

(1980) 08 OHC CK 0005
In the Orissa High Court
Case No : Civil Revision No. 511 of 1980

Gade Narayan Murty

APPELLANT

Vs

Berhampur Municipality

RESPONDENT

Date of Decision : 12-08-1980

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 102
Orissa Municipal Act, 1950 — Section 147(1), 147(2)

Citation : AIR 1981 Ori 29 : (1980) 50 CLT 566

Hon'ble Judges : R.N. Misra, J

Bench : Single Bench

Advocate : N.V. Ramdas, for the Appellant; R.C. Misra, for the Respondent

Final Decision : Allowed

Judgement

R.N. Misra, J.—Defendant is in appeal against the affirming decree passed by the Additional Subordinate Judge of Berhampur. Plaintiff-Municipal Council, filed a suit in terms of Section 170 of the Orissa Municipal Act against the defendant, owner of holding No. 406 (dour number) in Ward No. 13 for recovery of taxes , for the four quarters of 1972-73 and prayed for the holding itself to be subjected to a charge for the decree. The defendant contended that the enhancement of the existing tax had been made without any enquiry or notice to him. It may be pointed out that the enhancement was done in two stages -- once from the existing tax of Rs. 25.13 paise per quarter to Rs. 139.80 paise per quarter and again from RS. 139.80 paise per quarter to Rs. 158.74 paise per quarter. These were more or less connected with extensions to the existing constructions. Defendant had challenged the enhancement by way of appeal under the Act and the appellate authority had granted a small reduction. Both the courts below have decreed the suit. Defendant is, therefore, in second appeal.

2. A preliminary objection has been raised by Mr. Misra for the plaintiff-respondent that in view of the bar u/s 102 of the Code of Civil Procedure, the second appeal is not maintainable. Admittedly, the claim in the suit is Rs. 617.07

and that is the valuation of the second appeal. Section 102 of the Code provides:--

"No second appeal shall lie in any suit of the nature cognizable by Courts of Small Causes, when the amount or value of the subject-matter of the original suit does not exceed three thousand rupees."

At the time the suit commenced, the amendment to the Code had not come into force and the amount then was Rs. 1,000/-. On the principle indicated in the case of Garikapatti Veeraya Vs. N. Subbiah Choudhury, , the relevant amount to be taken into account would be Rs. 1,000/- prior to the amendment. According to Mr. Misra the suit is one which was cognizable by the Court of Small Causes and, therefore, a second appeal does not lie in view of the low valuation. Mr. Ramdas, on the other hand, takes the stand that the schedule read with Section 15 of the Provincial Small Cause Courts Act would clearly show that the present litigation was not cognizable by the Court of Small Causes. Section 15 of the Provincial Small Cause Courts Act provides:--

"(1) A Court of Small Causes shall not take cognizance of the suits specified in the Second Schedule as suits excepted from the cognizance of a Court of Small Causes."

Mr. Ramdas is not able to point out any entry in the Second Schedule which would cover the present claim. In the circumstances, I am inclined to agree with Mr. Misra for the plaintiff-respondent that the second appeal would be hit by Section 102 of the Code of Civil Procedure.

3. During argument Mr. Ramdas had prayed for leave to convert the second appeal into a revision. Since more court-fee has been paid and there is no question of limitation. I am prepared to treat the second appeal as a Civil Revision. Appropriate correction in the registry be made.

4. Mr. Ramdas contended on merit relying on Section 147 (2) of the Orissa Municipal Act that prior notice of enhancement was a condition precedent and the owner of the holding was entitled to raise an objection before the enhancement could become operative. Reliance is placed on a Bench decision of the Patna High Court in the case of Abdul Kadar Khan Vs. Chairman, Puri Municipality, . which was rendered in a dispute arising within the Province of Orissa when a corresponding provision under the Bihar and Orissa Municipal Act was in force. Harries, C. J., speaking for the Court stated :---

".....The question arises as to what is the effect of an omission to give the statutory notice. It appears to me that giving of notice of the proposed assessment and the date upon which the alteration will be made is a condition precedent to the right of the municipality to make the alteration or addition. Unless such notice is given, the alteration or addition cannot, in my view, be made....."

Similar view was taken in the case of Lachminarayan Das v. Chairman, Cuttack

Municipality AIR 1935 Pat 322. Mr. Misra for the Municipality does not dispute that notice is a condition precedent and is a matter touching jurisdiction. He, however, contends that want of such notice had not been specifically pleaded nor deposed to by the defendant. In para. 4 of the written statement, it has been pleaded that there was no enquiry or notice but the sequence in which the subsequent facts had been stated, argues Mr. Misra seems to confine want of notice to the earlier enhancement. Defendant has been examined as D. W. 1. He has stated in his deposition:--

".....I came to know about the enhancement for the first time when the bill collector served the notice Ext. 3."

This statement of his in evidence-in-chief has not been disputed in cross-examination. No document has been produced from the plaintiff's side to prove compliance of Section 147 (3) of the Act. In the circumstances, I am inclined to accept the plea of the defendant that the enhancement was sought to be enforced without compliance of Section 147 (2) of the Act. In view of the Patna decisions which have full application, the enhancement was not enforceable.

5. Mr. Misra for the Municipal Council placed reliance on a Single Judge decision of the Patna High Court in the case of Commissioners of Hazari-bagh Municipality v. Jagarnath Sahay 1967 B. L. J. R. 31 for the proposition that even if there had been want of notice, once the rate payer challenges in appeal, he is no more entitled to raise the objection of want of notice. I am not inclined to agree with this view. The notice contemplated u/s 147 (2) of the Act is one in compliance with the rules of natural justice. Megarry, J., in the case of Leary v. National Union of Vehicle Builders 1971 Ch. 34, pointed out on the question as to whether the want of natural justice by the branch committee was cured by the complete rehearing of the plaintiff's case by the appeals council, that whilst a complete rehearing by an original tribunal or by some other body competent to decide an issue might satisfy the requirements of natural justice, a plaintiff, where there was a right, of appeal from an original decision, was entitled to natural justice both before the original tribunal and the appellate tribunal. This principle has been followed by a division Bench of this Court in the case of K. Venkataramana v. Union of India ILR (1973) Cut 1104 : 1974 Lab IC 1190. As I have just pointed out, the consistent Patna view is that notice is a condition precedent and jurisdiction to enhance is dependent upon notice having been issued. In that view of the matter, conduct of the owner of the holding cannot be relied upon to confer jurisdiction on the statutory authority to act without complying with the statutory condition precedent. In my view, the enhancement was bad and cannot be sustained.

6. Mr. Misra next contended that within the ambit of Section 115 of the Code of Civil Procedure, there was no scope to interfere in the matter. Now that I have found that there was no compliance with the statute and a statutory condition precedent had not been fulfilled, the demand must be held to have been raised without jurisdiction. The courts below went wrong in overlooking this feature and

such an erroneous decision of the courts below is available to be corrected in exercise of revisional jurisdiction.

7. Reliance was placed by Mr. Ram-das on Ext. 10 which is a Government order in exercise of powers u/s 131-A of the Act. Counsel for the Municipality has appropriately contended that plaintiff's case is not covered by the notification and what was annulled by the State Government in exercise of its overriding powers was the general revision made in 1970 and not the impugned enhancement of tax. Defendant is not entitled to fall back upon Ext. 10.

8. I would accordingly allow the Civil Revision and hold that plaintiff-Municipality was not entitled to recover the enhanced amount of tax. It would, however, not be proper to deprive the Municipality of its legitimate dues calculated at the old rate. Since the enhancement alone is subject to objection, I direct that the plaintiff-Municipality shall have a decree on the existing rates prior to the enhancement. The trial court is directed to pass an appropriate decree on the basis of the existing rates prior to the disputed enhancement. There would be no order for costs here.