

(1939) 08 PAT CK 0032

In the Patna High Court

Panchanan Mukharji

APPELLANT

Vs

Commissioner of Cuttack Municipality

RESPONDENT

Date of Decision : 29-08-1939

Acts Referred:

Bihar and Orissa Municipal Act, 1922 — Section 107, 107(2), 107(d)

Citation : AIR 1940 Patna 583

Hon'ble Judges : Harries, C.J

Bench : Division Bench

Judgement

Harries, C.J.—This is a plaintiff's second appeal from a decree of the lower Appellate Court dismissing his claim for a declaration that a certain assessment made by the defendants was illegal and ultra vires and for the return of a sum of money paid by way of enhanced tax. The plaintiff is householder in Ward II of the Cuttack Municipality which house is valued for the purposes of taxation at Rs. 240. In or about the year 1933 the plaintiff added a second storey to this house and later the Executive Officer in charge of the Cuttack Municipality revised the assessment u/s 107(d), Bihar and Orissa Municipal Act. This was done soon after the Cuttack Municipality was superseded, the date of such supersession being 4th December 1933. The new annual value of the property was fixed at Rs. 420 and the tax was levied upon this basis. Later general revision of the assessment of property in Cuttack was made and in that general revision the assessment was maintained at Rs. 420. The plaintiff claimed that the proceedings whereby the assessment was enhanced to Rs. 420 were ultra vires and illegal. He further alleged that the value of the property could not be regarded as having been validly enhanced by the revision because the formalities necessary had not been complied with.

3. The amendment or alteration of the valuation list is dealt with in Section 107, Bihar and Orissa Municipal Act, and Sub-section 1(d) provides that a holding may be revalued or reassessed where its value has been increased by additions or alterations to the building. It was for this reason that the Cuttack Municipality

purported to alter the plaintiff's assessment. Sub-section (2) of Section 107 of the Act provides that where the Commissioners propose to increase an assessment by reason of addition or alteration to buildings, they must give the assessee at least one month's notice of their intention. Sub-section (3) of that Section provides that the assessee may object to the proposed increase and if he does, Sections 116 to 119 of the Act apply so far as practicable.

4. These latter Sections deal with the procedure on revision. Section 116 provides that anybody dissatisfied with the amount assessed upon him or with the valuation or assessment of a holding, may apply for a review, and Section 117 directs that every such application shall be heard and determined after the tribunal hearing the same has taken such evidence and made such enquiry as it deems necessary. Sections 116 and 117 apply, as I have said, to objections to a proposed amendment of the list by reason of Sub-section 3 of Section 107 of the Act.

In the present case the plaintiff objected to the proposed enhancement of his assessment and it now appears that the District Magistrate did pass an order dismissing this objection. It is however common ground that the plaintiff was never given an opportunity to appear before the District Magistrate and to urge his own case. In those circumstances can it be said that this objection was heard and determined as required by Section 117 of the Act? A Bench of this Court, of which I was a member, recently decided that in order to comply with Section 117 of the Act the assessee must be given an opportunity to put his own case and to call such evidence as may be relevant to the issue. Applications falling within Section 117 of the Act cannot be disposed of without the assessee being given an opportunity of presenting his case. If they are disposed of in such a manner then the assessment is clearly illegal. In the earlier case to which I have referred, the Bench decided that where a revision was decided in the absence of the assessee a day before the actual date fixed for hearing, the assessment was illegal though the assessee had been given an opportunity later, if he so desired, to appear and argue his Case. The Bench held that as the case had been disposed of in his absence the assessment was illegal. In the present case the assessee did everything which he was required to do. He was not given the full month's notice as required by the Act but he filed his objections and those objections Should have been heard and determined after the objector had been given an opportunity of presenting his case. They were heard and decided in his absence and without his knowledge and accordingly I hold that the increased assessment which resulted from these proceedings was illegal and the increased, amount which the Municipality collected cannot be retained.

7. Some time afterwards, it was decided that the assessment of the holdings in Cuttack should be revised as such had not taken place for five years. The statute provides machinery for this general revision of assessment. Section 115(1) provides that when the assessment list in this general revision has been prepared or revised, the Chairman shall sign the same and shall give public

notice by beat of drum and by placards posted up in conspicuous places throughout the Municipality of the place where the list may be inspected and Sub-section (2) of the Section provides that in cases in which any property is for the first time assessed or the assessment is increased, the Chairman must-give notice thereof to the owner or occupier of the property if known.

8. In the list published as a result of the general revision of assessment, the assessment of the plaintiff's house stood at Rs. 420, that is the amount to which it had been illegally increased early in 1934. I have already held that that enhancement was illegal and of no effect. It was however contended on behalf of the Municipality that after the publication of this revised list the assessment became perfectly legal. It is said that the assessment had not been enhanced for the first time in the general revision and accordingly no special notice was required to be sent to the assessee. In my view as the original enhancement was illegal then it must be wiped out of consideration altogether. It was open to the District Magistrate of the superseded Municipality to increase this assessment during the revisional assessment, but any such in-crease would be the first time the assessment had been legally increased. The learned District Judge appears to have thought that an illegal increase would have to be taken into consideration and that the figure as it stood in the revised list could not be regarded as the first enhancement of the assessment.

9. In my judgment, as the attempt to enhance the value made early in 1934 was abortive and of no effect, the enhancement of this assessment in the revised list must be regarded as an enhancement made for the first time). That being so, notice of such enhancement would have to be given to the assessee by reason of Sub-section (2) of Section 115 of the Act. It is conceded that no such notice was ever given and that being so, the enhancement made in the general revision of assessments was also illegal and of no effect. Once the earlier enhancement is held to be illegal and ultra vires, the enhancement made during the general revision must be regarded as the first enhancement. The increase or enhancement contemplated by the Act must be a legal increase or enhancement and the Municipality cannot rely upon any illegalities committed by them. In my view, the learned District Judge was wrong in holding that the enhancement of the assessment during the general revision was legal and that no notice need be sent of it to the plaintiff.

10. For the reasons which I have given I am satisfied that the decree of the lower Appellate Court cannot be sustained and must be set aside. No other point was taken in this appeal. I therefore allow this appeal, set aside the decree of the lower Courts and decree the plaintiff's claim for the declaration and the amount claimed. The plaintiff must have his costs in this Court and in both the Courts below. If the Municipality have realized any further sums by way of enhanced tax since this suit was instituted, such should be refunded to the plaintiff.