FULL BENCH

Before G. D. Khosla, C. J., D: Falshaw and G: L. Chopra, JJ.

THE MUNICIPAL CORPORATION OF DELHI,—*Appellant.*

versus

M/S. SOHNA MAL-INDER SEN AND OTHERS,—*Respondents.*

Regular Second Appeal No. 560 of 1953.

1960

March, 18th

Punjab Municipal Act (III of 1911) as extended to Delhi—Section 61—Imposition of terminal tax on goods which are not consumed, used or sold within the limits of the municipal committee—Whether legal—Government of India Act (1935)—Section 143, and Constitution of India (1950)—Article 277—Effect of.

Held, that section 61 of the Punjab Municipal Act, 1911, as applied to Delhi, authorised the municipal committee to impose the terminal tax and it had been lawfully imposed in 1916 by the terminal tax by-laws. The definitions of the words "import" and "terminal tax" in these by-laws clearly show that the terminal tax was meant to cover goods brought into Delhi even if they were to be subsequently exported. After the Government of India Act of 1935 came into force, a new terminal tax could not be imposed by a Municipal authority, since the imposition of such a tax was not within the legislative scope of a Provincial Legislature, but those Municipal bodies which had already lawfully levied terminal tax could continue to do so until it was otherwise enacted by the Central Legislature which, however, introduced no such legislation (*vide* section 143 of the Government of India Act, 1935). Again under the provisions of Article 277 of the Constitution of India no legislation has so far been introduced which would affect the continued realisation of terminal tax where it had been lawfully introduced and was continued by the Government of India Act, 1935. The notification, dated 17th of April, 1940, did not levy any new terminal tax; it only continued the levy of the terminal tax which had been in force from 1916 onwards. It is thus clear that the continued levy of the terminal tax by the

Municipal Corporation, Delhi, on goods which are not consumed, used or sold within its limits is not illegal.

Regular Second Appeal from the decree of the Court of Shri Mehar Singh Chaddah, Enhanced Appellate Powers, Senior Sub-Judge, Delhi, with dated the 22nd day of August, 1953, reversing that of Shri Chander Gupt Suri Sub-Judge, 1st Class, Delhi, dated 4th December, 1951; granting the plaintiffs a decree for permanent injunction restraining the defendant from levying, assessing and realsing Terminal Tax on goods for the plaintiffs brought at Himilton Road, Railway Platform by rail and exported to stations beyond the Municipal limits of the defendant by road in trucks, with costs.

G. S. PATHAK, H. HARDY and R. S. NARULA, for the Appellant:

A. R. WHIG and P. C. KHANNA, for the Respondent.

JUDGMENT

FALSHAW, J.—This second appeal has been referred to a Full Bench in the following circumstances. Falshaw, J.

A suit was instituted against the Delhi Municipal Committee in 1950, by three plaintiffs all fruit and vegetable merchants, whose business, partly at least, consisted of unloading fruits and vegetables imported into Delhi by rail at the Hamilton Road Railway platform and reloading them in motor trucks for export from Delhi. By a notification issued in January, 1947, the scope of the existing terminal tax imposed by the Municipal authorities in Delhi was extended to cover serveral kinds of fruits with effect from 1st of May, 1947, and the plaintiffs instituted their suit for an injunction restraining the Municipal Committee from levying terminal tax on the goods imported by rail and unloaded at Hamilton Road Railway platform and exported by road. Various defences were taken by

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the Municipal Committee, but we are now only concerned with the subject-matter of the fourth issue framed by the trial Court. It was worded:—

> Is the action of the Committee in levying tax on goods which are not consumed, used or sold illegal and can the committee not impose such a tax?

I think that this issue must be read as if the words "within Municipal limits" had been included after the words "goods which are not consumed, used or sold".

This issue was decided by the trial Court against the plaintiffs and the suit was dismissed, but in first appeal the learned Senior Subordinate Judge reversed this finding and granted the plaintiffs the injunction which they claimed.

The Municipal Committee, which is now superseded by the Corporation of Delhi, filed a second apeal in this Court. While the appeal was ending in this Court the imposition of terminal tax on goods which merely passed through Delhi from U.P. on their way to places in the State of Punjab was challenged by the Amrit Banaspati Company (C.W. No. 64-D of 1955). This came up for hearing before the learned Chief Justice and myself and by our order, dated the 23rd of May, 1956, we referred two questions to be answered by a Full Bench. The second of these questions does not arise in connection with the present case, but the first question is in essence the same as the fourth issue in the suit. It was worded:—

> Did the issue of the notification of 1940, have the effect of cancelling the orders of Municipal Committee of Delhi by which terminal tax was imposed?

It seems that when the present appeal came up for hearing some time after that it was pointed out that a similar question was involved in a reference to the Full Bench, and, therefore, this case, without any formal order of reference, was left to be decided by the Full Bench along with the other reference. It so hapened that by the time that reference actually came before the full Bench the Company and the Municipal authorities had arrived at some sort of settlement and the petition under article 226 of the Constitution, which had given rise to it was withdrawn in the terms of that settlement. We are thus left with the task of deciding the matters in dispute in the present case.

In order to understand the precise nature of the dispute it is necessary to set out the history of the terminal tax at Delhi. It seems that upto 1916, the Delhi Municipal Committee used to levy octroi duty, but on the 28th of February, 1916, a notification of which a copy is D-2 was issued by the Chief Commissioner.

It reads—

> "Under the provisions of section 62 sub-section (7) of the Punjab Municipal Act, III of 1911, and with the previous sanction of the Governor-General in Council, the Chief Commissioner, Delhi, is pleased to declare that with effect from the 1st June, 1916, the following rates of terminal tax on the aricles mentioned in the schedule, hereto attached, shall be levied in the Municipality of Delhi in lieu of the existing octroi."

Section 61 of the Punjab Municipal Act, as applied to Delhi deals with the imposition of taxes by a Municipal Committee. Sub-section (1) sets out a list of taxes which may be imposed. It does not

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include terminal tax. As the Act stood in 1916, sub-sections (2) and (3) read as follows:—

> "(2) Save as provided in the foregoing clause, with the previous sanction of the Local Government any other tax which under rules made under clause (a) of sub-section 3 of section 80-A of the Government of India Act, a local authority may be authorised to impose by any law made by the local Legislature without the previous sanction of the Governor-General.
>
> "(3) With the previous sanction of the Local Government and of the Governor-General in Council, any tax."

Sub-section (12) provided that a notification of the imposition of a tax under the Act was to be conclusive evidence that the tax had been imposed in accordance with the provisions of the Act.

In these circumstances there seems to be no doubt that the terminal tax was lawfully imposed in the first instance, and both in the terminal tax bye-laws notified on the 29th of April, 1916 (D-3), and in the amended bye-laws notified on the 14th of March, 1917 (D-4) in bye-law (1) "import" has been defined as meaning the bringing in of goods into the Terminal Tax Limits from outside these limits and "terminal tax" was defined as meaning a duty levied on the import of goods within the Terminal Tax Limit of Delhi Municipal Committee, such duty not being liable to be refunded on the export of such goods from such limits. It is thus clear that the terminal tax was meant to cover goods brought into Delhi even if they were to be subsequently exported.

Under the Government of India (Adaptation of Indian Laws) Order of 1937, following the coming into force of the Government of India Act of 1936, and by a notification (copy D-8), dated the 18th of November, 1939, sub-section (2) of section 61 of the Municipal Act, was amended as follows:—

> "Save as provided in the foregoing clause, with the previous sanction of the Provincial Government any other tax, which the Provincial Legislature has power to impose in the Province under the Government of India Act, 1935.

Nothing in this section shall authorise the imposition of any tax which the Provincial Legislature has no power to impose in the Province under the Government of India Act, 1935.

Provided that a Committee which immediately before the commencement of Part III of the said Act, was lawfully levying any such tax under this section as then in force may continue to levy that tax until a provision to the contrary is made by the Central Legislature;

and with the previous sanction of the Provincial Government may from time to time:—

> (I) vary the limits fixed under clause (g) of section 188 for the collection of any terminal tax, and
>
> (II) vary the schedule of animals or articles subject to such tax and enhance, reduce or modify the rates thereof."

It is thus clear that although now, after the Government of India Act of 1935, had come into force, a new terminal tax could not be imposed

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by a Municipal authority, since the imposition of such a tax was not within the legislative scope of a Provincial Legislature, those Municipal bodies which had already lawfully levied terminal taxes could continue to do so until it was otherwise enacted by the Central Legislature, and it is common ground that no such legislation was introduced.

When the Government of India Act, 1935, disappeared from the scene with the coming into force of the Constitution a similar saving provision was embodied in article 277, which reads:—

> "Any taxes, duties, cesses or fees which, immediately before the Commencement of this Constitution, were being lawfully levied by the Government of any State or by any municipality or other local authority or body for the purposes of the State, municipality, district or other local area may, notwithstanding that those taxes, duties, cesses or fees are mentioned in the Union List, continue to be levied and to be applied to the same purposes until provision to the contrary is made by Parliament by law."

It is again agreed that no legislation has so far been introduced which would affect the continued realisation of terminal tax where it had been lawfully introduced and was continued by the Government of India Act, 1935.

It would thus appear that as long as the terminal tax in the present case was lawfully introduced in the first instance and it was continued by the Government of India of 1935, and the consequential amendment of sub-section (2) of section

61 of the Municipal Act, there would be nothing unlawful in the Municipal Committee having included certain kinds of fruits in the taxable commodities for the first time by the notification issued on the 18th of January, 1947.

The position is, however, complicated by the fact that in 1940, what is in form a fresh terminal tax was substituted for the previously existing one. A notification, dated the 17th of April, 1940, was published which reads:—

> "In pursuance of the provisions of sub-section (10) of the section 62 of the Punjab Municipal Act, 1911 (Punjab Act III of 1911), as extended to the Province of Delhi, it is hereby notified that with the previous sanction of the Chief Commissioner the Municipal Committee of Delhi and New Delhi and the Notified Area Committee, Civil Station, Delhi have with effect from the 21st July, 1940, imposed a terminal tax upon animals and articles imported into Municipal or Notified Area limits as the case may be.
>
> The description of the property to be taxed and the rates of the tax imposed are defined in Schedule A hereto annexed, subject to certain exceptions which are defined in Schedule B, and are hereby sanctioned under section 71 of the said Act.
>
> The tax will be assessed at the barriers established for the purpose, by the staff of the Terminal Tax Department of the Delhi Municipal Committee, in accordance with the rules made under section 240 of the said Act.

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All previous notifications regarding the imposition of Terminal Tax shall with effect from the 21st July, 1940 be superseded by this notification."

This notification being under sub-section (10), it is to be presumed that the procedure laid down in the earlier sub-sections of section 62 had been followed. Section 62 deals with the procedure to impose taxes and sub-section (1) provides that the Commitee may, at a special meeting, pass a resolution to propose the imposition of any tax under section 61. Sub-section (2) provides for the publishing of a notice giving particulars of the proposed tax and sub-section (3) provides for objections by any inhabitant. There are further provisions for modifications and finally sub-section (8) provides for the sanction or refusal of the proposed tax by the Provincial Government. The notification under sub-section (10) is only to be issued after the sanction by the Provincial Government.

It may be mentioned that apart from the amendment introduced in secion 61(2) of the Municipal Act under the Government of India (Adaptation of Laws) Order the Government of India Act itself contained a provision similar to that of article 277 of the Constitution. Sub-section (2) of section 143 reads:—

"Any taxes, duties, cesses or fees which, immediately before the commencement of Part III of this Act, were being lawfully levied by any Provincial Government, municipality or other local authority or body for the purposes of the Province, municipality district or other local area under a law in force

on the first day of January, nineteen hundred and thirty-five, may, notwithstanding that those taxes, duties, cesses or fees are mentioned in the Federal Legislative List, continue to be levied and to be applied to the same purposes until provision to the contrary is made by the Federal Legislature."

In upholding the validity of the tax the trial Court does not appear to have considered what, if any, was the effect of the notification of the terminal tax in 1940. The learned Senior Subordinate Judge, however, held that this amounted to the introduction of a new tax and since the imposition of terminal tax was a subject which only appeared in the Federal list, and the only tax of this kind which a Provincial Government could authorize was one for cesses on the entry of goods into the local area for consumption, use or sale therein, he held that the imposition of the tax was illegal.

The matter in dispute is thus narrowed down to the issue, whether, by superseding the previous terminal tax as from the 21st of July, 1940, by the notification of the 17th of April, 1940, the Municipal authorities were imposing a new tax, or whether they were merely continuing to levy the terminal tax lawfully imposed by them from 1916 onwards.

There is undoubtedly something to be said for the argument that since the Municipal authorities followed the procedure set out in section 62 before issuing the notification under sub-section (10) in April, 1940, they were abandoning the old tax and imposing a new one, and in 1940, a new terminal tax could not be imposed by any local authority since only a tax in the nature of octroi

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could be imposed by the Provincial Government by that time.

At the same time it is perfectly clear that in any sense other than the most technical and formal sense the tax was not a new one. Much stress was laid on what is meant by the words "levied" and "continue to be levied" in the amended section 61(2) of the Municipal Act and in section 143(2) of the Government of India Act, 1935. It is clear from the Oxford English Dictionary that the word "levy" covers both imposition and realization and this fact, although it does not decide the matter conclusively one way or the other, is rather in favour of the Municipal authorities.

Reliance was placed on behalf of the plaintiffs on the fact that whereas the notification of 1916, only referred to the Municipal Committee of Delhi the notification of 1940, refers to the Municipal Committee of Delhi and New Delhi and the Notified Area Committee of the Civil Station of Old Delhi. This aspect of the matter appears to have been brought up for the first time before us, and thus the matter does not seem to have been investigated at all. It would in fact appear from the plaint that the plaintiffs were only affected by the imposition of the tax so far as it related to the Municipal Committee of Delhi and it was this Municipal Committee which was made the only defendant in the suit. In these circumstances no attempt appears to have been made to establish whether terminal tax had been levied by the Municipal Committee of New Delhi or the Notified Area Committee of the Civil Station of Old Delhi before the notification of 1940, and whether, therefore, the tax was being newly imposed in respect of these two authorities in 1940, and it seems to me that question could only arise

in the event of a suit being brought against either of those authorities challenging its right to impose the tax.

As regards the defendant Committee the question arises whether we should look to the form or to the substance, and while there is no doubt that the tax as imposed in 1940, was imposed by the Delhi Municipal Committee under the procedure and form of a new tax, it was undoubtedly merely a continuation of the old tax, which in fact was still to be levied under the old notification until the 21st of July, 1940, of more than three months after the date of the notification, after which the terminal tax was to be levied under the new notification. In these circumstances I should be very reluctant to hold that the terminal tax as levied by the Delhi Municipal Committee as from the 21st July, 1940, was a new tax and not a continuation of the levying of the terminal tax which had been in force from 1916 onwards.

The result is that I would accept the appeal and restore the decree of the trial Court dismissing the plaintiff's suit, but in view of the nature of the point involved I consider that it is a suitable case in which the parties should be left to bear their own costs throughout.

KHOSLA, C. J.—I agree.

CHOPRA, J.—I agree.

B. R. T.

APPELLATE CIVIL

Before D. Falshaw, G. L. Chopra and A. N. Grover, JJ.

FAQIR CHAND,—*Appellant.*

versus

SARDARNI HARNAM KAUR AND ANOTHER,—*Respondent.*

Regular First Appeal No. 63-D of 1957.

1960

March, 25th

Hindu Law—Joint Hindu family consisting of father and sons—Father creating mortgage of joint family property—