
(1983) 03 PAT CK 0001
In the Patna High Court
Case No : A.F.A.D. No. 909 of 1974

Chandradip Prasad and Another	Vs	APPELLANT
Ravelganj Municipality and Others		RESPONDENT

Date of Decision : 04-03-1983

Acts Referred:

Bihar and Orissa Municipal Act, 1922 — Section 98(1), 98(2)

Citation : AIR 1983 Patna 327 : (1983) PLJR 275

Hon'ble Judges : S.K. Jha, J; Ashwani Kumar Sinha, J

Bench : Division Bench

Advocate : Pradyuman Narain Singh, for the Appellant; Jugal Kishore Prasad (No. 2), for the Respondent

Final Decision : Partly Allowed

Judgement

1. The plaintiffs are the appellants against the judgment of modification.
2. The suit concerns Holding No. 585 of Ward No. 2 situate within the Ravelganj Municipality in the district of Satna. The appellants want a declaration that the holding in question is not liable to assessment of any of the taxes sought to be imposed as per the notice of demand dated 4-4-1967, issued by the municipality defendant No. 1-respondent No. 1 and that the actions of the municipality are all arbitrary, invalid, beyond jurisdiction and ultra vires the statutory powers vested in the Municipal Commissioners. On those grounds, the appellants want the demand notices issued by the respondents to be quashed and they further seek an injunction restraining the defendants from executing the orders in question.
3. Shorn of all details, the case of the appellants is that appellant No. 2, Thakur Prasad, fought municipal election, as a result of which all the Municipal Commissioners became inimical to him. On account of this enmity, respondent No. 1, i.e., Municipality, arbitrarily assessed a huge amount of taxes on his holding in question though the house was incomplete and unoccupied. Other objections were taken which we need not take notice of for the purpose of

disposal of this appeal.

4. The Chairman of the Municipality, defendant No. 10, contested the suit and denied all the allegations of the appellants. The defendants-respondents further stated that the suit house was complete in the year 1965 and was in habitable condition and, therefore, the assessment was rightly made. The suit house was really constructed and occupied by appellant No. 2, Thakur Prasad and the Municipality was well within its jurisdiction to tax the owner and occupier thereof. Thakur Prasad filed objection in the Municipality, which was heard by a legally constituted Review Committee and after due enquiry and hearing, the Review Committee found the assessment already made as correct. These, in essence, were the points on which the parties were at loggerheads.

5. Although a number of issues were framed, it is not necessary to refer to all of them since in this appeal only a short point has been raised. Before embarking upon the point for determination in this case, it is worthwhile to mention that the trial Court found against the appellants in finding that the holding in question was liable to be assessed under the provisions of Section 98 (2) of the Bihar and Orissa Municipal Act, 1922 (hereinafter referred to as the Act). It, however, held in favour of the appellants that they were not liable to pay the latrine tax. Both the parties filed appeal before the lower appellate Court. The lower appellate Court, while agreeing with the finding of the trial Court that the assessment was liable to be made u/s 98 (2) of the Act, further held in favour of the Municipality that the appellants were liable to pay the latrine tax. As the most agitated question of fact before the Courts below was that the house over the holding in question was not yet complete, it was not liable to any assessment of tax, the finding of the lower appellate Court in this regard is that the house was actually complete and the appellants were residing in it. That is a pure question of fact and the case on facts rests there in so far as this point is concerned. On this finding, the only question, agitated in this Court, is as to whether the assessment of tax was liable to be made u/s 98 (1) or under the provisions of Section 98 (2) of the Act.

6. Learned counsel for the appellants urged that the assessment could be made on the finding only under the provision of Section 98 (1) of the Act. In our view, the submission is well justified and fortified by law. A similar question, came up before a Bench of this Court in the case of Chandi Pd. Choudhary v. Bhagalpur Municipality 1965 BLJR 862. The facts of that case were on all fours with those of the case at hand. It was held therein that -

"On the admitted facts of this case, in the building on the holding in question the owners themselves reside and it is their residential house. Therefore, it is manifest that it was not intended for letting but the intention was clear that it should be used by the owners as their residence. That being the position the assessment of the holding could be made only under Sub-section (1) of Section 98, and not Sub-section (2) of that section,"

7. This position in law must inevitably follow the language of the statute itself. Section 98 (2) of the Act runs thus :--

"If there be on the holding a building off buildings, the actual cost of erection of which can be ascertained or estimated and which is or are not intended for letting or for the residence of the owner himself, the annual value of such holding shall be deemed to be an amount which may be equal to but not exceed, seven and a half per centum on such cost, in addition to a reasonable ground rent for the land comprised in the holding"

We are not concerned with the proviso to Sub-section (2) of Section 98 of the Act. It will be clear from the aforesaid provision that Sub-section (2) can be attracted only in such cases where the building on a holding is not intended for letting or for the residence of the owner himself. In the instant case, the finding of fact is that the building on the holding was used for residential purposes by the appellants. By no stretch of imagination, therefore, it can be said that the provision of Sub-section (2) of Section 98 is attracted. The only other provision which can then apply would be Sub-section (1) of Section 98, which runs in the following terms:--

"The annual value of a holding shall be deemed to be the gross annual rental at which the holding may reasonably be expected to let."

It is, therefore, clear that the assessment of tax on the annual value of the holding in the instant case will have to be in the mode and manner prescribed in Sub-section (1) of Section 98 of the Act.

8. This position, in law, is further fortified by two other Bench decisions of this Court, the facts of which may not be said to have been identical with the facts of the present one. All the same the principle laid down is the same. Reference in this connection may be made to the cases of Shivji Khetai Thacker and Others Vs. Commr. of Dhanbad Municipality, and Patna Municipal Corporation Vs. Kailash Behari Sinha and Another, .

9. In the result, therefore, this appeal is allowed in part to the extent as indicated above; and as a necessary corollary it follows that the latrine tax will have to be paid only on the annual value as assessed in terms of Sub-section (1) of Section 98 of the Act. There shall be no order as to costs.