
(1972) 04 OHC CK 0011
In the Orissa High Court
Case No : O.J.C. No. 849 of 1969

Geeta Devi and Others

APPELLANT

Vs

Cuttack Municipality and Others

RESPONDENT

Date of Decision : 24-04-1972

Acts Referred:

Constitution of India, 1950 — Article 14

Orissa Municipal Act, 1950 — Section 131, 131(1), 134, 137, 137(1)

Citation : (1972) 38 CLT 540

Hon'ble Judges : R.N. Misra, J;B.K. Ray, J

Bench : Division Bench

Advocate : R.K. Mohapatra, for the Appellant; S. Misra, for the Respondent

Judgement

R.N. Misra, J.—The Petitioners are the owners of a holding bearing No. 448 within Ward No. XXI of the Cuttack Municipality having purchased the same in January 1965 from the owner of the building. At the time of purchase of the building the assessed annual value of the building was Rs. 360/-. The total annual tax was Rs. 81/- with the break-up as follows:

Holding tax Rs. 32.40

Latrine tax Rs. 32.40

Water tax Rs. 12.96

Lighting tax Rs. 3.24

The Petitioners made some repairs and remodelling of the building subsequent to purchase. It is stated that the accommodation was not altered and the building continued to have the same 12 rooms as it had by the time the Petitioners purchased the property. The Petitioners removed the service latrines within the holding and set up septic latrines.

2. It is stated that notice was issued in September 1965 upon the Petitioners fixing the annual valuation of the holding at Rs. 4000/. and the total tax was

fixed at Rs. 900/. with the break up as follows:

Holding tax Rs. 360/-

Latrine tax Rs. 360/-

Water taxRs. 144/-

Lighting tax Rs. 36/-

Notices was given saying that the enhancement would be effective from 30-9-1965 (Vide Annexure 2). The Petitioners thereupon preferred an appeal before the District Magistrate u/s 153 of the Orissa Municipal Act (hereinafter referred to as the Act) challenging the arbitrary enhancement of the valuation and corresponding taxes. It is stated that the Petitioners pointed out that the fixation of the annual valuation was absolutely arbitrary and had no reference to the locality, the comparable holdings around the house, and was the outcome of capricious, arbitrary and whimsical assessment. It was also contended that since there were no service latrines the latrine tax could be only 25 percent of the normal rate. On 4-6-1969, the Appellate authority visited the spot, but ultimately affirmed the assessment. The Petitioners ask us to quash the assessment on the ground that it has not been in accordance with law and is arbitrary, illegal and contrary to the statutory provisions as also the spirit of the law. Mr Mohapatra for the Petitioners also contends that the provision of the Municipal Act authorising fixation of the annual value of the holding is arbitrary particularly in the absence of any guide line indicated by the Act.

3. Two questions arise for consideration. The first aspect is whether the provision in Section 131 of the Act relating to annual valuation of the holding is arbitrary and as such liable to be struck down as being hit by Article 14 of the Constitution. The next aspect for consideration is as to whether the assessments as raised is in accordance with law and as such not open to dispute. Section 131 of the Act authorises imposition of various taxes. Sub-section (1)(a) provides for a tax on holdings situated within the municipality assessed on their annual value. Mr. Mohapatra contends that no guide line has been indicated in the statute in the matter of assessing the annual value Section 137 of the Act deals with assessment of tax on the annual value of a holding. The relevant provision in that section may now be extracted:

(1) 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, less & deduction, in case of buildings only of ten (now fifteen, vide Orissa Act 20 of 1968) percent of such annual rent and the said deduction shall be in lieu of all allowance for repairs or on any other account whatsoever.

(2) If there be on the holding a building or 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 each holding shall be deemed to be an amount which may be equal to, but not exceed, seven

and a half percentum on such cost in addition to & reasonable ground rent for the land comprised in the holding.

(3) The value of any machinery or furniture which may be on a holding shall not be taken into consideration in estimating the annual value of such holding under this section.

4. It is true no further provision has been made in the matter of determination of the annual value of a holding. But we are not prepared to accept the contention of Mr. Mohapatra that merely because there is no such provision in Section 131(1) (a) of the Act must be held to ultravires the Constitution. The term annual value is a definite concept in law. Sub-section (1) and (2) of Section 137 of the Act throw some guide line. The policy of the legislation is well known. It is intended to raise revenue by way of tax. In *Jyoti Pershad Vs. The Administrator for The Union Territory of Delhi*, their Lordships considered this aspect of the matter at length and Indicated.

It is not, however, essential for the legislation to comply with the rule as to equal protection, that the rules for the guidance of the designated authority, which is to exercise the power or which is vested with the discretion, should be laid down in express terms in the statutory provision itself...Such guidance may thus be obtained from or afforded by (a) the preamble read in the light of the surrounding circumstances which necessitated the legislation, taken in conjunction with well known facts of which the Court might take judicial notice or of which it is apprised by evidence before it in the form of affidavits, *Kathi Raning Rawat Vs. The State of Saurashtra*, , being an instance where the guidance was gathered in the matter above indicated, (b) or even from the policy and purpose of the enactment which may be gathered from other operative provisions applicable" to analogous, or comparable situations or generally from the object sought to be achieved by the enactment.

Section 137 of the Act does throw some guidance and we have no doubt in our mind that the provision itself does indicate the policy as also the basis upon which full effect to the legislative intention will be available to be given. The first contention of Mr. Mohapatra must stand negated.

5. The Petitioner contended in his appeal before the District Magistrate that the holding did not have services latrines and as such was entitled to exemption u/s 134 of the Act in respect of three-fourths of the tax. Section 134(e) proviso runs as follows:

Provided that in respect of holdings wherein provision has been made for septic tank latrine the aforesaid tax shall not be imposed at a rate exceeding such percentage, not being more than twenty-five percentum of the tax as may be fixed by the Municipal council.

It has not been disputed that the holding does not have service latrines and is fitted with septic tank latrines. The learned District Magistrate did not refute the

assertion made in appeal before him in that regard, yet he dismissed the appeal without giving relief on such score. Before us the Petitioner has reiterated the allegation in paragraph 8 of the writ petition. In paragraph 12 of the counter affidavit the assertion of the Petitioners has not been denied. On the other hand it has been said:

That a holding containing a dwelling house is liable to be taxed at the rate of 10 percent of the net valuation as latrine tax and the Assessee is entitled to a reduction to the extent of 25 percent thereof if he makes a provision for septic tank latrine. In this particular case the Petitioners may be entitled to that reduction on their application to the Municipal Council which they have not so far made.

This itself goes to show that the Appellate authority did not take into account the contention of the Petitioners and though he visited the holding for the purposes of effectively disposing of the appeal he omitted to consider an important feature.

6. The next contention of the Petitioners is that normally for determining the annual valuation of the holding particularly where the holding has a residential house rent in the market for a comparable house keeping in view of the location, the amenities, the extent of accommodation and such other features is treated as the basis. The Petitioners did point out with reference to holdings is the locality that the determination of the annual value of the holding made in this case was arbitrary. There is no indication either in the framing of the assessment or in the Appellate decision as to what was the basis for determining the annual value of the holding. Though the annual value of the holding may be in many cases an estimate it is bound to be reasonable and if a dispute is raised it must be open to justification in an objective manner. Having examined the Appellate decision we find absolute dearth of materials disclosed therein to justify the basis adopted by the municipal authorities in the matter of determination of the annual valuation of the holding. We have a feeling that the enquiry has not been complete and materials available have not been taken into consideration and the Petitioners have also not been given due opportunity to contest the determination of the annual value. We have no option but to quash the Appellate decision and require the Appellate authority (opp. party No. 3) to redispense of the appeal in accordance with law. He shall determine the annual value of the holding in a fair way after giving due opportunity to the Petitioners to substantiate their claim of what the annual value of the holding would be. In view of the fact that there is no denial on the question of the benefit u/s 134 of the Act as claimed by the Petitioners we hold that the Petitioners are entitled to the reduction in the municipal tax to the extent of 75 percent. As a result whatever would be the latrine tax assessed the Petitioners shall have a reduction of 75 percent thereof under the proviso to Section 134(e) of the Act. The writ petition is allowed. The Appellate decision of the opposite party No. 3 in Municipal Appeal No. 64/3 of 1965/1966 dated 4-6-1969 is quashed. That appeal shall be redispensed of by the opposite party No. 3 in accordance with law and the

directions contained in this decision. The Petitioners shall be entitled to costs.
Hearing fee Re. 100/. (One hundred).

B.K. Ray, J.

7. I agree.