Supreme Court of India
Municipal Council Waraseoni And ... vs Satish Chandra Jain And Anr on 15 November, 1995
Equivalent citations: 1996 AIR 599, 1996 SCC (7) 29
Author: M Punchhi
Bench: Punchhi, M.M.

PETITIONER:
MUNICIPAL COUNCIL WARASEONI AND ANR.

Vs.

RESPONDENT:
SATISH CHANDRA JAIN AND ANR.

DATE OF JUDGMENT15/11/1995

BENCH:
PUNCHHI, M.M.
BENCH:
PUNCHHI, M.M.
SEN, S.C. (J)

CITATION:
1996 AIR 599 1996 SCC (7) 29
JT 1995 (8) 176 1995 SCALE (6)421

ACT:

HEADNOTE:

JUDGMENT:

O R D E R CIVIL APPEAL NO. 3360 OF 1979:

A Division Bench of Madhya Pradesh High Court, quashed on a writ petition, the bill and notice of demand, issued against the respondent under Section 164 of the M.P. Municipalities Act, 1961, on the basis that the fees sought to be collected from the respondent fetched him no quid pro quo.

The respondent herein was granted by auction a lease by the Municipal Council, Waraseoni for a year from 1-4-1971 to 31-3-1972 for recovery of cattle registration fee and market fee, popularly known in that region as "Baithaki". The contracted money was Rs.1,75,000/-. The respondent did not pay the whole and withheld a sum of Rs.29,592.63. The Municipal Council was constrained to start recovery proceedings against the respondent under the provisions of the Act. A bill for the

amount was sent to the respondent under Section 164(2) and a demand notice under Section 164(3) was also issued against the respondent. The respondent seeking quashing of the bill and the demand notice approached the High Court of Madhya Pradesh under Article 226 of the Constitution, which quashed the bill and the demand notice on the premise stated earlier.

Two points were raised before the High Court; (i) that the fee imposed bore no correlation to the services rendered and being in the nature of tax was, therefore, invalid; and

(ii) no lease could be granted for recovery of such fee when the fee itself was invalid. A question consequential in nature was also raised that since the said contracted sum of Rs.1,75,000/- compositely related to cattle registration fee as well as market fee, the portion representing market fee could not be made out if imposition of cattle registration fee was held beyond the power of the Municipal Council. Sequally it was urged that the market fee too, needed to be quashed on account of its being inextricably added up in the contracted amount. The High Court, seemingly, relying upon a Full Bench decision of that Court in Dhaniram vs. Janapada Sabha, Janjgir, 1965 M.P. L.J. 408, held cattle registration fee to be invalid because it was thought that the imposition of such fee, independent as it was, on the price fetched for an animal, bore no correlation to the services rendered by Janpada Sabha, and, therefore, cold not be described as fee'. In the instant case, the Municipal Council, did not specifically stated in its return as to what services it rendered to the sellers and buyers of animals and what was the purpose for which the fee was imposed. The return was general in terms. It was therefore spelt out by the High Court that there was an implied admission that the fee collected was for purposes of general revenue.

This view of the High Court, with due respect, cannot be sustained; more so at the instance of the respondent contractor. The respondent could not bemoan that no services were rendered or were deficient at the site where business of sale of cattle was transacted. The High Court seemingly overlooked the Madhya Pradesh Government Gazette dated October 23, 1950 wherein the notice issued itself the Municipal Council, Waraseoni had justified enhancement of fees from 1-2 paisa to a rupee because the Municipal Council found it difficult to put up with the expenses of sanitation, lighting, etc. at the place where cattle was sold and the sale registered within the municipal limits. It is otherwise a matter of common knowledge that where a cattle fair is held and business transacted, certain basic facilities are normally provided by the Municipal Council. To enumerate a few, it would provide sufficient space for storage and sale of fodder, enough troughs for storage of drinking water for the cattle, pegs and menagers to tie cattle, provide drinking waters for human beings visiting the area, as also eating places for them. Besides, it has to look after sanitation of the place, as is natural for the cattle collected to be urinating and dropping dung requiring immediate attention for removal, if not altogether there and then, but at least for putting it in temporary storage till removed altogether. These facilities are inherent in a cattle fair which the Municipal Council is supposed to offer and maintain. Additionally, it is worthy to note that here the cattle fair is a weekly affair; all the more requiring constant availability of these facilities. Quid pro quo was, therefore, writ large with the imposition of fee.

Apart from what has been said above, it did not lie in the mouth of the respondent, having himself collected the fee, to say that no services were rendered. He is stealing the language of those persons

who paid the fee and could have objected. Noticeably, no tax payer has come forward to challenge the fee in question. The respondent was himself clothed with the authority of a tax collector, for he had contracted to pay a fixed amount to the Municipal Council for a year, having bought and attained the right to collect tax. He cannot be allowed to say that he had collected the fee wrongly and on that basis he would not pay the contracted money, since he had to reimburse himself by a wrong collection. In this view of the matter, we think that the High Court overlooked an important aspect of the case as to the maintainability of the writ petition at the instance of the respondent.

Thus, on either ground of attack, there was no merit in the writ petition preferred by the respondent and equally he had no locus to challenge the imposition of fee, which was otherwise validly imposed. When imposition of registration of cattle fee is in order, the portion of the fee representing market fee is automatically in order. The question of splitting the two vanishes. In the view thus taken, this appeal is allowed, the judgment and order of the High Court is set aside and the writ petition filed by the appellant is dismissed, with costs.

CIVIL APPEAL NO.1025 OF 1995:

The appellant herein, contracted with the Municipal Council, Waraseoni to pay a sum of Rs.1,59,000/- on account of cattle registration fee for the year 1972-73. Since he fell in arrears in the payment thereof, a suit for Rs.1,11,431.56 was filed by the Municipal Council against the appellant being dues of fees on sale of cattle, including interest. The appellant contested the suit. All the issues, except one, were decided by the trial court in favour of the appellant. The one decided against him was on the basis of the Full Bench decision in Dhaniram vs. Janapada Sabha, Janjgir - 1965 M.P.L.J. 408. The suit was dismissed. The High Court on appeal at the instance of the Municipal Council reversed the trial court judgment and decreed the suit against the appellant with costs throughout imposing future interests at the rate of 6% per annum from the date of the decree till realisation. Challenge to imposition of cattle registration fee has been negatived by us in the earlier decision made today in Civil Appeal No. 3360 of 1979. The basis of defence of the appellant thus stands knocked out. On the basis of the said ratio, there is no merit left in this appeal, which is accordingly dismissed, but without any order as to costs.