

(1961) 02 MP CK 0022

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 128 of 1960

Municipal Committee

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 16-02-1961

Acts Referred:

Central Provinces and Berar Municipalities Act, 1922 — Section 178, 42, 53, 53(1)
Constitution of India, 1950 — Article 226

Citation : AIR 1962 MP 40 : (1961) ILR (MP) 252

Hon'ble Judges : P.V. Dixit, C.J.; K.L. Pandey, J

Bench : Division Bench

**Advocate : A.P. Sen, for the Appellant; Y.S. Dharmadhikari, for Respondents
Nos. 3 to 5, 7 to 11 and 13 to 16 and R.J. Bhawe, A.G.A, for the Respondent**

Final Decision : Allowed

Judgement

Dixit, C.J.—By this application under Article 226 of the Constitution of India, the Municipal Committee, Seoni, asks for a writ of certiorari to bring up and quash an order of the Collector, Seoni, made on 5th March, 1960, staying the public auction of municipal Kothas and Chabutras and for a writ of prohibition to the Collector, Seoni, and the opponent State restraining them from giving effect to the said order of the Collector.

2. The facts and circumstances in which this petition has been filed are that on 1st February, 1960, the Municipal Committee issued a public proclamation stating that the Kothas and Chabutras located in market sites would be leased out for the period from 1st April, 1960 to 31st March, 1961, by public auction on 24th February 1960. The proclamation directed all defaulters to clear off their arrears of taxes and rent by 23rd February, 1960, adding that on their failure to do so they would not be permitted to bid at the auction.

Subsequently, another proclamation was issued postponing the date of auction from 24th February, 1960 to 6th March, 1960 and giving Publicity to the terms and conditions upon which leases would be granted. On 5th March, 1960, the

respondents Nos. 3 to 16, who are occupying the Kothas and Chabutras intended to be leased out by the Municipal Committee by public auction, presented an application to the Collector under Sections 53 of the C. P. and Berar Municipalities Act, 1922. In that application they stated that they were occupying the Kothas and Chabutras for over thirty years and were also paying the rent enhanced by the Committee from time to time in respect of the Kothas and Chabutras in their occupation; that the resolution of the Committee for leasing out the Kothas and Chabutras by public auction for the year 1960-61 was illegal and contrary to the practice of the Municipal Committee in the matter of leases of this property; and that the resolution of the Committee would also disturb their business and was likely to create a breach of the peace. The said respondents prayed that the execution of the resolution of the Municipal Committee be stayed. On receiving the application, the Collector made the impugned order on 5th March, 1960, which is as follows:-

"Execution of the order of the Municipal Committee be stayed till the disposal of the application.

A report be made to Government that such an application having been submitted, the execution of the order of the M. C. has been stayed pending final decision of the application as several of the applicants claim to be tenants of the M. C. for the last 30 to 40 years and it will not be just to displace them all of a sudden without giving them adequate notice and a hearing.

M. C. be noticed."

A copy of the respondents' application was served on the Municipal Committee who was asked to file a reply to it. The parties were then heard by the Collector, and on 2nd May, 1960, the Collector made a report to the Government under Sections 53 (2) of the Act recommending that the order passed by him on 5th March, 1960, staying the auction be continued in force and that the respondents be continued as monthly tenants of the Kothas and Chabutras till the order of 5th March, 1960 is vacated or rescinded by him. The Collector stated that in the meantime he would make efforts to bring about a compromise between the Municipal Committee and the respondents in regard to the leasing out of the Kothas and Chabutras. This petition was filed on 25th April, 1960.

3. The petitioner-Committee questions the legality of the order of the Collector dated the 5th March, 1960, on the grounds that the proposed auction of the Municipal Kothas and Chabutras is only in discharge of the statutory duty of the Municipal Committee under the Act and the rules framed thereunder; that Sections 53 does not empower the Collector to interfere in the day-to-day municipal administration or in the discharge of statutory duties; that the conditions for the exercise of the powers by the Collector under Sections 53 did not exist, and that the mere fact that the respondents were in occupation of the Kothas and Chabutras for some years did not give them any right to move the Collector for taking action u/s 53.

The petition has been opposed by the respondents mainly on the grounds that in making the order u/s 53 (1) of the Act the Collector was not exercising a quasi-judicial function but was only performing an administrative duty and, therefore, the order could not be quashed by a writ of certiorari, and that as the Municipal Committee had not in the past auctioned the leases but had granted them by separate agreements in accordance with the bye-laws framed u/s 178 of the Act it was now precluded from changing the method of leasing out municipal Chabutras and Kothas.

4. In our opinion, there was no jurisdiction in the Collector to make the order that he did on 5th March 1960. Section 53 of the Act runs as follows :

"53. (1) If, in the opinion of the Deputy Commissioner, the execution of any order or resolution of a Committee, sub-committee or joint committee, or the performance of any Act which is about to be done, or is being done, in Pursuance of or under cover of this Act, is likely to cause injury or annoyance to the public, or to any class or body of persons or to lead to a breach of the peace, he may, by order in writing, suspend the execution or prohibit the performance thereof within his district.

2. If the Deputy Commissioner makes any order under Sub-section (1) he shall forthwith forward to the State Government a copy of the order, with a statement of the reasons for making it; and the State Government may rescind the order or direct that it continues in force with or without modification, permanently, or for such period as it may think fit,"

It will be seen from the provisions of the first subsection that the Collector has the power to suspend the execution or Prohibit the performance of any order Or resolution of a municipal committee, sub-committee or joint committee if the order or resolution is likely to cause injury or annoyance to the public, or to any class or body of persons or to lead to a breach of the peace.

The making of an order u/s 53 (1) is no doubt an administrative or executive act. But it has been made dependent on certain conditions and contingencies. An order under that provision cannot be made by the Collector unless there is likelihood of any injury or annoyance to the public, or to any class or body of persons, or of a breach of peace because of the execution or performance of any order or resolution of the committee. The fulfilment of these conditions is no doubt left to the subjective opinion or satisfaction of the Collector. But where from the order recorded by the Collector u/s 53 it is evident that the Collector made an order solely on grounds altogether extraneous to Section 53 (1) the case would be one of want of jurisdiction in the Collector to make the order.

If the order made by the Collector is wholly without jurisdiction, then it can be and must be quashed by a writ of certiorari. Sub-section (2) of Section 53 enjoins the Collector to forward to the State Government forthwith a copy of the order passed by him under Sub-section (1) together with a statement of the reasons for making it. The State Government is then required to take some

decision rescinding the order or directing its continuance with or without modification Permanently or for such period as it may think fit. Section 53 contemplates swift action. It does not envisage any hearing to the municipal committee or to the objectors of the order or resolution of the committee the execution or performance o? which is sought to be stayed. Indeed a hearing would defeat the very purpose contemplated by Section 53 of the Act.

5. In the present case, none of the requirements of Sections 53 of the Act was fulfilled. The Collector passed the impugned order dated 5th March 1960 on the opinion that the respondents Nos. 3 to 16 were tenants of municipal Kothas and Chabutras for the last thirty to forty years and it would not be "just to displace them all of a sudden without giving them adequate notice and a hearing." The order was not passed because of any likelihood of any injury or annoyance to the public or any class or body of persons, or of a breach of Peace, that is to say, on any of the grounds on which alone the Collector was required to decide the question of suspending the execution or performance of the decision of the Municipal Committee to lease out the Chabutras and Kothas by public, auction.

The displacement, if any, of any of the aforesaid respondents resulting from the implementation of the resolution of the committee for carrying out the statutory duty cannot be said to be one causing injury or annoyance to them. There is no more injury or annoyance than one feels when called upon to pay a valid tax. "Injury" means unlawful infringement or privation of a right, and "annoyance" in law means much the same thing as nuisance. That in proposing to lease out the Chabutras and Kothas by public auction the Municipal Committee was only carrying out a statutory duty is obvious enough from Section 42 of the Act and the rules as to the transfer of Immovable property by a municipal committee for a term not exceeding three years. Section 42 of the Act is as follows :

"Subject to such exceptions as the State Government may by general or special order direct, no committee shall transfer any Immovable property except in pursuance of a resolution passed at a meeting by a majority of not less than two-thirds of its members and in accordance with rules made under this Act, and no committee shall transfer any property which has been vested in it by the Government except with the sanction of the State Government :

Provided that nothing in this section shall apply to leases of Immovable property for a term not exceeding three years."

The relevant rule dealing with leases for terms not exceeding three years is in the following words :

"Subject to such exceptions as the State Government may by general or special order direct, no Immovable property which yields or is capable of yielding an income shall be leased out except by public auction :

Provided that the committee may, for reasons to be recorded in writing and to be reported to the Deputy Commissioner of the district, transfer such Immovable

property to a bidder other than the highest bidder."

According to these provisions, the municipal committee has no power to lease out the Chabutras and Kothas except by public auction unless the Government has by a general or special order made an exception in the case of any property. It is not disputed that the Government has not issued any general or special order excluding the leases of the municipal Kothas and Chabutras in question from the purview of the above provisions. The petitioner-committee, is, therefore, under a statutory obligation to hold a public auction of the leases. If in the past the municipal committee did not act in conformity with these provisions and illegally leased out Chabutras and Kothas by private arrangements, that cannot be a ground for a repetition of the illegality in future and for preventing the committee from holding the auction. The intended auction by the municipal committee being thus legal and also mandatory under the Act and the rules, it cannot be said to be one likely to cause injury or annoyance to the respondents as contemplated by Section 53(3.) of the Act.

6. In the memorandum that the Collector sent to the Government on 2nd May 1960, a reference Was made to the byelaws framed by the municipal committee u/s 178 of the Act for the inspection and regulation of markets to show that the committee was not under an obligation to hold a public auction of the leases and that it was open to the Committee to rent out the Chabutras, stalls etc. by agreement without any auction. Byelaw 3 (b) no doubt says that every shop, stall, Chabutra or site in every market shall be given on rent either by public auction or on a temporary lease at the rates and on the terms specified in the schedule appended to the byelaws.

In our opinion, this byelaw cannot be of any assistance in supporting an action which is contrary to Section 42 of the Act and the rules framed u/s 176(1). The byelaws framed by the municipal committee derive their authority from the Act and the rules framed thereunder. They must, therefore, be consistent with the provisions of the Act and the rules, and if they are repugnant they cannot be valid (see *Dukhram Gupta Vs. Co-operative Agricultural Association Ltd. and Others*, .

Byelaw 3(b) in so far as it gives to the committee the power to let out shops, stalls, Chabutras etc. without holding a public auction of the same contrary to Section 42 and the rules framed under the Act cannot be given effect to or pressed into service for sustaining the validity of the action of the municipal committee in the past in letting out the Chabutras and Kothas in violation of Section 42 and the rules. The mandatory duty imposed on the municipal committee by Section 42 and the rules framed under the Act cannot be got rid of by a byelaw framed by the municipal committee.

7. u/s 53 (2) the Collector was required to forward forthwith a copy of his order dated the 5th March 1960 with a statement of the reasons for it. But it was not until 2nd May 1960 that the copy was sent, and the reasons which the Collector

sent to the Government were not the reasons on which he was persuaded to make the order of 5th March 1960 but were the reasons which the Collector culled out to support his action from the arguments addressed before him on behalf of the municipal committee and the respondents Nos. 3 to 16 after the passing of the order dated the 5th March 1960. In the memorandum dated 2nd May 1960 forwarding a copy of his order dated the 5th March 1960, the Collector, after stating the submissions of the parties, came to the conclusion that there was a likelihood of a breach of the peace on 5th March 1960.

If there was in fact such a likelihood on 5th March 1960 and the Collector formed his opinion on that day about its existence warranting the order that he made, then it was not necessary for the Collector to hear arguments of the parties for convincing him on 2nd May 1960, that such a likelihood existed. If the Collector did form such an opinion on 5th March 1960 itself, he should have sent a copy of his order of 5th March 1960 to the Government without any delay just saying that he was compelled to take that action because of the likelihood of a breach of the peace. But the Collector did not do any such thing. Instead, he passed the order of 5th March 1960 on the footing that it would not be just to displace the respondents Nos. 3 to 16 as they were claiming to be the tenants for the last thirty to forty years. The order was made really on these untenable grounds and not on any likelihood of a breach of the peace which did not become obvious to the Collector on 5th March 1960 itself but was discovered by him after hearing the arguments of the parties.

In these circumstances, the order passed by the Collector on 5th March, 1960 cannot be Sustained.

If, as we think, that order is illegal and invalid, then the submission of that order to the Government for action u/s 53(2) is of no legal effect whatever. If Government had given a direction continuing in force the Collector's order dated 5th March 1960 with or without modification, such a direction would have been invalid. The Government, however, took no action on the report made by the Collector on 2nd May 1960 though the matter was one which, having regard to the nature of the provisions contained in Section 53, required an early decision and riot prolonged indecision.

8. For all these reasons, we have formed the view that the order dated the 5th March 1960 of the Collector, Seoni, is illegal and invalid. It is accordingly quashed by the issue of a writ of certiorari. The respondents Nos. 1 and 2 are restrained from giving effect to that order. The petitioner shall have one set of costs of this application from respondents Nos. 3 to 16. Counsel's fee is fixed at Rs. 150/-. The outstanding amount of security deposit shall be refunded to the petitioner.