

(1957) 05 PAT CK 0007

In the Patna High Court

Case No : Misc. Judicial Case No. 379 and 558 of 1954

Narsingh Prasad

APPELLANT

Vs

Chairman, Gaya Municipality and Others

RESPONDENT

Date of Decision : 09-05-1957

Acts Referred:

Bihar and Orissa Municipal Act, 1922 — Section 107(1), 117(1)

Citation : AIR 1958 Patna 114 : (1958) 6 BLJR 43

Hon'ble Judges : Ramaswami, C.J.;Kanhaiya Singh, J

Bench : Division Bench

Advocate : Baldeva Sahai, T.K. Prasad, Shivanugrah Narain and N.K.P. Sinha, for the Appellant; R.S. Sinha, Madan Prasad II, S.P. Jamuar and Awadh Kishore Prasad, for the Respondent

Final Decision : Allowed

Judgement

1. This application is made on behalf of the petitioner Sri Narsingh Prasad for grant of a writ in the nature of certiorari under Article 225 of the Constitution to call up and quash the order of the Chairman of the Gaya Municipality dated the 3rd July, 1954 whereby he ordered that the- petitioner and Srimati Deoki Kuer should be recorded in place of the deceased Jugeshwar Lal in the assessment list for holding Nos. 15, 29 and 39 in Ward No. 5 and holding no 366 in Ward No 6 of the Gaya Municipality.

2. The argument put forward by Mr. Baldeva Sahai on behalf of the petitioner is that the order of the Chairman is ultra vires because substitution of the name of the petitioner and Srimati Deoki Kuer in place of the deceased Jugeshwar Lal could be made only by a committee constituted in the manner required by Section 117 of the Bihar and Orissa Municipal Act, 1922, and not by the Chairman acting on behalf of the Commissioners of the Municipality. In support of his argument learned counsel referred to Section 107 (1) (b) of the Act which is in the following terms :

"The Commissioners may from time to time alter or amend the assessment list in any of the following ways :-- (b) by substituting therein for the name of the owner or occupier of any holding the name of any other person who has succeeded by transfer or otherwise to the ownership or occupation of the holding".

Counsel also referred to Section 107 (2) of the Act which states 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), (d) or (dd) of Sub-section (1), and of the date on which the alteration will be made."

Reference was also made to Section 107 (3) which provides that the objections made by any person interested in the alteration of the assessment should be heard and disposed of in the manner provided by Sections 116 to 119. Section 107 (4) enacts that

"every alteration made under Sub-section (1) shall be signed by the Chairman and, subject to the result of an application u/s 116, shall take effect from the date on which the next instalment falls due, but the Commissioners by such alteration shall not be deemed to have made a new or revised assessment list".

It is necessary at this stage to refer to Section 116(1) of the Act, which states as follows :

"(1). 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."

Section 117 relates to the manner in which an application is made u/s 116 relating to assessment made u/s 89. Section 105, Section 107 or Section 113, and determined. Section 117 enacts as follows :

"(1). Every application presented under last preceding section relating to assessment made u/s 89, Section 105. Section 107 or Section 113 shall be heard and determined by a Committee consisting of two Commissioners and two tax-payers of the Municipality, nominated or elected in the prescribed manner by the Commissioner at a meeting and one servant of the Government not below the rank of a Deputy Magistrate nominated by the District Magistrate in this behalf, provided that no commissioner or tax-payer shall be a member of the Committee appointed to hear applications from the ward for which he was elected and that three members shall form the quorum.

(2) All applications presented under the last preceding section other than the applications referred to in Sub-section (1), shall be heard and determined by a Committee consisting of not less than three Commissioners, provided that no

Commissioner shall be a member of the Committee appointed to hear applications from the ward for which, he was elected."

3. In the present case We are of opinion that the procedure contemplated by Section 117 (1) applies and the question of substitution in place of the deceased Jugeshwar Lal for the holding in question should have been heard and determined by a Committee constituted in the manner required by Section 117 (1). It is argued on behalf of the petitioner that the Chairman acting on behalf of the Commissioners had the power to make alteration, but this argument is not right because Section 107 (3) provides that if any objection is made by any person interested in the alteration of the assessment list then the provisions of Sections 116 to 119 shall apply. It follows, therefore, that the procedure in this case should have been the procedure contemplated by Section 117 (1) of the Act.

If that is the correct view to be taken regarding the interpretation of the relevant sections" it follows that the order of the Chairman dated the 3rd July, 1954 in this case is an order ultra vires and made without jurisdiction and must be quashed by a writ in the nature of certiorari.

4. Miscellaneous Judicial Case No. 379 of 1955.--In this case the same petitioner has applied for grant of a writ under Article 226 of the Constitution for quashing the order of the Municipal Chairman dated the 29th September, 1954 by which he purported to review the order dated the 3rd July, 1954 and substituted only the name of Srimati Deoki Kuer in place of the deceased Jugeshwar Lal for the holding in question. It was contended by Mr. Baldeva Sahai on behalf of the petitioner in this case that there is no provision for review granted under the Bihar and Orissa Municipal Act, 1922, with reference to an order of substitution made u/s 107 (1) (b) of the Act.

In our opinion this argument is well-founded and must prevail. In any event the order dated the 29th September, 1954 is vitiated by same illegality as the order dated the 3rd July, 1954 for the reason that an order of this kind cannot be made by a Municipal Chairman but only by a Committee constituted in accordance with the procedure prescribed in Section 117 (1) of the Act.

5. For these reasons we hold that the order of the Municipal Chairman dated the 29th September, 1954 is ultra vires and made without jurisdiction and must be quashed by a writ in the nature of Certiorari.

6. We accordingly allow both the applications with costs and grant a writ for quashing the orders of the Chairman dated the 3rd July, 1954 and the 29th September, 1954. Hearing fee Rs. 100/- for both the cases payable by the Municipality and opposite party No. 3 Mst. Deoki Kuer in equal proportions.