(2000) 09 AHC CK 0135

In the Allahabad High Court

Case No : C.M.W.P. No. 395 of 1982

Sarang Theatre and others APPELLANT

Vs

State of U.P. and others RESPONDENT

Date of Decision : 22-09-2000

Acts Referred:
Uttar Pradesh Municipalities Act, 1916 — Section 128, 128(1), 130, 131, 131(1)

Citation : (2000) 4 AWC 3192(1)

Hon'ble Judges : S.R. Alam, J;R.K. Agrawal, J

Bench : Division Bench

Advocate : V.B. Singh and M.D. Singh, for the Appellant; S.C., C.S. Singh and V.N. Khare, for the Respondent

Final Decision : Dismissed

Judgement

R.K. Agrawal, J.—The petitioners. Sarang Theatre. Vishal Cinema and Bharat Talkies situate at Baraut in the district of Meerut, have filed this petition under Article 226 of the Constitution of India, seeking the following reliefs :

"to issue a writ of certiorari quashing the notice dated 1.3.1980/26.3,1980 (Annexure-3A to the writ petition) and Notification dated 1.12.1981/ 6,2.1982 (Annexure-3B to the writ petition) as well as notice dated 27.5.1982 (Annexure-7 to the writ petition) ;

to issue a writ, order or direction in the nature of mandamus directing the opposite parties not to realise the impugned show tax during the pendency of the present writ petition ;

to issue a writ, order or direction in the nature of ceritorari quashing the citation for recovery dated 28.7.1995 (Annexure-III to the affidavit) passed by Tehsildar. Baraut, district Meerut ;

to issue a writ, order or direction in the nature of mandamus directing the respondents and Tehsildar, Baraut, district Meerut not to recover any amount from the petitioner No. 1 in pursuance of the impugned citation dated 28.7.1995 [Annexure-III to the supplementary-affidavit) passed by Tehsildar, Baraut, district Meerut;

to issue a writ, order or direction in the nature of mandamus directing the respondents, if at all show tax is payable, then it should be levied @ Rs. 10 per show as the petitioner No. 1''s annual rental value is less than Rs. 10,000.

2. The facts of the case in brief are that the petitioners are exhibiting cinematograph films within the limit of Municipal Board. Baraut in the district of Meerut. The Municipal Board, Baraul, through its Administrator, published a notice in Prabhat Samachar Patra dated 5.7.1979 inviting objection to the proposal for imposition of show tax. The petitioners filed their objection on 13.8.1979 before the Administrator of Municipal Board, Baraut on several grounds. However, vide order dated 23.10,1979. all the objections have been rejected. A notification was published on 1.3.1980 in the U. P. Gazette levying show lax at the rate of Rs. 20 per show where the annual value of the cinema hall was Rs. 10,000 or more and a show tax of Rs. 10 per show where the annual value was less than Rs. 10,000. The levy of show tax by the Municipal Board is under challenge in the present writ petition.

3. We have heard Sri V. B. Singh, learned counsel for the petitioner and Sri C. S. Singh, learned standing counsel on behalf of the respondents.

4. The learned counsel for the petitioners submitted that the proposal to levy show lax made by the respondent No. 2 is completely against the scope of Section 131(1)(a) and Section 128 (1) (iii) (a) of the U. P. Municipalities Act. 1916 (hereinafter referred to as the Act), inasmuch as the proposal has been made in the capacity of the Board while the same should have been made in the capacity of the Administrator. He further submitted that the proposal was published on 5.7.1979 in Prabhat Samachar Patra, which has got almost no circulation in the area of Municipal Board, Baraut, and, therefore, the publication of the proposal was against the provisions of Section 94 (3) of the Act. He further submitted that the respondent No. 2 passed a fresh order on 3.8.1979 extending the time for filing the objection upto 14.8.1979, which order was not published in any local newspaper in Hindi nor any notice whatsoever was given to the affected persons, specially, when in the Municipal Board. Baraut, the petitioners are the only persons running the cinema halls and could have been informed easily. He submitted that the proposal published on 5.7.1979 became ineffective in view of the subsequent order dated 3.8.1979.

5. Sri V. B. Singh, learned counsel for the petitioner further submitted that the petitioners were not afforded any opportunity of hearing by the respondent No. 2 before deciding their objections and, therefore, the order has been passed in gross violation of the principles of natural justice, equity and fair play and in any event the said order has been passed without any application of mind under the directions contained in Government Order dated 19.9.1978 which has got no

legal sanctity. Another ground of attack was that the Municipal Board. Baraut, had been superseded by the State Government under the provisions of Section 30 of the Adhiniyam and the District Magistrate has been appointed as the Administrator, who has been given all the powers of the Municipal Board. The District Magistrate in the capacity of Administrator could not have levied any fresh tax and it was for the Board, which consists of elected representatives that could have levied/imposed any fresh tax.

6. Section 94 of the U. P. Municipalities Act. 1916 (hereinafter referred to as the Act), provides for minute book and resolution, Section 94 (3) provides for the manner in which a resolution passed by a Board at a meeting is to be published. Section 94 (3) read as follows :

"Every resolution passed by a board at a meeting, shall, as soon thereafter as may be, be published in Hindi in any paper approved by the State Government for purposes of publication of public notices, published in the district, or if there is no such paper in the district, in the division, in which the municipality concerned is situate and where there is no such paper, be pasted up on the notice boards of the Municipal Office and Collectorate Office for three consecutive days."

7. Chapter-V of the Act deals with the Municipal taxation. Section 131 of the Act, deals with framing of preliminary proposal. Section 131 (3) requires the board to publish in the manner prescribed in Section 94, the proposal framed under sub-section (2) along with notice in the form set forth in Schedule 111, Section 132 (1) provides for taking into consideration the objection, if any, submitted to the proposal. Section 133 of the Act, gives the power to the State Government or the prescribed authority to reject, sanction or modify the proposals. Section 135 deals with the imposition of tax. 11 reads as follows :

"135. Imposition of tax.--(1) A copy of the resolution passed u/s 134 shall be submitted to the State Government, if the tax has been sanctioned by the State Government, and to the prescribed authority in any other case.

(2) Upon receipt of the copy of the resolution the State Government, or prescribed authority, as the case may be, hall notify in the official Gazette, the imposition of the tax from the appointed date, and the imposition of a tax shall in all cases be subject to the condition that it has been so notified.

(3) A notification of the imposition of a tax under subsection (2) shall be conclusive proof that the tax has been imposed in accordance with the provisions of this Act."

8. Sub-section (3) of Section 135 provides a notification of the imposition of tax under sub-section (2) shall be conclusive proof that the tax has been imposed in accordance with the provisions of this Act.

9. In the present case, it would be seen that the proposal for imposition of show tax was published in accordance with Section 94 (3) of the Act, in Prabhat

Samachar Patra published from Meerut, i.e., the district where the Municipal Board is situate. It is not the case of the petitioner that Prabhat Samachar Patra is not approved by the State Government for purposes of publication of public notices or it has not been published in Hindi. Thus, the provisions of Section 94 (3) of the Act have been complied with. So far as the question of extending the period of filing objection vide order dated 3.8.1979, having not been published in any newspaper in terms of Section 94 (3) is concerned, we find that there is no such requirement. The original proposal for imposition of show tax has been published in accordance with Section 94 (3) of the Act and by the order dated 3.8.1979 only the time for filing objections have been condoned. Moreover, it is not in dispute that the petitioners had filed their objection also. Thus, there is no illegality or irregularity in the publication of the proposal.

10. The Stale Government has notified the proposal and the levy of show tax in the official Gazette dated 1,3.1980 (a copy of which has been filed by the petitioners themselves as Annexure-3A). Thus, in view of the provisions of Section 135 (3) of the Act, he imposition of show tax is to be deemed in accordance with the provisions of this Act, s has been held by the Hon''ble Supreme Court in the case of The Municipal Board, Maunath Bhanjan Vs. Swadeshi Cotton Mills Co. Ltd. and Others, . In paragraph 9 of the judgment the Hon''ble Supreme Court has held as follows :

"9. We have thus no doubt that the notification had really been issued in compliance with the requirement of sub-section (2) of Section 135 of the Act. That would attract the application of sub-section (3) of that section which provides as follows :

"135 (3) A notification of the imposition of a tax under subsection (2) shall be conclusive proof that the tax has been imposed in accordance with the provisions of this Act." So when a probative effect had been given by law making the notification of the imposition of the tax as "conclusive proof" that the tax had been imposed "In accordance with the provisions of this Act, no evidence could be allowed to combat that fact, and we have no hesitation in holding that the imposition was according to the law."

Similar view was taken by the Hon''ble Supreme Court in the case of Tharoo Mal v. Purarn Chand Pandey. 1978 ALJ 25.

11. Learned counsel for the petitioners relied upon the decision of the Hon''ble Supreme Court in the case of Raza Buland Sugar Co. Ltd. Vs. Municipal Board, Rampur, , and submitted that since the procedure as laid down in Sections 94 (3), 128, 130. 131 and 135 of the Act, has not been followed, the deeming provisions of Section 135 (3) would not be attracted. As already mentioned above, the show tax has been imposed after following the procedure laid down in Section 94 (3) and Sections 131 (3) and 134 of the Act. Thus, there is no irregularity. The presumption laid down u/s 135 (3), that the tax has been imposed in accordance with the provisions of this Act, upon the notification

having been published in the official Gazette u/s 135 (2) will come into play and thus, the imposition of the show tax is in accordance with the provisions of the Act. The decision of the Hon''ble Supreme Court in the case of Raza Buland Sugar Co. Ltd., Rampur (supra), came up for consideration before the Hon''ble Supreme Court in the case of Tharoo Mal v. Puran Chand Pandey (supra), and the Hon''ble Supreme Court had held "if there is such a gross breach of the rules that the proposal sanctioned could not be deemed to be "imposition of a tax" at all. Section 135 (3) may not bar the consideration of such a basic infirmity in the proceedings, which make them no proceedings at all in the eye of the law. This is the most that can be said on the strength of Raza Buland Sugar Co. Ltd. Vs. Municipal Board, Rampur, which is strongly relied upon by Mr. Chitale."

12. No gross breach of the rules have been established in the present case. Thus, there is no illegality in the imposition of show tax.

13. Learned counsel for the petitioner then submitted that since the Municipal Board has been superseded by the State Government and the District Magistrate has been appointed as an Administrator, the Administrator could not hove imposed the show tax. Section 30 of the Act gives the State Government the power to dissolve or supersede the Board. Section 31 (b) provides for exercise of all the powers and duties of the Board by the Administrator. Thus, the Administrator can levy fresh taxes.

14. It was further submitted that in respect of petitioner No. 1, i.e., Sarang Theatre, the Chief Judicial Magistrate vide order dated 15.1.1983 had held the annual rental value to be less than Rs. 10,000. However, from the perusal of the order of the Chief Judicial Magistrate, which has been filed as Annexure-2 to the supplementary-affidavit of Naresh Chand Sharma, we find that the annual house tax has been reduced to Rs. 750. There is no reference about the annual value of the house. However, in the interest of justice, the respondent No. 2 is directed to verify the annual value of the petitioner No, 1 and if it is found that it is below than Rs. 10.000, then the show tax be levied and realised at the rate of Rs. 10 and not Rs. 20 as per the Rules published in the Gazette dated 1.3.1980.

15. Subject to the aforesaid observations, we do not find any merit in this petition and it is dismissed. However, the parties shall bear their own costs.