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**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**WRIT PETITION NO. 1224 OF 2000**

1. Bilaspur Merchants Association, Purana Mal Dhakka, Bilaspur, M.P., Through Its President Shri Devi Das Wadhwani, Aged 43 Years, S/o Shri Hund Raj Mal, R/o Behind Chhabra Marble, Gagmal Chowk, Bilaspur.
2. Devi Das Wadhwani, S/o Shri Hund Raj, aged about 43 years, R/o Behind Chhabra Marble, Gagmal Chowk, Bilaspur, District Bilaspur.
3. Matadeen Agrawal Partner M/s Chiranji Lal Biswanath, Mal Dhakka, Budhwari Bazar, Bilaspur, District Bilaspur.
4. Ramesh Lal Wadhwani, Partner M/s Chandra Sugar Agency, Mal Dakka, Budhwari Bazar, Bilaspur, District Bilaspur

**... Petitioners**

**Versus**

1. State of Madhya Pradesh (now Chhattisgarh), Commercial Tax Department, through Secretary, Commercial Taxes, Government of M.P., Bhopal (M.P.)
2. Deputy Commissioner, Commercial Tax, Bilaspur, District Bilaspur.
3. Commercial Tax Officer, Bilaspur Circle, Bilaspur.
4. State of Chhattisgarh, through Collector, Bilaspur.
5. Municipal Corporation, Bilaspur, through its Commissioner, Municipal Corporation, Bilaspur.

**... Respondents**

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| For Petitioners | : | Mr. B.P. Gupta, Advocate. |
| For Respondent-State | : | Mr. Y.S. Thakur, Dy. Advocate General. |
| For Intervener | : | Mr. Parag Kotecha, Advocate. |

**Hon'ble Shri Justice P. Sam Koshy**

**C A V ORDER**

**Reserved on : 19/10/2016**
**Delivered on : 11/11/2016**

**1.** The present Writ Petition under Article 226/227 of the Constitution of India has been filed seeking the following reliefs :

> **(i)** This Court may be pleased to declare by appropriate writ or order that the Petitioners are not liable to pay entry tax under the Entry Tax Act as the area of railways where they are carrying their business does not fall within the local limits of Municipal Corporation of Bilaspur for the facts and reasons stated above.

**(ii)** This Court may be pleased to direct the Respondents not to act upon the notification Annexure P-2 till the Writ Petition No. 4041 of 1999 pending before this Court for decision is disposed of as the notification on the basis of which the entry tax is sought to be levied is under challenge in the same petition.

**(iii)** This Court may be pleased to restrained the Respondents by appropriate writ or order from levying entry tax upon the Petitioners as being illegal, without the authority of law and without jurisdiction, thereby quashing Annexure P-3 dated 12.11.1999 as void, illegal and opposed to law.

**2.** The Petitioners in the instant case are assailing Annexure P-3, dated 12.11.1999, issued by Respondent No.3, the Commercial Tax Officer, Bilaspur Circle, Bilaspur informing that the members of the Petitioner's association who were businessman carrying on the business at the Mal Dhakka area of Bilaspur which is an area exclusively under the control of the South East Central Railways (erstwhile South Eastern Railway) will be liable to pay entry tax on all those goods and articles brought at the Mal Dhakka area with effect from 23.7.1999.

**3.** According to the Petitioners since the area where the members of the Petitioner's Association were carrying on their business was outside the limits of the Corporation and the notification and the order on the basis of which the entry tax is being sought to be levied is also *sub judice* in a writ petition i.e., Writ Petition No. 4041 of 1999 and till the issue is decided, the subsequent issuance of the order making the entry tax leviable is bad in law.

**4.** Learned Counsel for the Petitioners submit that the undisputed fact in the present case is that the members of the Petitioner's Association were carrying on their business at the Mal Dhakka area near Budhwari Bajar which was an area exclusively belonging to the Railways and was outside the limits of the Municipal Corporation, Bilaspur and the said area was exempted from the taxes which were otherwise leviable in respect of local limits and local area of the Municipal Corporation. Subsequently, the said Mal Dhakka area was also brought within the precinct of the Municipal Corporation, Bilaspur and entry tax and other related taxes were made leviable in the area which though belonging to the Railway department but came within the boundaries of Municipal Corporation, Bilaspur. However, vide Annexure P-3, dated 12.11.1999, the authorities have made entry tax leviable at the Mal Dhakka area effective from 23.7.1999 and it is this implication of tax liability with effect from 23.7.1999 which is under challenge in the present case.

**5.** Learned Counsel for the Petitioners confined his challenge in the present Writ Petition to the enforceability of the provisions with effect from 23.7.1999 to 1.11.2000. He refers to the definition of “Local Area” as defined in Section 2(d) and the definition of “Local authority” as defined in Section 2(e) of the Chhattisgarh Sthaniya Kshetra Me Mal Ke Pravesh Par Kar Adhiniyam, 1976 (herein after referred to as 'the Act of 1976'). For ready reference Sections 2(d) & (e) of the Act of 1976 are reproduced herein under :

> **“2. Definitions.–** XXX XXX XXX
> XXX XXX XXX
>
> (d) “*Local Area*” means the area comprised within the limits of a local authority;
>
> (e) “*Local authority*” means an authority constituted under a law relating to local authority but shall not include a Janapad Panchayat, a Zila Panchayat, a Mandal Pachayat or such other local authority as the State Government may, by notification, specify;**”**

**6.** Likewise, Counsel for the Petitioners also refers to the provisions of Section 2(aa) of the Act of 1976 wherein “entry of goods into a local area” has been defined, which again for ready reference is reproduced below :

> **“2. Definitions.–** XXX XXX XXX
> XXX XXX XXX
>
> (aa) “*entry of goods into a local area*” with all its grammatical variations and cognate expressions means entry of goods into that local area from any place outside thereof including a place outside the State for consumption, use or sale therein;**”**

**7.** In addition to the definitions in respect of the entry of goods into a local area and the local authority, the Act of 1976 also under the provisions of Section 2(b) defines what “Entry Tax” means :

> **“2. Definitions.–** XXX XXX XXX
> XXX XXX XXX
>
> (b) “*Entry tax*” means a tax on entry of goods into a local area for consumption, use or sale therein levied and payable in accordance with the provisions of this Act and includes composition money payable under Section 7-A;**”**

**8.** Counsel for the Petitioners further refers to Section 405 of the Chhattisgarh Municipal Corporation Act, 1956 wherein under Chapter XXXV the powers have been conferred upon the Governor to include or exclude from the limits of the city or any specified area. Referring to the aforesaid provisions of law, he submits that since the area where the members of the Petitioners' association are carrying their business falls in an area which is exclusively under control, possession and authority of the Railway department it does not automatically fall within the jurisdiction of the Municipal Corporation. According to the Counsel for the Petitioners, the area where they were carrying business is exempted from being subjected to entry tax on the goods which enter the Railway area and further it is only the Central Government which is empowered to make laws relating to taxation as provided in the 7$^{th}$ Schedule, List 1, Entry 22 of the Constitution of India.

**9.** Counsel for the Petitioners also relied upon Annexure P-1 which is a notification dated 3.2.1993. However, subsequently vide another notification dated 23.7.1999 (Annexure P-2) a fresh notification was issued bringing the Railway area also within the limits of the Bilaspur Municipal Corporation. According to the Petitioners, this inclusion of the local area within the limits of Municipal Corporation was subjected to challenge by the Railway department in the High Court vide Writ Petition No. 4041 of 1999. The railway authorities had questioned the power, authority and jurisdiction of the State Government to legislate on the subject which otherwise came under the Union List; List 1, 7th Schedule of the Constitution of India. As per the Petitioners it is only the Central Government which could have done and the area which has been brought within the limits of Municipal Corporation is in fact the property which falls within the definition of Railway as is defined in Section 2(31) of the Railways Act.

**10.** At this juncture, Counsel for the Petitioners submits that the members of the Petitioners' association have already been reallocated to a different place with effect from 1.11.2000 onwards and that the only challenge that the Petitioners make is the applicability of the said notification from 23.7.1999 till 1.11.2000. Subsequent to 1.11.2000 the area to which they have been reallocated being already within Municipal limits and they are liable to pay and there is no dispute so far as the subsequent period is concerned. He submits that the Petitioners are also challenging the applicability part on account of the fact that the petition which was said to have been filed by the Railway department, i.e., Writ Petition No. 4041 of 1999, also stood disposed of on 13.7.2012 where the High Court had only dealt with the issue of payment of property tax on the properties owned and possessed by the Railways in Bilaspur to the Municipal Corporation. The Division Bench of this High Court on 13.7.2012 allowed the petition of the Railway department and quashed the notices issued by the Municipal Corporation, Bilaspur in respect of property tax from the Railway authorities, however the High Court did not venture into other issues in the said writ petition and left it upon to be adjudicated as and when occasion arises. Thus, after the disposal of the said writ petition, the present writ petition was amended so as to take the grounds of the competency of the State authorities in extending the limits of the Municipal Corporation.

**11.** Counsel for the Petitioners also relies upon the judgment of the Madhya Pradesh High Court reported in 1982 (15) VKN–280 in the matter of *Jethani Cloth Stores, Bilaspur* Vs. *Asstt. Sales Tax Officer, Bilaspur and Another* and also the judgment of the Madhya Pradesh High Court reported in 1997 (30) VKN–233 in the matter of *Cigarette Agencies* Vs. *Commissioner of Sales Tax and Others*. Both these petitions were pertaining to the same area, and the petitions were allowed by the Madhya Pradesh High Court. Thus, he prayed for the relief that the Petitioners are not entitled for payment of entry tax to the Respondents for the period from 23.7.1999 to 1.11.2000.

**12.** Opposing the petition, the State Counsel submitted that the issue involved in the present case is no longer *res integra* for the reason that an identical issue has already been dealt by the coordinate Bench of this Court in Writ Petition (T) No. 87 of 2014, decided on 4.3.2016, and held that levy of entry tax in respect of the goods entering the Railway area is legal. Heavily relying upon the said judgment, Counsel for the State submitted that the case of the Petitioners does not fall under Article 285 of the Constitution of India and that the authorities concerned are competent to issue notification extending the limits of the Municipal Corporation, and thus prayed for the rejection of the writ petition.

**13.** A plain perusal of the relief clause of the writ petition clearly would reflect that the Petitioners had in fact challenged the action of the

Respondents in making the Railway area also amenable to entry tax in respect of goods which enter the railway area on the ground that the said issue is already *sub judice* in Writ Petition No. 4041 of 1999 filed by the Railway authorities. However, what is pertinent to note at this juncture is the fact that notification dated 23.7.1999 has not been subjected to challenge by the Petitioners. Neither has the said issue been considered or decided by the Division Bench in Writ Petition No. 4041 of 1999. The said Writ Petition No. 4041 of 1999 decided on 13.7.2012 was in fact confined to the Corporation authorities demanding property tax in respect of Railway properties and which stood decided in favour of the Railway department. However, the question of charging entry tax for the goods which were entered into the Railway area, the same was left open. Now when the said issue was left open by the Division Bench of this Court in Writ Petition No. 4041 of 1999 it was incumbent upon the Petitioners to have challenge the notification dated 23.7.1999 bringing the railways area within the limits of the corporation, in the absence of which and without quashment of the said notification the relief(s) sought for by the Petitioners in the present case cannot be granted, as the third relief sought is only quashment of the demand notice without challenging the substantive notification making the provisions applicable.

**14.** In addition, what has also come in the way of the Petitioners is the judgment of the Supreme Court in the case of *Senior Divisional Mechanical Engineer* v. *State of Orissa & Others* and other analogous civil appeals, decided on 7.8.2008, wherein in somewhat similar circumstances the Supreme Court has upheld the power of the State imposing taxes on goods brought within the limits of the Municipal area including the Railway area. Relying upon the said judgment of the

Supreme Court and also the earlier judgment of the Supreme Court in the case of *N.M.D.C.* v. *State of Punjab & Others*, 1997 (7) SCC 339, the coordinate Bench of this Court also in its judgment dated 4.3.2016 passed in Writ Petition (T) No. 87 of 2014 filed by the another set of businessmen carrying on business in the same area at which the members of the Petitioners' association were operating who were also questioning the charging of entry tax on goods brought into the Railway area held that the State authorities were justified in levying entry tax on the goods brought into the Railway area.

**15.** If we read the contents of the submissions made by the Counsel for the Petitioners in the said Writ Petition (T) No. 87 of 2014 as is reflected from the judgment, it clearly reflects that in fact the bone of contentions and the grievance of the petitioners therein were in fact identical to the one which has been raised by the Petitioners in the present case. Considering the same contentions of the petitioners in the said writ petition, the Court relying upon the decisions of the Supreme Court in the case of *Senior Divisional Mechanical Engineer* (supra) and the case of *NMDC* (supra), both of which were decided applying the ratio earlier laid down by the Supreme Court in *Presidential Reference,* reported in AIR 1963 SC 1760, had dismissed the writ petition.

**16.** When we look into the judgment of the Hon'ble Judge deciding the Writ Petition (T) No. 87 of 2014 we find that the same issues have been sought to be decided by the Petitioners in the present petition. Now when the said issues have already been adjudicated upon by the coordinate Bench, this Court does not find any strong case made out by the Petitioners for taking a different view than what has been taken in Writ Petition (T) No. 87 of 2014.

**17.** So far as making of the Act enforceable for the period 23.7.1999 to 1.11.2000 is concerned, once when the notification dated 23.7.1999 is not under challenge, the judgment of the Supreme Court rendered in preceding paragraphs as also the judgment of this Court in Writ Petition (T) No. 87 of 2014 going against the Petitioners, the natural consequence would be that of the provisions of law being applicable from the date of notification being issued which in the instant is 23.7.1999. Section 406 of the Chhattisgarh Municipal Corporation Act, 1956 is clear on this issue. Section 406(1)(b) clearly enunciates that once when an area is included within the limits of the city unless otherwise notified all the provisions of the Municipal Corporation Act regularizing by-laws shall apply to the said area. Thus it cannot be said that the members of the Petitioners' association are exempted from paying entry tax on goods which are brought within the Railway areas.

**18.** So far as the two judgments of the Madhya Pradesh High Court cited by the Petitioners are concerned, both these judgments are of the period prior to the notification dated 23.7.1999 and it was in accordance with the notification of 1993 which was in force excluding the Railway areas from the limits of the Municipal Corporation. Thus the law laid down in the said judgments is distinguishable in the facts of the present case in which the notice under challenge is subsequent to the notification dated 23.7.1999 bringing Railway area within the Municipal limits.

**19.** As a fall out, the writ petition being devoid of merits deserves to be and is accordingly dismissed. No order as to costs.

Sd/-
(P. Sam Koshy)
**JUDGE**

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