

(1999) 04 PAT CK 0043
In the Patna High Court
Case No : C.W.J.C. No. 2343 of 1992 (R)

Nirmal Kumar Kedia and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 28-04-1999

Acts Referred:

Bihar and Orissa Municipal Act, 1922 — Section 276

Citation : AIR 1999 Patna 164 : (1999) 47 BLJR 1385 : (1999) 9 PLJR 706

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : P.K. Prasad, for the Appellant; Manjul Prasad, I. Sen Choudhary, S.C.I., for the Respondent

Final Decision : Dismissed

Judgement

M.Y. Eqbal, J.—This writ application has been tiled by the petitioners for themselves and on behalf of numerous other persons in representative capacity seeking issuance of an appropriate writ in the nature of certiorari for quashing the notification dated 15-5-90 as conveyed and communicated in memo No. 1776, Urban Development Department, Patna to respondents Nos. 2 and 3 respectively whereby and whereunder they have sought to enforce recovery of licence fee at the rate of Re. 1 per sq. ft. per month from 1985-86 to 1991-92.

2. The petitioners and other persons have been holding and possessing different stalls of various different sizes either constructed by the Daltonganj Municipality or by the stall holders themselves and the lands allotted by the said Municipality in the market commonly called as "Chandharana Bajar". The petitioners' case is that initially the Daltonganj Municipality allotted stall to different persons including the petitioners on annual rental basis. On or about 30-5-72 a resolution was passed by the Commissioner of the Municipality purporting to enhance the said rental by describing it as licence fee at the rate of Re. 0.25 paise per sq. ft. The stall holders filed a representation before respondent No. 2, the Deputy Commissioner, Palamau who suspended the said resolution in exercise of his

power u/s 383 of the Bihar & Orissa Municipal Act, 1922. It is stated that thereafter the Commissioner of the Municipality passed a second resolution on 12-12-73 purporting to reduce the enhanced rent to Re. Order 15 paise and Re. 0.12 paise per month per sq. ft. The stall holders thereupon filed title suit No. 66/75 in the Court of the Munsif, Daltonganj challenging the said resolution of enhancement of rental at the aforesaid rate. The said suit was ultimately dismissed on 13-12-82 by the Addl. Munsif and aggrieved by the said judgment the stall holders filed an appeal being title appeal No. 3/83 which too was dismissed. It is stated that the stall holders preferred second appeal No. 15/84R before this Court. The said appeal was ultimately dismissed by this Court in terms of the judgment dated 26-9-91. During the pendency of the appeal the Commissioner of the Municipality purported to enhance the rental/licence fee at the rate Re. 1/- per sq. ft. per month with effect from 1-4-85. However, on an application filed by the petitioners in the second appeal, the resolution of the Commissioner of the Municipality was stayed subject to the condition that the appellants will furnish security to the extent of Rs. 5000/- each. The petitioners' further case is that on the basis of the said resolution Urban Development Department, Govt. of Bihar issued the impugned notification dated 15-5-90 authorising the Daltonganj Municipality to levy licence fee at the rate of Rs. 1/- per sq. ft. per month with effect from 1-4-1985 in respect of the shops in Bajar and the road side lands within the limits of the Daltonganj Municipality.

3. A counter-affidavit has been filed on behalf of respondents 1 and 2 stating, inter alia, that the enhancement of licence fee with effect from 1-4-85 at the rate of Re. 1/- per sq. ft per month was decided by then Municipal Board Finance Committee in its meeting dated 18-2-85 and it was approved by the Board in its meeting dated 22-3-85. The said resolution was sent to the Urban Development Deptt. for approval and accordingly approval was accorded. Various other facts have also been stated in the counter-affidavit justifying the imposition of licence fee at the rate of Re. 1/- per sq. ft. per month.

4. A supplementary counter-affidavit has also been filed by the respondents giving a detailed chart showing the exorbitant amount lying against the petitioners as they have not been paying the licence fee for the last several years.

5. I have heard Mr. P. K. Prasad, learned counsel appearing on behalf of the petitioners and Mr. Manjul Prasad, learned counsel appearing on behalf of the respondents-Municipality.

6. Mr. P. K. Prasad mainly raised two points. Firstly learned counsel submitted that the enhancement of licence fee is illegal, arbitrary and unconstitutional for the reason that the procedure provided u/s 82(2) of the said Act has not been followed and there cannot be enhancement of licence fee retrospectively. Learned counsel further submitted that the authorities of the Municipality cannot take a decision or pass a resolution for enhancement of licence fee unless approval is taken from the State Govt. Secondly, learned counsel submitted that from the letters and correspondences in between the respondents it will appear

that the purpose of enhancement of licence fee was only to enrich the Municipality and to meet the financial crisis of the Municipality and there is absence of quid pro quo.

7. Mr. Manjul Prasad, learned counsel appearing on behalf of the respondents, submitted that there is no question of realisation of licence fee retrospectively inasmuch as decision was taken by the authorities of the Municipality in the year 1985 itself and pursuant to that decision the Urban Development Department of the State Government gave their approval and after receipt of the approval licence fee has been charged with effect from 1985 and not prior to that date.

8. There is no dispute that in the year, 1972 the petitioners and others were paying rental at the rate of Re. 0.25 paise per sq. ft per month and the said rent was reduced to Re. Order 15 paise per sq. ft. per month in the year 1973. In the year, 1975 the stall holders filed title suit No. 56/75 challenging the enhancement of rent by the Municipality. The suit was dismissed and the appeal preferred by the stall holders was also dismissed. Thereafter, they preferred Second Appeal No. 15/84 (R) which too was dismissed on 26-9-81. During the pendency of the suit a resolution was taken by the authorities of the Municipality in its meeting held on 18-2-85 for enhancement of licence fee at the rate of Re. 1 sq. ft. per month. The said decision was communicated to the State Govt. for approval. The appellants moved a petition in the Second Appeal for the stay of the recovery of the enhanced licence fee and this Court in terms of order dated 11-9-85 passed in Second Appeal No. 15/84R stayed the realisation of enhanced licence fee subject to the appellants' furnishing security of a sum of Rs. 5000/- each. The Second Appeal was finally disposed of on 26-9-91 and this Court affirmed the findings arrived at by the trial Court and the first appellate Court that the appellants and stall holders are the licencees and not the lessees as asserted by them. The appellants of the said appeal could not get any relief either against the enhancement of licence fee in the year, 1973 or in the year, 1985. When the final approval of the State Govt. was communicated to the Municipality in the year, 1990 for the recovery of the licence fee, the petitioners were called upon to pay the licence fee at the rate of Re. 1/- per sq. ft. per month with effect from 1985. It is, therefore, clear that the authorities of the Municipality have taken decision in the year, 1985 for enhancement of licence fee not from any date prior to 1985. In other words, the decision has not been taken in the year, 1985 for recovery of licence fee retrospectively. Mr. P. K. Prasad, learned counsel appearing on behalf of the petitioners put heavy reliance on the decision of the Apex Court in the case of Shree Bhagwati Hosiery Mills Pvt. Ltd. and Another Vs. Bhagalpur Municipal Corporation and Another, for the proposition that enhancement of holding tax cannot be made retrospectively. In my opinion, the law laid down by the Apex Court is not applicable in the facts and circumstances of the present case. In that case enhancement of holding tax on account of increase in the valuation of the holding by raising construction of godowns was made u/s 107 of the Bihar Municipal Act and demand was raised with retrospective effect on the basis of annual rent paid by the tenant, namely,

the Food Corporation of India from 1978. The assessment was done in 1981. In that context it was held that enhancement of holding tax cannot be made retrospectively on the basis of increase in the annual valuation of the holding subsequently.

9. Mr. P. K. Prasad then drew ray attention to several letters particularly letter dated 6-1-90 issued by the Special Officer, Daltonganj Municipality to the Urban Development Department requesting and reminding the latter to immediately approve the decision of the Municipality for enhancement of licence fee as a huge amount has become due and for non-realisation of the said amount the Municipality has been facing financial crisis. Learned counsel, therefore, submitted that the licence fee has been increased exorbitantly in order to meet the financial crisis of the Municipality and, therefore, the principle of quid pro quo is not available to the respondents as, learned counsel submitted, the services have been rendered by the Municipality as against the licence fee realised by it. I do not find much force in the submission of the learned counsel. It is not disputed that the land belongs to the Municipality and the same was allotted to the petitioners and different persons who either constructed stall themselves or got constructed by the Municipality. It is also not disputed that the respondent-Municipality has been maintaining a market complex and the roads and drains. Therefore, it is not necessary that each individual person should get the services from the Municipality in order to satisfy the requirement of quid pro quo. This question was raised in a similar circumstance and the Apex Court in the case of City Corporation of Calicut Vs. Thachambalath Sadasivan and Others, has held (at page 758 of AIR) :--

"It is thus well settled by numerous recent decisions of this Court that the traditional concept in a fee of quid pro quo is undergoing a transformation and that though the fee must have relation to the services rendered, or the advantages conferred, such relation need not be direct, a mere casual relation may be enough. It is not necessary to establish that those who pay the fee must receive direct benefit of the services rendered for which the fee is being paid. If one who is liable to pay receives general benefit from the authority levying the fee the element of service required for collecting fee is satisfied. It is not necessary that the person liable to pay must receive some special benefit or advantage for payment of the fee."

10. Having regard to the facts and circumstances of the case and the discussion made above I am of the opinion that the impugned order passed by the respondents-authority demanding licence fee with effect from 1985 cannot be said to be a demand of fee retrospectively. As a matter of fact, decision for enhancement of licence fee itself was taken in the year, 1985 but the enhanced licence fee was not realised as approval of the State Govt. was not communicated quickly.

11. In the result, I do not find any merit in this writ application which is, accordingly, dismissed.