
(1939) 02 PAT CK 0005
In the Patna High Court

Kamakhya Narayan Singh

APPELLANT

Vs

Chairman, Hazaribagh Municipality

RESPONDENT

Date of Decision : 08-02-1939

Acts Referred:

Bihar and Orissa Municipal Act, 1922 — Section 12

Citation : AIR 1939 Patna 499

Hon'ble Judges : Wort, J

Bench : Division Bench

Judgement

Wort, J.—This appeal can be disposed of on one short ground, but I propose to deal with both the points which have, been raised. The first point arises by reason of Section 12, Bihar and Orissa Municipal Act of 1922, which provides:

There shall be established for each Municipality a body of Commissioners, who shall be a body corporate by the name of the Municipal Commissioners of the place by reference to which the Municipality is known, having perpetual succession and a common seal, and may by that name sue and be sued.

2. The use of the word "may" must be construed in the sense that they shall by that name sue and be sued, and by no other. In this case, as is very common in this Province, the party suing is the Chairman of the Municipality, a position although recognized by the Municipal Act is not a legal entity nor a Corporation sole and therefore he is not entitled to sue. The action in the present form is therefore not maintainable. The sooner the Municipalities of this Province realize this position the better. Two cases have failed owing to this form being used in actions either by the Municipality or against them.

3. The other point for consideration is whether in the circumstances the Raj was estopped from denying that the Municipal Commissioners were their landlords. It appears that about 1400 bighas of land was granted by the Raj in 1864 for the purpose of building the town of Hazaribagh or extending it--the exact purpose it is unnecessary to state. It has been found by both the Judges in the Courts

below that the land upon which these bungalows stood and with regard to which rent was claimed was not a part of the 1400 bighas.

4. I would be more accurate in saying that the finding of the trial Court was that, and not appealed against and therefore accepted in the lower Appellate Court. Now, the Judge finds as a fact that the Municipal authorities are not the landlords of this piece of land, that is to say, they have no title to it. The learned Judge has also decided that in the circumstances the parties are not estopped from applying the principles laid down by their Lordships of the Judicial Committee of the Privy Council and by a decision of this Court to which I was a party. But the learned Judge appears to have considered that the payment by the defendant to the Municipal authorities of rent for a considerable period created the tenancy.

5. The case can be very shortly stated thus as soon as it is found that the defendant is not estopped, the other finding becomes impossible. A tenancy either exists or does not exist. In fact, we know it does not exist in this case because the landlord was not the proprietor of the land; and a tenancy cannot exist between a person and another person neither of whom has title to the land the subject-matter of the so-called tenancy. It is only when estoppel comes in and the defendant is prevented from saying that there is no tenancy that the law of tenancy would apply.

6. Payment of rent, it has been decided on many occasions, is evidence of tenancy, but it is prima facie evidence of tenancy which, apart from questions of estoppel, can be rebutted, and on the facts of this case, whether the Baja paid under a mistake or misrepresentation, it seems to me not to matter. But it cannot be said that they (the Municipality) were the tenants of the Baja or that they were liable for payment of rent sued for in this case. I refer to my decision in *Badrudin Khan Vs. Bhagloo Koeri*, and to the decision of their Lordships of the Judicial Committee of the Privy Council in AIR 1937 251 (Privy Council) . I would allow the appeal and dismiss the suit with costs throughout.