

State Of Haryana vs Mohan Lal & Ors on 30 October, 1969

Equivalent citations: 1970 AIR 1848, 1970 SCR (3) 202, AIR 1970 SUPREME COURT 1848

Author: S.M. Sikri

Bench: S.M. Sikri, G.K. Mitter, P. Jaganmohan Reddy

PETITIONER:
STATE OF HARYANA

Vs.

RESPONDENT:
MOHAN LAL & ORS.

DATE OF JUDGMENT:
30/10/1969

BENCH:
SIKRI, S.M.
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MITTER, G.K.
REDDY, P. JAGANMOHAN

CITATION:
1970 AIR 1848 1970 SCR (3) 202
1969 SCC (3) 484

ACT:
Punjab Town Improvement Act (Punj. 4 of 1922), ss. 1(3) 3, 4, 4A and 103(1) and Punjab Municipal Act, 1911, s. 238-Supersession of Municipality-Power of Government to set up Improvement Trust under 1922.Act-Power of Government to reconstitute dissolved Trust after reconstitution of Municipal Committee.

HEADNOTE:
The Rohtak Municipal Committee was superseded in August 1954, and an Administrator was appointed under s. 238 of the Punjab Municipal Act, 1911. In June 1958 the provisions of the Punjab Town Improvement Act, 1922, were extended to the Municipality and the Rohtak Improvement Trust was set up under the Act. In August 1961, the Government issued a notification under s. 103 (1) of the 1922 Act dissolving the

Trust. The Municipal Committee was reconstituted in January 1962 and in October 1962 the Government decided to reconstitute the Trust. The Municipal Committee thereupon passed a resolution opposing the reconstitution of the Trust. In January 1963, however, the Government reconstituted the Trust and the Municipal Committee was asked to name its representatives to be appointed as trustees. The rate-payers filed a writ petition challenging the reconstitution of the trust and the High Court allowed the petition.

In appeal to this Court,

HELD : (1) The attention of the High Court was not drawn to s. 4A of the 1922 Act and therefore it erred in holding that the Trust could not be set up in 1958 because, under s. 1(3) of the 1922 Act a Trust cannot be created in a Municipal area unless the committee was functioning. Under s. 4A, where the Municipal Committee was superseded the State Government could appoint the trustees, and there was no anomaly in the Government nominating the trustees, because, the Administrator who had all the powers and duties of the Committee under s. 238 of the 1911 Act was competent to say to the Government that the 1922 Act should not be applied to the Municipality. [205 C-D 206 B]

(2) Once the 1922 Act had come into operation under s. 1(3), it continues to apply and it was not necessary to apply it again when the Municipal Committee was reconstituted in 1962. [206 D]

(3) Under ss. 3 and 4 of the 1922 Act and the General Clauses (Punjab) Act, 1898, Government has the power to create a new trust or reconstitute a Trust which was dissolved. [206 H]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1121 of 1966. Appeal by special leave from the judgment and order dated August 17, 1965 of the Punjab High Court, in Letters Patent Appeal No. I 10 of 1965.

Janardan Sharma -and R. N. Sachthey, for the appellant. The respondent did not appear.

The Judgment of the Court was delivered by Sikri, J.-This appeal by special leave is directed against the judgment of the High Court of Punjab accepting the petition filed by the rate-payers of Municipal Committee, Rohtak, respondents before us, and ordering that the State Government shall not proceed with the constitution of the Rohtak Improvement Trust under the notification of August 30, 1961. The High Court allowed the petition because it held (1) that sub-s. (3) of s. I of the Punjab Town Improvement Act (Punjab Act IV of 1922)-here in after referred to as the Act-only envisages the creation 'of a Trust in a Municipal area where -a Committee is functioning and so is in a position to hold a special meeting to decide whether or not it considers the creation of a trust desirable, and

(2) that once a trust ceases to exist under s. 103(1) of the Act in order to recreate the trust, the Act has to be applied again, and as the Municipal Committee had at a special meeting held on November 9, 1962, decided unanimously that the Act should not be applied the Government was bound to give effect to that decision. The learned counsel for the appellant, Mr. Sachthey, contends that the High Court has placed a wrong interpretation on the two provisions mentioned above and somehow s. 4-A of the Act was not noticed by the High Court. Before we deal with the interpretation of the provisions mentioned above it is necessary to state a few facts. The Rohtak Municipal Committee was superseded on August 2, 1954. The Government purported to extend the provisions of the Act to the whole of the area of the Municipality on May 21, 1958. The notification to this effect reads "In pursuance of the provisions of sub-section of Section I of the Punjab Town Improvement Act 1922 (Punjab Act No. IV of 1922), the Governor of Punjab proposes to apply the provisions of the said Act to the whole of the area of the municipalities specified below with effect from 9th June,

1.....

2.....

3. Rohtak,....."

Sub-section (3) of s. 1 of the Act reads as follows "1. (3) This section and section 66 shall come into force at once. The State Government may by notification propose to apply the rest of the Act to the whole or any part of any municipality and to any locality adjacent thereto, on such date as may be specified in such notification; and the Act shall come into operation after the, lapse of three months unless within that period the municipal committee concerned at meeting convened for the purpose of considering the application of the Act resolve by a majority of two-thirds that the Act should not be so applied."

In pursuance of this notification a trust was set up. But on August 30, 1961, the Government issued a notification in exercise of its powers under sub-s. (1) of s. 103 of the Act and declared that the Rohtak Improvement Trust shall be dissolved with effect from August 30, 1961 from which the Chairman and the trustees of the aforesaid Trust ceased to function.

Section 103(1) of the Act reads as follows :

"103. (1) When all schemes sanctioned under this Act have been executed or have been so far executed as to render the continued existence of the trust, in the opinion of the State Government, unnecessary, or when in the opinion of the State Government it is expedient that the trust shall cease to exist, the State Government may by notification declare that the trust shall be dissolved from such date as may be specified in this behalf in such notification; and the trust shall be deemed to be dissolved accordingly."

It appears that on the supersession of the Municipality of Rohtak in 1954 an Administration was appointed under S. 238 of the Punjab Municipal Act, 1911. This section, inter alia, provides:

"238. (1)

(2) When a committee is so superseded. the following consequences shall ensue

(a)....

(b) all powers and duties of the committee may, until the committee is reconstituted, be exercised and performed by such persons as the State Government may appoint in that behalf;"

Fresh elections of the Municipal Committee, Rohtak, were held in July 1961, and the Municipal Committee reconstituted on January 10, 1962. On October 23, 1962, the Government informed the Deputy Commissioner, Rohtak, that it had decided to reconstitute Rohtak Improvement Trust immediately and asked the Deputy Commissioner to recommend a panel of six names of suitable persons for appointment as trustees and the Government also asked him to call upon the Municipal Committee, Rohtak, to elect its representatives as trustees.

This was not to the liking of the Municipal Committee and the Municipal Committee unanimously passed a resolution on November 9, 1962, strongly opposing the reconstitution of the Improvement Trust, Rohtak.

The Government by notification dated January 10, 1963, in exercise of powers conferred 'by sub-s. (2) of s. 4 of the Act appointed one Major S. K.Mehta -as Chairman, Rohtak Improvement Trust. The Municipal Committee was again requested to send two names of three members of the Municipal Committee to be appointed as trustees as required by cl. (b) of sub-s. (1) of s. 4 of the Act. Thereupon 32 rate-payers filed the petition under Art. 226 of the Constitution challenging the reconstitution of the Rohtak Improvement Trust.

Coming to the first point decided by the High Court, it seems to us that s. 4-A to the Act was-not brought to its notice and if it had been brought to its notice the High Court may well have come to the contrary conclusion. Section 4-A which, was inserted by Punjab Act VIII of 1936 reads :

"4-A. During the period of supersession of a Municipal Committee under section 238 of the Punjab Municipal Act, 191 1, the three seats allotted to the Municipal Committee on the trust under clause (b) of sub-section (1) of section 4 shall be filled by the State Government by appointing any three persons by notification in the Official Gazette. The term of office of every trustee so appointed shall be three years or until the Trust is dissolved, whichever period is less, provided that if the Municipal Committee is reconstituted three members of the Municipal Committee shall be elected or appointed in accordance with the provisions of section 4, and on their election or appointment the three trustees appointed by the State Government under this section shall cease to be members of the Trust."

Reading s. 1(3) and s. 4A of the Act, and s. 238 of the Punjab Municipal Act, 1911, together, it seems to us that the true meaning of the latter portion of sub-section (3) of s. 1 is that when the Government -applies the section and the Municipal Committee has been superseded before that date, it is the Administrator who would exercise the powers given under the latter part of that sub-section; in other words, the Administrator would be competent to say to the Government that the Act shall not come into operation. The words of s. 238 of the Punjab Municipal Act are very wide and it is difficult to limit the expression "all powers -and duties of the committee" in any manner. The Municipality exercised powers by resolution passed by majority and the fact that this particular resolution had to be by two-third majority does not lead to the conclusion that the power to oppose the application of the Act vesting in the Municipal Committee cannot be exercised by the Administrator under s. 238, Punjab Municipal Act.

Section 4A of the Act clearly proceeds on the basis that while the Municipal Committee stands superseded the appointment of trustees which was originally to be made by the Municipal Committee would be made 'by the State Government. As the High Court did not have s. 4-A before it had relied on the anomaly that where a Municipal Committee was suspended the Government could nominate some members of the suspended Committee as members of the Trust or otherwise fill these vacancies, and the High Court felt that it could not believe that it was the intention of the Legislature. Coming to the second point. made by the High Court, it seems that the High Court has wrongly,, held that once the Act has been applied it is necessary that it should be applied again when the Municipal Committee is reconstituted. There is nothing in the words of sub-s. (3) of s. 1 to 'warrant this conclusion. Once the Act has come into operation in accordance with the provisions of sub-s. (3) of s. 1 there is no provision by which the Act can cease to apply. The only point that remains is,; when a trust has been dis- solved under s. 103 of the Act, can it be reconstituted under the Act ? The only provisions under which a trust can be reconstituted under the Act are sections 3 and 4. Section 3 reads :

"3. The duty of carrying out the provisions of this' Act in any local area shall, subject to the conditions and limitations hereinafter contained, be vested in a board to be called "The (name of town) Improvement Trust" hereinafter referred to as the "The Trust"; and every such board shall be -a body corporate and have perpetual succession and common seal, and shall by the said name sue and be sued."

Section 4 reads;

"4. (1) The trust shall consist of seven trustees, namely The other sub-sections of s. 4 provide how the trustees are to be appointed.

It seems to us that if the trust could originally be created under ss. 3 and 4, reading ss. 3 and 4 and s. 12 of the General Clauses Act, the Government has the power to create a view trust or reconstitute a new trust. We may mention that s. 12 of the Gene-

ral Clauses (Punjab.) Act, 1898, provides that "where by any Punjab Act any power is conferred then that power may be exercised from time to time as occasion requires." In the result the judgment of

the High Court is set aside, the appeal allowed and the writ petition dismissed. There, will be no order as to costs throughout.

Y.P.

Appeal allowed.