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(1970) 08 OHC CK 0002

In the Orissa High Court

Case No : Second Appeal No. 557 of 1966

Nalam Jaggarao and Others — APPELLANT

Vs

Berhampur Municipality — RESPONDENT

Date of Decision : 25-08-1970

Acts Referred:
Orissa Municipal Act, 1950 — Section 132(2)

Citation : (1970) 36 CLT 1190

Hon'ble Judges : R.N. Misra, J

Bench : Single Bench

Advocate : P.V. Ramdas, for the Appellant; G. Rath, for the Respondent

Final Decision : Dismissed

Judgement

R.N. Misra, J.—The Plaintiffs are in appeal against a confirming judgment of the learned Additional Subordinate Judge of Berhampur in a suit for declaration that the assessment made under the provisions of the Orissa Municipal Act, 1950 in respect of the Nalam Bhimaraju Choultry is ultra vires the Act and for permanent injunction against realisation of the demand raised under the Act.

2. The Plaintiffs contended that the disputed holding being a Choultry was free from liability of Municipal holding tax under the provisions of Section 132(2) of the Orissa Municipal Act. That provision is to the following effect:

Any holding, which is used exclusively as a place of public worship, or religious assemblage, or as dharmasala, sarai, choultry, or as a mortuary, or which is duly registered as a public burial or burning ground, shall be exempted from the tax on holdings.

On the hasis of this provision, according to the Plaintiffs, no holding tax could be raised against the Choultry.

3. The defence was that though it was a Choultry by nomenclature it was not being used exclusively for the purpose and a part of it had been rented out either

on daily or monthly hasis to different persons and thus it did not satisfy the requirement of Section 132(2) of the Act. The jurisdiction of the civil Court was also disputed.

4. The Courts below have found concurrently that the Choultry was not being exclusively need as a Choultry and the civil Court has no jurisdiction.

5. There can be no dispute that the assessment is not in conformity with the Act and as there is no compliance of the statute, there could be no bar of jurisdiction. This aspect of the matter is concluded by a series of decisions both of the Judicial Committee as also of the Supreme Court.

6. In AIR 1940 105 (Privy Council) , which has been approved by their Lordships of the Supreme Court the proposition to this effect is clear. Even with reference to the municipal assessment in the decision of Mr. Justice Fazl Ali in Commissioners of Arrah Municipality Vs. Jatendra Chandra Jain and Others, , the legal hasis has been indicated. Thus if it is found that the Choultry was being exclusively used as Choultry the assessment raised in this case was liable to be struck down by the civil Court.

7. The main question, however, is-Is the Choultry being used exclusively for the purpose of Choultry? In the Courts below it has been concurrently found that rent is being realised from some persons in occupation and there are others in occupation without paying rent. Whether rent is realised or (sic) is (sic) material, but by allowing such user the Choultry does Dot continue to be exclusively a Choultry. The hasis of exemption u/s 132(2) is clear. Certain public institutions have been freed from holding tax liability by the statute. Unless the Choultry in question satisfies the requirements rigorously there can be no exemption. It is wen settled that for exemption from tax liability the requirements must be satisfied and the tests must be scrupulously followed.

8. Mr. Ramdas wanted to contend that the rent that was being realised was also going for the upkeep of the Choultry. Such a case has not been made out either in the plaint or at the trial, and such a contention has also not been raised in the grounds of appeal in the lower appellate Court or here is Second Appeal. That would be a mixed question of fact and law, and without the facts the contention has no legs to stand. Since it has not been raised in the trial stage and evidence has not been brought on record and the municipal authorities have not been given an opportunity of meeting such a case, I would rule out the contention of Mr. Ramdas.

9. Mr. Ramdas also relied upon a Division Bench decision of the Patna High Court in The Special Officer, Patna City Municipality Vs. Shah Khawja Sahib Hussan, . The decision in this case cannot be applied to the facts of the present case. A Moulavi was staying in a part of wakf property which was exempt under the Bihar Municipal Act from tax liability. The question that arose for determination before the Patna High Court was as to whether the residence of the Moulavi within a part of the wakf property amounted to the wake property not being exclusively

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used for the wakf purpose. There was no case of realising any rent. Taking an overall picture of the matter their Lordships of the Patna High Court held that notwithstanding the residence of the Moulavi it continued to be exclusively used for the purpose of the wakf. Here the position is very different. On the findings recorded in the Courts below there is no escape that the Choultry does not satisfy the requirements of Section 132(2) of the Orissa Municipal Act. Thus, the assessment must be held to be validly made and the Plaintiffs'' claim to be exempt from tax lability cannot be sustained. The appeal fails and is dismissed. The judgment of the lower appellate Court stands affirmed. There would be no order as to costs of this appeal.

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