
(1959) 07 OHC CK 0010
In the Orissa High Court
Case No : Civil Revision No. 40 of 1957

Imam Bux

APPELLANT

Vs

Cuttack Municipality

RESPONDENT

Date of Decision : 03-07-1959

Acts Referred:

Bihar and Orissa Municipal Act, 1922 — Section 107(2), 115(2), 118, 357
Orissa Municipal Act, 1950 — Section 139, 144, 145, 146(1), 147
Presidency Small Cause Courts Act, 1882 — Section 25

Citation : (1959) 25 CLT 520

Hon'ble Judges : Das, J; Barman, J

Bench : Division Bench

Advocate : J.M. Mitra, in C.R. No. 40/57 and J.M. Mitra and S.K. Mitra, in C.R. No. 220/57, for the Appellant; S. Misra and D. Singh, for the Respondent

Final Decision : Dismissed

Judgement

Das, J.—These two applications u/s 25 of the Small Cause Courts Act were filed by the Defendants and were referred by two learned Single Judges of this Court to a Division Bench. Accordingly, both the civil revisions were heard together and are governed by this common judgment.

2. The question of law is common to both the applications and one argument Was addressed to us. I will deal with the question of law in the first application and refer to the fact of each application separately.

C.R. No. 40/57:

3. This application arises out of a suit filed by the Cuttack Municipality for realisation of house and latrine taxes to the tune of Rs. 36/14/- for the period beginning from the 1st quarter of the year 1953-54 to the last quarter of the year 1955-56 in respect of holding No. 579 in Ward No. XV. At the time of hearing of this suit, the claim for the four quarters of 1953-54 was given up by the Plaintiff Municipality. The claim only for the years 1954-55 and 1955-56 were

pressed. The Plaintiff's whole case was that Holding No. 579 during the assessment of 1947 was Holding No. 1169 and stood recorded in the name of one Ahmed Hossain with a quarterly holding tax of Rs. -19/9 pies and the latrine tax of Rs. -/9/9 pies. After the general revision of assessment, the Holding No. 1169 was renumbered first as 1169 and 1169/A which subsequently were numbered as 579 and 580. Thus, Holding No. 1169 became holding No. 579. During the general revisional assessment, the house tax for 579 was assessed at Rs. 2/- and the latrine tax at the sum amount per quarter. This Holding stood recorded in the name of the Petitioner, Immam Bux who was the purchaser by a registered Kabala dated December 12, 1952 (Ext. C) from the original holder, "one Khatun Bibi. This assessment was given effect to from 1st of April, 1954. Accordingly, the Plaintiff Municipality sued at the revised rate for the assessment years 1954-55 and 1955, 56.

4. The defence of the Defendant-Petitioner inter alia was that the original Holding No. 1169 with an area of 060 was renumbered as Holding No. 579 in Ward No. XV. The Defendant by his purchase only purchased 013 out of the total area of 060. The same day Khatun Bibi, the original holder also executed a kabala in favour of her son, Ahmed Hossain as evidence by Ext. D. The area covered by that deed was 021. The balance of the total area of 060, however, was sold to one Abdul Gani. The area of 013 purchased by the Defendant had one pucca and one kutchra room, whereas, the area purchased by Ahmed Hossain had one pucca room, one kutchra room, verandha, well, privy etc.... Accordingly, the Defendant averred that he was liable, if at all, for the payment of the 1/3rd amount as claimed by the Plaintiff-Municipality. This was the only plea taken in the written statement. However, at the time of trial, certain interesting questions of law were raised and two grounds were taken by the Defendant, namely, (i) that the plaint not being amended in view of p.w. 1's evidence and the Defendant having initially not being in a position to take up proper and full defence, the Plaintiff's claim cannot be substantiated; and (ii) whether in the facts and circumstances of the case, the plea in defence based on non-compliance of the provisions of Section 152 of the Orissa Municipal Act, 1950 (Orissa Act XXIII of 1950) can be agitated at all in this suit in view of this provisions of Section 156 of the said Act. The trial Court was of opinion that Section 156 is a complete bar to the civil court going into these questions. As regards the first point, the trial judge held that the amendment of the plaint was rather beneficial to him. Accordingly, he decreed the suit for Rs. 32/- only. It is against this decision that the Petitioner had filed the present Civil Revision.

5. Mr. J.M. Mitra, learned Counsel on behalf of the Petitioner argued at great length that since the Plaintiff-Municipality had not confirmed to the provisions of the Orissa Municipal Act (hereinafter referred to as the Act), it had acted without jurisdiction, and accordingly, the civil court can examine the legality of this assessment u/s 156 of the Act. Thus, according to the contentions of Mr. Mitra, the Defendant for the first time was assessed during the general revision of assessment which took effect from first of April, 1954. The authorities had not

complied with the several provisions of the Act while making this assessment. Therefore, not only the assessment was made illegally but it was made without any jurisdiction.

6. In order to appreciate the point raised by Mr. Mitra, it would be necessary to state the facts in a little more detail. It is an admitted fact that the Defendant purchased a portion of the old Holding No. 1169 on December 29, 1952. The Plaintiff-Municipality in its original plaint also claimed realisation of taxes for the four quarters of the assessment year 1953-54 which was given up at the trial, but confined its claim to the four quarters of the assessment years 1954-55 and 1955-56, the annual assessment being Rs. 16/- only. Thus, the total claim came to Rs. 32/-. According to the Defendant immediately after his purchase, he had given notice of the transfer to the Municipal authorities. P.W. 1, the law clerk of the Municipality, deposed that no such notice was ever given by the Defendant. From Ext. I-the Demand and Collection Register for the assessment year 1953-54, it is clear that there was one holding for that year, that is, Holding No. 1169. The owner of that holding was recorded to be Ahmed Hossain and the annual valuation shown to be Rs. 24/- and consequently, the assessment was Rs. 4/14/- per year. This continued up to the end of the 4th quarter of 1953-54. This will be evident from the Defendant's own document on which he relied upon, that is, Ext. A. the tax receipt for the four quarters of 1951-52. By Ext. A, the Defendant paid Rs. 4/14/- on March 9, 1956. In that receipt, the new holding number been noted. The Defendant under the provisions of Sub-section (4) of Section 148 was bound to pay the arrears of that holding after his purchase. That is why he made the payment for the year 1951-52 at the old rate. Coming to the assessment year 1954-55 which was given effect to from 1st of April, 1954 it is apparent from Ext. 2 that the old valuation and the old assessment were noted therein, but two numbers were given being 1169 and 1169/A. 1169 corresponds to the new number 579 and 1169/A corresponds to the new Dumber 580. This is because when the municipal authorities went on local inspection they found two persons in occupation of different portions of the same holding. From Ext. 2, it is also clear that the annual valuation of the portion of the Defendant was first proposed to be Rs. 90/- which was finally fixed at Rs. 80/- and the assessment made was at Rs. 2/- as the holding tax and Rs. 2/- as the latrine tax, the total being Rs. 4/- per quarter which comes to Rs. 16/- a year. It was contended on behalf of the Defendant that this assessment was made u/s 148 read with Section 139 of the Municipal Act. But the Plaintiff contends that this assessment was really made u/s 145. No evidence, whatsoever, has been adduced by the Defendant as to when exactly this assessment was made. It is clear from the evidence on record that this assessment was made during the general revision of assessment in the year 1954-55 (vide the evidence of p.w. 1). It would be pertinent to mention at this stage that the old Holding No. 1169/A which corresponds to the present Holding No. 580, the valuation was proposed first to be Rs. 22/- and finally fixed at Rs. 20/- and the assessment was at Rs. 1/- a quarter which makes Rs. 4/- annually. This difference was because holding

No. 579 had two pucca rooms and one kutch a room, whereas Holding No. 580 had one kutch room and a verandah. Thus, the Demand Register for the year 1954-55 as evidenced by Ext. 3, is in accordance with the assessment made as per Ext. 2. Since the Defendant had paid the arrears for the assessment year 1951-52, a demand notice was served on him in respect of this holding as evidenced by Ext. B on May 31, 1956 for the four quarters of 1952-53 and the 1st quarter of 1956-57 the intervening quarters being the subject matter of the suit.

7. With this background of facts as emerges from the documents I will now proceed to consider the question of law as raised at the Bar. The provision of the Act imposing a bar on suits is rather stringent.

The Legislature in most unmistakable terms had provided that no suit challenging the legality of the assessment or valuation can be filed in any court. Some courts no doubt have taken the view that it can be challenged in a civil court if the assessment in question was made without jurisdiction. Therefore, it is to be seen if the assessment in this case was made without any jurisdiction.

8. Now turning to the provisions of the Act, it is incumbent on the municipal authorities to prepare the assessment list in accordance with the provisions of Section 145 as soon as the percentage at which the tax is to be levied for the next year has been determined u/s 144. Section 139 provides for the assessment in case of land or building subdivided into separate shares. It also provides that if, during the currency of any period, prescribed by Sub-section (1) of Section 146, the ownership of an land or building, or portion thereof is subdivided into separate shares, the municipal council may, on the application of any of co-owners, after giving the other co-owners an opportunity to be heard, divide the assessment of such land, building or portion thereof in the manner prescribed therein. We are not concerned with that procedure at the present moment. Section 148 of the Act makes a provision for notice by the transferee of his transfer to the Executive Officer of the Municipality. Thus, Section 148 lays down that whenever the title to any holding is transferred, both the transferor and the transferee shall, within three months after the execution of the instrument of transfer, or if no such instrument is executed, within three months after the transfer is effected, give notice in writing of such transfer to the Executive Officer. In this case, as it appears from the evidence, although an assertion was made by the Defendant that he informed the municipal authorities immediately after his transfer, nothing has been proved. On the contrary, p.w. 1 is positive that no such notice was given by the transferee. Hence, the contention of Mr. Mitra that it was an assessment u/s 147 read with Section 139 cannot be accepted. As I have said before, it is on local inspection that the municipal authorities found that portions of the same holding were in occupation of two persons, and accordingly, during the general revisional assessment the old holding was separated and the present assessment was made. When such assessment list is prepared as contemplated u/s 145, it must be published by the

Executive Officer as provided for in Section 152 of the Act. Section 152 (1) provides that the Executive Officer shall give public notice of the assessment list when prepared 01" revised by beat of drum and by placards posted up in conspicuous places throughout the Municipality, where the, said list may be inspected. Sub-section (2) of Section 152 further provides that the Executive officer shall also in all cases in which any property is for the first time assessed or the assessment is increased, give notice hereof to the owner or occupier of the property, if known. In this case, Sub-section (2) does not come into play at all since it is not the first assessment. The Executive Officer under the provisions of Sub-section (1) of Section 152 is to publish the notice by beat of drum and by placards at certain conspicuous places throughout the Municipality. The Defendant had adduced no evidence to show that the publication as set forth above has not been made. Section 153 thereafter provides for an appeal against the assessment to the District Magistrate or to such other officer, as may be empowered by the State Government in that behalf. Admittedly, no appeal had been preferred against this assessment by the Defendant. The defence was that he had no knowledge at any time of this assessment, but he had the demand notice for the year 1954-53 as evidenced by Ext. 2. Even if he had not filed an appeal against the assessment, he could have filed an application for review of the assessment, by the District Magistrate. Further, Section 156 which bars a civil suit provides that if no appeal is preferred or even if the appeal is preferred and the assessment is upheld that order would be final and binding on the taxpayer. The proviso to Sub-section (2) of Section 156 also makes a provision for the review by the District Magistrate and that also would be final if it varies the original order. Now, the whole contention of Mr. Mitra was that since the assessment was without jurisdiction the civil court would be competent to question this assessment which is now challenged by him. Section 156 in unmistakable terms provides that 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 this Act. Thus, Section 156 is a complete bar for challenging the liability to be taxed. Undoubtedly, the municipal authorities have the jurisdiction to assess taxes on the owners or occupiers of holdings within the limits of their Municipality, but any assessment that is made by the municipal authorities is subject to appeal or review by the District Magistrate as provided Under Sections 153 and 156 of the Act. Nothing has been done by the Defendant. Hence, the order of assessment has become final and binding on the Defendant. In our opinion, the civil court is not competent in view of this provision, to question the assessment which has now become final it can only be questioned in the manner provided under the Act, that is, by the District Magistrate or any other officer empowered by the State Government in that behalf. Mr. Mitra sought to rely on two decisions of this Court reported in the case of *Jambeswar Satpathy v. Puri Municipality* through its Chairman ILR 1957 Cutt 222 this Court took the view that the notices under Sections 107(2) and 115(2) of the Bihar and Orissa Municipal Act were duly issued by the Plaintiff-Municipality and served on an adult male member of

the Defendant's family as provided u/s 357. There having been no objection raised within the period of limitation as prescribed u/s 118, it is not now open to the Defendant to challenge his liability. I do not see how this case can be of any avail to the Petitioner. In the case of Puri Municipality v. Narayan Panda 24 C.L.T. 390 it was decided by this Court that an order in respect of assessment or valuation or liability to assessment taxation passed by competent municipal authorities shall be final and binding. Merely because the assessment is illegal it cannot be declared to be completely without jurisdiction of the municipal authorities. If the circumstances of the case reveal that the authorities had no power or jurisdiction to make an assessment, such an assessment is liable to be attacked in a suit before the civil court. Except on the ground of absence of jurisdiction, the order of the municipal authorities made whether on wrong basis or right basis must be taken to be final. As I have stated earlier, there is no want of jurisdiction as far as the municipal authorities are concerned. Even if Mr. Mitra's contentions are accepted, it may at best amount to an illegal assessment. But that cannot be questioned by the civil court in view of the provisions of Section 156 of the Act.

9. No other point had been argued by Mr. Mitra. Thus, the sole contention of Mr. Mitra having failed, this application must be dismissed. But in the circumstances, there will be no order for costs.

C.R. No. 220/57.

10. This also is an application u/s 25 of the small Cause Courts Act by the Defendant against the judgment of the Small Cause Court Judge, Cuttack decreeing the Plaintiff-Municipality's suit for Rs. 100/-. The Municipality filed a suit against the Defendant-Petitioner for realisation of arrears of holding tax and latrine tax in respect of Holding No. 136 in Ward No. XVIII, the tax payable being Rs. 10/- per quarter.

11. The defence was that the claim of the Municipality is illegal, unreasonable, excessive and is liable to be dismissed. He further averred that after the new assessment of the holding, he filed an objection since the valuation of the holding was raised to Rs. 200/- per year. This objection, according to the Defendant, was not heard and disposed of in accordance with law. Hence, the assessment was ultra vires and unjust. The Plaintiff-Municipality on November 15, 1955 sent a notice of demand for Rs. 80/- and hence the claim for Rs. 100/- is not sustainable. Two points were raised before the trial judge, namely, (i) whether the Plaintiff's claim was just and proper and in accordance with law; and (ii) if the Plaintiff was entitled to the decree as prayed for.

12. From the records, it appears that the Defendant had filed an objection to the assessment as evidenced by Ext. B. This objection was received by the Plaintiff-Municipality on September 8, 1953. This was an objection purported to have been made under the provisions of Section 153 of the Act. No notice of hearing of this case was given to the Defendant either by the Plaintiff-Municipality or by

the district Magistrate, who ultimately heard and disposed of the matter on November 27, 1953, (vide Ext. A). According to this order, the assessment was up held in the absence of the Defendant. The Defendant naturally submitted that he was not bound by this order and was not liable to pay the enhanced rate of tax.

13. Mr. Mitra raised the same objections as in the foregoing Case. In addition to the legal objection, he submitted that there has been a failure of natural justice since no notice of the date of hearing of the appeal or objection was given to the Defendant. The non-compliance of the provisions of Section 153 may amount to an irregularity, but in view of the Defendant's admission in his evidence as D.W. 1 that he never attempted to file any application for review before the District Magistrate when he came to know about the enhancement of the tax, the order passed by the District Magistrate must be taken to be final. Once the assessment is made final, it cannot be objected to by the Defendant because 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. I have discussed the legal question in detail in the previous case. Hence, it is not necessary to repeat the same here. The objection as raised by Mr. Mitra, is bound to fail. Accordingly, this application is also dismissed and the rule is discharged. But there will be no order for costs.

Barman, J.

14. I agree.

15. Revisions dismissed.