
(1969) 12 P&H CK 0024

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ No's. 2975 of 1967 and 444 of 1968

Ram Niwas Gupta and Others

APPELLANT

Vs

State of Haryana and Another

RESPONDENT

Date of Decision : 15-12-1969

Acts Referred:

Constitution of India, 1950 — Article 226

Evidence Act, 1872 — Section 115

Punjab Municipal Act, 1911 — Section 47

Citation : AIR 1970 P&H 462 : (1971) 1 ILR (P&H) 689

Hon'ble Judges : Mehar Singh, C.J.; D.K. Mahajan, J.; Bal Raj Tuli, J

Bench : Full Bench

Advocate : R. Sachar, Satya Parkash Jain and G.C. Garg, for the Appellant; D.S. Tewatia, General, B.S. Gupta, C.B. Kaushik and U.D. Gaur, for the Respondent

Final Decision : Dismissed

Judgement

Bal Raj Tuli, J.—These two writ petitions Civil Writ No. 2975 of 1967, Ram Niwas Gupta v. State of Haryana and Civil Writ No. 444 of 1968, Jit Ram Shiv Kumar v. State of Haryana came up for hearing before me in the first instance and I referred them for decision to a Division Bench in view of the fact that there was a judgment of a Division Bench of the Lahore High Court in Municipal Committee, Sonapat v. Dharam Chand AIR 1935 Lah 632, the correctness of which had been doubted. In pursuance of my reference order, these petitions were placed for hearing before a Division Bench consisting of my Lord the Chief Justice and myself on December 1, 1969. and we referred them to a Full Bench in view of the fact that the Lahore judgment was a judgment by a Division Bench. This is how these writ petitions have come up before this Full Bench for decision. This judgment will dispose of both the writ petitions.

2. The facts are that the Municipal Committee, Bahadurgarh, decided to establish a Mandi known as Fateh Mandi in 1916 and settled the terms of auction by resolution No. 8 dated November 20, 1916. One of the terms of the sale, namely.

No. 14, was that the Mandi would be free from the imposition of octroi tax but that the owners of the plots in the Mandi would be required to pay house-tax which might be imposed for meeting the expenses of the Mandi. At a special meeting held on May 20, 1917, the Municipal Committee, Bahadurgarh, passed resolution No. 4 providing that term No. 14 of the conditions of sale of the plots in Fateh Mandi be amended so as to read that the Mandi would remain immune from payment of octroi tax for ever. The Commissioner, Ambala Division, objected to this term and by his letter No. 2454 dated June 26, 1917, addressed to the Deputy Commissioner, Rohtak, with a copy to the President, Municipal Committee, Bahadurgarh, intimated his disapproval to resolution No. 4 dated May 20, 1917.

The Municipal Committee, by Its resolution No. 6 dated August 30, 1917, requested the Commissioner, Ambala Division, to confirm condition No. 14 in the proclamation of sale and by his letter No. 3627/M-40-LF, dated September 20, 1917, the Commissioner withdrew his objection to the said resolution but it was stated in the letter that "as soon as the market is established, it will be necessary to consider what form of taxation is best to cover the market share of municipal expenses". By resolution No. 1, dated March 10, 1919, the Municipal Committee, Bahadurgarh, imposed house-tax at the rate of Rs. 3/14/6 per cent of the annual value on the shopkeepers of the Mandi to cover an expenditure of approximately Rs. 800/- per annum for the said market.

3. It is stated by the learned counsel for the petitioners that octroi was being levied in other parts of the limits of Bahadurgarh Municipality but Fateh Mandi was kept out of the octroi limits. By notification No. 9697-C-53/63830 dated September 4, 1953, the octroi limits of the Municipal Committee, Bahadurgarh, were extended and made conterminous with the municipal limits with the result that Fateh Mandi was included within the octroi limits. The Examiner, Local Fund Accounts, in the course of his audit of the accounts of the Municipal Committee raised an objection to the granting of exemption by the Municipal Committee to the goods imported in Fateh Mandi from payment of octroi and stressed that octroi should be imposed on the goods imported in that Mandi. The Municipal Committee reconsidered the whole matter and by resolution No. 1 dated March 2, 1954, decided that Fateh Mandi, Bahadurgarh, would remain free from payment of octroi according to the terms of the proclamation of sale relating to the sale of plots in the said Mandi. This resolution was passed in a special meeting of the Committee held on that date and was referred to the Punjab State for confirmation u/s 70(2) of the Punjab Municipal Act, 1911 (hereinafter called the Act). The Punjab Government confirmed the resolution by a memorandum dated May 4, 1954.

4. The Municipal Committee, Bahadurgarh, reconsidered the matter in a meeting held on May 8, 1954 and by resolution No. 1 of that date decided to levy octroi on the goods imported into Fateh Mandi but this resolution was annulled by the Punjab Government in exercise of its power u/s 236 of the Act and a copy of that

order was communicated to the President, Municipal Committee, by endorsement No. 2768-CC-54/11442, dated May 17, 1954. Since the Examiner, Local Fund Accounts, Punjab, was insisting on the levy of octroi on the goods imported into Fateh Mandi, Bahadurgarh, the representatives of the Mandi discussed the matter with the Secretary to Government, Punjab, Local Self-Government Department, who, by his memo No. 3159-C-56/26258, dated April 9, 1956 Informed the President of the Municipal Committee that the action of the Government confirming resolution No. 1 dated March 2, 1954, exempting the goods imported into Fateh Mandi from the levy of octroi u/s 70(2) (c) of the Act, was quite in order and that no separate notification to this effect was necessary under the rules and that the Examiner, Local Fund Accounts, had already been apprised of the Government's decision. The result was that no octroi was levied on the shopkeepers of Fateh Mandi.

5. By resolution No. 6 passed in a special meeting of the Municipal Committee held on July 21, 1965, it was decided that the Punjab Government be requested to cancel its approval of resolution No. 1 dated March 2, 1954 and that octroi should be levied from the shopkeepers of Fateh Mandi. This resolution was considered by the State of Haryana and by memo No. 6406-I-C-II-67/26734 dated October 30, 1967, the Government conveyed its approval to resolution No. 6 passed by the Committee on July 21, 1965. On receipt of this memorandum, the Municipal Committee started charging octroi on the goods imported into Fateh Mandi, Bahadurgarh, which obliged the petitioners to file the present writ petitions in this Court for the quashing of resolution No. 6 dated July 21, 1965, passed by the Municipal Committee, Bahadurgarh, and its approval by the Haryana Government conveyed on October 30, 1967.

6. The respondents to the writ petitions are the State of Haryana and the Municipal Committee, Bahadurgarh, both of whom have filed returns to the writ petitions and the main point taken is that the Municipal Committee and the Government had no authority to exempt the shopkeepers of Fateh Mandi from the levy of octroi duty for ever. The Municipal Committee has also taken a preliminary objection that the petitioners have not alleged any violation of a statutory right of theirs and, therefore, the writs are not maintainable.

7. We find substance In the preliminary objection raised by the learned counsel for the Municipal Committee, Bahadurgarh. The petitioners are claiming exemption from the payment of octroi on the basis of the terms of auction which had been approved by the Municipal Committee by resolution No. 8 dated November 20, 1916, as amended by resolution No. 4 dated May 20, 1917 and agreed to by the Commissioner, Ambala Division. It is stated by them that the purchasers accepted term of sale No. 14 and purchased the plots on the faith thereof which resulted into a contract between the Municipal Committee and the purchasers of the plots and the Municipal Committee cannot be permitted to go back thereon.

In reply it has been argued by the learned counsel for the respondents that no

binding contract came into being between the Municipal Committee and the petitioners because no contract was executed in accordance with Section 47 of the Act and, therefore, by virtue of Section 47(3), the Municipal Committee was not bound by any contract pleaded by the petitioners. It has also been argued that u/s 46 of the Act the transactions were required to be approved by the Municipal Committee in a meeting which was never done and, therefore, no contract came into being between the petitioners and the Municipal Committee. No plea has been taken in the written statements with regard to non-compliance of the provisions of Section 46 of the Act but the plea with regard to Section 47 of the Act was definitely taken. No replication was filed to the written statements and at the hearing of the writ petitions it has been accepted by the learned counsel for the petitioners that the contracts with regard to the purchase of the plots, not having been executed in accordance with Section 47 of the Act, were void and not binding on the Municipal Committee but he contends strenuously that the Municipal Committee cannot be allowed to go back upon the assurance given to the purchasers at the time of the sale of the plots that no octroi would be levied in the Mandi.

In support of his submission, the learned counsel has strongly relied upon the judgment of their Lordships of the Supreme Court in *Union of India v. M/s. Anglo Afghan Agencies*, AIR 1968 SC 718. It was observed by their Lordships:--

"It was somewhat faintly urged that If the Government is held bound by every representation made by it regarding its Intention, when the exporters have acted in the manner they were invited to act, the Government would be held bound by a contractual obligation even though no formal contract in the manner required by Article 299 of the Constitution was executed, and the exporter would be entitled to claim damages contrary to that provision for breach of the contract even though no formal written contract had been executed in the manner provided by that Article. But the respondents are not seeking to enforce any contractual right: they are seeking to enforce compliance with the obligation which is laid upon the Textile Commissioner by the terms of the Scheme, and we are of the view that even if the Scheme is executive in character, the respondents, who were aggrieved because of the failure to carry out the terms of the Scheme, were entitled to seek resort to the Court and claim that the obligation imposed upon the Textile Commissioner by the Scheme be ordered to be carried out."

It is to be noted that in that case the petitioners were not claiming the fulfilment of any contractual right but were asking the Textile Commissioner to fulfil his obligation under the Export Promotion Scheme which had been framed under the provisions of the Imports and Exports (Control) Act, 18 of 1947. Their Lordships definitely stated that the petitioners were not enforcing any contractual right which supports the argument of the learned counsel for the respondents that contractual rights cannot be enforced by a petition under Article 226 of the Constitution of India. The terms of auction for the sale of plots in Fateh Mandi

cannot be equated with the Export Promotion Scheme and cannot be termed as an executive act whereby the Textile Commissioner bound himself to fulfil his obligations under the said Scheme. The terms of auction amounted to the conditions of contract of sale of the plots between the Municipal Committee and the petitioners or their predecessors-in-interest and cannot be termed as representations made by the Municipal Committee.

Term 14 of the conditions of sale on which the petitioners rely and which had been approved by the Municipal Committee by resolutions passed on November 20, 1916 and May 20, 1917, would have formed one of the conditions of the conveyance of the plots if any such conveyances had been executed by the Municipal Committee in favour of the purchasers. The Municipal Committee, u/s 61(2) of the Act has the right to impose octroi in the whole of the town or any part thereof subject to the sanction of the State Government. This power given to the Municipal Committee authorises it to impose octroi on the goods imported within the whole of the municipal limits or any part thereof and the only ground on which the petitioners seek immunity from the payment of octroi is condition No. 14 of the auction. But for that condition they have no right to say that they are not liable to pay octroi to the Municipal Committee.

This right of immunity from the payment of octroi claimed by the petitioners, thus, directly flows from the contract regarding the purchase of plots in Fateh Mandi from the Municipal Committee and is not based on any provisions of a statute or a scheme prepared under a statute. The ratio decidendi of the Supreme Court judgment, therefore, is not applicable to the facts of these cases. It is well established that the extraordinary remedy under Article 226 of the Constitution cannot be resorted to to enforce contractual rights but is only meant for the redress of a grievance arising out of the violation of a legal right of the person making the petition. No such legal right has been pleaded by the petitioners. They have based their right to claim immunity from the payment of octroi only on term 14 of the terms of auction stated above.

It has been held by their Lordships of the Supreme Court in *Lekhraj Satramdas, Lalvani Vs. Deputy Custodian-cum-managing Officer and Others*, , as under:--

"But even on the assumption that the order of the Deputy Custodian terminating the management of the appellant is illegal, the appellant is not entitled to move the High Court for grant of a writ in the nature of mandamus under Article 226 of the Constitution. The reason is that a writ of mandamus may be granted only in a case where there is a statutory duty imposed upon the officer concerned and there is a failure on the part of that officer to discharge that statutory obligation. The chief function of the writ is to compel the performance of public duties prescribed by the statute and to keep the subordinate tribunals and officers exercising public functions within the limits of their jurisdictions."

In the cases in hand no breach of any statutory duty on behalf of the respondents has been complained of nor has it been stated what statutory

obligation can the respondents be ordered to discharge by this Court.

8. A Division Bench of the Madhya Bharat High Court in *Satya Prakash v. Commissioner, Land Reforms and Jagirs*. M. B. AIR 1955 MP 188 dealt With a case in which the contracts had not been executed in the form required by Article 293(1) of the Constitution of India and were, therefore, not binding on the Government and were not enforceable against it. On those facts, the learned Judges held as under:--

"The petitioners cannot, therefore, claim that under those contracts they have a legal and enforceable right to work the forest areas, and to the manufactured charcoal, Katha and the felled material. It may be that if the D.F.O. was authorised to enter into contracts op behalf of the Government and if he did so conclude any agreements with the petitioners for the working of the forest areas, the petitioners may be entitled to the relief of compensation.

But that is a matter with which we are not concerned. Here, the petitioners claim to enforce a right to work the forest areas and to the manufactured material under contracts which are unenforceable. The contracts being unenforceable, they have no legal right which can be enforced by any direction or a writ under Article 226."

The facts of that case are identical with the facts of the two cases in hand inasmuch as the contracts of the sale of plots not having been executed in accordance with the provisions of Section 47 of the Act, are not binding on the Municipal Committee and cannot be enforced against it Any relief arising out of those void contracts cannot be claimed by filing a petition under Article 226 of the Constitution. By these petitions the petitioners are seeking to restrain the Municipal Committee from committing a breach of the contract of sale, one of the terms of which was that no octroi would be levied. Such a petition is, in our opinion not maintainable.

9. On behalf of the respondents it has also been urged that by Punjab Act 48 of 1953. Section 62-A was inserted in the Act which reads as follows:--

"62-A. Power of Government In taxation.

(1) The State Government may, by special or general order notified In the Official Gazette, require a Committee to impose any tax mentioned in Section 61, not already imposed at such rate and within such period as may be specified in the notification and the Committee shall thereupon act accordingly.

(2) The State Government may require a Committee to modify the rate of any tax already imposed and thereupon the Committee shall modify the tax as required within such period as the State Government may direct.

(3) If the Committee fails to carry out any order passed under Sub-section (1) or (2), the State Government may, by a suitable order notified In the Official Gazette, impose or modify the tax. The order so passed shall operate as if it

were a resolution duly passed by the Committee and as if the proposal was sanctioned in accordance with the procedure contained in Section 62."

Ever since the enactment of this section, the State Government can require a Committee to impose any tax mentioned in Section 61, which includes octroi, not already imposed and if the Municipal Committee does not carry out that direction, the State Government has the authority to impose that tax.

The argument of the learned counsel for the petitioners is that recourse to Section 62-A cannot be had by the State Government because octroi is already imposed within the limits of the Municipal Committee, Bahadurgarh. This argument is, however, devoid of force because in Fateh Mandi the octroi had not been imposed before the State Government approved resolution No. 6 dated July 21, 1965 on October 30, 1967 and, therefore, on that date the State Government could direct the Municipal Committee, Bahadurgarh, to impose that tax and if the Municipal Committee failed to impose such a tax, the State Government could have Imposed it itself. The result is that even If the writ petitions are accepted, the State Government can nullify the effect thereof by issuing an appropriate notification u/s 62-A of the Act. It is axiomatic to say that this Court does not issue infructuous writs or writs which can be nullified by the respondents by a notification under a statute.

10. These petitions are liable to be dismissed on the two grounds set out above and it is not necessary to deal with the arguments of the learned counsel on the other points urged in these petitions. The first such point is that the respondents are estopped in equity from imposing octroi contrary to the representation made by term 14 of the auction notice. Reliance has been placed by the learned counsel for the petitioners on *Dadoba Janardhan v. Collector of Bombay* ILR (1901) 25 Bom 714; *Municipal Corpn. of City of Bombay v. Secy. of State for India in Council* ILR (1905) 29 Bom 580 *Collector of Bombay Vs. Municipal Corporation of The City of Bombay and Others*, and AIR 1968 SC 718 (supra). Particular stress has been laid on para 19 of the judgment of their Lordships in the last mentioned case in which it had been observed:--

"We hold that the claim of the respondents is appropriately founded upon the equity which arises in their favour as a result of the representation made on behalf of the Union of India in the Export Promotion Scheme, and the action taken by the respondents acting upon that representation under the belief that the Government would carry out the representation made by it. On the facts proved in this case, no ground has been suggested before the Court for exempting the Government from the equity arising out of the acts done by the exporters to their prejudice relying upon the representation."

This plea of equity cannot be gone Into in these petitions for want of material placed on the record. It is to be noted that the petitioners are not the original purchasers of the plots in Fateh Mandi. They are either the descendants of, or transferees from, the original purchasers of the plots. Admittedly no sale-deed

was executed by the Municipal Committee in favour of the original purchasers in order to determine what rights were conveyed to the predecessors-in-interest of the petitioners. No allegation has been made that the original purchasers would not have purchased the plots or would not have paid the price that they did, if condition 14 about immunity from payment of octroi had not been there. It is to be remembered that the sites of the shops in the Mandi were auctioned and were not given by private negotiations or by inviting tenders. The shops had been auctioned before resolution No. 8 passed on November 20, 1916, was amended on May 20, 1917. The said amendment stated that the Mandi would be immune from the payment of octroi forever. This representation had not been made to the original purchasers when the plots were auctioned in 1916. A subsequent amendment of one of the conditions of the auction-sale cannot be said to estop the Municipal Committee from levying the octroi.

Moreover, estoppel has no operation or efficacy whatsoever except as a bar to testimony. Its sole office is either to place an obstacle in the way of a case which otherwise might succeed, or to remove an impediment out of the way of a case which might otherwise fail. It has no other function. Emphatically it is not a cause of action in itself; nor does it create one, though the application of this, as of any other rule of evidence in the course of litigation, may result in a total or partial establishment or disestablishment of the case made by one or other of the parties. Estoppel merely operates as a bar to the suit; it does not extinguish the right. The petitioners might be able to plead estoppel in a proceeding for the recovery of octroi from them, if any are brought by the Municipal Committee, but they cannot come to the Court and say that the Municipal Committee should be restrained from levying or collecting any octroi from them by basing their right on term 14 of the conditions of sale. This matter, however, cannot be finally determined in these writ petitions for want of adequate material. In a proper case and before a proper forum it will have to be determined whether the transferees from the original purchasers can take up the plea of estoppel or equity and to what extent. For that purpose it will be necessary to determine on what representations or conditions the original purchasers purchased the plots and on what conditions have the petitioners, who are transferees from the original purchasers, purchased the shops. For that purpose a perusal of the sale-deeds" in their favour will be necessary.

No sale-deeds have been produced or referred to in these petitions. In the case before their Lordships of the Supreme Court the claim was made by the exporters who had acted on the faith of the Export Promotion Scheme which had been formulated by the Union Government under the provisions of the Imports and Exports (Control) Act and the Textile Commissioner was bound to act in accordance with that Scheme. The equity was said to have arisen in favour of the exporters on the ground that on the faith of the provisions of the Scheme which amounted to representation to them by the Union Government, they had acted to their prejudice by making the exports, in consideration of which they were entitled to hundred per cent import quota and that import quota could not

be reduced at the whim of the Textile Commissioner. The facts of these two cases are, however, different and on a proper material It will be considered whether the ratio decidendi of that case can be applied to the facts of these cases.

11. On behalf of the respondents it has been strenuously contended that the transactions relating to the sales of plots by auction In Fateh Mandi in 1916 amounted to contracts between the parties and the said contracts not having been reduced to writing and executed with due formalities as prescribed in Section 47 of the Act, no enforceable right ever accrued to the petitioners or their predecessors-in-interest and none can be enforced against the Municipality. It is further submitted that the power of levying tax u/s 21(2) of the. Act with the sanction of the State Government amounts to exercise of legislative power and no estoppel or equity can be pleaded against the exercise of such power. The learned Advocate-General appearing for respondent 1 has further contended that the power to grant immunity or exemption from the payment of tax is also a legislative power and the exemption once granted can always be revoked.

To this contention the reply on behalf of the petitioners is that the exemption or immunity from payment of octroi granted to their predecessors-in-interest was backed by consideration and, therefore, the Municipal Committee could not withdraw that exemption or immunity. The learned counsel for the respondents submit that no exemption in accordance with Section 70 Sub-section (2) of the Act had ever been granted because the sanction of the State Government had not been obtained which was mandatory and apart from Section 70 Sub-section (2) of the Act there is no provision in the Act empowering the Municipal Committee to grant immunity from payment of a tax forever and even under that sub-section immunity forever cannot be granted. In short the argument is that immunity from the payment of tax forever cannot be granted and term No. 14 of the sale by auction was ultra vires the powers of the Municipal Committee and cannot be enforced. On behalf of the petitioners it is stated that the Municipal Committee has the power u/s 188(g) of the Act to fix limits for the purpose of collecting octroi and in exercise of that power, the Municipal Committee fixed such limits by excluding Fateh Mandi and the Municipal Committee should be compelled to keep Fateh Mandi out of octroi limits because of term No. 14 of the auction-sales. All these matters involve complicated questions of law and fact and, as we have said above, for lack of material on the record cannot be determined in these writ petitions. Numerous judgments have been brought to our notice by the learned" counsel on both sides in support of their respective contentions but we find no necessity to refer to them as we are not deciding these pleas on merits and prefer to dismiss these petitions on the first two grounds referred to above.

12. For the reasons given above, these petitions are dismissed but without any order as to costs because of the difficult nature of the questions canvassed in the writ -petitions.

Mehar Singh, C.J.

13. I agree.

D.K. Mahajan, J.

14. So do I.