

(1964) 12 PAT CK 0025

In the Patna High Court

Case No : Letters Patent Appeal No. 108 of 1959

Patna Municipal Corporation

APPELLANT

Vs

Kailash Behari Sinha and Another

RESPONDENT

Date of Decision : 18-12-1964

Acts Referred:

Bihar and Orissa Municipal Act, 1922 — Section 105, 116(1), 98(1), 98(2)
Easements Act, 1882 — Section 52, 53, 54, 55, 56
Transfer of Property Act, 1882 — Section 105

Citation : AIR 1965 Patna 288

Hon'ble Judges : S.C. Misra, J;G.N. Prasad, J

Bench : Division Bench

Advocate : Kanhaiyaji, for the Appellant; Lalnarain Sinha and B.P. Samaiyar, for the Respondent

Judgement

1. This appeal under Letters Patent is by the defendant, the Patna Municipal Corporation. The plaintiff is the owner of a cinema house in the town of Patna standing on holding No. 73A-1 which has now been changed to 70, circle No. 9. The land on which the cinema house stands was taken on lease by the plaintiff respondent. The first assessment of municipal tax in respect of the premises was made under Sub-section (2) of Section 98 of the Bihar and Orissa Municipal Act, 1922. The tax levied amounted to Rs. 23/8/- per quarter. There was, however, a revised assessment under Sub-section (1) of Section 98 of the Act and an objection to the same raised by the plaintiff was overruled. The plaintiff brought a suit for a declaration that the order of assessment was illegal and ultra vires of the powers of the municipal authorities. That suit led to Title Appeal No. 32/14 of 1943 and the appellate Court held that the order of assessment was illegal and as such declared it null and void.

The third assessment was taken up in 1945 and the plaintiff was sought to be assessed once more on the basis of assessment u/s 98(1) of the Act, but the plaintiff's objection succeeded before the Assessment Commissioner with power to Hear appeal against the order of assessment. The Assessment Commissioner

directed that Clause (2) of Section 98 was the appropriate provision of the Municipal Act under which the premises of the plaintiff, the cinema house, were to be assessed and as such the basis was the cost of construction of the building. The assessment of the building was taken up once again in 1950 and once more notice was Issued to the plaintiff to the effect that the premises were to be assessed on the basis of annual rental value. The annual rental value mentioned in the original notice was Rs. 3600/- but the appellate authority under the Municipal Act raised the annual value to Rs. 6000/- and accordingly a tax of Rs. 427/8/- per quarter was sought to be imposed.

The suit giving rise to this appeal was instituted by the plaintiff for a declaration inter alia that the appropriate provision of law applicable to the assessment of this building was Section 98, Clause (2) and not Section 98, Clause (1), i.e., the assessment was to be made on 74 per cent of the cost of construction and not on annual letting value. The suit of the plaintiff was dismissed by the trial court. On appeal, the learned Additional District Judge of Patna came to a decision in favour of the plaintiff. The defendant, therefore, appealed to this Court which was numbered as Second Appeal 1028 of 1956. By a judgment dated the 4th August, 1959, the learned single Judge upheld the contention of the plaintiff and dismissed the appeal. On leave being asked for under the Letters Patent however, permission was granted and hence the present appeal.

2. The main, question of law which arises for consideration is the interpretation of Section 98 of the Bihar and Orissa Municipal Act (Act VII of 1922). Clauses (1) and (2) of Section 98 of the Act stand as follows:

"(1) The annual value of a holding shall be deemed to be the gross annual rental at which the holding may reasonably be expected to let".

"(2) if there be on the holding a building or buildings, the actual cost of erection of which can be ascertained or estimated and which is or are not intended for letting or for the residence of the owner himself, the annual value of such holding shall be deemed to be an amount which may be equal to, but not exceeding seven and a half per centum on which cost, in addition to a reasonable ground rent for the land comprised in the holding". In this connection attention may also be directed to Section 82 of the Act which sets out the powers of the Commissioners to Impose taxes. Section 82, Clause (1), Sub-clause (b) lays down that the Commissioners may, from time to time, at a meeting convened expressly for the purpose, of which due notice shall have been given subject to the provisions of this Act and with the sanction of the State Government, impose within, the limits of the Municipality the following taxes and fees or any of them-- a tax on holding situated within the Municipality assessed on their annual value. It is thus clear that Section 98(1) of this Act together with Clause (1), Sub-clause (b) of Section 82 lays down that the basis of taxation will be the annual value which would in case of a building be the gross annual rental at which the holding may reasonably be expected to let.

This is the general provision for making assessment of municipal tax in respect of a holding lying within the limits of the municipality. Section 98, Clause (2), however, provides an exception to the general rule in which the annual value has been provided to be an amount which may be equal to but not exceeding seven and a half per centum on the cost of construction in addition to the reasonable ground rent for the land comprised in the holding. The point for consideration is as to whether a cinema house, which is obviously not intended for the residence of the owner, can be taken to be a building in which the criterion of annual rental can be said to arise to serve as the basis of the said assessment. Learned counsel for the appellant has contended that Clause (2) of Section 98 cannot be held to be appropriate in this case because the expression "not intended for letting" cannot be taken to cover the case of a building intended to be used as a cinema house.

A building can be said to be "not intended for letting" only when it is to be utilised for the purposes which are not connected with using the building for a commercial concern. Clause (2) of Section 98, therefore, should be exclusively limited to premises meant for use as a hospital, school or such institution of public interest and not to a commercial concern like a cinema house. Reference has been made in this connection to the case of *Secretary of State v. Municipal Commissioner of the City of Madras* ILR Mad 38. In that case the premises in question on which the Municipal tax was to be assessed was the Lying-in-Hospital at Madras. In that case it was held, on a construction of Section 123 of the City of Madras Municipal Act, that the standard value was what the hypothetical tenant requiring the building for use as a Hospital would be willing to pay rather than rent a less suitable building and adapt it to his requirements at his own expense, and that in this sense the contention of the Municipality was correct.

In that case their Lordships referred to some English decisions as to what would be the standard of value of a building in regard to the amount of rent payable for it by a hypothetical tenant. Quoting Lord Justice Brown in the case of *Queen v. School Board for London* (1885) 55 LJ MC 33, it was held "that the test of rateable value was the rent for which the premises might reasonably be expected to let to a tenant. In estimating that, in the present case, the rent for which the premises might be reasonably expected to let to the Board themselves may be considered, for how could the only body likely to require the premises be excluded from the estimate, that is, why should the only body likely to require or use the premises be excluded from the estimate of rent payable". It was thus held that the proper basis of valuation would not be the rent fetched in the open market but the rent which would be fetched in the city of Madras of a building specially eligible for use as a Lying-in-Hospital.

Learned counsel for the appellant contended that even in the case of a building to be used as a hospital a criterion was made in the above decision for finding out the annual letting value. It is no doubt true that thereafter special provision was made in the law in regard to buildings to be used for such purposes, but, at

any rate, the criterion of finding the letting value was laid down in clear terms of that case. The cinema house, there fore, must be taken to be a building of which a letting value can easily be determined with reference to the rental which it would fetch in the locality where it stands if it is to be used as a cinema house by some other person. This case no doubt appears to be relevant for the purpose of determining whether a building like the present one can be said to have a letting value. In our opinion, therefore, the contention of learned counsel for the appellant is correct so far as the letting value of a building used as a cinema house is concerned.

3. Learned counsel for the respondents has, however, contended that even if that were so, the crucial words used in Clause (2) of Section 98 of the Act are not whether the house can have a letting value, but whether the house is said to have been intended for the purpose of letting. Where the owner himself is in occupation and has used the building as a cinema house, the actual words used in this clause cannot be taken to go against the contention of the plaintiff inasmuch as it cannot be said that the house was ever Intended to be used for the purpose of letting. Learned counsel's argument found favour with the District judge and if the words "intended to be used for letting" were to be taken in the sense In which the learned counsel for the respondents asks us to take them then this may lead to an untenable position. For instance, in this view of Clause (2) all the houses lying within the Municipal area would have to be put in two categories, one consisting of houses which are intended for the purpose of letting and the other consisting of houses which are not intended for that purpose.

As a matter of fact, practical experience, however, shows that it does not happen frequently. A house, which after construction, has been let out may be resumed by the lessor and intended either for his own purpose as his residence or something else and a house which originally had not been let out may subsequently happen to be let out. If the contention of learned counsel for the respondents, therefore, were to be accepted, all these anomalies would arise in the assessment of taxes of houses lying within the municipal limits. That can never have been the intention of the legislature. The expression "intended for letting" must, therefore, be taken to refer to houses which have been let out or in respect of which letting value can be ascertained in a reasonable manner. It is only when the letting value is not discoverable, then Section 98(2) would come into play and in that case where the cost of construction can be ascertained, the assessing authorities will have to take the costs of construction into account for the purpose of proper valuation of the building.

4. Learned counsel for the appellant has drawn our attention in this connection to the cases of *Karnani Properties Ltd. Vs. Augustin*, and *Shivji Khetal v. Commissioners of Dhanbad Municipality* 1958 BLJR 19 : AIR 1969 Pat 186. These two decisions, however, refer to what would be the rent payable and what would constitute letting. This argument has been raised by learned counsel In connection with a subsidiary argument which cropped up in this case on the

admission made on behalf of the plaintiff that the cinema house used to be hired out for certain monetary considerations to parties which came to give dance performances or some theatrical shows. Learned counsel for the appellant relied upon this aspect of the case for the purpose of establishing that at least in regard to this building it may well be said that It was being also let out from time to time although not on a permanent or regular basis.

The learned Subordinate Judge as well as the learned single Judge did not accept this argument urged on behalf of the appellant on the ground that occasional letting of the hall of this building to visiting theatrical parties on payment of money would not amount to letting because letting involves some kind of regularity and transfer of possession of the building. Allowing temporary use of the hall on payment to parties outside would at the highest amount to a licence and not to a lease and this would not create any interest in the building nor would possession pass from the owner to the user of this hall for a temporary show. A reference has also been made to an English decision in the case of *Frank Warr and Co. Ltd. v. London County Council* (1904) 1 KB 713 referred to by their Lordships in the aforesaid case reported in *Shivji Khetai Thacker and Others Vs. Commr. of Dhanbad Municipality*, .

In our opinion, however, this decision is distinguishable. It related to the consideration and nature of the interest created in favour of a person who was allowed to use the premises during theatrical shows to supply, refreshments etc., and the grantee's claim of interest in the premises under the Lands Clauses Consolidation Act, 1845. It was in those circumstances held that the grantees were mere licensees and could not be taken to have acquired any interest in the land itself. In the present case, however, that question does not arise and it may well be taken that the word "letting" may be comprehensive enough to include not only the lease hold interest but also the interest of the licensee. Letting according to the dictionary meaning is putting a person In possession of an Immovable property for money compensation under which expression would come not only lessees but also licensees. In the case reported in *Shivji Khetai Thacker and Others Vs. Commr. of Dhanbad Municipality*, , this Court took the view that when a portion of the cinema house was put in possession of stall keepers etc. that would amount to letting of the house and In that case Section 98, Clause (1) of the Bihar and Orissa Municipal Act would be applicable for the purpose of assessing the Municipal Tax for such a holding and not Clause (2) thereof.

Strictly speaking, therefore, the present case is different from the facts of that decision, but it is relevant only to this extent that even where certain rooms in the premises used by the cinema house are let out to stall keepers etc., it must be held that the criterion of ascertaining the letting value is available in such a case. Learned counsel for the appellant has contended that even where the cinema house is allowed to be used for money consideration in a general. way from time to time, it cannot be said that the letting value of the house is not

available although, how far such a factor would be relevant for determining the amount assessable would depend upon the facts and circumstances of each case. The moment, therefore, a house can be taken to be put in possession even for a temporary purpose by an outsider for money consideration, the letting value can be taken to be available in such a case and Clause (1) of Section 98 would be attracted and not Clause (2) of that section.

In our opinion, the argument urged on behalf of the appellant has considerable force and must succeed. Clause (2) must be confined, therefore, to a case where the letting value is not available and not to the facts of the present case where the admitted case of the plaintiff himself is that the house used to be let out for money consideration from time to time apart from the fact that it was being put to commercial use. Learned counsel for the respondents has, however, endeavoured to establish that whatever might be the original Intention of framing the Act, but this is a taxing statute and if the plain words of the section lead to one inference the law court should not try to go behind them to find out the substance or even to endeavour to see what difficult positions may arise in actual application of the law unless the plain words are given different meaning.

In support of this contention reliance has been placed by learned counsel on the cases of *G. SCAMMELL AND NEPHEW, LTD. Vs. ROWLES (H. M. INSPECTOR OF TAXES)*, *The Central India Spinning and Weaving and Manufacturing Company, Limited, The Empress Mills, Nagpur Vs. The Municipal Committee, Wardha*, and *A.V. Fernandez Vs. The State of Kerala*, . In my opinion, however, the principle is correct but all the same the words used in a statute must be given a reasonable meaning provided that meaning follows from the actual words employed. In the present case, the crucial words are "intended for the purpose of letting out". We have already indicated that this must have reference to what is actually being done and not to a hypothetical situation in regard to a house and what was the original object for which the house was constructed. In the present case the building in question is being used as a cinema house which is a commercial purpose and the reasonable rent for the building itself must enter into the calculation of the owner in fixing the charges for admission of visitors to the cinema shows.

As a matter of fact, whenever a building is put to a commercial use, generally speaking, the rent of the house, where the business is carried on, must be taken into account in determining the cost of establishment for the business itself. We are, therefore, inclined to hold that whenever a building is put to commercial use, such a building cannot be regarded as one not intended for letting and, in fact, the letting value of such a building is easily available. Learned counsel for the respondents has, however, attempted to support this contention with reference to the meaning of the word "occupation" and he has urged that unless the building sought to be assessed is let out to a tenant who has a continuing right of occupation thereof which is productive of rent, it cannot be held that the house has got any letting value.

In the present case there is no such tenant as contemplated u/s 111, Clause (6) of the Bihar and Orissa Municipal Act and as such it cannot be held that the house is productive of rent. Although in the present case there is no tenant with a continuing right of occupation of the house, but since the owner himself is in occupation and is putting the house to a commercial purpose making money out of the use of the house itself and carrying on business in it in which the rental value of the house must be a factor, It cannot be held that it has not got a letting value or, as mentioned above, it is not intended for letting. The contention of learned counsel on this score, there fore, must fail.

5. Learned counsel for the appellant has also drawn our attention to Section 105 of the Transfer of Property Act which contains the definition of the word "lease". He has also referred to Sections 52 to 56 of the Indian Easements Act, 1882, which deal with the definition and incidence of a licence. The contention is that whenever houses are allowed to be used by the owner by another person for any period and any payment is made for the grant of such licence, it will come within the scope of the word "licence". We have already considered this matter and held that the word "letting" in fact is more comprehensive than the grant of a lease. All the houses which are put for commercial use or are used by outsiders as lessees or licensees for money consideration will come within the meaning of the word "letting" and as such for the purpose of assessment of the municipal taxes the house in which a commercial concern, such as a cinema is held, must come within the purview of Clause (1) of Section 98 of the Act and not within Clause (2) thereof.

6. It may be stated that the Bengal Municipal Act (Act III of 1884), Section 101, corresponds to Section 98 of the Bihar and Orissa Municipal Act, 1922, and there also the proviso corresponds to Clause (2) of Section 98 which was construed as meaning that this was applicable where the actual rental was not discoverable on which the valuation might be based. It was, however, urged that the language of that section was slightly different from the present Section 98, but the substance of that section is in *pari materia* with the provisions of Section 98 of the Bihar and Orissa Municipal Act.

7. Coming to the basis of valuation of a cinema house under the Calcutta Municipal Act (West Bengal Act XXXIII of 1951), in Section 168 Clause (4), the basis of assessment has been provided In the following terms:

"The provisions of Sub-sections (1), (2) and (3) shall be subject to the following provisos (i) in the case of a building used a public cinema house or theatre or other similar place of public resort, recreation or amusement, the gross annual rent of the building shall be deemed to be not exceeding five per cent of the gross annual receipts in respect of the cinema house or theatre or place of public resort, recreation or amusement including receipts from rent and advertisements and sale of admission tickets but excluding taxes on the sale of such tickets".

It is no doubt true that the basis arrived at for the calculation of annual rent in

Clause (4) of Section 168 of the Calcutta Municipal Act may be different from the Bihar and Orissa Municipal Act. There a fixed criterion on percentage has been fixed, but the remarkable point is that the percentage is levied on the basis of annual rent of the building which has been laid down to be a percentage to the maximum of 5 per cent of the gross annual receipts. The percentage basis obviously rests upon the fact that a Cinema house is a commercial concern. The analogy of this provision of the Calcutta Municipal Act may, therefore, be also invoked in support of the contention that a building in which a cinema establishment is situate must be taken in the eye of law to have a gross annual rental value and as such must be regarded as a building which is Intended for letting purposes or which is covered by the term "letting". Section 128 of the Bengal Municipal Act of 1932 contains language the meaning of which is in substance the same as that of Section 98 of the Bihar and Orissa Municipal Act. But the wordings are slightly altered. Clause (1) of Section 128 is the same as in Clause (1) of Section 98. So far as Clause (2) of Section 128 is concerned, it is in the following terms:

"(2) if such gross annual rental cannot, in the opinion of the assessor, be easily estimated or ascertained, the annual value of such holding shall be deemed to be an amount which may be equal to, but may not exceed, seven and half per centum on the value of the building or buildings on such holding at the time of such assessment plus a reasonable ground rent for the land comprised in the holding".

The Bengal legislature appears to have dropped the positive form of Clause (2) of Section 98 and the ambiguous words "building not intended for letting" in Section 98(2) of the Bihar and Orissa Municipal Act. In the Bengal Act a positive form, viz., that where the gross annual rental of a building cannot be easily estimated or ascertained irrespective of the fact that the building is intended for letting or not shows that a criterion has been fixed for determining the amount of tax payable in most cases, namely, on the gross annual rental, but in exceptional cases, where that cannot be easily estimated or ascertained, then on the basis of the cost incurred in the erection of the building together with a reasonable ground rent for the land comprised in the premises. If this criterion is kept in view then the annual rental value of a place of public amusement like the cinema house can easily be ascertained.

Mr. Samaiyar for the respondents has contended that it may well be that the Bengal legislature realising the difficulty in which the assessing authorities of the Municipality find themselves under the old Bengal Municipal Act have recast the language and made it more explicit. Since, however, Section 98 of the Bihar and Orissa Municipal Act does not contain the words as are to be found in Clause (2) of Section 128 of the Bengal Municipal Act, not much assistance can be derived in forming a conclusion as to the construction of Section 98 (2) of the Bihar and Orissa Municipal Act with reference to the language of Section 128 (2) of the Bengal Municipal Act, 1932. The argument may be held to be correct so far as

the construction of the language of one Act with reference to the language of another Act is concerned. It cannot always be fruitful and some times It may be misleading because the provisions of each statute must be construed in the light of the words employed by the legislature and not by an apparent analogy between two provisions where the words are taken into consideration.

But reference may be made to Clause (2) of Section 128 of the Bengal Act for the positive purpose to show that a fair construction of Sub-clause (2) of Section 98 of the Bihar Act in the light of the discussion set out above can only be what is contained in Section 128, Clause (2) of the Bengal Act. Holding otherwise would amount to putting the buildings within the Municipal area in different categories such as some intended for letting whose character may not change, and some others not intended for that purpose whose character also may not change unless In the extreme case of a residential house or a commercial building used by the owner actually let out to a tenant. Since, however that will be an extreme position, the only fair and reasonable way of construing Section 98 (2) of this Act would be the same as is contained in Clause (2) of Section 128 of the Bengal Municipal Act, 1932, and it must be held that Clause (2) of Section 128 of the Bengal Act more or less effects only a verbal change of that section.

As we have, however, held, even If we leave out of consideration the provisions of the West Bengal Municipal Act, 1932, at any rate, the provisions of the Calcutta Municipal Act are relevant for the purpose of re-enforcing the conclusion that a cinema house which is run as a place of public amusement where the admission is by way of tickets purchased by the visitors, the annual rental value can easily be determined and such a building must come within the category of one comprised in the category of houses let out to a tenant in a regular manner for money consideration which is the rent of the building. It may very well be that the legislature may think of placing houses of public amusement lying within the Corporation or any other Municipal area by making amendment in the Act on the same line as the Calcutta Municipal Act has provided for assessment of a house of public amusement for the sake of convenience of municipal taxation. That, however, is a matter with which this Court is not concerned. It must, however, be held that a building wherein public amusement to be paid for by the visitors is carried on, tax must be assessed under Clause (1) and not Clause (2) of Section 98 of the Act.

8. Another question that was raised before us was as to the annual valuation of the premises on the basis of which the assessment is to be made. It is stated that the assessors in the first instance determined the annual valuation to be Rs. 3600/-on the basis of which municipal tax was to be levied. The respondent, the owner of the cinema house, thereafter preferred an application for reviewing the amount of assessment u/s 116 of the Bihar and Orissa Municipal Act. The Assessment Commissioner, who exercised the powers of the Commissioners of the Patna Municipality, which then stood superseded by the order of the Government, enhanced the valuation to Rs. 6000/-. The question for

consideration is whether such an enhancement can be allowed to stand as a valid assessment. Section 116, Clause (1) stands thus:

"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 of the Act provides a procedure by which such an application is to be disposed of and under Clause (3) of that section it is provided that "such Committee after taking such evidence and making such inquiry as it may deem necessary, may pass such order as it thinks fit "in respect of such application".

The question for consideration is the scope of Clause (3) of Section 117. Learned counsel for the appellant contends that the assessment is not complete unless the order of the assessing authority is finally approved by the Commissioners as provided u/s 116 (1) of the Act. In our opinion, there is no force in the argument advanced on behalf of the Patna Municipal Corporation by learned counsel. The original assessment was made by the Commissioners u/s 105 of the Act in which no provision has been made for associating a non-commissioner with it.

The authority making the assessment will be one appointed by the Commissioners and as such an application for review filed u/s 116 (1) is to be disposed of u/s 117, Clause (1) which provided that "every application presented under the 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 Commissioners 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 taxpayer 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". Clause (2) of this section provides the manner in which applications other than those made u/s 116 (1) are to be disposed of and Clause (3), as already quoted, provides the procedure to be followed by the Committee in disposing of such applications.

It is thus clear that the authority empowered to dispose of applications for review u/s 116 (1) of the Act is definitely different from the authority which is to make the original assessment in terms of Section 105 of the Act, as was done in this case. The two authorities being distinct, the next question for consideration is whether the reviewing authority u/s 116(1) can be taken to have been vested with the power to enhance the assessment made u/s 105 of the Act. It appears to us clear that no such power can be taken to have been conferred on the reviewing authority inasmuch as Sub-clause (3) of Section 117 provides that such Committee appointed to dispose of an application u/s 116(1) "may pass such order as it thinks fit" but it adds further that it must be "in respect of such application".

It is thus obvious that the power to review or pass necessary orders is only in respect of an application filed u/s 116 and not a general order that may appear fit and proper in the case. Since an application u/s 116 (1) obviously must be for reduction of the amount of valuation or assessment, it is clear that the reviewing authority has no power to enhance the assessment amount either of annual valuation or the amount of tax assessed by the assessing authority. Mr. Kanhaiyaji contends that in any case the Municipal authority had the power to revise the assessment. That however, is a matter which does not arise for consideration in the present appeal before us and it is not necessary to go into that matter In detail.

9. The result, therefore, is that the appeal is allowed to this extent that the basis of assessment should be held to be u/s 98, Clause (1) of the Act and not Clause (2) of that Section, as held by the learned Additional District Judge and the learned Single Judge of this Court. The annual valuation, however, would be that recorded by the assessors u/s 105 of the Act and not the enhanced amount which was recorded u/s 116(1) of the Act. In the circumstances of the case, the parties shall bear their own costs throughout.