
(1986) 03 PAT CK 0004

In the Patna High Court

Case No : Civil Writ Juris. Case No. 650 of 1979 (R)

Jagnarayan Prasad Jaiswal

APPELLANT

Vs

Commissioners of Ranchi Municipality and Another

RESPONDENT

Date of Decision : 04-03-1986

Acts Referred:

Bihar and Orissa Municipal Act, 1922 — Section 107, 116, 117, 117(2)

Citation : AIR 1988 Patna 145 : (1986) PLJR 943

Hon'ble Judges : Hari Lal Agrawal, J

Bench : Single Bench

Advocate : Debi Prasad, A. Sahay and Indirani Choudhary, for the Appellant;
P.K. Prasad, for the Respondent

Final Decision : Dismissed

Judgement

Hari Lal Agrawal, J.—By this writ application the petitioner has challenged the order of assessment passed by the erstwhile Ranchi Municipality with respect to the holding of the petitioner bearing Municipal Holding No. 607 of Ward No. 5, situate in the town of Ranchi. According to the case of the petitioner, earlier the holding was assessed during the general assessment in the year 1960-61, at the annual valuation of Rs. 700/- only, but later on it was enhanced at the annual valuation of Rs. 10,000/- with effect from the third quarter of the year 1978-79. The petitioner has stated that no earlier information was given of the revised assessment proceeding and he was suddenly intimated of the increased assessment by a communication dated 15-12-78 (Annex.-1). The petitioner filed a review application challenging the order u/s 116 of the Bihar and Orissa Municipal Act, along with his brother, Gopalji Jaiswal, after taking a power of attorney from him. In para 13 of the writ application, the petitioner has admitted that the Review Committee noticed the petitioner to appear before it and the Committee ultimately reduced the annual valuation of Rs. 10,000/- to Rs. 4,000/- by its order dated 3-3-79 (Annex.-4).

2. Mr. Debi Prasad, learned counsel appearing on behalf of the petitioner, has

raised two contentions in challenge of the impugned order contained in Annex.-2 which stood modified by the review order, contained in Annex.-4. He submitted that the assessment order being passed under the provisions of Section 107 of the Act, in absence of the statutory notice, as provided under Sub-section (2) of the said section, to the petitioner, the order was without jurisdiction. Giving of at least one month notice to the interested person for amending the assessment list under any of the clauses of Section 107 of the Act is a non-issue, since it has been well settled by a series of decisions of this Court.

Although no counter-affidavit has been filed, but I find it difficult to accept the contention of the learned counsel that the assessment order in question has been passed in exercise of the powers u/s 107 of the Act. The order does not speak of the application of any of the conditions for the change; rather it has taken notice of the entire structure of the holding which is a four-storeyed Pucca building containing shops and rooms. Stating the details of the entire building, it has been stated that it may be assessed at the annual valuation of Rs. 10,000/-, in place of the old valuation. I do not see any merit in the first contention raised.

3. The second point urged was that no personal hearing was given to the petitioner by the Review Committee. It was submitted by the learned counsel for the Municipality that Section 117(2) of the Act does not contemplate a personal hearing. It reads thus :

"All applications presented under the last preceding section, other than the applications referred to in Sub-section (1), shall be heard and determined by a committee....."

It was submitted that the expression "shall be heard" does not mean a personal hearing. I do not find any substance in this contention of the learned Counsel for the municipality as in my view, the expression "shall be heard" means granting an opportunity of personal hearing. I also find support for this view from a decision of this Court in the case of Panchanan Mukharji Vs. Commissioner of Cuttack Municipality, , where it was categorically laid down that "in order to comply with Section 117 of the Act, the assessee must be given an opportunity to put his own case and to call such evidence as may be relevant to the issue.. the assessee must be given an opportunity of presenting his case." The clear import of these observations is the grant of personal hearing as well to an assessee and not merely presenting a review application to be considered by the members of the Review Committee in his absence.

4. I have discussed the legal position as the matter was agitated at the bar at some length and although I take a view in favour of the petitioner on the legal question, I do not find any justification for interfering with the impugned order as I have already stated above that the petitioner has admitted that the Review Committee had noticed him to appear before it. There is no averment in the writ application that in pursuance of the notice to the petitioner when he appeared before the Committee, he was not allowed any personal hearing. The substratum

of the argument, therefore, vanished and I do not find any irregularity in conducting the proceeding by the Review Committee.

5. Both the points raised by the learned counsel for the petitioner having been rejected, this application must fail. It is accordingly dismissed but without costs.