3. This section and section 63 shall come into, force at once. The State Government may by notification propose to apply the rest of the Act to the whole or any part of any municipality and to any locality adjacent thereto, on such date as may be specified in such notification; and the Act shall come in to operation after the lapse of three months unless within that period the Municipal Committee concerned at meeting convened for the purpose of considering the application of the Act resolve by a majority of two thirds that the Act should not be so applied.

5. It is thus argued that a Trust could only be created in an area where a Municipal Committee was functioning and could thus have an opportunity within three months of the notification of the Government conveying its intention to apply the Act of rejecting the application provided that two third majority of the Members of the Municipal Committee voted against it at a meeting convened for the purpose of ascertaining the Committee's views.

6. The learned Single Judge, without really discussing or meeting this argument, has held that the trust was created in accordance with law, since no two-thirds majority of the Municipal Committter voted against it within three months of the notification, and further that once the Act had been applied to the Rohtak area, the dissolved Trust could be recreated without any power on the part of the

Municipal Committee to oppose it. This latter finding was based on the provisions of section 12 of the Punjab General Clauses Act of 1893 which reads-

Where, by any Punjab Act, any power is conferred then that power may be exercised from time to time as occasion requires.

7. In my opinion the contentions raised on behalf of the petitioners were wrongly rejected by the learned Single Judge. Sub-section (3) of section 1 of the Act clearly only envisages the creation of a Trust in a Municipal Area where a Committee is functioning and so is in a position to hold special meeting to decide whether or not it considers the creation of a trust desirable. I do not consider that a Trust could be properly created except in the light of the provisions of section 4 of the Act regarding the constitution of the Trust This section reads:

1. The trust shall consist of seven trustees, namely-

(a) a Chairman

(b) three members of the Municipal Committee and

(c) three other persons.

2. The Chairman and three persons referred to in clause (c) of sub-section (1) shall be appointed by the State Government by notification.

3. The members of the Municipal Committee referred to in clause (b) of sub-section (1) shall be elected by the Municipal Committee.

4. If the Municipal Committee does not by such date as may be fixed by the State Government elect a person to be a trustee, the State Government shall, by notification appoint a member of the Municipal Committee to be a trustee, and any person so appointed shall be deemed to be a trustee as if he had been duly elected by the Municipal Committee.

5. * * * *

To argue that the Trust was validly created by the notification of 1958 would imply reading into sub-section (3) of section 1 of the Act some provision to the effect that where Municipal Committee is suspended the provisions regarding two thirds majority of the Committee is to be regarded as a nullity, and also reading into section 4 some provision to the effect that where a Committee was suspended the Government can nominate some members of the suspended Committee as members of the Trust or otherwise fill these vacancies and I cannot believe that this was the intention of the Legislature.

8. In any case, however, even if there was properly constituted Trust which was dissolved by the notification of the 30th of August 1961 and in the words of section 103(1) ceased to exist, I consider that in order to recreate the Trust a fresh start had to be made and the position on the date when the Government notified the Deputy Commissioner of its intention to be establish the Trust was as if the dissolved trust had never existed Thus when the Municipal Committee at a

special meeting convened to consider the matter on the 9th of November, 1962 decided, not merely by a two-thirds majority but unanimously that Act should not be applied to the Municipality of Rohtak, the Government was bound to give effect to this decision. In my opinion the provisions of section 12 of the Punjab General Clauses Act do not help the Government at all in this matter, since even when a power is exercised on a second or subsequent occasion it has to be exercised in accordance with the provisions of the law which grants the power.

9. I am therefore of the opinion that the petitioners in this case were entitled to succeed and I would accordingly accept the appeal and order that the State Government shall not proceed with the constitution of the Rohtak Improvement Trust under the notification of the 30th of August 1961.

10. The Municipal Committee of Rohtak was joined as a respondent and has supported the petition. The petitioner-, will be entitled to their costs both in the writ petition and in the appeal from the State Government. Counsel's fee in the appeal Rs. 150.00.

Mehar Singh, J.

11. I agree.