
(1997) 12 P&H CK 0007

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 1011 of 1983

Prabhudayal Himmatsingka

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 16-12-1997

Acts Referred:

Citation : (1998) 1 PLJ 36 : (1998) 1 PLR 576 : (1998) 1 PLR 375 : (1998) 2 RCR(Civil) 7

Hon'ble Judges : T.H.B.Chalapathi, J

Advocate : Mr. H.S. Hooda, Advocate General, Haryana., Hemant Gupta, Advocate., Advocates for appearing Parties

Judgement

T.H.B. Chalapathi, J. (Oral)

1. Learned Advocate General, Haryana, states that after filing of the writ petition in view of the facts mentioned in the writ petition, the State Government has taken a decision to omit byelaws 81 and 82 in the Haryana Municipal Drainage and Sanitation Byelaws, 1977, under which service charges have been imposed in regard to sanitary installations of drainage and also monthly charges for the sanitary installations in the existing or new buildings.

2. The challenge made in this writ petition is to the validity of byelaws 81, 82 and 83 of the Haryana Municipal Drainage and Sanitation Byelaws, 1977. These byelaws have been omitted by the State Government vice its notification No. G.S.R.34/H.A.24/73/S.200 and 214/84 dated 27th April, 1984. According to the learned Counsel for the petitioners, Section 70 of the Haryana Municipal Act, 1973 authorises a Municipal Committee to impose a fee with regard to drainage, but the Committee has not exercised this power under Section 70 of the Act, therefore, it cannot be said that byelaws 81 and 82 have been framed in exercise of the powers conferred by Section 70 of the Act on a Municipal Committee. Section 75 is also not attracted in this case as it only confers power on the State Government to require a committee to impose any tax mentioned in Section 70 of the Act. Subsection (3) of Section 75 of the Act empowers the State Govt. to

impose any tax if the Committee does not carry out any order passed under subsection (1) of Section 75 of the Act. Therefore, bye laws 81 and 82 also will not come under Section 75 of the Act. Byelaws have been framed under Section 200 clause (n) of the Act. Section 200 empowers the State Government to make byelaws. Clause (n) of Section 200 authorises the State Government to make byelaws to regulate the making and use of connections or communications between the private houses and premises and mains or service cables, wires, pipes, drains, sewers and other channels established and maintained by the Committee under the provisions of the Act.

3. Learned Advocate General, Haryana, concedes that clause (n) of Section 200 of the Act does not empower the State Government to charge any fee for the drainage connection or installation of sanitary works. In view of this concession, I am not going into the question whether the word "regulate" empowers the State Govt. to fix the fee or charge any amount for providing the drainage service or sewerage service to the occupant of a building in any municipal area. I am leaving that question open in view of the concession given by the learned Advocate General, Haryana in the instant case.

4. In view of the what has been stated above, the writ petition is to be allowed.

5. The writ petition is, accordingly, allowed and the respondents are directed to refund the amounts paid by the petitioners under protest as the amounts have been paid within three years prior to the filling of the writ petition.