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(1986) 01 OHC CK 0036

In the Orissa High Court

Case No : Appeal No. 60 of 1933

Lachminarayan Das APPELLANT

Vs

Chairman, Cuttack Municipality RESPONDENT

Date of Decision : 16-01-1986

Acts Referred:
Bihar and Orissa Municipal Act, 1922 — Section 107, 107(1), 107(2)

Citation : (1986) 2 CLT 37

Hon'ble Judges : Courtney Terrell, C.J

Bench : Single Bench

Advocate : S.K. De, for the Appellant; S.S. Chatrerji, for the Respondent

Final Decision : Allowed

Judgement

Courtney Terrell, C.J.—This is second from a decision of the decision of the District Judge reversing the decision of the Munsif, who decreed a suit in the following circumstances.

2. The Plaintiff is a person who lives in the town of Cuttack, and has a house there. Under the provisions of the Bihar and Orissa Municipal Act the commissioners desired to increase his assessment on the ground that he had extended the building in question by making additions or alterations to it. The Act makes provision by Section 107 for such increase of assessment Sub-section (1) of Section 107 states, the alterations of assessment which may be made in the list. Sub-section (2) provides as follows:

The commissioners shall give at least one month''s notice to any person interested of any alteration which they propose to make, under Clause (a), (b), (c) or (d) of Sub-section (1) and of the date on which the alteration will be made.

3. The commissioners, without giving any such notice, as is provided by this sub-section, in fact proceeded to make an alteration in the Plaintiff''s assessment and then proceeded to collect the increased tax. The Plaintiff complained that he had received no notice and, said that in any case the increased assessment was not

justified on its merits.

4. It would appear although there is no direct evidence o the point that the commissioners proceeded to entertain the Plaintiff''s objection and ultimately dismissed it. In this suit, however, he says that he is entitled, not withstanding the circumstances of the rejection of his objection by the commissioners, to claim a declaration firstly that the commissioner, not having issued that the required notice are not entitled to make the alteration which, they did in fact make, and he asked for an injunction to restrain them from levying the increased assessment. Since the suit has been brought the assessment has been, in fact levied from the Plaintiff.

5. The Defendant has argued that Sub-section (2) does not have the effect of making the issue of he notice therein mentioned a condition precedent for making, the required, alteration and an objection was further taken that u/s 377 of the Act the suit is not maintainable by reason of the fact that the Plaintiff did not before his suit issue the notice provided by that section.

6. As to the last objection, I agree with the learned District, Judge and with the learned Munsif that Section 377 has no application to cases of this sort Section 377 like the English Public Authorities Protection Act and similar legislation in India, is for the purpose of protecting a public authority from suits in respect of acts bonafide purporting to have been performed under the aegis of a law full Act but in which in spite of the bonafides of the public authority the law has been over stepped and tort has been committed. It is not intended to apply suits for the recovery of sums of money other than damages for which the lawfully recoverable either under statute or at Common Law. This view of the matter was taken by this Court in a recent decision F.A. Nos. 83, 84 and 85 of 1932 Patna High Court Ed. J. in which the Plaintiff sought to recover a statutory amount of compensation which the public authority had refuse to pay over to him I therefore think there is no bar to the suit.

7. On the merits of the suit itself it seems to me that the meaning of Sub-section (2) of Section 107 is to lay down a condition precedent to the alteration of an assessment. It is conceded that the increased taxation cannot be recovered until the alteration of the list has been made as a condition precedent. Similarly the effect of Sub-section (2) is to make the issue of at least one month notice of the proposal to make an alteration a condition precedent to the making of alteration itself.

8. On behalf of the, Municipality a further point has been argued that the Plaintiff, in any case had the merit of his objection entertained by the commissioners and it is suggested that in that case he can hardly claim to have the benefit of the notice which was only intended to give him an opportunity to have his case considered. To my mind this is no answer at all to the Plaintiffs claim: We know little or nothing of the actual proceeding that took place before the commissioners but in any case the Plaintiff cannot be prejudiced by the fact

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that in default of the commissioner considering his objection on the ground of want of notice he fell back upon a defence of the merits of his case in the matter of the assessment. The learned Munsif decreed the suit. The District Judge, whilst supporting the munsif on the question of the protection'' afforded to the Municipality by Section 377, considered that the fact that the Municipality had already gone into the matter of the merits of the objection to the increased assessment was a bar to the Plaintiff''s suit and he considered that the Plaintiff was at fault in not setting forth in his plaint and in not producing before that Court the proceedings before the commissioners.

9. Now the papers relating to the proceedings before the commissioners are in possession of the Municipality and if such papers were relevant, and I think they were not the tri section to be tried, it was for the Municipality to produce them, it was no fault, of the Plaintiff that he did not produce them.

10. In my opinion the judgment of the learned District Judge was erroneous and should be set aside. The appeal will be allowed, the declaration asked for will be granted and inasmuch as the increased taxes have been collected for the Plaintiff they will be returned by the commissioner''s and the commissioners will pay the costs throughout.

11. Appeal allowed.

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