

CIVIL WRIT

Before Bishan Narain, J.

THE ADMINISTRATOR, MUNICIPAL COMMITTEE,
LUDHIANA,—*Petitioner.*

v.

THE EXCISE AND TAXATION COMMISSIONER,
JULLUNDUR CITY AND OTHERS,—*Respondents.*

Civil Writ No. 60 of 1955

1955

Dec., 15th

Punjab Urban Immovable Property Tax Act (XVII of 1940)—Section 3—Punjab Municipal Act (III of 1911)—Section 56(1)(g)—Property Tax on income from the use of Public Streets—Tehbazari fee levied by Municipal Committee for the use of Public Streets—Whether liable to Property Tax.

Held, that by the operation of section 56(1)(g) of the Municipal Act, the Municipal Committee should be held to be owner of so much of the air above and of the soil below as is necessary to the ordinary user of the street as a street. The *tehbazari* fee is charged for the use of a public street only and, therefore, it must be held that for the purposes of the property tax the Municipal Committee is the owner of the surface of the public street and the soil underneath

it to the extent indicated above . That being so, the public streets to that extent are lands and are liable to taxation under section 3 of the Property Tax Act.

Petition under Articles 226 and 227 of the Constitution of India, praying that this Hon'ble Court may be pleased to call for the records of the Revision No. 354 of 1952-53 (Administrator, Ludhiana Municipality v. The Punjab State), before the Excise and Taxation Commissioner and of the assessing authority and the assessment order be quashed and set aside and the respondents be directed not to assess and realise property tax on tehbazari fees realised by the petitioner. Any other or further relief to which the petitioner may be entitled may be granted.

I. D. DUA and JAGAN NATH, for Petitioner.

S. M. SIKRI, Advocate-General, for Respondents.

ORDER

BISHAN NARAIN, J. This writ petition under Bishan Narain, Article 226 of the Constitution has arisen in these J. circumstances. The Ludhiana Municipal Committee levies *tehbazari* fee under section 173, Punjab Municipal Act, 1911. This section empowers the Municipal Committee to charge fee for giving permission to any person to make use of public street. The Municipal Committee charges this fee from hawkers and others, from persons placing *takhats* on public streets and for projections over them. Thus the Municipal Committee is earning profit from this user of the public streets. The assessing authority, Ludhiana, imposed property tax on this *tehbazari* fee and this order was upheld by the Excise and Taxation Commissioner by his order dated the 22nd October, 1954. The Municipal Committee has approached this Court to quash the order of assessment on the ground that *tehbazari* fee is not liable to property tax as this fee is not used nor was intended to be used for purposes of profit.

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Shri Indar Dev Dua, learned counsel for the Municipal Committee, frankly concedes and in my opinion rightly concedes before me that this ground taken in the petition has no substance. He, however, urges that this tax is leviable only on owners of buildings and lands and that the Municipal Committee is not owner of any public street. He further urges that the public street vests in the Municipal Committee only for the purposes of the Act. I allowed him to raise this new point in view of the fact that it is a pure question of law and relates to the rights of a public body.

Now, under section 3 of the Punjab Urban Immoveable Property Tax Act, 1940 (Act No. XVII of 1940) a tax is charged on buildings and lands at the rate specified in the Act. Section 4 of the Act exempts certain properties from this tax and section 4(1)(b) provides that tax shall not be leviable in respect of the buildings and lands vesting in the State Government or owned or administered by a local authority or a District Board when used exclusively for public purposes and not used or intended to be used for purposes of profit. Therefore, buildings and lands owned or administered by a local authority are exempt from payment of this tax provided the public streets are not used nor are intended to be used for purposes of profit. Under section 2(b) of this Act "local authority" means a "municipal committee". The question, therefore, that arises is whether under the 1940 Act the Municipal Committee can be considered to be the owner of the public street. Section 56(1)(g) of the Punjab Municipal Act lays down that all public streets "vest in and are under the control" of the Municipal Committee. Now, these words appear to have been taken from section 149 of the Public Health Act, 1875 (38 and 39 Victoria Chapter 55). When construing these words

it was observed by Collins M. R. in *Finchley Electric Light Company versus Finchley Urban District Council* (1)—

“It has been decided by a long series of cases that the word ‘vest’ means that the local authority do actually become the owners of the street to this extent: they become the owners of so much of the air above and of the soil below as is necessary to the ordinary user of the street as a street, and of no more.”

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These observations were approved by their Lordships of the Privy Council in *Maharaja Man Singh versus Arjan Lal* (2). It is, therefore, clear that by operation of section 56(1) (g) of the Municipal Act the Municipal Committee should be held to be owner of so much of the air above and of the soil below as is necessary to the ordinary user of the street as a street. The *tehbazari* fee is charged for the use of a public street only and therefore it must be held that for the purposes of the property tax the Municipal Committee is the owner of the surface of the public street and of the soil underneath it to the extent indicated above. That being so, the public streets to that extent are lands and are liable to taxation under section 3 of the Property Tax Act.

Shri Indar Dev Dua on behalf of the Municipal Committee however, relies strongly on *S. Sundaram Ayyar versus The Municipal Council of Madura and the Secretary of State for India in Council* (3). This decision has not always been accepted as laying down the legal position regarding public streets correctly [vide *C. S. S. Motor Service versus Madras State* (4)]. In any case, in *S. Sundaram Ayyar v. The Municipal Council of Madura and the Secretary of State for India in Council* (3), it was observed by Benson, J. at page 652 that the Municipal Committee

(1) (1903) 1 Ch. 437

(2) A.I.R. 1937 P.C. 299

(3) I.L.R. 25 Mad. 635

(4) A.I.R. 1953 Mad. 279

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has the exclusive right to manage and control the surface of the soil and so much of the soil below and of the space above the surface as is necessary to enable it to adequately maintain the street as a street. If this be the position, even then the Municipal Committee is liable to pay the tax as it must be held that the Municipal Committee is managing public streets, that is, lands for purposes of profit. Thus the case is not covered by section 4(1) (b) of the Property Tax Act and the Municipal Committee cannot plead for exemption from payment of the property tax under this provision of law.

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There is also another way of looking at the matter. All public streets within the municipal limits of Ludhiana vest in the Municipal Committee. This Committee has been in existence for more than twenty-five years. Proviso to section 169 (g) of the Municipal Act provides that any land owned by any person other than the Government which has been used as a public street for a period of twenty-five years shall become the absolute property of the Municipal Committee. It is obvious that in the city of Ludhiana all lands underneath the surface of public streets have become the absolute property of the Municipal Committee. It is quite possible that some of the public streets may not be twenty-five years old but this is not likely. In any case this matter was never agitated before the assessing authority and it is not possible in these proceedings to specify the public streets of which the entire land does not vest in the Municipal Committee under proviso to section 169(g). This matter, however, is not of much importance now as I am of the opinion that the Municipal Committee is liable to pay property tax on all lands forming public streets.

For these reasons I see no force in this petition. Considering that the petition was filed by a public body, I leave the parties to bear their own costs.