

(1937) 12 PAT CK 0019
In the Patna High Court

Mathura Prasad

APPELLANT

Vs

Special Officer in charge, Gaya Municipality

RESPONDENT

Date of Decision : 03-12-1937

Acts Referred:

Bihar Municipal Act, 1922 — Section 130, 82

Citation : AIR 1938 Patna 192

Hon'ble Judges : Agarwala, J

Bench : Division Bench

Judgement

Agarwala, J.—In the judgment of the Court below the suit out of which this application has arisen is described as a suit by the plaintiff (The Gaya Municipality) to recover Rs. 28-13.6 par annum for the years 1931.32 to 1934.35 on account of platform tax in respect of the defendant's holding No. 47.

2. It is to be observed that the suit is not to recover a platform tax but a license fee and the fee is not payable in respect of a holding but a platform, The question was agitated in the Court below as to whether such a suit is governed by Article 115 or Article 120, Lim. Act. The Court held that it was governed by Article 120 and was therefore brought within time. It is now again contended by the defendant before me that the Article applicable is 115 and that the suit was barred. Article 115 provides a period of three years for a suit for compensation for the breach of any contract, express or implied, not in writing registered and not otherwise specially provided for. Article 120, on the other hand provides a period of 6 years for a suit for which no period of limitation is elsewhere provided.

3. The learned advocate for the petitioner referred to Section 82, Bihar Municipal Act 1922, which authorizes the Commissioners to impose certain taxes and fees and to Section 130 which empowers the Commissioners to proceed to recover taxes by way of a suit instead of by distress or by sale. The contention of the learned advocate was that Section 130 only authorizes suits by Municipality to recover such taxes and fees as have been imposed u/s 82 of the Act, and that any other sums claimed by a Municipality are not suits authorized by the

Municipal Act and therefore they must be regarded as suits arising out of a contract and governed by Article 115. The liability to pay the fee claimed in the present case arises by reason of Section 180 of the Act which prohibits the erection of a platform over any public road or drain without the previous sanction of the Commissioners and authorizes the Commissioners in the case, of platform which has been sanctioned to levy a fee to be fixed by the Commissioners within certain limits.

4. It is contended that the amount claimed in the present suit arises by reason of a contract between the Municipality and the platform, holder and that a suit for recovery of the amount is not governed by Section 130. Section 368 of the Act, however, provides that:

All costs, expenses, rents, fees or other moneys due under this Act to the Commissioners of any Municipality may be recovered In the manner provided in Sections 128-130.

that is to say by distress, sale or by suit. As the amount claimed is a fee which the Commissioners are authorized by Section 180 to assess and recover, it appears to me that by reason of Section 363 the Municipality is authorised to recover such fees by distress or suit. Reference however was made to the Division Bench decision of this Court in Chairman and Commissioners of Chaibassa Municipality v. Gobind Sao A.I.R.1937. Pat. 360. That was a case where the Municipality, having erected a market, settled with a farmer the right to collect tolls. The farmer of tolls not having paid the amount due from him under the contract was sued, and it was held that the suit was governed by Article 115 and not by Article 120. That case is clearly distinguishable from the present. It was quite obviously a suit on the contract between the Municipality and the farmer of the tolls. It was not a suit for rent or for fees or for recovery of taxes.

6. The present case is a suit for recovery of a fee which the Municipality was authorized by the statute to recover by suit and the liability of the defendant does not arise out of any contract between himself and the Municipality but out of an obligation imposed by the statute on licensees of platforms to pay the fees assessed by the Municipal Commissioners.

7. This petition is therefore rejected with costs. Hearing fee one gold mohur.