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C.A.No. 6612-6613 OF 2002  
IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.6612-6613/2002

Margo Municipal Council, Goa

...  
Appellant

VERSUS

M/s Atlas Realtors & Ors.

...  
Respondents

O R D E R

The appellant before us is a Municipal Council. In the said Municipal Council there were Building Bye-Laws. In terms of Section 308 of the Goa Municipalities Act, 1968 the Director, Municipal Administration wanted the Model Bye-Laws to be enforced in respect of the appellant and pursuant to his directions, the appellant adopted such Model Bye-Laws. In the Model Bye-Law no provision had been made in regard to licence fee payable in respect of licences for the construction of the building and renewal thereof. However, during pendency of the application for renewal, a public notice was published on 9.9.1991. The said public notice indicated that the appellant had adopted Model Building Bye-Laws and Regulations, 1987

-2-

framed by the Government of Goa with modifications mentioned in the Notice. The Bye-laws were to come into force from 16.9.1991 and one of the modifications set out in the Model Building Byelaws was addition of a Schedule of fees for various licences or permissions that were to be granted. After the publication of the said notice the contesting respondents were informed by the Chief Officer of the appellant that the renewal application of the said respondents was allowed but they were directed to remit different amounts towards renewal fees as detailed in the Model Bye-laws as adopted by the appellant. However, this demand was protested by the contesting respondents. Thereafter, the said contesting respondents filed writ petition before the High Court raising various contentions.

The High Court on examination of the matter held that though the publication of the Byelaw may be in order in so far as the Model Byelaws framed by the government, which are sought to be implemented by the Director of Municipal Administration by asking the Council to adopt the same, having not provided the schedule of fees, the schedule of fees which the Municipal council tried to enforce in the said notice was not done after following the due procedure. The High Court noticed that the Municipal Council had undoubted right of levying such fees but

had to follow the necessary procedure as provided under Section 307 of the Goa Municipalities Act, 1968 and ultimately granted the reliefs sought for by the contesting respondents.

Learned Additional Solicitor General, appearing for the appellant submitted that the High Court had noticed the illegality insofar as inclusion of the schedule of fees by public notice dated 9.9.1991 and that illegality was in respect of not following the procedure laid down in Section 307 of the Goa Municipalities Act, 1968. Insofar as not inviting public objections regarding schedule of fees, he submitted that inasmuch as the appellant was obliged to abide by the directions issued by the Director of the Municipality in terms of the Section 308, they adopted the Model Bye-laws and the same having contained lacuna the same was supplied by the appellant by adding schedule of fees in respect of various permissions or licences granted and, therefore, the appellant was not obliged to follow the procedure provided under Section 307 of the Goa Municipalities Act, 1968.

It is necessary to notice that the power to levy fees is available under Section 323 of the Ac

t. Section 323(2) provides as follows:

"(2) Except as otherwise provided by or under this Act, there shall be charged a fee-

-4-

(a) for every such licence at such rates as shall from time to time be specified in the respective provision of the bye-laws relating to the grant of such licence; and...." (Rest of the provisions are considered as unnecessary for the present case).

The aforesaid provision makes it very clear that the levy of fees could be made by an appropriate provision made in the bye-laws relating to grant of such licences. Therefore, necessarily the appellant has to resort to the procedure prescribed under Section 307. It is clear that the appellant had adopted the Model Byelaws and those Byelaws on such adoption becomes the Byelaws of the appellant and when the same need to be modified necessarily the procedure prescribed under Section 307 had to be followed. Therefore, the view taken by the High Court cannot be objected to and it is not necessary for us to interfere with the conclusion that the inclusion of the schedule of fee by public notice dated 9.9.1991 was not in order. The grievance before the High Court is only in relation to addition of schedule of fees in the Model Byelaws and in regard to other aspects. Hence, the High Court could not have proceeded to quash the public notice dated 9.9.1991 which contained the entire Byelaws. The High Court should have made

-5-

it clear that insofar as addition of the schedule of fee in the said Byelaws was inappropriate and only to that extent the High Court should have quashed the same. Therefore, the order made by the High Court to that extent shall stand modified.

Further we must notice that the Municipal Council was under the impression that the Model Bye-laws having been adopted by the appellant, the fees in respect of various licences and permissions not having been made provided under the Model Byelaws the same having been provided now, they were entitled to collect such fees and on that basis collected fees from 16.9.1991 onwards. It is only six contesting respondents who had come before the Court challenging the validity of such levy. The various reliefs that have been granted in respect of the contesting respondents by the High Court individually are maintained. In these circumstances the judgment of the High Court is declared to have come into operation from the date it was delivered namely 12.2.2001. This course we have adopted in the light of the decision of this Court in Somaiya Organics(India) Ltd. Vs. State of U.P. And Anr.-(2001) 5 SCC 519.

-6-

It is necessary to notice that the appellant having collected such fees on the basis we have set out earlier, if the notice is held to be bad the levy itself becomes bad on the date the notice came into effect, it will lead to financial crisis so far as appellant is concerned. In that view, we have adopted the aforesaid course. The appeals shall stand partly allowed as aforesaid.

.....J.

( S. RAJENDRA BABU )

.....J.

( G.P. MATHUR )  
New Delhi,  
November 12, 2003.

ITEM No.101

Court No. 2

SECTION IX

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

CIVIL APPEAL NO.6612-6613/2002

Margo Municipal Council, Goa

Appellant(s)

VERSUS

M/s Atlas Realtors & Ors.  
(With office report)

Respondent (s)

Date : 12.11.2003:This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S. RAJENDRA BABU  
HON'BLE MR. JUSTICE G.P. MATHUR

For Appellant (s)Mr. Mukul Rohtagi, ASG  
Mr. Shridhar Y. Chitale, Adv.  
Mr. A.P. Medh, Adv.

For Respondent (s) Mr. A.K. Sanghi, Adv.  
Mr. Dhruv Mehta, Adv.  
Ms. Shalini Gupta, Adv.for  
M/s K.L. Mehta & Co.

UPON hearing counsel the Court made the following  
O R D E R

Learned Addl. Solicitor General/ learned counsel for the parties made their sub  
missions from 10.40 a.m.to 11.45 a.m.

The appeals shall stand partly allowed in terms of the signed order.

( Meenu Sethi )  
Court Master

( Om Prakash )  
Court Master

Signed order is placed on the file