(1938) 04 PAT CK 0009

In the Patna High Court

Patna City Municipality APPELLANT

Vs

Krishnavati Bahoo RESPONDENT

Date of Decision : 13-04-1938

Acts Referred:
Bihar and Orissa Municipal Act, 1922 — Section 100, 111

Citation : AIR 1938 Patna 391

Judgement

1. This is an application for revision of the order of the Small Cause Court Judge of Patna dismissing the claim of the Patna City Municipality against the owner of an unoccupied holding for one fourth of the latrine tax assessed on the holding on the ground that it is due u/s 111, Bihar and Orissa Municipal Act.

2. The learned Small Cause Court Judge has held that the provisions of Section 111 of the Act do not apply to latrine tax and that therefore the owner is not liable to pay the portion claimed by the Municipality. The liability of payment of latrine tax is imposed by Section 100 of the Act which provides that the tax shall be payable by the persons in actual occupation of holdings within the Municipality. Section 135 of the Act provides that in certain circumstances the owner shall be liable to pay the tax which he will recover from the persons in actual occupation; but we are not concerned with that section here. The definition of an ''occupier'' includes an owner in actual occupation of his own premises, but there is nothing in the Act which suggests that in the absence of an occupier for a holding which is actually unoccupied, the owner is to be deemed to be in actual occupation for the purpose of payment of latrine tax,

3. The learned Small Cause Court Judge was apparently in error in supposing that the provisions of Section 111 of the Act could not, in any circumstances, apply to claims of the Municipality for latrine tax but that question does not arise here, because we are here dealing with the owner of the property who has not at any time been in actual occupation of it. When the holding became unoccupied and unproductive of rent, the owner had to apply u/s 111 for remission of liability for a portion of other municipal taxes, but there was no necessity for him

to apply for remission of the latrine tax because he had at no time been liable to pay it.

4. The decree of the Small Cause Court Judge on this point has been correctly made and this application must be dismissed with costs.