

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (PIL) No. 10 of 2015**

Meharban Singh S/o Shree Darshan Singh Aged About 43 Years R/o Shop No. 57, Mobile Gallery Shop, Himalaya Commercial Complex, Aakshganga, Supela, Bhilai, P.S. Supela, District Durg, Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary, Department Of Urban Development, Mantralaya, Naya Raipur, District Raipur Chhattisgarh
2. Collector Durg, District - Durg (C.G.)
3. Commissioner, Municipal Corporation, Bhilai, Durg, District Durg, Chhattisgarh

---- Respondents

For Petitioner:	Mr. Manendra Nath Dubey, Advocate
For State :	Mr. J.K. Gilda, Advocate General with Mr. Y.S. Thakur, Additional Advocate General
For Corporation:	Mr. H.B. Agrawal, Senior Advocate along with Mr.Pankaj Agrawal, Advocate

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice
Hon'ble Shri Sharad Kumar Gupta, Judge

Order on Board**Per Thottathil B. Radhakrishnan, Chief Justice****24.08.2017**

1. This Writ Petition was instituted in 2015 as a Public Interest Litigation challenging Annexure P/1 decision of the Bhilai Municipal Corporation which results in imposition of what it called as 'transfer fee' on transfers of property, either by sale or otherwise. The fee to be paid under that nomenclature is 10% of the value of the land which is transferred; except in a mortgage, for which the levy is based on the mortgage amount.

2. The State Government has filed its pleadings stating that no relief is sought for against it. However, the learned Advocate General has pointed out that in the realm of tax and fee, it appears to be the settled position that there could not be any Public Interest Litigation.
3. The Bhilai Municipal Corporation has placed pleadings on record. It says that Special Area Development Authority, Bhilai; for short, "SADA"; which was involved in developing the area in question, ultimately ceased to exist and all its assets, liabilities and rights came to be vested in the Municipal Corporation. According to the learned Senior Advocate for the Corporation, the properties which were originally within the jurisdiction of the Municipal Corporation and the properties which came to its control on the cessation of SADA are dealt with under two separate sets of Rules. It is thus argued that the transfer of interest of SADA in favour of the Corporation carried with it the right to collect fees, taxes etc.
4. The sum and substances of the plea of the petitioner is that what is levied by the Corporation on the basis of Annexure P/1 resolution of the year 2000, is unauthorised, for different reasons. The petitioner pleads that the said resolution does not amount to the imposition of any tax or fee which could be collected in accordance with constitutional sanction. Article 265 of the Constitution is pointed out to say that the impugned levy would amount to imposition of tax, otherwise than by authority of law. The learned counsel for the petitioner, in our view, has quite rightly relied on Section 133 of the Madhya Pradesh Municipal Corporation Act, 1956; hereinafter, the "Act", which applies to the State of Chhattisgarh, to argue that there is no statutory provision which authorises the levy of a transfer fee in the nature of tax. He also pointed out, Section 133A of the Act, introduced by way of an amendment in 1961 to that Act, whereby an additional levy of 1% of stamp duty is

prescribed on the value of the property; and in case of usufructuary mortgage, on the amount secured by the instrument; if the property is within the limits of the Corporation. He accordingly argued that if at all there could be any levy on any transfer of interest in land, it could be only to the extent provided for in Section 133A of the Act.

5. The question whether tax could be imposed in the guise of transfer fee in such cases came up for consideration before the Calcutta High Court which ultimately led to the decision rendered by the Hon'ble Supreme Court of India in **Calcutta Municipal Corporation & Others v. Shrey Mercantile Pvt. Ltd. & Others**¹. Dilating on the question whether such imposition was a fee or a tax, the Apex Court concluded that such a levy could only be a fee and not a tax, if it were to stand the test of constitutional sanction as to imposition. Their Lordships further proceeded to consider the sustainability of the quantum of imposition and held that the rate of transfer fee cannot vary from case to case depending upon the value of the property for the purpose of mutation. It was laid down that, because there is an element of service in the process of considering and deciding on an application for transfer or mutation in the records of the Municipal Corporation, a fee could be imposed. So much so, it was held that Article 14 of the Constitution would apply in situations where the imposition is attempted to be made on the basis of the value of the property or the value of the transaction. We are of the view that the said precedent completely governs the field relating to the issues in hand. Therefore the impugned levy has necessarily to go.
6. The plea on behalf of the Corporation that the impositions made by the SADA were permitted to be carried forward when immovable properties within the jurisdiction of SADA were brought to be within the jurisdiction of the

Corporation does not stand. The levy of tax or fee of the nature impugned, either by the Corporation as the Local Self Government Institution, or by SADA as a duly competent authority to impose a fee or tax, is bad in terms of the Constitution and the laws, in the light of the law laid in *Calcutta Municipal Corporation* (supra). The identity of the authority which imposes such tax or fee is not decisive. Therefore, it makes no difference as to whether the Rules which held the field during the days of SADA or the Rules which govern the Corporation would apply. We also do not see anything in the Madhya Pradesh Municipal Corporation (Transfer of Immovable Property) Rules, 1994 framed under Act which enable levy of fee of the nature that is impugned in this writ petition.

7. Reverting to the submission of the learned Advocate General that this writ petition ought not to be entertained as a Public Interest Litigation; 'PIL', for short; we would say that it appears from the records that this Court had noticed the fact that under challenge is a decision of 2000, though the writ petition was filed as a PIL only in 2015. It was admitted by issuing notice on 24/04/2015 by specifically recording that the interest of the public at large is within the resolution that is impugned. The Municipal Corporation which was respondent No. 3 was then directed to place its answer in view of the short questions involved in the litigation. Sitting in writ jurisdiction, we think that it would only be prudent on our part to decide and render verdict on the issues raised since the Corporation has also placed its pleadings on record touching the merits of the matter and because the issue in hand is of such nature which would be of consequence to almost every person who holds interest in immovable property within the limits of the Bhilai Municipal Corporation or anyone who enters into transaction touching such property. The situation in hand, on its totality, generates sufficient factors to entertain this matter in the

discretionary writ jurisdiction, particularly because the action of the Corporation infracts Article 14 and Article 265 of the Constitution and the issues raised are covered against the Corporation and in favour of the citizens through the judgment in *Calcutta Municipal Corporation* (supra) which contains law laid by the Apex Court. Not only that, if we were to leave undecided the issues raised in this writ petition, *qua* the impugned levy by the Bhilai Municipal Corporation, that may only generate personal actions by individuals on the same issue; thereby leading to multiplicity of litigations on an issue which is precedentially covered in terms of Article 141 of the Constitution. This being a PIL, the effect of this judgment cannot, *ipso facto*, lead to any claim for refund or to reopen any issue which stands concluded *in re* any person who has already paid transfer fee on any transaction in terms of Annexure P/1 and it would be open to the Corporation to fix such transfer fee as would answer the parameters of law including the law laid in *Calcutta Municipal Corporation* (supra).

8. In the result, this writ petition is allowed quashing Annexure P/1 and declaring that no amount in the name of transfer fee or otherwise shall be collected on the strength of Annexure P/1 by the 3rd respondent Municipal Corporation of Bhilai.

Sd/-

(Thottathil B. Radhakrishnan)
Chief Justice

Sd/-

(Sharad Kumar Gupta)
Judge