
(1966) 09 PAT CK 0015
In the Patna High Court
Case No : Civil Revision No. 26 of 1962

Commissioner of Sasaram Municipality	APPELLANT
Vs	
Ram Sarup Pandey	RESPONDENT

Date of Decision : 12-09-1966

Acts Referred:

Bihar and Orissa Municipal Act, 1922 — Section 105, 106, 107, 113, 116

Citation : AIR 1967 Patna 216

Hon'ble Judges : R.L. Narasimham, C.J; R.K. Choudhary, J; Kamla Sahai, J

Bench : Full Bench

Advocate : Ramji Saran, for the Appellant; B.P. Samaiyar and Bindeshwari Chaudhary, for the Respondent

Final Decision : Allowed

Judgement

Sahai, J.—This application by the Commissioners of the Sasaram Municipality (hereinafter to be referred to as the municipality) is directed against a judgment of the Munsif, 1st Court, Sasaram, whereby he has dismissed a mall cause court suit instituted by the municipality against the opposite party for recovery of a total amount of Rs. 85 on account of arrears of holding and water taxes, besides costs of the suit. The question which arises for consideration in this case is whether a committee constituted under Sub-section (1) or Sub-section (2) of Section 117 of the Bihar and Orissa Municipal Act, 1922 (hereinafter to be referred to as the Act), could legally dispose of an application filed by the opposite party u/s 116 of the Act against the revisional assessment of holding tax on the opposite party's holding. The case has been referred to this Bench as there is a conflict of decisions in this Court at this point.

2. The opposite party is the owner of holding No. 150 in ward No. 1 of the municipality. It consists of plots Nos. 402, 403, 407 and 408 in mahalla Gaurakshini within the municipality. Briefly stated, the municipality's case is that holding tax was introduced in the municipality from the year 1946-47, and that the holding in question was assessed to holding tax, amounting to A sum of Rs.

20 per year, in the year 1952-53. The holding was further assessed to water tax at the rate of Rs. 50 per year from the fourth quarter of 1957-58. In the revisional assessment in 1958-59, the holding and water taxes remained the same. The opposite party has defaulted in payment of the holding and water taxes to the tune of Rs. 85.

3. The defendant (who is the opposite party in this Court) filed a written statement, and took various pleas. The only point, however, which was urged in argument on his behalf before the learned Munsif was that the revisional assessment in 1958-59 was not in accordance with the provisions of Section 106 of the Act, and the objection filed by him against the assessment was not disposed of by a committee constituted u/s 117 (2) of the Act as it should have been. On this basis, it was contended that the objection was not legally disposed of and hence he was not liable to pay the holding tax as assessed upon the holding. Another argument was that he was not liable to pay the water Lax also.

4. The petitioner had admittedly filed an application for review u/s 116 of the Act against the revisional assessment. It appears that members of the committee, which disposed of that application, were Shri Kamlakar Pandey and Shri Gokul Chand Jaiswal, who were two lax-payers of the municipality, Shri Sheo Narayan Sah and Shri Ramdhari Prasad, who were commissioners of the municipality, and Shri Zamil Ahmad, Deputy Magistrate, who was nominated by the District Magistrate. Thus, the committee was formed under Sub-section (1) and not under Sub-section (2) of Section 117. Shri Zamil Ahmad was not present at the hearing of the application; but quorum consists of three members only.

5. The learned Munsif has held that the defendant's application for review u/s 116 should have been heard by a committee formed under Sub-section (2) which provides that the committee should consist of not less than three municipal commissioners. Inasmuch as only two of the members of the committee in question were municipal commissioners, he has further held that the defendant's application was not disposed of in accordance with law. On this basis, he has come to the conclusion that the municipality is not entitled to recover the arrears of holding tax from the defendant. He has further held that, since the water tax is assessed according to the valuation on the basis of which the holding tax is assessed and since the holding tax itself has not been legally assessed, the assessment of water tax is a nullity. On these findings, he has dismissed the suit. Hence, the plaintiff municipality has filed this application for revision.

6. Mr. Ramji Saran, who has appeared on behalf of the municipality, has argued that the learned Munsif's view is erroneous, and that it was only a committee formed under Sub-section (1.) and not a committee formed under Sub-section (2) of Section 117 of the Act which could dispose of the opposite party's application for review u/s 116 against the assessment of holding tax on his holding. I proceed now to consider whether his argument is correct.

7. In order to decide the above question, it is necessary to refer to some of the provisions of the Act. Section 89 provides for preparation of a list of assessment on persons. Section 90 provides for the period for which the list will remain in force. It contemplates, publication of a new assessment list, revision or amendment of the original list after three years. Section 101 lays down that, "when it has been determined to impose any tax to be assessed on the annual value of holdings," the commissioners shall determine the annual value of all holdings, and shall enter such value in a valuation list. u/s 104, the commissioners have, at a meeting, to determine the percentage on the valuation of holdings at which the tax shall be levied.

8. Sections 105 and 106 and Sub-section (1) of Section 107 are important for the purposes of this case. A perusal of these provisions shows that the valuation entered in the valuation list prepared u/s 101 has to be carried to the assessment list under Clause (d) of Section 105. There seems to be no provision for an objection to the value entered in the valuation list until it is carried to the assessment list; but an application for review can be filed u/s 116 not only against the assessment but also against the valuation as entered in the list u/s 105.

9. It is manifest that Section 105 provides for preparation of the original assessment list, and Section 108 provides for preparation of the revised assessment list, which has to be prepared every five years after the preparation of the original list. Sub-section (1) of Section 106 is clearly dependent upon Section 105 because it lays down that the revisional assessment list will be prepared in the same manner as the original list. This sub-section, therefore, does not stand alone but has to be read with Section 105. The revisional assessment list can also be said to be prepared u/s 105 because it has to be prepared in the manner laid down in that and previous sections, though it is Section 106 which says that a revisional assessment list will be prepared every five years.

10. Sub-section (2) of Section 106 has to be read with Section 107. That section does not come into operation at the time of preparation of the original assessment list; but the commissioners can exercise the power given to them under that section at the time of preparation of the revisional assessment list or during the interval between the preparation of the general assessment list and another. Mr. Samaiyar, who has appeared on behalf of the opposite party, has argued that the powers conferred by Section 107 cannot be exercised at the time of preparation of the revisional assessment list. I am quite unable to accept this argument. The words used in Section 107 are "from time to time", and there is nothing in it to show that it does not come into play at the time of preparation of the revisional assessment list. The words used in Sub-section (2) of Section 106, viz., "subject to any alteration or amendment made u/s 107 and to the result of any application u/s 116 connote that it is open to the commissioners to exercise their power u/s 107 to alter or amend the assessment list even in the course of

preparation of the revisional assessment list.

Art example will make this clear. Suppose the revised valuation list has been prepared. Before the revised assessment list is ready, the value of any holding has been increased by additions or alterations to buildings or it has decreased due to the fact that the holding has been wholly or partially demolished or destroyed. There is no reason why the commissioners cannot exercise their powers under Clause (d) or (f) of Section 107 (1) to alter or amend the previous assessment list in view of those facts. If a tax-payer is dissatisfied with the alteration or amendment u/s 106 (2) read with Section 107, he is entitled to file an application for review u/s 116 as the sub-section itself indicates.

11. Section 113 provides for the appointment of an assessor at the instance of the State Government in certain circumstances and for assessment by such an assessor.

12. Section 115 (1) provides for publication of the assessment list mentioned in Section 89 or Section 105 when it has been prepared or revised. The revision referred to in this sub-section is clearly one u/s 90 or Section 106, respectively. The Legislature, however, did not think it necessary to refer specifically either to Section 90 or to Section 106, and It considered reference to Sections 89 and 105 to be sufficient. This is obviously because though sections 90 and 106 provide for periodic revision, the assessment lists are, as I have already said, prepared in the manner provided in the Act and culminating in preparation of assessment lists under Sections 89 and 105. In this view of the matter, it seems manifest that, when Section 89 or Section 105 is referred to in Sections 115 and 117, it signifies the original assessment list prepared under those sections and also the revised assessment list. This view is supported by the fact that there is no rational basis at all for making a difference between the original assessment list and the revised assessment list in so far as an application for review u/s 116 and its disposal u/s 117 is concerned.

13. Section 116 (1) lays down that a person may apply to the Commissioners for review if he is dissatisfied (1) with the amount assessed upon him or (2) with the valuation or assessment of any holding, or (3) with the fact of assessment to tax on the ground that he is not in occupation of the holding or he is not liable to be assessed. On these grounds, he may pray for review of the amount of assessment or valuation or for exempting him altogether from the assessment or tax. No distinction has been made in this sub-section between the original and the revisional valuation or assessment of any holding.

14. Section 117 provides for hearing and determination of applications filed u/s 116. A committee appointed under Sub-section (1) has to consist of two commissioners and two tax-payers of the municipality along with a Government servant not below the rank of a Deputy Magistrate nominated by the District Magistrate. The committee to be appointed under Sub-section (2) has to consist of not less than three commissioners.

15. In view of the words used in Subsections (1) and (2) of Section 117, all applications u/s 116 relating to assessment upon the objector as a person u/s S9 or assessment upon his holding u/s 105, besides assessment under Section 107 or Section 113, have to be dealt with under Subsection (1). In view of the reasons which I have given above, it is abundantly clear that Sections 89 and 105, as referred to in this Subsection, include the original as well as the revisional assessment lists. It is further clear that all applications u/s 116 relating to valuation or exemption of the objector from assessment or payment of tax have to be disposed of under Sub-section (2). I may add that all objections relating to any matter other than assessment which, can be raised under Sub-section (3) of Section 107, have also to be dealt with under this sub-section.

16. I may now consider the decisions of this Court on the point in question. The earliest decision which has been brought to our notice is that of a Bench of this Court in *Dr. Mahendra Prasad v. Administrator, Patna Corporation* 1954 B LJ R 499. In that case, their Lordships have not specifically made any reference to Sub-section (1) or Sub-section (2) of Section 117; but observations made by them make it clear that, when reference was made in Section 117(1) to Section 105, it was unnecessary to make reference also to Section 106 in that sub-section. S.K. Das, J. (as he then was), who delivered the judgment of the Bench, has stated:

"The word 'revised' in Section 115 can have a reference only to the revision contemplated u/s 106 of the Act. Mr. Girish Nandan Sahay Sinha has made much of the fact that Section 115, or Section 117 as amended in 1947, does not contain any reference to Section 106. Section 117 as amended in 1947 refers to an assessment made u/s 89, Section 105, Section 107 and Section 113. Section 115 refers to an assessment mentioned in Section 89 and Section 105. It is worthy of note that even when new valuation and assessment lists are prepared u/s 106, they have to be prepared in the same manner as the original lists; in other words, the same procedure as laid in Sections 101, 102, 105, etc., as to be followed. This is the reason why it was enough to refer to the assessment list u/s 105 in Section 117. From the strictly drafting point of view, it was unnecessary to refer to Section 106; because the new assessment lists u/s 106 have to be prepared in the same manner as original lists."

17. The next decision is an unreported one. It is that of a Bench of this Court in *Mahadeo Lal Singhanian v. Municipal Commissioners, Bhagalpur Municipality*, S. A. No. 1067 of 1952, D/-5-7-1956 (Pat). The point under consideration directly arose for decision in that case. Rai, J., who has delivered the judgment, has quoted Section 117(1) of the Act, and has observed:

"According to this sub-section, every application presented u/s 116 relating to the assessment made u/s 105 or Section 107 was to be determined by a committee appointed under Sub-section (1) of Section 117 of the Act. The Court of appeal below has taken the view that though the new valuation and assessment list is provided for u/s 106 of the Act, in fact the assessment list is to

be prepared in accordance with the provisions of Section 105 of the Act, hence the objection filed by the plaintiff could have been heard by a committee appointed u/s 117(1) of the Act. Besides this the objection filed by the appellant will certainly come u/s 107(1) (d) and (dd) of the Act. In that view of the matter also the present objection filed by the plaintiff could have been heard and disposed of by committee formed u/s 117(1) of the Act."

18. Both the above decisions support the view which I have expressed above; but contrary views have been expressed in two other Bench decisions of this Court: (1) *Municipal Commissioners of Sahibganj Municipality v. Jugal Kishore* 1957 BLJR 577 and (2) *Gopal Jee Sahai v. V.D. Misra* 1963 B LJ R 244. In the former case, the contention of Mr. (now Mr. Justice) U.N. Sinha was that when Section 105 was specifically mentioned in Sub-section (1) of Section 117, it was wholly unnecessary to refer to Section 106. This was in consonance with the decision in *Dr. Mahendra Prasad's case* 1954 BLJR 499; but their Lordships rejected the contention on the ground that Sections 105 and 106 dealt with entirely two different matters, the former with original assessment and the latter with revisional assessment. *Kanhaiya Singh J.*, who delivered the judgment of the Bench, observed further:

"The original assessment and revision assessment are not the same, though the machinery provided for making them may be identical. I do not think how the subject-matter of Section 105 and Section 106 can be regarded as identical. The original assessment and revision assessment call for different treatment. Further, it will be wholly wrong to assume that the legislature deliberately omitted Section 106 from Sub-section (1) of Section 117. Had this been the intention of the legislature, It must have Indicated it by a recourse to usual drafting phraseology."

With great respect, I am unable to agree. A careful consideration of the section which I have discussed above leaves no room for doubt that reference to Section 105 in Sub-section (1) of Section 117 includes the revisional assessment list prepared in accordance with Section 105 on revision u/s 106. Besides it is manifest that the committee formed under Subsection (1) represents different interests and is stronger than the committee formed under Sub-section (2). Any objection to assessment u/s 89 or Section 105 as well as any objection to alteration or amendment of the assessment u/s 107 must be heard and disposed of by the stronger committee under Sub-section (1). There cannot be any possible dispute in this connection. Can any principle form the basis of an argument that the revisional general assessment should be treated upon a different footing and objections to it should be heard by the weaker committee under Sub-section (2)? The obvious answer is that there can be no principle for making such a distinction.

19. *Kanhaiya Singh, J.* was a party also to the decision in *Gopal Jee Sahai's case* 1963 BLJR 244. The Bench has followed the decision in the case of *Municipal Commissioners of Sahibganj Municipality* 1957 BLJR 577. Referring to *Dr. Mahendra Prasad's case* 1954 BLJR 499 *Ramratna Singh, J.*, who has delivered

the judgment, has stated that the question was not pointedly raised in that case. He has further observed:

"It is true that the revised assessment list u/s 106 has to be prepared in the same manner as the original assessment list: but this does not mean that Sub-section (1) of Section 117 refers also to revised lists made u/s 106. If the argument of the learned Advocate, that assessments made u/s 106 are covered by Sub-section (1) of Section 117, on the ground that such an assessment is made in the same manner as the original assessment u/s 105, were accepted, then Subsection (2) of Section 117 would become redundant. Both the sub-sections of Section 117 contain provisions for hearing of objections to valuation or assessment only and, in view of the fact that Sub-section (1) speaks of Sections 89, 105, 107 and 113 only, Subsection (2) must refer to Section 106. I am, therefore, of the opinion that a revised assessment u/s 106 is covered by Sub-section (2) of Section 117."

I have already shown what kinds of applications for review can be disposed of under Sub-section (2) of Section 117. With great respect, therefore, I am unable to accept that Subsection (2) of Section 117 will become redundant unless it is taken to refer to a revised assessment u/s 106. It follows that I am unable to concur with the conclusion reached by their Lordships in that case.

20. In Jugal Kishore Tamakuwala Vs. Municipal Commissioners of Sahibganj Municipality, the tax-payer filed an application for review u/s 116 against the increase in valuation of his holding. The municipality constituted a committee under Subsection (2) of Section 117. That committee disposed of the application. Mahapatra, J., who delivered the judgment of the Bench, stated :

"It is clear that the applications relating to valuation, non-liability to tax or assessment which can be made u/s 116 are kept out from Clause (1) of Section 117 and are provided for in Clause (2) of that section."

This decision supports the conclusion which I have already reached.

21. Speaking with great respect, I am clearly of the opinion that the cases of 1957 BLJR 577 and 1968 BLJR 244 have been wrongly decided. They are, therefore, overruled.

22. In my judgment, the application for review filed by the opposite party was legally decided by a committee formed under Sub-section (1) of Section 117 of the Act. Mr. Samaiyar has not urged any other ground for holding that the assessment of holding tax on holding No. 150 of the opposite party is illegal of without Jurisdiction. He has also not put forward any argument as to why the imposition of water tax on the opposite party should be held to be illegal when his argument relating to the legality of the holding tax has failed.

28. For the reasons given above, I allow the application, set aside me judgment of the learned Munsif, and decree the suit with costs throughout; the hearing fee in this Court is assessed at Rs. 32/-.

Narasimham, C.J.

24. I agree.

Choudhary, J.

25. I agree.