(1970) 09 AHC CK 0043

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 667 of 1965

M/S. Pooran Chand and Sons — APPELLANT

Vs

City Board, Mussoorie and Another — RESPONDENT

Date of Decision : 25-09-1970

Acts Referred:

Uttar Pradesh Municipalities Act, 1916 — Section 153(f)
Uttar Pradesh Municipalities Act, 1916 — Section 153(f)
Uttar Pradesh Municipalities Act, 1916 — Section 153(f)

Citation : (1970) 40 AWR 864

Hon'ble Judges : V.G. Oak, C.J;H.N. Seth, J

Bench : Division Bench

Advocate : Sudhir Chandra, for the Appellant; K.N. Seth for opposite parties, for the Respondent

Final Decision : Allowed

Judgement

V.G. Oak, C.J.—The question reaised in this writ petition is whether a certain rule framed by the State Government under UP Municipalities Act is valid or not.

2. Messrs Pooran Chand and Co. Mussoorie are the Petitioners. They own a certain building at Mussoorie. They applied to the Municipal Board of Mussoorie for remission of certain taxes on the ground that the building in question remained vacant for a part of the year. The Petitioners relied upon certain rules framed by the State Government u/s 153(f) of UP Municipalities Act. The Municipal Board replied that, in view of a decision of this Court dated 3-4-1964 the Board was unable to give effect to the rules in question. The Petitioners maintain that they are fully entitled to the benefit of the rules framed by the State Government. They have therefore filed the present writ petition to enforce the rules.

3. Annexure A to the writ petition is a copy of certain Rules framed by the State Government for Municipal Board, Mussoorie u/s 153(f) of UP Municipalities Act, (hereafter referred to as the Act). Annexure D to the writ petition is a copy of a

letter from the Executive Officer, City Board, Mussoorie to the Petitioners explaining the reason why the Rules could not be enforced. The letter makes reference to this Court''s judgment dated 3-4-1964. Attached to Annexure D is a copy of the judgment of Mr. Justice Katju in City Board Mussoorie v. Smt. Gomti Sethani Civil Rev. No. 1051 of 1961 D/- 3-4-1964. In that case the learned Judge expressed the view that the rules in question framed by the State Government is invalid. That view of the learned Judge has been challenged by the present Petitioners.

4. The learned Judge mainly relied upon Section 151 of the Act. St. 151 of the Act states:

In a Municipality other than one situated wholly or partly in a hilly tract when a building or land has remained vacant and unproductive of rent for ninety or more consecutive days during any year the Board shall remit or refund so much of the tax of that year as may be proportionate to the number of days that the said building or land has remained vacant and productive of rent.

5. It is true that Sub-section (1) of Section 151 is confined to Municipalities other than those situated in hilly tracts. But it does not follow that similar action cannot be taken under other provisions of the Act. Section 151 does not prohibit remission in municipalities other than those situated in hilly tracts.

6. Rules relied upon by the Petitioners u/s 153(f) are as regards assessment and other matters. Section 153 states:

The following matters shall be regulated and governed by rules except in so far as provision therefor is made by this Act, namely--

(a)...(b)...(c)...(d)... (e)...

(f) Any other matter relating to taxes in respect of which this Act makes no provision or insufficient provisions and the provision is in the opinion of the State Government necessary.

7. Section 296 of the Act enables the State Government to make Rules. Sub-section (1) of Section 296 lays down that the State Government shall make rules in respect of matters described in Sections 95, 127, 153 and 235. It is thus clear that the State Government is fully competent to make Rules with respect to matters mentioned in Clause (f) of Section 153 of the Act.

8. It is true that Section 151 of the Act does not enable the State Government to make the rule relied upon by the Petitioners. But apparently such a rule is permissible Under Clause (f) of Section 153 of the Act. Since there is no specific provision in the Act for remitting taxes in municipalities situated in hilly tracts, it was open to the State Government to utilise its residuary power Under Clause (f) of Section 153 to cover the matter. In our opinion, the State Government was fully competent to frame the Rules in question Under Clause (f) of Section 153 of the Act. The rules mentioned in Annexure A to the writ petition are valid.

9. It follows that it is open to the Municipal Board of Mussoorie to enforce those rules. In fact it is the duty of the City Board to follow Rules framed by tae State Government. Suitable direction may accordingly be given to the Municipal Board.

10. The petition is allowed with costs. The Respondents are directed to follow the rules framed by the State Government as given in Annexure A to the writ petition.