

(1962) 08 OHC CK 0018
In the Orissa High Court
Case No : Civil Revision No. 94 of 1961

Dayasagar Mohapatra

APPELLANT

Vs

Councillors, Sambalpur Municipality

RESPONDENT

Date of Decision : 10-08-1962

Acts Referred:

Bihar and Orissa Municipal Act, 1922 — Section 134, 156(1), 86

Citation : (1962) 28 CLT 511

Hon'ble Judges : Misra, J

Bench : Single Bench

Advocate : M.S. Rao, M.K.C. Rao and A.K. Rao, for the Appellant; S.S. Basu, for the Respondent

Final Decision : Dismissed

Judgement

Misra, J.—Defendant is the Petitioner. The Plaintiff opposite-party filed S.C.C. Suit No. 103 of 1960 in the court of the Small Cause Court Judge, Sambalpur, for realisation of Rs. 7092 nP. as the arrear latrine tax due for the house belonging to the Petitioner. The admitted case of the parties is theft the house in question does not contain a latrine, urinal or cesspool. The defence is that the Petitioner is not liable to pay the latrine tax and that the assessment of the latrine tax is illegal and without jurisdiction. The learned Small Cause Courts Judge decreed the Plaintiff's suit by his order dated 22nd December, 1960, holding that the imposition of the tax was legal. It is against this order that the revision has been filed.

2. The learned Small Cause Courts Judge has recorded his finding as follows: "From the evidence discussed above these facts are admitted on both hands, namely, that there is no latrine, cesspool or urinal in the suit holding. Again from the evidence it also transpires that at least the suit holding was assessed with latrine tax since the year 1946 or 1947. It is also admitted that the Defendant was aware to the revised assessment after it was done in the year 1953. It is also further proved that the municipality in a resolution rejected the prayer of the

Defendant for reconsideration of the imposition of latrine tax." The Defendant served certain interrogatories on the Plaintiff. One of those was "That there was no resolution by the Municipal Council that a latrine, urinal, or cesspool is required in the said holding before it was assessed to latrine tax by the Municipality". To this the municipality gave a reply that a resolution is necessary as the holding has been assessed to latrine tax since its construction till the period in suit. The Orissa Municipal Act came into force in 1950, and prior to that the Bihar and Orissa Municipal Act was in force. Section 86(a) was the corresponding provision in that Act and it says that the tax shall be imposed only on holdings containing dwelling houses, latrines, urinals or cesspools and on holdings containing shops or places of business in which, in the opinion of the Commissioner at a meeting, a latrine, urinal or cesspool is required. As admittedly the latrine tax has been imposed on this holding from 1946-47 onwards the first imposition was definitely under the Bihar and Orissa Municipal Act and the imposition in that case would be if in the opinion of the Commissioners at a meeting it was decided to impose such a tax. No question in the interrogatories asked the Plaintiff if the Commissioners under the Bihar and Orissa Municipal Act in a meeting ever decided that the suit holding should be imposed with latrine tax. Therefore there is no material on the record to show one way or the other as to the legality of the imposition of such a tax at its inception prior to the Orissa Municipal Act came into force. It is for this reason that the learned Small Cause Court Judge rightly observed, "It was open to the Defendant to call for any paper from the Municipality to prove that at the inception the Municipality did not form any opinion about the same at the time of imposition of the tax".

3. Mr. M.S. Rao contended that the assessment of latrine tax under Section 134(a) of the Orissa Municipal Act, 1950, was without jurisdiction. Section 134(a) runs as follows:

(a) that the tax Shall be imposed only on holdings containing dwelling houses, latrines, urinals or cesspools, and on holdings containing shops or places of business, in which, in the opinion of the municipal council a latrine, urinal or cesspool is required;

Admittedly there is no opinion of the municipal council in the shape of a resolution that the suit holding containing a shop or place of business requires a latrine, urinal or cesspool. But as I have already said, tax has been imposed on this holding since 1946-47 prior to the enforcement of the Orissa Municipal Act. According to Mr. Rao in the absence of such a resolution the imposition of the tax is without jurisdiction and that the civil court has power to declare that the tax is illegal. In AIR 1940 105 (Privy Council) , their Lordships observed.

It is settled law that the exclusion of the jurisdiction of the Civil Courts is not to be readily inferred, but that such exclusion must either be explicitly expressed or clearly implied. It is also well settled that even if jurisdiction is so excluded, the Civil Courts have jurisdiction to examine into cases where the provisions of the Act have not been complied with or the statutory tribunal has not acted in

conformity with the fundamental principles of judicial procedure.

By Section 156(1) of the Orissa Municipal Act, no objection shall be taken to any assessment or valuation nor shall the liability of a person to be assessed or taxed be questioned in any other manner or by any other authority than is provided in the Act. This section expressly ousts the jurisdiction of the Civil Courts to examine the liability of the Defendant to be assessed or taxed under the Act. Even then the Civil Court has jurisdiction to examine if the provision of the Act has not been complied with. The Civil Court can therefore examine if there is non-compliance with the condition precedent imposed u/s 134(a) of the Orissa Municipal Act or u/s 86(a) of the Bihar and Orissa Municipal Act. To that extent the power of the civil court is absolute.

4. It is also well settled that if the power and jurisdiction of the taxing authority is questioned on the ground that the formalities prescribed by the taxing statute have not been adopted, then the onus is on the Assessee to establish it. The Queen v. Reynolds 2 fully supports such a view. AIR 1934 Pat 83 and Commissioners of Darbhanga Municipality Vs. Shiva Prasad, are in the same line. It is therefore necessary for the Defendant to establish that at its inception when the suit holding was assessed with latrine tax, it was not decided by the Commissioners in a meeting that the suit holding requires a latrine, urinal or cesspool. There is a presumption that official acts are regularly done. It is however rebuttable. The Defendant has failed to discharge that onus and accordingly the defence contention that the assessment is illegal, is untenable.

5. There is no merit in this Civil Revision. It is accordingly dismissed with costs. Hearing fee of Rs. 50/.