

PETITIONER:
NAGAR PANCHAYAT, UNA

Vs.

RESPONDENT:
UNA TALUKA SAHAKARI KHARID VECHAN SANGH LTD.

DATE OF JUDGMENT:
17/09/1970

BENCH:
GROVER, A.N.
BENCH:
GROVER, A.N.
SHAH, J.C.

CITATION:
1971 AIR 1078 1971 SCR (2) 407
1971 SCC (1) 21

ACT:
Gujarat Panchayat Act, 1961, s. 307(e) and (k)-Nagar Panchayat continuing to collect octroi under Saurashtra Terminal Tax and Octroi Ordinance, 1949, previously collected by Municipality for the same area constituted under Bombay Municipal Act, 1901-if competent to do so.

HEADNOTE:
The Appellant, Nagar Panchayat, Una, a local body, was constituted under the Gujarat Panchayat Act, 1961, which came into force 'from April 1, 1963. Prior to this enactment, the Bombay Municipal Act, 1901, as applied to Saurashtra, was in force in that region of the present State of Gujarat and under its provisions the Una Municipality was constituted. This Municipality was collecting octroi on commodities imported into the municipal limits of Una under the Saurashtra Terminal Tax and Octroi Ordinance 1949. Section 3 of that Ordinance empowered the State Government to impose the tax mentioned thereunder in the cities and towns specified or included later in Schedule 1. One of these taxes was a terminal tax on goods imported into or exported from the terminal, tax limits. Section 4 gave powers to the Government to make rules by notification for the purpose of carrying out the purposes of the Ordinance. Rule 4, which was framed in Gujarati language, provided that collection of octroi and terminal tax would be done through the "Sudhrai" of the area entered in the schedule to the Ordinance.

After the Act of 1961 came into force and the Nagar Panchayat replaced the Municipality, it continued to collect the octroi till 1967, when the respondent filed a petition under Article 226 challenging the competence of the Nagar Panchayat to collect the octroi. The High Court held that since in the Rules promulgated under the Ordinance in Gujarati the collecting Agency had been described as "Sudhrai" which means Municipality, the Nagar Panchayat was not competent to collect the octroi under the Ordinance as it did not fall within the meaning or definition of the term "Municipality".

On appeal to this Court,

HELD : Allowing the appeal : The High Court was in error in

coming to the conclusion that the Nagar Panchayat was not entitled to carry on the work of collection of octroi under the Ordinance even though the Ordinance which imposed liability to pay remained in force.

Section 307 of the Act leaves no room for doubt that wherever a Nagar Panchayat was constituted in Place of the municipality, the municipality disappeared and all its funds including the right to realise taxes etc. vested in the Nagar Panchayat. In other words it was the Nagar Panchayat which was to function as the local body in the area previously constituted as a municipality. Clause (k) of s. 307 clearly saved all laws or rules which were applicable to the local area which formed a municipality and they were to continue to, apply and to remain in force in the area for which the Nagar Panchayat came to be constituted. There was no force in the contention that the Ordinance did not become applicable to the cities and towns specified in Schedule I which came to be constituted as Grams or Nagars under the Act. [410 C]

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Even if in the rules framed under the Ordinance certain expression created a difficulty that could not defeat the right and the power conferred on the Nagar Panchayat by the Act of realising and collecting the octroi which was being done under the Ordinance as saved by clause (k) of s. 307. [410 H]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1059 of 1970. Appeal from the judgment and order dated February 18, 1970, of the Gujarat High Court in Special Civil Application No. 387 of 1968.

D. V. Patel and Vineet Kumar, for the appellant.

I. N. Shroff, for the respondent.

The Judgment of the Court was delivered by Grover, J. This appeal by certificate arises out of a writ petition filed by the respondent which is a Society registered under the Bombay Cooperative Societies Act 1925 challenging the collection of octroi by the appellant which is the Una Nagar Panchayat.

The appellant is a local body constituted under the Gujarat Panchayat Act 1961, hereinafter called the "Act, which came into force with effect from April 1, 1963. Prior to its enactment the Bombay Municipal Act 1901, as applied to Saurashtra, was in force in that region of the present State of Gujarat. Under its provisions Una Municipality was constituted. It was collecting octroi on commodities which were imported into the municipal limits of Una under the Saurashtra Terminal Tax and Octroi Ordinance 1949. Under S. 3 of that Ordinance the Government could impose the tax mentioned thereunder in the cities and towns specified or included later in Schedule 1. One of these taxes was a terminal tax on goods imported into or exported from the terminal tax limits. Octroi as defined by s. 2(2) included a terminal tax. Section 4 gave the power to the Government to make rules by notification for the purpose of carrying out the purposes of the Ordinance. Rules were framed under s. 4 in the Gujarati language. It was provided therein that the collection of Octroi and terminal tax would be done through the Sudhrai of the area entered in the schedule to the ordinance. It is apparent that under the Ordinance it was the State Government which imposed the octroi or the terminal tax in the cities and towns specified in the

Schedule and the Sudhrai was only an agency for collection thereof.

By a notification dated December 12, 1949 issued under the Ordinance the Government of the erstwhile State of Saurashtra included the town of Una in the Schedule to the Ordinance. Thus

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octroi and terminal tax, became leviable in that town on certain commodities imported there. Section 9 of the Ordinance must also be noticed. According to it the Government was to maintain it separate fund in respect of all monies received by it on account of any of the taxes specified in s. 3 for every city or town or 'local area specified in Schedule I and such fund after deducting therefrom the expenditure incurred in connection with the levy and collection of such tax was to be applied for the benefit of the inhabitants of the city or town or local area for which it was maintained. The purpose of levying the octroi duty or terminal tax under the Ordinance clearly was to add to the revenue of the local body for the benefit of the people residing within the Jurisdiction of that particular local body.

So long as Una Municipality remained a municipality as constituted under the Act of 1901, there was no difficulty in the matter of collection of the octroi. After the Act came into force the Nagar Panchayat replaced the Municipality in Una. It continued to collect the octroi till 1967 when the respondent, for the first time, raised an objection that it was not entitled to do so. As the Nagar Panchayat persisted in making the collection a petition under Art. 226 of the Constitution was filed in the Gujarat High Court. It has been held by the High Court that since in the Rules, promulgated under the Ordinance in Gujarati the collecting agency has been described as Sudhrai which means a municipality the Nagar Panchayat was not competent to collect the octroi under the Ordinance as it did not fall within the meaning or definition of the term "municipality". In our judgment the High Court was in error in coming to the conclusion that the Nagar Panchayat was not entitled to carry on the work of collection of octroi under the Ordinance even though, the Ordinance which imposed liability to pay remained in force. Under s. 307 of the Act where any local area was declared to be a gram or nagar under s. 9- and if that area was co-extensive with the limits of a municipal district or municipal borough the municipality functioning in such local area was to cease to exist and in its place an Interim Gram Panchayat was to be constituted. According to clause (c) of that section the unexpended balance of the municipal fund and property including arrears of rates, taxes and fees belonging to the municipality and all rights and powers which vested in the municipality were to vest in the Interim Gram or Nagar Panchayat fund until a new panchayat was constituted in accordance with the provisions of s. 308(1). Clause (g) provided that all officers and servants in the employ of the municipality were to become officers and servants of the Interim Panchayat under the Act. Clause (k) was in the following terms

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"Any law (other than the municipal law) or any rule, by-law, notification or order issued under such law, which was applicable to and in force in the local area immediately before it was declared as a gram or nagar under section 9, shall continue to apply to and to be in force in the local area until it is super

seded".

Section 308 dealt with the term of office of an Interim Panchayat and the steps to be taken to hold election for a new Gram or Nagar Panchayat. The appellant in the present case is indisputably the duly constituted Nagar Panchayat. Section 307 of the Act leaves no room for doubt that wherever it Nagar Panchayat was constituted in place of the municipality the municipality disappeared and all its funds including the right to realise taxes etc., vested in the Nagar Panchayat. In other words it was the Nagar Panchayat which was to function as the local body in the area previously constituted as a municipality. Clause (k) of s. 307 clearly saved all laws or rules which were applicable to the local area which formed a municipality and they were to continue to, apply and to remain in force in the area for which the Nagar Panchayat came to be constituted. By no stretch of reasoning could it be said that the Ordinance did not become applicable to the cities and towns specified in Schedule I which came to be constituted as Grams or Nagars under the Act. It is true that no fresh rules were promulgated under the Ordinance adapting the new terminology but even about the word Sudhrai It is, a moot point whether it means only a municipality as constituted under the Act of 1901.

An argument was raised before the High Court that the Gujarati expression "sudhrai" meant any local-self governing authority. The High Court observed that this expression as used in the Octroi rules could not have a wider connotation than the expression "municipality" in s. 9 of the Ordinance. When s. 307(k) of the Act saved the operation of all, laws and rules etc., other than the municipal law the intention of the legislature was precise and definite and it is futile to suggest that the Ordinance was not covered by this saving clause. The object underlying clause (c) of S. 307 was to vest in the Nagar Panchayat the entire municipal fund including the arrears of taxes and fees as also the powers and rights relating thereto which previously vested in the municipality. The octroi which was being collected under the Ordinance clearly fell within the ambit of clause (c). The power and the right, therefore, had passed to the Nagar Panchayat and it was fully entitled to exercise it. Even if in the rules framed under the Ordinance certain expression created a difficulty that could not defeat the right and the power conferred on the Nagar Panchayat

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by the Act of realising and collecting the octroi which was being done under the Ordinance as saved by clause (k) of s. 307.

If on account of the absence of proper adaptation in the rules made under the Ordinance any difficulty is being experienced in the collection of octroi it is always open to the State Government to make those clarifications and adaptations and indeed it would be expedient and desirable to do so. So long as the new rules are not framed under the Ordinance or adaptations are not made thereunder the Nagar Panchayat can certainly make the (collection and through the officers who discharge the same duties as were being performed by their counterparts mentioned in the rules.. This is what seems to have been done up till 1967 without any objection by any one.

In the result the appeal succeeds and it is allowed with costs, in this Court as also in the High Court,
R.K.P.S. Appeal allowed..

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JUDIS