

(1978) 08 P&H CK 0018

In the Punjab And Haryana At Chandigarh

Case No : Letter Patent Appeal No. 348 of 1975

The State of Punjab

APPELLANT

Vs

Dewan Chand and Others

RESPONDENT

Date of Decision : 23-08-1978

Acts Referred:

Constitution of India, 1950 — Article 14, 19

Punjab Municipal Act, 1911 — Section 10, 11, 4, 5, 6

Citation : AIR 1979 P&H 46 : (1979) 1 ILR (P&H) 138

Hon'ble Judges : Prem Chand Jain, J;J.M. Tandon, J

Bench : Division Bench

Judgement

Prem Chand Jain, J.—The State of Punjab has filed this appeal under Clause X of the Letters Patent against the judgment of a learned single Judge of this Court, dated 23rd of April, 1975 by which C.W.P. No. 2328 of 1966 filed by Dewan Chand and others, respondents, was allowed and the notification issued under S. 10 of the Punjab Municipal Act (hereinafter referred to as the Act), which reads as under, was quashed:--

"In exercise of the powers conferred by sub-section (1) of S. 10 of the Punjab Municipal Act, 1911, the President of India is pleased to withdraw the area of Narot Jaimal Singh Municipal Committee, District Gurdaspur from the operation of the said Act with effect from the 31st of Oct., 1966."

It was by virtue of the aforesaid notification that the area of Narot Jaimal Singh Municipal Committee, District Gurdaspur, was withdrawn from the operation of the Act. Two contentions were raised before the learned Single Judge, that no notice was ever given to the petitioners (now respondents) before passing the impugned notification, and that S. 10 of the Act was unconstitutional. Both these contentions prevailed with the learned Single Judge, who, as earlier observed, allowed the petition.

2. Mr. M. P. Singh Gill, learned Deputy Advocate General, Punjab, challenged the correctness of the findings of the learned Single Judge and submitted that S. 10

of the act provided sufficient guidelines as to in which cases the area from the municipal committee could be withdrawn from the operation of the Act. After hearing the learned counsel for the parties, we are of the view that there is no merit in this contention of the learned counsel, S. 10 of the Act reads as under:--

"(1) The State Government may, by notification withdraw from the operation of this Act the area of any municipality constituted thereunder.

(2) When a notification is issued under this section in respect of any municipality this Act and all notifications, rules, bye-laws, orders, directions and powers issued, made or conferred under this Act, shall cease to apply to the said area; the balance of the municipal fund and all other property at the time of the issue of the notification vested in the committee shall vest in the State Government and the liabilities of the committee shall be transferred to the State Government."

From a bare perusal of this Section, it is evident that no guideline is provided as to in which cases the area of any municipality could be withdrawn from the operation of the Act. S. 10 forms part of Chap. II which relates to the constitution of municipalities. S. 4 provides a detailed procedure for constituting a municipality. Under this section the State Government is required to issue a notification when it proposes to constitute a municipal committee in respect of any local area. Such a notification is required to define the limits of the local area to which it relates. A detailed procedure is prescribed for the publication of the notification. The inhabitants of the area, who may object to the notification, are entitled to file objections in writing. The objections have to be disposed of by the State Government by passing orders. It would thus be seen that a municipality can be constituted only after following a detailed procedure and nothing has been left to the whim of the State Government.

3. Further if the State Government intends to alter the limits of any municipality, then again a detailed procedure is prescribed under S. 5 of the Act. In S. 7, procedure is given with regard to cases covered by S. 6 which relates to the exclusion of local area from any municipality. It would thus be clear from the perusal of these sections, that a mandatory formality of inviting objections from the inhabitants of the local area, is required to be complied with and that before taking any action, the Government is duty bound to consider those objections. Surprisingly, under S. 10 which gives power to withdraw municipal area altogether from the operation of the Act, a blanket power is given to the State Government and the right of an inhabitant of that area to raise an objection has been denied. As observed by the learned Single Judge, it has been left completely to the whim of the State Government to withdraw any municipal area from the operation of the Act. No guideline at all has been prescribed or indicated as to in which cases, and under what circumstances the State Government could resort to the provisions of S. 10, which are so drastic in nature that by exercising power under that Section, a fully grown committee can be abolished. In this view of the matter, we agree with the learned Single Judge that as no guideline is provided under S. 10 of the Act, the same is ultra vires of

Arts. 14 and 19 of the Constitution.

4. In view of the aforesaid finding, no other question arises for consideration.

5. For the reasons recorded above, this appeal fails and is dismissed. But in the circumstances of the case, we make no order as to costs.

6. Appeal dismissed.