

Khagaria Municipality and anr. Vs. State of Bihar and ors.

Khagaria Municipality and anr. Vs. State of Bihar and ors.

SooperKanoon Citation : sooperkanoon.com/135718

Court : Patna

Decided On : Jan-03-2008

Judge : Navaniti Prasad Singh, J.

Appellant : Khagaria Municipality and anr.

Respondent : State of Bihar and ors.

Disposition : Application dismissed

Judgement :

Navaniti Prasad Singh, J.

1. Heard.

2. Khagaria Municipality is the writ petitioner challenging the order of the Collector, Khagaria whereby the Collector has refused to transfer the right to collect tolls in respect of the public Baluahi bus stand adjacent to the national highway to the Municipality. The Collector has pointed out the distinction between vesting of property with the State and the right to give or perform municipal functions vis-a-vis the Municipality. It is submitted on behalf of the Municipality that by virtue of Section 11A of the Bihar and Orissa Municipal Act 1922 and the corresponding provisions of Section 45 of the Bihar Municipal Act 2007, Municipality has the duty and obligation to provide municipal functions to public areas and that being so the right to realize tolls in respect of those areas must also vest in it. State, on the

other hand, submits that vesting of property and collecting tolls are matters entirely different from duty and obligation to provide Municipal services. Tolls are realized by the State as an adjunct to the right of an owner of property and municipal services are obligations of the Municipality which are to be made financially by levying of municipal taxes and rates. One is an obligation of municipal services, the other a proprietor's right.

3. A reference to Section 58 of the Bihar and Orissa Municipal Act 1922 would show that all properties other than private property, Government property or property of any other local authority within a municipal area would vest in the Municipality. On similar lines are the provisions of Section 232 of the new Act. Here, the bus stand in question is adjacent to national highway. It was the property of the State Government. It was built out of funds of the State Government. The said property never vested in the Municipality nor was it constructed out of municipal funds. Therefore, it cannot be disputed that the said bus stand remained in property of the State Government. It being the property of the State Government, the State Government has a right to collect toll as an adjunct to the right of a proprietor for permitting user thereof. Tolls are collected not for rendering municipal services but for permitting public vehicles to park and pick up passenger traffic from Government land. That is a right inherent to the right of a proprietor of a property and the Collector has rightly pointed out that it is a Sairat, a right arising from immovable property. Neither the right to collect toll nor the property has vested in the Municipality either under the old act or under the new Act. The question of providing municipal services being duties as pointed out in Section 11A of the old Act and Section 45 of the new Act are distinct obligations of the Municipality. Those obligations are notwithstanding property not vesting in the Municipality. The cost of meeting those obligations have to be met by the Municipality from the rates, municipal taxes as levied and collected by the Municipality.

4. Thus, in my view, there is a clear distinction between vesting of property and duty to perform municipal functions and the two cannot be mixed in any manner and they operate in two different and distinct fields and for two different and distinct purposes. The distinction, as drawn by the Collector, is valid in law and the

relief, as sought by the writ petitioner that is Khagaria Municipality, untenable in-law. The learned Counsel for the petitioners submits that if the Municipality has to provide municipal functions then it surely must have power to raise resources

5. In my view, State has not denied such a power to the Municipality. The dispute is essentially with regard to right to collect tolls which, as stated above, is a right of the proprietor of the land and has nothing to do with providing the municipal services.

6. The writ application, thus, merits no consideration and is dismissed accordingly.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com