
(1942) 04 PAT CK 0001
In the Patna High Court

Municipal Commissioners

APPELLANT

Vs

Kapur Chand Lall

RESPONDENT

Date of Decision : 04-04-1942

Acts Referred:

Bihar and Orissa Municipal Act, 1922 — Section 82(1)(b), 98(2)
Provincial Small Cause Courts Act, 1887 — Section 25

Citation : AIR 1942 Patna 417

Judgement

1. This is an application u/s 25 of the Provincial Small Cause Courts Act against a decision dismissing a suit of the Patna City Municipality for recovery of house tax, latrine tax and water tax, totalling Rs. 260-14-6 for a period which is described as "first quarter 35-36 to second quarter 40-41," but seems from the rates and amount claimed to cover no more than five years. The taxes claimed were in respect of holding No. 103 in circle No. 89, and the Municipality also claimed interest at 12½ per cent. The defence was that the defendant only purchased the holding in an execution sale in November 1937, obtaining dakhaldhani in February 1938, and that the holding was not assessable or liable to pay any tax since his purchase because it was no more than a parti piece of land. In the lower Court the petitioner did not press his claim for the period prior to the defendant's purchase. There was a conflict of evidence as to whether there was any house standing on the holding "during the period from the third quarter of 1937-38 till the second quarter of 1940-41," and the learned Judge below held that the house had fallen down before the defendant became the owner of the holding. Belying on Dip Narain Choudhry and Another Vs. The Addl. Dist. Magistrate (in charge of the Patna Municipality), , the learned Judge declined to infer from the assessment list and the Demand and Collection Registers of the petitioner municipality that any house stood on the holding in the period in suit subsequent to the defendant's purchase. He held accordingly that the plaintiff had failed to prove that the defendant was liable to pay any of the taxes claimed, and, therefore, dismissed the suit.

2. The claim for the period prior to the third quarter of 1937-38 (the quarter of

the defendant's purchase), which was practically given up in the lower Court, has not been repeated before me. What was claimed as house tax is really a tax on holdings on their annual value under Clause (b) of Sub-section (1) of Section 82, Bihar and Orissa Municipal Act, The word "holding" is defined in Sub-section (9) of Section 3, and the definition contains nothing to exclude parti land or land with a house on it in a dilapidated condition which Was what the defendant purchased. The contrast between the two Sub-sections of Section 98 is illuminating. Under subs. (1) the annual value of a holding is to be the gross annual rental which the holding may reasonably be expected to let, and there was evidence in the present case that on the holding in suit there was, for some time, a motor workshop, and afterwards, a store of fuel for sale. Sub-section (2) of Section 98 deals with holding with buildings on them, the actual cost of erection of which can be ascertained or estimated and which are not intended for letting or for the residence of the owner himself. Sub-section (1) will, therefore, cover holdings with buildings of a character outside Sub-section (2) or holdings without any buildings on them at all. The learned advocate for the opposite party has not been able to show that the act exempts from municipal taxation holdings merely because they may have no habitable buildings on them, and *Dip Narain Choudhry and Another Vs. The Addl. Dist. Magistrate (in charge of the Patna Municipality)*, , which was referred to in the lower Court, can, speaking with all respect, not be regarded as art authority on that point, especially because it does not discuss the matter as a question of law and seems to be concerned merely with a disputed question of fact. Section 101 of the Act requires the municipality, when it has determined to impose any tax to be assessed on the annual value of holdings, to determine such annual value and enter it in a valuation list. This annual value is also subsequently entered in the assessment list prepared u/s 105. u/s 106 these valuation and assessment lists are ordinarily prepared once in every five years, and under Sub-section (2) of the section every valuation and assessment entered in these lists is to be valid, subject to any alteration or amendment made u/s 107 and to the result of any application u/s 116, until the first day of April next following of the completion of a new list. The reference to Section 107 is important, for Clause (f) of Sub-section (1) of that section contemplates a reduction, upon the application of the owner or occupier, of the valuation of any holding which has been wholly or partly demolished or destroyed, or the value of which has been diminished from any cause. Sub-section (3) of the same section makes the provisions of Sections 116 to 119 applicable to such applications. It follows that in the case of such holdings the person liable to pay the tax can only obtain a reduction by applying under Clause (f), and that if the municipality should deal with such application in accordance with the law, no objection can be taken to the decision of the municipality in the civil Court. The lower Court observed that it was noteworthy that in the demand and the Collection Registers of the plaintiff the name of Gouri Prasad, the original owner of the holding from whom the opposite party bought it, in an execution sale, appeared as assessee; but it is quite clear that the opposite party cannot derive any advantage from this fact, for, u/s 108 it was his duty (no less than

Gouri Prasad's) to give notice of the transfer to the Chairman of the Municipality. Where an assessment is not reduced u/s 107, the owner of the holding remains liable to pay the holding tax except so far as he may be entitled to remission u/s 110 or Section III (on account of vacancies) but apart from this the liability of the owner cannot, it seems clear, be questioned in the civil Court.

3. The learned advocate for the respondents has, as a matter of fact, suggested that a holding with no building on it, or with a dilapidated building on it, may come within Sub-section (4) of Section 84, which provides that where the aggregate annual value of all the holdings held by any one owner within a municipality does not exceed Rs. 6, the tax on holdings shall not be imposed on any of the holdings of the said owner. But the valuation of all holdings is a matter for the municipality, and not for the civil Court as has been repeatedly held in decisions on Section 119 of the act which runs "no objection shall be taken to any assessment or valuation in any other manner than in this Act is provided." The lower Court observed that there was no evidence on behalf of the plaintiff to show that notice of the assessment, which was apparently first made in 1934-35, was given as required by Section 115 of the Act, or that the present defendant had any notice thereof. It does not, however, appear from the written statement of the defendant that he so much as raised this point nor had he anything to do with the holding at that time. The learned Judge below also said that there was nothing on the record to show that notice of demand was ever served upon the present defendant as required by Section 123. But this point again was not raised by the defendant in his written statement, and it seems desirable in view of similar observation in *Dip Narain Choudhry and Another Vs. The Addl. Dist. Magistrate (in charge of the Patna Municipality)*, , to point out that the notice u/s 123 only affects the plaintiffs right to levy arrears by distress and sale u/s 124 and not his right to sue u/s 130. The liability to pay the holding tax does not arise from the notice u/s 123 at all but from earlier provisions of the Act, and the learned advocate for the opposite party has not been able to show me any real authority or reason for holding that the right of the municipality to sue for arrears is dependent on the service of a notice u/s 123. In the present case, moreover, the notice could not have been addressed to the opposite party as he had not notified his transfer to the Chairman u/s 108. The learned advocate for the opposite party has not been able seriously to contest his liability for the holding tax from the quarter of his purchase onwards. As regards the latrine tax and the water tax, however, he has cited *Patna City Municipality Vs. Krishnavati Bahoo*, , in which it was held that the owner of an unoccupied holding is not liable even for one-fourth of the latrine tax u/s 111. He has also referred to Section 316, according to which part of the charge for water supplied by communication pipes falls upon the occupier, while the water tax is the liability of the owner of the holding. These points, however, depend on questions of fact and were not at all raised in the lower Court. There is also no reference to them in the written statement of the opposite party. It is impossible to entertain them at this stage. The only point that the opposite party raised by his written statement

was that because the holding was parti therefore he was not liable to pay any tax; and this contention completely fails.

4. The result is that this application must be allowed and the decision of the lower Court set aside. The plaintiff's claim must be decreed with effect from the third quarter of 1937-38. The claim for interest prior to the suit must be disallowed as in Commissioners of the Patna City Municipality Vs. Kshetro Das Bose, , for it is not shown that the municipality made any demand on the opposite party prior to the suit. The petitioner will be entitled to costs of the lower Court in proportion to his success. The decretal amount will carry interest at 6 per cent, till realisation. The petitioner will also be entitled to proportionate costs in this Court and a hearing fee of two gold mohurs.