(1929) 01 PAT CK 0040

In the Patna High Court

Municipal Commissioner of Barh APPELLANT

Vs

Jagdish Prasad RESPONDENT

Date of Decision : 17-01-1929

Acts Referred:

Citation : AIR 1929 Patna 235 : 119 Ind. Cas. 884

Hon'ble Judges : Fazl Ali, J

Bench : Single Bench

Judgement

Fazl Ali, J.—This application arises out of a Small Cause Court suit brought by the Municipality of Barh, for the recovery of Rs. 9 as Municipal tax said to be recoverable from the opposite party for the fourth quarter of 1925-1926 and the first three quarters of 1926 1927. The Small Cause Court before whom the suit was brought dismissed it on the ground that the payment of the tax could not be enforced against the petitioner because he had objected to the assessment and his objection had not been disposed of in the manner provided by the Bihar and Orissa Municipal Act. The Small Cause Court was of opinion that the objection preferred by the opposite party was an objection u/s 116, Municipal Act, and that it should have been disposed of by a Committee consisting of not less than three Municipal Commissioners as provided by Section 117 of the Act. This view of the learned trial Court is attacked before me by the learned Advocate for the petitioner on the ground that the assessment made in this case was an assessment u/s 95 of the Act and will, therefore, not be governed by the procedure laid down u/s 116 or Section 117 of the Act. It is said that there is no express provision in the Act by which the provisions of Section 116 and 117 have been made applicable to assessment made u/s 95 of the Act in the manner in which the provisions of those sections have been made applicable to the alterations or amendments made in the assessment list u/s 107 of the Act. I am afraid I cannot agree with the view put forward by the learned Advocate because there is nothing in the language of Section 116 which will restrict its application only to the assessments made u/s 89 or those made u/s 101, Section 116 runs as follows:

Any person who is dissatisfied, with the amount assessed upon him or with the valuation or assessment of any holding, or who disputes his occupation of any holding, or his liability to be assessed, may apply to the Commissioners to review the amount of assessment or valuation, or to exempt him from the assessment or tax.

2. The note on the margin of the Act shows that the Legislature by enacting this section meant to provide the assesses with a remedy by way of an application for review, if he was dissatisfied with the assessment. It is said that because the section does not expressly say so it must be inferred that it does not apply to an assessment made u/s 95 but at the same time there is nothing to show that it has been enacted only for the benefit of a certain class of assessees and not others. On general principles also it cannot be held that an assessee, if he is dissatisfied with the assessment, has been left by the Legislature without any remedy for objecting to the assessment and to have his objection decided. In my opinion, the view taken by the Small Cause Court Judge was quite correct and the objection preferred by the opposite party should have been disposed of by a Committee consisting of not less than three Commissioners as had been provided in Section 117 of the Act.

3. It is next contended before me that the assessment made by the Municipality, however, wrong and illegal it may be: cannot be questioned in the Civil Court. The learned Advocate has cited before me in this connexion the case of Manessur Dass v. Collector and Municipal Commissioners of Chapra 1 C. 409 in which it was held that a suit to set aside an order made on an appeal u/s 33, Bengal Act III of 1864 to the Municipal Commissioners against a rate assessment and to reduce the tax levied by them under that Act, On the ground that they had tried the appeal in an improper way, and had exceeded their powers and acted contrary to the provisions of the Act, could not be maintained in the Civil Courts and that the decision of the Commissioners in such an appeal was absolutely final. Apart from this decision the only provision in the Act which the learned Advocate has been able to cite before me in support of his proposition is Section 119 of the Act which runs as follows:

No objection shall be taken to any assessment or valuation in any other manner than in this Act is provided.

4. Now, the facts of this case are that an objection was preferred by the opposite party under the Act and the Municipality failed to dispose of that objection in the manner provided under the Act. In these circumstances the Municipality wanted to enforce its claim for the realizition of the tax which had been imposed on the opposite party without complying with the necessary provisions of the Act and the opposite party in defending the suit questioned the legality of the assessment. These being the facts of the case it is clear that the present case is clearly distinguishable from the case of Manessur Dass v. Collector and Municipal Commissioners of Chapra 1 C. 409 relied on by the learned Advocate. In these circumstances I hold that the suit brought by the petitioner was rightly dismissed

by the trial Court and I would dismiss the application with costs.

