

(1954) 02 OHC CK 0005

In the Orissa High Court

Case No : Second Appeal No. 34 of 1950

Chairman, Municipality of Balasore

APPELLANT

Vs

Mahammad Abdul Sattar Khan

RESPONDENT

Date of Decision : 16-02-1954

Acts Referred:

Bihar and Orissa Municipal Act, 1922 — Section 82(1)

Citation : AIR 1954 Ori 218 : (1954) 20 CLT 337

Hon'ble Judges : Panigrahi, C.J.; Mohapatra, J

Bench : Division Bench

Advocate : H. Mohapatra and R.N. Misra, for the Appellant; L.K. Dasgupta, for the Respondent

Final Decision : Dismissed

Judgement

Mohapatka, J.—This appeal has been brought by the defendant Municipality of Balasore) against the confirming judgment of Sri T. V. Rao, Subordinate Judge of Balasore, dated 31-10-1949. The plaintiff is a resident of Balasore Town occupying Holding No. 5 in Ward E together with Holdings No. 256 of Motiganj and No. 5 of Daftary Sahi. He has been assessed to pay a personal tax of Rs. 9/7/- per quarter. The only contention of the plaintiff is that the assessment is ultra vires inasmuch as the tax has been fixed on a consideration of his income from properties outside the jurisdiction of the Balasore Municipality. The plaintiff admits that in fact he possesses 40 acres of land but that is in Chandipur which is admittedly outside the municipal jurisdiction.

2. The contention of the defendant-appellant is that the assessment is legal and in accordance with the provisions of Section 82, Bihar and Orissa Municipal Act. The relevant provisions of law are contained in Section 82, Clause (1), Sub-clause (a) which runs as follows :

"82. (1) The Commissioners may, from time to time, at a meeting convened expressly for the purpose, of which due notices shall have been given, subject to

the provisions of this Act and with the sanction of the Local Government, impose within the limits of the municipality the following taxes and fees, or any of them :

(a) a tax upon persons in sole or joint occupation of holdings within the municipality according to "their circumstances and property within the Municipality".

The decision of the Appeal Committee passed on 8-4-1947 on the objection filed by the plaintiff u/s 116 of the Act shows that the Chairman and four other members constituted the Committee. The order runs as follows :

"The applicant says that he has forty acres of land, income from which they assess at Rs. 1,000/-. They also assess his income from Jewellery shop, cloth shop and Homeopathy and the house rent in the name of his wife at Rs. 2,200/-. So the total income comes to Rs. 3,200/- which they divided on the three holdings. As the previous tax was assessed on this basis, they maintained the previous personal tax of Rs. 9/7/- per quarter."

The order for the assessment of personal tax which is impugned in this suit is based on the income of the forty acres of land as one of the items. This has been found by the Courts below and it is without any dispute that this forty acres of land is situate outside the jurisdiction of the Municipality.

3. The point to be determined, therefore, is whether the assessment is to be declared as invalid and ultra vires as it was based upon consideration of properties outside the municipal jurisdiction. This point has been the subject of judicial pronouncement in several cases, the earliest of which that has come to our notice is a decision in the case of -- "Kameshwar Prasad v. Chairman, Bhabua Municipality", 27 Cal 849 (A), which is to the effect :

"An assessment of tax u/s 85, Clause (a) of the Bengal Municipalities Act (which exactly corresponds to Section 82 of the Bihar and Orissa Municipal Act which was in operation in the years in question) made in consideration of the assessee's "circumstances and property" (altogether or partly) outside the local limits of the Municipality is ultra vires and illegal; and the Civil Court has jurisdiction to set aside such an assessment."

At page 859, their Lordships observed "as follows :

"And the whole question which had to be considered in this case was whether the Municipality had not in making the assessment in question proceeded upon the basis of the plaintiff's circumstances and property outside the Municipality of Bhabua. If they did so altogether or even partly, as it seems to have been the case, it is obvious that the assessment was ultra vires, and the plaintiff was entitled to bring the suit that he instituted."

It seems to be the definite view that for the purpose of making the assessment u/s 82 (1)(a), the Municipal Body can base their assessment only on a consideration of the circumstances of the property within the jurisdiction of the

Municipality and the assessment is vitiated and is ultra vires if the property outside the jurisdiction of the Municipality is taken into consideration. The same view also was taken by Coutts and Das JJ. of the Patna High Court in the case of "Chairman, Bihar Municipality v. Ramdeo Das", AIR 1920 Pat 427 (B), where their Lordships lay down:

"Income derived from property situated outside the Municipality does not come within the phrase "circumstance and property within the municipality" in Section 85 of the Bengal Municipal Act, 1884, and is not liable to assessment under Clause (a) of that section."

The main contention before their Lordships was in respect of income from the zamindari property which was admittedly outside the municipal area. The contention that the income from the zamindari will be brought within the meaning of "circumstances and property within the municipality" was negatived by their Lordships and the principle laid down in 27 Cal 849 (A) was followed.

The same view also was affirmed in another sub-sequent case of the Patna High Court reported in -- "Md. Ali Nawab v. Behar Municipality," AIR 1920 Pat 429 (C).

4. Mr. Mohapatra, appearing for the appellant, strenuously argues that as soon as the income comes to the hands of the assessee, who is a resident within the municipal jurisdiction, it will come within the meaning of circumstances of the man within the municipality even though the property may be situate outside. His contention is that the man may have several sources of income. The sources may be situate outside the municipality, but as soon as the income is received by the assessee within the municipal jurisdiction, the provisions of Section 82(1) (a) are complied with. It is to be remembered that the personal tax under the Municipal Act is not the same as the tax levied under the provisions of Income Tax Act. Moreover, as we have indicated above, this contention was raised and negatived in the case reported in "27 Cal 849" (A) & AIR 1920 Pat 427 (B), and with respect we agree with the view expressed in these decisions.

5. Mr. Mohapatra, however, relies upon another decision of the Calcutta High Court reported in -- Abdul Latif Yusuff Vs. Abu Mohammed Kassim, , where the assessment was found to be legal even though the income in that case was the sale proceeds of a Tea Garden outside the local limits of the municipality. We find from the facts stated in the judgment of Sir Ashutosh Mukherjee that in that case the income derived from the Tea Gardens in the Western Doars in the district of Jalpaiguri was deposited in the bank to the credit of the assessee-company within the municipal jurisdiction and further that the entire income is brought to be spent and enjoyed within the Municipality. Mukherjee J. observed:

"There can be no room for doubt that the sale proceeds of the tea, when they are brought within the municipal limits and are placed in the Bank to the credit of the companies, may, without undue strain on the language, be described as their "circumstances and property", that is, their "means and property" within the Municipality, and may consequently be taken to furnish a just measure of their

liability to assessment u/s 85(a)."

It is to be noted that the earlier decisions of the Calcutta High Court and the Patna High Court that we have referred to above were also placed before their Lordships; but they have disposed of the earlier cases with the remark:

"What constitutes the circumstances and property of a person within the Municipality must in a large measure depend upon the facts of the particular case."

In our view, the above feature, that in the case the income was brought and deposited in the bank within the municipal area, distinguishes it from the present one. In the case before us, there is no evidence whatsoever as to whether the present assessee was receiving income of his property at Chandipur within the municipal area; but that apart if there be any conflict in principle between the proposition laid down in the case of Abdul Latif Yusuff Vs. Abu Mohammed Kassim, , and the view expressed in the earlier decisions of the Calcutta High Court and Patna High Court, we would agree with the view of the earlier decisions of the Calcutta and Patna High Courts referred to in our judgment in preference to the view expressed in AIR 1922 Cal 48 (2) (D).

6. In this view of the position of law, the decisions of the Courts below are correct. The appeal is, therefore, dismissed with costs and the judgments of the Courts below are confirmed.

Panigrahi, C.J.

7. I agree.