(1938) 08 PAT CK 0013

In the Patna High Court

Commissioners of Darbhanga Municipality APPELLANT

Vs

Shiva Prasad RESPONDENT

Date of Decision : 31-08-1938

Acts Referred:

Citation : AIR 1939 Patna 20

Hon'ble Judges : Wort, Acting C.J.

Bench : Division Bench

Judgement

Wort, Ag. C.J.

1. It must not be thought that I am laying down any principle of law in this case because that is not so, and it is with a considerable reluctance that I come to the conclusion at which I have arrived. I am quite certain that had I tried the case in the first instance I should not have come to the same conclusion on the question of fact as that at which the learned Judge in the Court below has arrived, and if it were possible I would reverse his decision on the point on which he has substantially decided the case. He has held here that no meeting was held and that the Sections of the Municipal Act were not complied with. Any assessment of tax would of course naturally be ultra vires. Tax can be imposed only by following the provisions of the Municipal Act.

2. I am equally convinced that if the provisions of the Act relating to formalities had been complied with, this Court would have no jurisdiction to interfere with the decision of the Commissioner which is final. If I were satisfied that the Judge had come to the conclusion that the meeting was not held because the municipal authorities did not prove that the meeting had been held, in other words, if the Judge had decided the case on the assumption that the onus of proof was on the Municipality, I should not have the slightest hesitation in setting aside the decision. But in this case the Municipal Officers were called and they gave explanation why the records relating to the meeting were not forthcoming which made the Judge come to the conclusion that the meeting in fact was not held.

3. It would not be accurate to say that the judgment was based on the assumption that the onus of proof was on the Municipality. If I could see anything in the judgment to suggest that, I repeat I would gladly set aside the same, because it must be assumed that what ought to have been done was in fact done: the onus is on the plaintiff to show that it was not done. Here the plaintiff certainly took precautions by calling upon the Municipality before the case was heard to produce papers, and the explanation for non-production not appealing to the learned Judge he definitely said that the meeting was not held. In those circumstances of course imposition of tax in this particular case was irregular.

4. It does not however prevent the Municipality from holding a meeting and imposing the tax in a proper and regular manner. These being the circumstances, the appeal fails and must be dismissed with costs.