IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16229 of 2015

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Ajeet Prasad Mehta, Son of late Sugriv Prasad, Residence of Mohalla - Pakari, P.S. Ara Nawada, District - Bhojpur at Present Vice President Sahari and Gramin Vikash Manch, Bihar (Non Registered Origination)

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Urban Development and Housing Department, Government of Bihar, Bhojpur, Ara
2. The District Magistrate Cum Collector, Bhojpur, Ara
3. The Sub - Divisional officer, Ara, Bhojpur
4. The Commissioner, Municipal Corporation, Bhojpur, Ara
5. The Mayor, Municipal Corporation, Bhojpur, Ara
6. The Managing Committee, Municipal Corporation, Ara, Bhojpur

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Gopal Govind Mishra, Advocate.
For the State : Mr. Anjani Kumar, AAG-4.
Mr. Shaildendra Kr. Singh, AC to AAG-4.
For Ara Municipal Corp. : Mr. Bishwa Bibhuti Kumar Singh, Advocate.

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
And
HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)
Date: 10-01-2017

The petitioner has invoked the writ jurisdiction of this Court in public interest litigation to direct the respondent authorities to collect the municipal tax from the urban area of Bhojpur District on the basis of the benefits/facilities provided by the Municipal Corporation in the urban area of the district. The prayer is to restrain the authorities to receive the taxes by pick and choose method without following the due process of law.

2. We find that no such direction as claimed by the

petitioner can be granted by this Court. The Municipal Corporation levies the tax to provide facilities in urban area, but there cannot be any pre-condition of payment of taxes so as to provide services. There is a difference between tax and fee. The tax is levied as part of a common burden, while a fee is for payment of a specific benefit or privilege. The distinction was noticed recently in the judgment reported as ***State of T.N. v. TVL South Indian Sugar Mills Assn., (2015) 13 SCC 748,*** wherein the Court held as follows:-

> "**7.** Over the years, the inflexibility with which the principle of quid pro quo was to be applied, which may have been sired from a pedantic perusal of *Synthetics and Chemicals Ltd. v. State of U.P., (1990) 1 SCC 109***,*** has been clarified and crystallised by this Court. We shall reproduce these paragraphs from *B.S.E. Brokers' Forum* v. *SEBI, (2001) 3 SCC 482,* to enable their fruitful consideration: (SCC pp. 501 & 503-04, paras 30 & 38)
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> > "*30.* This Court in *Sreenivasa General Traders* v. *State of A.P., (1983) 4 SCC 353,* has taken the view that the distinction between a tax and a fee lies primarily in the fact that a tax is levied as part of a common burden, while a fee is for payment of a specific benefit or privilege although the special advantage is secondary to the primary motive of regulation in public interest. This Court said that in determining whether a levy is a fee or not emphasis must be on whether its primary and essential purpose is to render specific services to a specified area or class. In that process if it is found that the State ultimately stood to benefit indirectly from such levy, the same is of no consequence. It also held that there is no generic difference between a tax and a fee and both are compulsory exactions of money by public authorities. This was on the basis of the fact that the compulsion lies in the fact that the

payment is enforceable by law against a person in spite of his unwillingness or want of consent. It also held that a levy does not cease to be a fee merely because there is an element of compulsion or coerciveness present in it, nor is it a postulate of a fee that it must have a direct relation to the actual service rendered by the authority to each individual who obtains the benefit of the service. It also held that the element of quid pro quo in the strict sense is not always a sine qua non for a fee, and all that is necessary is that there should be a reasonable relationship between the levy of fee and the services rendered. That judgment also held that the earlier judgment of this Court in *Kewal Krishan Puri* v. *State of Punjab, (1980) 1 SCC 416,* is only an obiter."

In view of the above, the petitioner cannot claim any precondition to deposit tax to claim services from the Corporation. We do not find any merit in the present writ application. Accordingly, the same is dismissed.

(Hemant Gupta, ACJ)

(Dinesh Kumar Singh, J)

Mishra/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	12.01.2017
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