CIVIL MISCELLANEOUS

Before D. K. Mahajan and Gopal Singh, JJ.

KRISHAN KUMAR SANAN AND OTHERS,—*Petitioners.*

versus

THE PUNJAB STATE AND ANOTHER,—*Respondents.*

Civil Writ No. 4032 of 1970.

March 2, 1971.

The Punjab Municipal Act (III of 1911)—Sections 61, 62 and 62-A—Failure of a Municipal Committee to impose tax under section 61—Tax imposed by the State Government by a notification under section 62-A—Procedure under section 62 for such imposition—Whether necessary to be followed.

Held, that in case of failure of a Municipal Committee to impose tax upon its residents under section 61 of the Punjab Municipal Act, 1911, it is entirely in the discretion of the State Government, on the facts and circumstances of the case, to take action under sub-section (1) of Section 62-A if it deems necessary to do so. Its judgment of the situation necessitating the taking of that action is binding and conclusive not only on a Municipal Committee but also upon those rendered liable to pay the tax proposed to be imposed. No doubt if tax is to be imposed under section 61 of the Act by a Municipal Committee, the procedure pertaining to the issue of notices and inviting of objections from those, who are to be made liable to pay tax, has to be gone through. But by virtue of sub-section (3) of section 62-A of the Act, the notification issued by the State Government imposing tax is to operate as if it were a resolution duly passed by the Committee and, therefore, the necessity of complying with the procedure devised by Section 62 of the Act has been dispensed with. That procedure is meant for a Municipal Committee and not for the State Government, when the latter exercises its power for imposition of tax by a notification issued under sub-section (3) of Section 62-A of the Act. (Para 7).

Petition under Article 226 of the Constitution of India, praying that an appropriate writ, order or direction be issued, to the respondents to submit the records of this case to this Hon'ble Court, with a view to enabling it to scrutinize the validity of the levy and with a view to quashing the same, and further praying that such other ad interim *or ancillary relief be granted by this Hon'ble Court as it may deem fit and proper under the facts and in the circumstances of this case, and further praying that while quashing the aforesaid illegal levy, the costs of this petition be awarded to the petitioners.*

D. N. AWASTHY, AND J. S. BAWA, ADVOCATES, for the petitioner.

S. S. KANG, DEPUTY ADVOCATE-GENERAL, PUNJAB.

MUNESHWAR PURI AND RAMESHWAR PURI, ADVOCATES for respondent No. 2.

JUDGMENT

The judgment of this Court was delivered by:—

GOPAL SINGH, J.—(1) This is a writ petition by Krishan Kumar and four others residents of the town of Batala in the District of Gurdaspur filed against the State of Punjab and Municipal Committee, Batala, respectively, impleaded as respondents Nos. 1 and 2 impugning the validity of notification dated June 17, 1970; issued under sub-section (3) of section 62-A of the Punjab Municipal Act, 1911 (hereinafter called the Act).

(2) The facts leading to the filing of the petition are as under:—

(3) The idea of levy of tax upon owners of buildings and lands situate within the municipal limits of the town of Batala has been pending since 1954. Respondent No. 2 has been passing resolutions and communicating to respondent No. 1 that it was not expedient that such tax be imposed on the owners of building and lands within the municipal limits of Batala as the residents of the town, were mostly industrialists and ran small scale industries and the town being a town near the border between Pakistan and India, the levy of tax will make them not to stick to the town of Batala but make them quit that town. By letter dated September 20, 1965, respondent No. 1, directed respondent No. 2 to pass a resolution under section 61 of the Act to impose that tax. On October 18, 1965, respondent No. 2 resolved that in view of the peculiar situation of the border town of Batala and the conditions then prevailing as a result of Indo-Pakistan hostilities, it would not be proper to burden the owners of buildings and lands, of that town with tax under section 61 of the Act. It was further mentioned in that resolution that the small-scale industry of the town will receive a big jolt or set-back if the Committee resolved to impose tax upon the owners of buildings and lands. At the end, the Committee said that at that juncture of time, impost of tax would not be called for, In the Punjab Government Gazette, dated December 23, 1965, respondent No. 1 published a notification addressed in the name of

respondent No. 2 in exercise of its powers under sub-section (1) of section 62-A of the Act calling upon respondent No. 2 to take steps for imposition of tax on the annual value of buildings and lands situate within the municipal limits of Batala as provided under section 61 of the Act. In a resolution passed on March 22, 1966, respondent No. 2 reiterated its earlier resolution dated October 18, 1965, and stated that considering the income and expenditure of respondent No. 2, there was no justification for the impost of that tax. On receipt of a further communication from respondent No. 1 to take necessary steps for action under section 61 of the Act for levy of the above said tax, respondent No. 2 passed another resolution on March 17, 1967 asserting that the residents of the town of Batala were resentful against the heavy burden of various taxes already imposed and that if the tax as proposed by respondent No. 1 is imposed upon the residents of the town, the business community would shift from the town and settle elsewhere and that thereby the local industry will seriously suffer. Taking into consideration the necessity of development of the town, the existing sanitary conditions and other amenities of the residents of the town and finding that respondent No. 2 was not paying heed to the repeated attempts made by respondent No. 1 to take action under section 61 of the Act, respondent No. 1 issued notification dated June 17, 1970, under sub-section (3) of section 62-A of the Act imposing tax on buildings and lands situate within the municipal limits of Batala. It was provided in that notification that it will be operative as if it were a resolution duly passed by respondent No. 2 and as if the proposal for imposition of tax had been sanctioned in accordance with the procedure provided in section 62 of the Act. Apart from the stand taken by the petitioners on the basis of the resolution passed by respondent No. 2, it has been pleaded on behalf of the petitioners that by virtue of notification dated June 17, 1970, the procedure for imposition of tax as devised by section 62 by giving notice to the owners of buildings and lands and determining the liability of the tax after hearing their objections could not be dispensed with by respondent No. 1 as has been done by the notification impugned on their behalf.

(4) In reply, respondent No. 1 has controverted the allegations of the petitioners as incorporated in the writ petition and pleaded on the basis of the circumstances alluded to above that there was every justification for the impost of the said tax and that it was not necessary to comply with the procedure for imposition of tax

contained in Section 62 of the Act, Respondent No. 1 has contended that the facts and circumstances pertaining to the impost of tax fully justified the action taken by respondent No. 1 and that respondent No. 1 had ample power to dispense with the necessity of procedure to be followed for impost of tax as laid down in section 62 of the Act. Respondent No. 2 in its return did not contest any of the grounds raised in the writ petition on behalf of the petitioners but dittoed their petition.

Shri D. N. Awasthy appearing on behalf of the petitioners has raised the following two issues :—

(1) that the procedure as contemplated by section 62 of the Act could not be done away with by the impugned notification and

(2) that in any case the notification is discriminatory and is hit by Article 14 of the Constitution.

(5) The first point pertaining to the want of power to dispense with by the impugned notification the necessity of compliance with the procedural provisions of section 62 of the Act will depend upon the scope of sub-section (3) of section 62-A of the Act. Sub-section (3) of section 62-A runs as follows:—

> "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."

(6) As the above reproduced sub-section (3) of section 62-A of the Act shows, respondent No. 1, on failure of the Committee to carry out the order or notification issued under sub-section (1) of that section, has power to notify the imposition of the tax. That notification or order of respondent No. 1 is to operate as if it were a resolution duly passed by the Committee. Thus, the notification of respondent No. 1 is nothing but a resolution passed by respondent No. 2. It is further provided in that sub-section that the proposal so made by respondent No. 1 for imposition of tax upon the owners of buildings and lands shall be treated as if the same had been sanctioned in accordance with the procedure contained in section 62 of the Act.

(7) In case of failure of a Municipal Committee to impose tax upon its residents under Section 61 of the Act, it is entirely in the discretion of the State Government, on the facts and circumstances of the case, to take action under sub-section (1) of Section 62-A if it deems necessary to do so. Its judgment of the situation necessitating the taking of that action is binding and conclusive not only on a Municipal Committee but also upon those rendered liable to pay the tax proposed to be imposed. There is no doubt that if tax is to be imposed under Section 61 of the Act by a Municipal Committee, the procedure pertaining to the issue of notice and inviting of objections from those, who are to be made liable to pay tax, has to be gone through. In virtue of the above underlined portion of sub-section (3) of Section 62-A of the Act, there has been dispensed with the necessity of complying with the procedure devised by Section 62 of the Act. That procedure is meant for a Municipal Committee and not for the State Government, when the latter exercises its power for imposition of tax by a notification issued under sub-section (3) of Section 62-A of the Act. As the Legislature has done away with the necessity of pursuing the course of procedure in case the tax is sought to be imposed by the State Government; no exception could be taken to the notification on the ground that in case the tax is imposed by a resolution of a Municipal Committee that procedure has to be followed and that the same has been rendered unnecessary, when it is to be imposed by the State Government under sub-section (3) of Section 62-A of the Act. It is in pursuance of the existence of power by virtue of sub-section (3) of Section 62-A of the Act that the necessity for pursuing the course of procedure as enjoined for respondent No. 2 has been done away with. In support of his contention; Shri Awasthy relied on a judgment of the Allahabad High Court in *Om Parkash Sharma and others* v. *State of Uttar Pradesh* (1). The question raised in that case was that it was as much obligatory on the State Government as on a Municipal Committee to comply with the procedure pertaining to the imposition of tax under Section 130-A of the U. P. Municipalities Act, 1916, corresponding to Section 62-A of the Punjab Municipal Act, 1911, Section 130-A(3) of the U. P. Act runs as follows:—

> "If the Board fails to carry out the order passed under sub-section (1) or (2), the State Government, may pass suitable order imposing or modifying the tax and thereupon

(1) 1959 A.L.J. 501.

the order of the State Government, shall operate as if it has been a resolution duly passed by the Board."

(8) When these two Sections are placed in just a position with each other, the difference between the two that immediately strikes is in the non-existence in Section 130-A of the U. P. Act of the expression, 'and as if the proposal was sanctioned in accordance with the procedure contained in Section 62' as underlined in the above reproduced sub-section (3) of Section 62-A of the Punjab Act. In Section 130-A of the U. P. Act, there is no provision to dispense with the obligation of the procedure referred to in Section 131 to 135 of the U. P. Act corresponding to Section 62 of the Punjab Act. Thus the judgment of the Allahabad High Court is obviously distinguishable and is of no avail to the petitioners.

(9) While dealing with the second point, it may be mentioned at the very outset that in the body of the petition, there is no allegation that another Municipal Committee similarly situate and with the same set of circumstances had been discriminated on the ground that in case of the residents of that Committee the State Government did not take action under Section 62-A of the Act while in the case of residents of respondent No. 2, the State Government has done so. Discrimination lies in unequal treatment of two equally situated individuals or body of individuals. In the absence of any premises of facts to the effect that although the persons residing within the municipal limits of respondent No. 2 stood at par with the residents of another Municipal Committee, yet respondent No. 1 did not issue notifications under sub-sections (1) and (3) of Section 62-A of the Act in respect of the other Municipal Committee. Moreover, the language of sub-section (3) of Section 62-A of the Act clearly shows that there is no scope for exercise of discretion on the part of the State Government to notify for following or for not following the proceedure for the impost of tax as given in Section 62 of the Act. On the other hand, the above expression, 'and as if the proposal was sanctioned in accordance with the procedure contained in Section 62' shows that it is merely on the issue of notification under sub-section (3) of Section 62-A of the Act that the necessity of following the procedure contemplated by Section 62 of the Act stands dispensed with. Upon notification being issued under sub-section (3) of Section 62-A of the Act, the

consequence of dispensation with the procedural provisions of Section 62 of the Act is irresistably and in every case of such notification to follow. No discretionary power has been vested in the Government to make a choice either in dispensing with the procedure laid down in Section 62 of the Act or in following it. The doing away with the procedural provision of Section 62 of the Act is imminent and automatic consequent upon notification issued under sub-section (3) of Section 62-A of the Act. Thus the question of either the statutory provision of sub-section (3) of Section 62-A of the Act or the notification thereunder being discriminatory and consequently contravening Article 14 of the Constitution does not arise.

(10) In the result, the writ petition fails and is disallowed with costs of Rs. 100 payable by the petitioners to respondent No. 1.

N.K.S:

LETTERS PATENT APPEAL

Before Harbans Singh, C.J., and R. S. Narula, J.

USHA,—*Appellant.*

versus

SUDHIR KUMAR,—*Respondent.*

Letters Patent Appeal No. 199 of 1969.

March 8, 1971.

Hindu Marriage Act (XXV of 1955)—Sections 24, 26 and 28—Maintenance pendente-lite *and litigation expenses—Court—Whether has discretion not to grant—Fixation of quantum of such allowance and expenses—Criteria for—Stated—Allowance* pendente lite *for the child—Whether can be claimed—Grant of allowance to the wife—Whether should be near to one fifth of the income of the husband—Maintenance to which a wife is otherwise found entitled—Whether can be reduced on the ground of her living with her parents.*

Held, that although in the matter of fixation of quantum of litigation expenses and maintenance *pendente lite,* a good deal of discretion lies with the trial Court, yet in so far as the question of the grant of maintenance allowance and litigation expenses are concerned, there is practically no discretion with the Court. If it is found in a proceeding under the Hindu Marriage Act, 1955, that the applicant under section 24 has no independent income