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HIGH COURT OF CHHATTISGARH, BILASPUR

WPPIL No. 94 of 2017

- Aivaj Dewangan S/o Late Shri Fulsingh Dewangan Aged About 31 Years R/o Trimurti Nagar, Ward No. 31, Chandrashekhar Azad Ward, Nagar Nigarm Beergaon, Police Station Urla, Tahsil Raipur, District Raipur Chhattisgarh.

---- Petitioner

Versus

1. State of Chhattisgarh Through The Secretary, Department Of Urban Development and Planning, Mahanadi Bhawan, Naya Raipur, Police Station Rakhi, Raipur, District Raipur Chhattisgarh.
2. Municipal Corporation, Beergaon, Through The Commissioner, Tahsil Raipur, District Raipur Chhattisgarh.

---- Respondents

For Appellant	:	Shri Prateek Sharma, Advocate.
For Respondent No.1/State	:	Ms. Richa Shukla, Deputy Government Advocate
For Respondent No.2/Corporation	:	Shri Rajnish Singh Baghel, Advocate
For Intervenor	:	Shri Kishore Bhaduri and Shri Abhinav Kardekar, Advocates.

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Order on Board

P. R. Ramachandra Menon, CJ.

03.07.2019

1. The Petitioner who is stated as a public spirited citizen has moved this writ petition, projecting the alleged 'double standards' being pursued by the State in the field of taxation, whereby some undeclared exemption is being extended to the industrial establishments situated in the area of Municipal Corporation, Birgaon and surrounding villages, where as the benefit as aforesaid is not being extended to a common man, who is stated as being squeezed of. It is in the said background, that the matter is sought to be interfered by this Court, by raising prayers in the following terms :

> “10.1 That, this Hon'ble Court may kindly be pleased to direct the respondents to recover the due amount of municipal taxes from all the factories / industries situated within the municipal limits of Municipal Corporation, Beergaon, from financial year starting from 01.04.2010 onwards, with adequate penalty, within stipulated time, in the larger public interest.

> 10.2. That, any other relief / order which may deem fit and just in the facts and circumstances of the case."

2. When the matter came for consideration before this Court, an interim order was passed on 24.08.2018 in the following terms :

> "There doesn't seem to be any meeting of minds between the authorities, the Urban Administration and Development Department, Government of Chhattisgarh, the Commerce and Industries Department, Government of Chhattisgarh as well as the Municipal Council, under whose jurisdiction certain industrial areas fall.
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> There cannot be any vacuum. Some law has to apply. If the Government wants to take a call, they have to do it within a reasonable time frame. But, from what has been produced before us on behalf of the Municipal Commissioner, who was ordered to be present in person that the things have been put on hold for a number of years now. This is an unacceptable position.
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> Therefore, let the state authorities or the Departments put their mind together and file an affidavit on behalf of the State as to what is required to be done with regard to the units, the industries and other establishments which fall within municipal boundaries, Beergaon and categorically take stand whether they have the powers to collect municipal taxes or they are to be absolved of the liability on another set of law or rules will govern industrial area.
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> The affidavit in question must be filed within a period of four weeks on behalf of the State.
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> Let the affidavit on behalf of the State be filed, especially by the Chief Secretary of the State, since a policy decision would be required to be taken in due coordination with all the Departments in question.
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> List after four weeks.
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> Personal appearance is dispensed with for the time being."

3. Pursuant to the said order, the Chief Secretary of the State filed an affidavit dated 20.09.2018, wherein it is stated in paragraph 15 as extracted below :

> "15. That in the light of the information submitted by the Commerce and Industries Department and Directorate of Urban Administration and Development and Department of Urban Administration, it is clear that general consensus is regarding excluding the industrial areas from the territorial limits of local self government bodies and in this particular case Directorate of Urban Administration and Development has already asked the Collector Raipur District where the Municipal Corporation Birgaon is situated to send a proposal for excluding the industrial areas from municipal limits of Municipal Corporation Birgaon further six months time will be required to come to final conclusion on the present issue as may stake holders are involved and any decision has to be taken after much circumspection and diligence."

4. The course and events taken note of and another order came to be passed by this Court, granting six months' time to complete the proceedings as stated in paragraph 15 of the affidavit of the Chief Secretary, as per order dated 28.09.2018, which reads as follows :

> "Keeping in mind the affidavit which has been filed by the Chief Secretary, Government of Chhattisgarh, dated 20.09.2018 and the directives which have been issued coupled with a prayer that the whole issue will require about six months time to be finally formalised, the prayer so made is allowed.
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> List this matter after six months, but the Chief Secretary, Government of Chhattisgarh will have to file yet another affidavit as to what has been done and achieved in the interregnum."

5. Based on that order, a further affidavit dated 24.06.2019 has been filed by the Chief Secretary. Paragraphs 4 and 5 are relevant, which are reproduced below for easy reference :

> "4. That it is respectfully submitted that the respondent State has vide its order dated 07//06/2019 decided on the aforementioned issue and stated that the taxed to be levied on the industrial units situated under the Municipal Corporation, Birgaon shall be imposed by the Municipal Corporation, Birgaon itself as these industrial units fall under its jurisdiction. Also, such tax shall be imposed by the Municipal Corporation, Birgaon as per the built up area of the construction land and the vacant land shall not fall under the purview of the tax imposition by the Municipal Corporation. Lastly, the rate of such taxation shall be decided by the Municipal Corporation, Birgaon through a formal order. A copy of the said order dated 07/06/2019 is annexed as ANNEXURE R/D.
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> 5. That, on receipt of the said order by the state government, the Municipal Corporation, Birgaon has vide its order dated 10/06/2019 adopted the said process of levy and stated in its order that the tax shall be imposed by them on every property taxpayer according to the built up area of the construction on the land and the vacant land shall not fall under the purview of the tax imposition by the Municipal Corporation. A copy of the said order dated 10/06/2019 is annexed as ANNEXURE R/E."

6. By virtue of the said turn of events, Mr. Prateek Sharma, the learned counsel for the Petitioner submits that the instance pointed out by the Petitioner as to the wrong and unsustainable course which was being pursued by the State has been substantiated and that the State have corrected themselves by taking a decision to the requisite extent, which has been adopted by the

Local Authority and steps are being taken to levy the tax. Learned counsel for the Petitioner further submits that the apprehension expressed by the intervenors is not correct or sustainable and that tax is being paid by other similarly situated entrepreneurs in other parts of the State and there cannot be any separate treatment or special consideration for the intervenors in the particular area involved herein.

7. Mr. Kishore Bhaduri, learned counsel representing the intervenors, submits that, by virtue of the course now pursued by the State / Local Authorities based on this writ petition, much prejudice has been caused to the intervenors, who are the industrialists in the area. It is stated that the Government had taken a decision earlier, with consent of all concerned, to exclude the industrial units which are situated in the areas in question from further taxation. It is stated that the said units are already satisfying tax and hence any instance of 'double taxation' has to be avoided. Learned counsel for the intervenors further submits that, because of the sudden change of the so-called policy of the State, the intervenors will have to face recovery proceedings and that notices have already been issued in this regard. The State has taken a somersault and has decided to impose tax contrary to the Industrial Policy and hence several industrial units are to suffer the consequence, affecting the rights and interest and even their existence.

8. We heard the learned counsel for the State as well, who submits that the matter was considered by the State exhausting and it was found necessary to evolve a proper policy. It was accordingly, that the proceedings have now been finalized, as given in the affidavit dated 24.06.2019.

9. After hearing both the sides, we are of the view that the action pursued by the Petitioner cannot be termed as vindictive or experimental, insofar as the

adverse instance pointed out has been considered and acted upon by the State, whereby they have decided to tax the industrial units situated in the area as in other cases; which cannot be interdicted by this Court in this proceeding. The scope of the same could be examined in other appropriate proceedings, if at all, the same is sought to be challenged with reference to the industrial policy of the State or such other sustainable grounds; with regard to which, no opinion is being expressed now.

10. In the said circumstances, we record the course and events and leave the matter as it is. The writ petition stands closed, accordingly.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

Chandra