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(2003) 08 SC CK 0027

In the Supreme Court Of India

Case No : Civil Appeal No''s. 1366-74, 1375-82, 2511-14, 2771, 3279, 3760-62, 4761-64, 5595 and 7535 of 2001 and 645-47, 1911, 2183-84, 2552, 2730, 4148-49, 5095, 5853-54 and 8098-8100 of 2002

Widia (India) Ltd. and Others — APPELLANT

Vs

The State of Karnataka and Others — RESPONDENT

Date of Decision : 21-08-2003

Acts Referred:

Constitution Of India, 1950 — Article 226, 246, 301, 303, 304, 304(a), 304(b)
Karnataka Tax On Entry Of Goods Act, 1979 — Section 2(A)(5), 3, 3(1), 4B
Karnataka Industrial Areas Development Act, 1966 — Section 3
Mysore General Clauses Act, 1899 — Section 21

Citation : AIR 2003 SC 3095 : (2003) 5 ALD 110 : (2003) 7 JT 237 : (2003) 6 SCALE 567 : (2003) 8 SCC 22 : (2003) 2 SCR 822 Supp : (2003) 132 STC 360

Hon'ble Judges : M. B. Shah, J;AR. Lakshmanan, J

Bench : Division Bench

Advocate : Bhaskar P. Gupta, A. N. Haksar and T.I.V. Iyer, Dhruv Agarwal, R.V. Prasad, Praveen Kumar, Satyanarayana, N.D.B. Raju, Bharathi R., Guntur Prabhakar, D. Venkatesh, A. Rama, Rajeev M. Roy, Rajeev K. Virmani, Rashmi Virmani, E.C. Vidyasagar, Sanjay Kunur, Ramlal Roy, Narayan N. Keshwani, Pratap Venugopal, P.S. Sudheer, Shalini Gupta, Revathy Raghavan, Sarpana Raj, Sanjay R. Hegde and Satya Mitra, for appearing partie, for the Appellant;

Final Decision : Dismissed

Judgement

Shah, J.—The levy of entry tax on goods by the State of Karnataka has chequered history and the State had to face various litigations on this score. The constitutional validity of Karnataka Tax on Entry of goods into Local Areas for Consumption. Use or Sale Therein Act, 1979 (hereinafter referred to as 'the Act') and the notifications issued by the State Government in exercise of its powers conferred by Section 3 of the said Act were challenged before the High Court by filing writ petitions under Article 226 of the Constitution. The Act and the notifications issued thereunder were declared unconstitutional and mandamus was issued directing the State Government and its officers to forebear from

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enforcing the provisions of the Act. Against that judgment and order, the State Government preferred appeal before this Court. This court in State of Karnataka and Another Vs. Hansa Corporation, set aside the order passed by the High Court striking down the Act.

2. The Court negatived the contention that Section 3 of the Act was vague. The Court also held that it was settled law that if the tax is compensatory in character, it would be immune from challenge under Article 301 of Constitution of India; if on the other hand, the tax is not shown to be compensatory in character, it would be necessary for the party seeking to sustain the validity of the tax law to show that the requirements of Article 304 have been satisfied. The Court also held that the levy of tax by the notification at the relevant time was not discriminatory in character as envisaged by Article 304(a) and it does not impose restrictions. The Court further held that the restrictions imposed are reasonable and in public interest and the Act subsequently having received the assent of the President, proviso to Article 304(b) is complied with and, therefore, the Act was saved by Article 304 and could not be struck down on the ground of its being violative of Article 301.

3. The title of the aforesaid Act was amended in 1992 and it was named as 'The Karnataka Tax on Entry of Goods Act, 1979'. Section 3 of the Act empowers the State Government to levy tax by issuing notification on the entry of any goods specified in the Schedule into a local area for consumption, use or sale in therein. At present, Sub-section (1) of Section 3 reads as under:--

"3. Levy of Tax.--(1) There shall be levied and collected a tax on entry of any goods specified in the First Schedule into a local area for consumption, use or sale therein, at such rates not exceeding five per cent of the value of the goods as may be specified " retrospectively or prospectively " by the State Government by Notification, and different dates and different rates may be specified in respect of different goods or different classes of goods or different local areas."

4. The controversy in these appeals centers round the addition of the word 'retrospectively'. Section 3 was amended by amending Act No. 8 of 1993, namely, the Karnataka Tax on Entry of Goods (Second Amendment) Act, 1992, whereby for the words "by the State Government by notification from time to time", the words "retrospectively or prospectively by the State Government by notification and different dates" were substituted. The amending Act was passed by the State legislature after obtaining the assent of the Governor on 11th February, 1993 but the assent of the President was not obtained and that is the only surviving challenge in these appeals.

5. Thereafter, Karnataka Act No. 45 of 1994, namely, the Karnataka Tax on Entry of Goods (Amendment) Act, 1994 was enacted after obtaining the assent of the President on 19.10.1994. Again, the said Act was amended by Karnataka Act No. 3 of 1995, namely, the Karnataka Tax on Entry of Goods (Amendment) Act, 1992 after obtaining the assent of the President on 6.9.1994.

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6. The Government of Karnataka in exercise of its power u/s 3(1) of the Act brought out notification dated 30.3.1994, which came into effect on 1st April, 1994 levying tax on the entry of goods brought into a local area from any place outside the State for consumption and use therein, at the rate of taxes as specified against the goods stipulated in the table appended thereto.

7. Several assessees filed writ petitions challenging the said notification. Pending writ petitions, Government of Karnataka in exercise of its power u/s 3(1) of the Act reads with Section 21 of the Mysore General Clauses Act, 1899, by issuing Notification No. FD-109-CET-97(8) dated 31st March, 1997, amended the notification dated March 30, 1994 by substituting for the words "from any place outside the State for consumption or use", the words "where such entry is for consumption or use of such goods and where such goods have not suffered tax under the Karnataka Sales Tax Act, 1957" with effect from 1st April, 1994.

8. The said notification was also challenged by filing interlocutory applications in pending writ petitions. Thereafter, the Division Bench of the High Court, by its judgment dated 4th August, 1997 in Avinyl Polymers Pvt. Ltd. Vs. State of Karnataka and others, quashed both the notifications, namely, notification dated 30th March, 1994 and notification dated 31st March, 1997. The High Court arrived at the conclusion that the levy of tax on entry of goods was compensatory in nature and not restrictive requiring any previous sanction or assent of the President of India and, therefore, the said Act cannot be held to be illegal for want of President's assent. However, the Court arrived at the conclusion that the notifications were discriminatory for the reasons recorded therein and it was also held that the authority exceeded its powers conferred u/s 3(1) of the Act and, therefore, the said notifications were ultra vires.

9. The said judgment and order was challenged before this Court and the Court finally passed the following order:--

"C.A. No. 3958 of 1998 and Nos. 1819-1848 of 2000 by delinked and listed separately.

Leave granted in S.L.P.(C) No. 134 of 1998.

Counsel for the parties agree that the appeals filed by the State of Karnataka have become infructuous. These appeals arise out of judgment of the Karnataka High Court before whom the respondents had challenged the notification dated March 30, 1994 and the amendment made on March 31, 1997 pertaining to entry tax. The said notification was quashed but while quashing the same the High Court had accepted the contention of the State of Karnataka that the entry tax was compensatory in nature.

We are now informed that the aforesaid notifications on March 30, 1994 and March 31, 1997 have been superseded by notification dated January 7, 1998 and notification on September 23, 1998, which are retrospective in character. The later notifications are subject-matter of challenge before the Karnataka High

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Court. As far as the State of Karnataka is concerned, it is not seeking to realise any tax under the earlier notification dated March 30, 1994 and March 31, 1997. The being so, the appeals filed by the State of Karnataka have become academic and nothing more survives.

As far as the appeals filed by the respondents are concerned, the same relate to the finding of the High Court to the effect that the entry tax was compensatory in nature. Learned Advocate-General agrees that without going into the merits this finding may be set aside and the High Court will be at liberty to go into this question afresh while deciding the writ petition which have been filed challenging the subsequent notifications.

Ordered accordingly. The High Court while deciding the fresh writ petitions will not be bound by its earlier decision. The appeals are disposed of. No order as to costs."

10. As this Court had declined to stay the operation of the judgment rendered by the Division Bench of the High Court in Avinyl Polymer's case, the Government of Karnataka issued notification dated January 7, 1998 which provided rate of tax on entry of goods into a local area for consumption, use or sale therein. The notification was brought in consonance with the judgment rendered by the High Court and it remained in force from January 7, 1998 to March 31, 1998. On March 31, 1998, another notification was issued providing levy of tax on entry of goods into local area for consumption, use or sale therein. This notification was prospective in operation.

11. Thereafter, on 23rd September, 1998, Government of Karnataka brought out another notification, which was effective for the period from April 1, 1994 up to January 6, 1998 by prescribing different rates of taxes for goods enumerated in the table appended to the notification purporting to levy tax on entry of goods brought into a local area from outside for consumption, use or sale therein.

12. Again various writ petitions were filed before the High Court challenging the said notifications, which were dismissed by the Single Judge by holding as under:--

1. The provisions of Section 3(1) of the Act are not ultra vires of the Constitution of India on the ground that no guidelines for prescribing rate of tax has been given and the provisions are compensatory in nature and does not require the assent of the President of India.

2. Notification dated 31.3.1998 and 7.1.1998 are valid piece of legislation.

3. Notification dated 23.9.1998 has not been issued u/s 4B of the Act, but has been issued u/s 3(1) and as such retrospective effect could have been given.

4. Notification dated 23.9.1998 cannot be considered to be invalid of the ground that it was not in force on the date of issue and was made applicable for past transactions only.

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5. Notification dated 23.9.1998 is a valid piece of legislation. It is however declared that tax shall not be levied or collected for the period from 1.4.1994 to 6.1.1998 for entry of goods in local area when the goods are brought from other areas of the State of Karnataka and also when the goods have been imported from outside the State of Karnataka and area meant for sale.

6. Entry 2-A by Notification dated 9.11.1998 prescribing rate of tax at 8% from 1.4.1995 is ultra vires the power of Section 3(1) of the Act.

7. In cases where assessment were already framed, the assessees would be free to file appeals within four weeks and where notice alone has been issued they may submit objections within the aforesaid period.

13. The State had not preferred any appeal against the aforesaid judgment and order.

14. However, the appellants (dealers) filed appeals before the Division Bench of the High Court. The High Court, by judgment and order dated 18th October, 2000, dismissed the Writ Appeal Nos. 1717-21, 8191-93 of 1999 and other appeals involving similar question.

15. Those judgments and orders are challenged by filing these appeals.

For the levy of entry tax, the High Court held that:--

17. The State of Karnataka came into being on 1.11.1956 pursuant to the reorganizations of the State of India. Municipal laws prevailing in different areas of the new State provided for imposition of tax called octroi. With effect from 1.4.1965 uniform taxation on various items under the Municipalities Act was brought into force.

18. Considerable debate is going on in the country regarding the justification of charging the octroi by the municipal committees. The octroi was being criticized as Archaic and Obnoxious impeding the free flow of trade creating bottlenecks. State of Karnataka was the first State to abolish octroi with effect from 1.4.1979. In order to compensate the loss. Karnataka Tax on Entry of Goods into Local Areas for Consumption. Use or Sale therein Act, 1979 was passed. The Act was enacted under the legislative powers derived from Article 246 of the Constitution of India read with Entry 52 List II of the 7th Schedule of the Constitution. It received the assent of the President of India on 27.5.1979. Originally the tax was levied on three items, namely textiles, tobacco and its products and sugar. Subsequently, there has been changes and the position as now stands is that tax could be levied on any items specified in the first schedule from items 1 to 103. Item No. 103 is a residuary clause and confers power on the State Government to levy tax on:

"Goods other than those specified in any entries in this schedule, but excluding those specified in the second schedule."

16. Further in the High Court, the appellants did not challenge (a) the notification

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levying the tax w.e.f. 7th January, 1998 (paragraph 12); and (b) the nature of the tax being compensatory or regulatory (paragraph 20).

17. Instead, it was contended that Act No. 8 of 1993 which introduces the words "retrospectively or prospectively by the State Government by notification on different dates" is neither reasonable nor in public interest and in any event if the said restriction could be said to be reasonable and in public interest, the same is unconstitutional and void as assent of the President was not obtained before enacting the same.

18. Dealing with this contention, the High Court relied upon its earlier decision in Avinyl Polymers's case (supra) as well as the decision rendered by this Court in Venkata Rao Esajirao Limbekar and Others Vs. The State of Bombay and Others, , wherein the Court held thus:--

"... We would, however, like to observe that as noticed before, when Hyderabad Amending Act III of 1954 was enacted the assent of the President was duly obtained. Similarly when Bombay Act XXXII of 1958 which was meant for amending Hyderabad Act XXI of 1950 was enacted the assent of the President had been given. If the assent of the President had been accorded to the amending Acts, it would be difficult to hold that the President had never assented to the parent Act, namely, Hyderabad Act XXI of 1950. Even if such assent had not been accorded earlier it must be taken to have been granted when amending Act III of 1954 was assented to."

19. The Court, thereafter, arrived at the conclusion that the assent of President of India would be deemed to have been given to the Act 8 of 1993 when assent to the subsequent Acts No. 45 of 1994 and 3 of 1995 was given.

SUBMISSIONS:--

20. In these appeals, challenge is confined to the notification dated 23rd September, 1998, which was issued by the State Government in exercise of powers conferred by Sub-section (1) of Section 3 of the Act providing that w.e.f. Ist Day of April, 1994 and up to 6th day of January, 1998 tax shall be levied and collected on the entry of goods, specified in Column (2) of the table, into a local area for consumption or use or sale therein at the rate specified.

21. The learned counsel for the appellants submitted that for levy of tax on the entry of goods on the basis of notification dated 7th January, 1998 which empowers the authority to collect tax prospectively, the appellants have no grievance. However, the notification dated 23rd September, 1998 empowering the authority to levy and collect tax from 1st April, 1994 up to 6th January, 1998 without prior sanction of the President is illegal and void and requires to be set aside. Further, there was no notification levying tax on entry of goods for a period from 1.4.1994 to 6.1.1998 as the previous notifications were held to be illegal and void. It is submitted that the notification dated 23rd September, 1998 is in pith and substance validating notification. It is also submitted that for the

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hiatus period from 1.4.1994 to 6.1.1998, there was no notification levying the entry tax. Such power could not be exercised by the delegated authority, namely, the State Government. Hence, the notification dated 23rd September, 1998 cannot be justified.

22. It is also submitted that the State cannot justify the validity of amending Act No. 8 of 1993 on the ground that since the subsequent amendments have received the President's assent, the impugned amendment is deemed to have received the President's assent, as it is against the law laid down by this Court in Kaiser-I-Hind Pvt. Ltd. and Others Vs. National Textile Corporation (Maharashtra North) Ltd. and Others, and Gram Panchayat of Village Jamalpur Vs. Malwinder Singh and Others, . It is contended that there was no proposal before the President to provide for levy of tax on entry of goods with retrospective effect when assent was given to Act No. 45 of 1994.

23. Lastly, it is contended that most of the appellants in the appeals fall within the limit of industrial area as declared u/s 3 of the Karnataka Industrial Areas Development Act, 1966. Hence, they would not be covered by the definition provided u/s 2(A)(5) of the Act, which defines 'local area' to mean:--

"'Local Area' means an area within the limits of a city under the Karnataka Municipal Corporation Act, 1976 (Karnataka Act 14 of 1977) a municipality under the Karnataka Municipality Act, 1964 (Karnataka Act 22 of 1964) a notified area committee, a town board, a sanitary board or a cantonment Board constitute or continued under any law for the time being in force and a Mandal under the Karnataka Zila Parishads, Taluk Panchayat Samithis. Mandal Panchayat and Nyaya Panchayats Act, 1983 (Karnataka Act 20 of 1985) and Panchayat Area under the Karnataka Panchayat Raj Act, 1993 (Karnataka Act 14 of 1993)."

24. The learned counsel for the respondents justified the impugned judgment for the reasons recorded therein. It is their submission that retrospective effect is given after removing the defects pointed out by the High Court in Avinyl Polymers's case (supra) and to validate the levy of entry tax.

FINDINGS:--

25. Before dealing with the rival contentions, we would first refer to Articles 301 and 304 which are as under:--

"301. Freedom of trade, commerce and intercourse.--Subject to the other provisions of this Part, trade, commerce and intercourse throughout the territory of India shall be free.

304. Restrictions on trade, commerce and intercourse among States.--Notwithstanding anything in Article 301 or Article 303, the Legislature of a State may be law--

(a) impose on goods imported from other States or the Union territories any tax to which similar goods manufactured or produced in that State are subject, so,

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however, as not to discriminate between goods so imported and goods so manufactured or produced; and

(b) impose such reasonable restrictions on the freedom of trade, commerce or intercourse with or within the State as may be required in the public interest.

Provided that no Bill or amendment for the purposes of Clause (b) shall be introduced or moved in the Legislature of a State without the previous sanction of the President."

26. Article 301 provides for free trade, commerce and intercourse throughout the territory of India. To this, two fold exceptions are carved out in Article 304 by providing that:--

(1) State may by law levy tax on the goods imported from other States. However, such levy should be similar to the tax levied on similar goods manufactured or produced in the State so as not to discriminate between the goods imported and goods manufactured or produced in the State.

Hence, levy of tax normally by the State legislature per se would not be, in any way, violative of Article 301.

(2) Further, Article 304(b) empowers the State legislature to impose reasonable restrictions on freedom of trade, commerce or intercourse with or within the State as may be required in the public interest.

For such restrictions to be valid, the State must obtain previous sanction of the President before introduction of the bill in the legislature of State.

27. On this aspect, it would be worthwhile to refer to the decision in Rattan Lal and Co. and Another Vs. The Assessing Authority and Another, wherein the Court held that where the general rate applicable to the goods locally made and no those imported from other States is the same nothing more normally and generally is to be shown by the State to dispel the argument of discrimination under Article 304(a), even though the resultant tax amount on imported goods may be different. The aforesaid decision was referred to and relied upon in Video Electronics Pvt. Ltd. and Another and Weston Electronics Ltd. and Another Vs. State of Punjab and Another, . In that case, the Court also referred to the decision in Kalyani Stores Vs. The State of Orissa and Others, wherein it was observed that the restriction on the freedom of trade, commerce and intercourse throughout the territory of India declared by Article 301 cannot be justified unless it falls within Article 304. Exercise of power under Article 304(a) can be effective only if the tax or duty on goods imported from other States and the tax or duty imposed on similar goods manufactured or produced in that State is such that there is no discrimination. The Court also referred to the observations of Hidayatullah, J. that Article 304(a) imposes no ban but lifts the ban imposed by Article 301 and 303 subject to one condition. That article is enabling and prospective. The Court (in para 22) further held:--

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"... It is manifest that free flow of trade between two States does not necessarily or generally depend upon the rate of tax alone. Many factors including the cost of goods play an important role in the movement of goods from one State to another. Hence the mere fact that there is a difference in the rate of tax on goods locally manufactured and those imported would not amount to hampering of trade between the two States within the meaning of Article 301 of the Constitution. As is manifest, Article 304 is an exception of Article 301 of the Constitution. The need of taking resort to the exception will arise only if the tax impugned is hit by Articles 301 and 303 of the Constitution. If it is not then Article 304 of the Constitution will not come into picture at all..."

28. In V. Guruviah Naidu and Sons and Others Vs. State of Tamil Nadu and Others, , this Court held that Article 304(a) does not prevent levy of tax on goods; what it prohibits is such levy of tax on goods as would result in discrimination between goods imported from other States and similar goods manufactured or produced within the State. The object is to prevent discrimination against imported goods by imposing tax on such goods at a rate higher than that borne by local goods since the difference between the two rates would constitute a tariff wall or fiscal barrier and thus impede the free flow of inter-State trade and commerce. The Court also held that it is for the petitioner challenging levy of tax to establish that such tax is discriminatory.

29. Further, for the tax to become a prohibited tax it has to be a direct tax the effect of which is to hinder the movement part of trade. So long as a tax remains compensatory it cannot operate as a hindrance. {Re: Sharma Transport Rep. by D.P. Sharma Vs. Government of Andhra Pradesh and Others, }.

30. In these appeals, no contention is raised to the effect that levy of tax on goods by the impugned notification discriminates between the goods imported from other States and similar goods manufactured or produced within the State. Hence, it would be difficult to accept the contention that the sanction of the President was required to be obtained before amending and enacting Act No. 8 of 1993 whereby for the words "by the State Government, by notification from time to time", the words "retrospectively or prospectively by the State Government by notification and different dates" were substituted. Addition of words 'retrospectively or prospectively' in Section 3(1) would not make the Section restrictive which can be hit by Article 301 of the Constitution nor the said part of the legislation could be held to be discriminatory. To clarify the situation, it can be stated that a subsequent notification issued in exercise of the powers conferred under the said Section may in some case amount to restriction to free trade and commerce but simplicitor addition of the words 'retrospectively or prospectively' would not require sanction of the President as contemplated under Article 304(b). Hence, the contention that amending Act No. 8 of 1993, by which the words 'retrospectively or prospectively' are added, requires sanction of the President, is without any substance.

31. Further, once it is conceded that imposition of tax was compensatory or

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regulatory in nature, there is no question of obtaining the assent of the President under Article 304(b) of the Constitution. For the Act in question, this question is dealt with and made clear by this court in M/s. Hansa Corporation (supra) and thereafter in repeated judgments including The State of Himachal Pradesh and Others etc. Vs. Yash Pal Garg (dead) by LRs and Others etc., H.H. Exporters etc. and Jai Mata Rolled Glass Ltd. and Another etc., wherein it is held that so long the tax remains compensatory or regulatory, it cannot operate as hindrance. The Court also held:--

(a) A demand for tax from the traders in common with others is not a restriction on the right to carry on trade, commerce and intercourse.

(b) Such tax would not come within the purview of the restrictions contemplated under Article 301 unless it is established that in reality, it hampers or burdens the trade and commerce.

(c) So long as the tax remains compensatory or regulatory, it cannot operate as a hindrance.

(d) If a State tax law accords identical treatment in the matter of levy and collection of tax on the goods manufactured within the State and identical goods imported from outside the State. Article 304(a) would be complied with. There is an undertaking assumption in Article 304(a) that such a tax when levied within the constraints of Article 304(a) would not be violative of Article 301 and State legislature has the power to levy such tax.

32. In view of this settled law, once it is held that the tax levied by the State Government was compensatory in nature, there is no question of obtaining sanction of the President under proviso to Article 304. In this view of the matter, the decision rendered by this Court in Kaiser-I-Hind Pvt. Ltd.'s case (supra) has no bearing in the present case.

33. It is true that normally tax would not be levied with retrospective effect but at the same time to validate the tax which was levied, after removing the defects pointed out by the previous decision, the State Government could exercise its powers u/s 3(1) of the Act and it cannot be said that it has acted beyond its jurisdiction. therefore, it cannot be held that notification dated 23rd September, 1998 empowering the authority to levy and collect tax w.e.f. 1.4.1994 to 6.1.1998 is, in any way, illegal or erroneous. The defects pointed out in Avinyl Polymers's case (supra) are removed and, therefore, it cannot be said that the notification dated 23.9.1998 is, in any way, illegal. In a situation like present one where notifications levying tax were held to be illegal, for validating such levy, the State Government has issued the aforesaid notification. It is not pointed out that the said notification is discriminatory between the goods imported from other States and similar goods manufactured or produced within the State.

34. Last contention only requires to be narrated for being rejected, as it cannot be disputed that the 'industrial area' is either within the area of Municipal

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Corporation or within the area of municipal limits or Panchayat limits. The establishment of industrial areas is for limited purpose and Section 3 of the Karnataka Industrial Areas Development Act, 1966 specifically provides that the State Government by notification declare any area to be an industrial area for the purposes of the said Act. But, it is nowhere provided that the said area would cease to be part and parcel of either municipal corporation or the area of municipality or panchayat. therefore, the High court rightly rejected this contention.

35. In the result, the appeals are dismissed. In each appeal, appellants to pay costs of Rs. 10,000/-.

SLP (C) Nos. 112-13 of 2002, SLP (C) _____ @ CC Nos. 3488-90 of 2003 and SLP (C) No. 8223-24 of 2003.

36. Special Leave Petitions _____ @ CC Nos. 3488-90 of 2003 are dismissed on the ground of delay.

37. For the foregoing reasons, Special Leave Petitioners are also dismissed.

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