

(1970) 10 PAT CK 0002
In the Patna High Court
Case No : Letters Patent Appeal No. 2 of 1968

Ram Das Sahu and Others

APPELLANT

Vs

The Municipal Commissioners

RESPONDENT

Date of Decision : 19-10-1970

Acts Referred:

Bihar and Orissa Municipal Act, 1922 — Section 57(2)

Citation : AIR 1971 Patna 353

Hon'ble Judges : U.N. Sinha, C.J;K.B.N. Singh, J

Bench : Division Bench

Advocate : J.C. Sinha and Jugal Kishore Pd., No. 2, for the Appellant; Ray Parasnath and Shree Krishna Chandra, for the Respondent

Final Decision : Dismissed

Judgement

U.N. Sinha, C.J.—This appeal has been filed by the plaintiffs under clause 10 of the Letters Patent of this Court against a judgment of a learned single Judge passed in Second Appeal No, 504 of 1964 on the 17th November. 1967. The plaintiffs had instituted a suit under the provisions of Order 1, Rule 8 of the CPC praying for an adjudication that a resolution passed by the Municipal Commissioners of Monghyr on the 30th March, 1955, levying professional tax was ultra vires and without jurisdiction. The plaintiffs had also prayed for an injunction restraining the Municipality from realising professional tax under the said resolution. The suit had been dismissed by the trial court and on appeal, the court of appeal below had decreed the suit, whereupon a second appeal had been filed in this Court, numbered as Second Appeal No. 504 of 1964 by the Municipal Commissioners. By judgment and order passed on the 16th January, 1967, a learned single Judge of this Court had called for a finding from the court of appeal below on the materials already on the record as to whether non-service of notice for levying professional tax on some of the Municipal Commissioners of the Municipality was a case of accidental omission or not, within the meaning of Section 57 (2) of the Bihar and Orissa Municipal Act, On a consideration of the

materials on record, the court of appeal below transmitted a finding to the effect that non-service of notices on some of the Municipal Commissioners was due to accidental omission, without any design to suppress notices on them. Ultimately by the final judgment of the learned single Judge, it was held that non-service of notices on a number of Municipal Commissioners was a case of accidental omission and, therefore, the plaintiffs were not entitled to challenge the levy of professional tax in view of the safeguard enacted in Sub-section (2) of Section 57 of the Act. According to the learned single Judge, non-service of notices on some of the Municipal Commissioners was not due to any deliberate suppression of notices of a special meeting on them and therefore the decree of the court of appeal below was wrong. The appeal was thus allowed.

2. Learned counsel for the appellants has referred to paragraph 4 of the judgment of remand passed by this Court and to paragraph 3 of the subsequent finding of the court of appeal below and has contended that the case did not fall within the purview of Section 57 (2) of the Municipal Act and that a pure question of law has been wrongly dealt with by the learned single Judge. What the learned Additional Subordinate Judge has held in paragraph 3 of his finding is that four persons named in that paragraph, namely, Chandrika Prasad, Dr. Damodar Prasad, Gaya Prasad and Kedarnath Gpenka. had not been served properly with notices of the meeting of Municipal Commissioners due to an accidental omission for the reasons mentioned in that paragraph. In paragraph 4 of the finding of the learned Additional Subordinate Judge he has dealt with the cases of three other Municipal Commissioners, namely, Gulam Mohiuddin, Rameshwar Mistry and Harnandan Pd. and he has come to the conclusion that non-service of notices on all of them was also accidental. In this context, the learned Additional Subordinate Judge has also referred to the evidence of an ex-Commissioner of the Municipality, namely, plaintiffs' witness No. 2. According to the learned counsel for the appellants, merely because the learned Additional Subordinate Judge held that there was no deliberate omission to serve these Municipal Commissioners with notice, this did not lead to the conclusion that there was an accidental omission to serve them, within the meaning of Section 57 (2). It is difficult to uphold this contention, as the conclusion of the learned Additional Subordinate Judge, which has been accepted by the learned single Judge of this court, that there was accidental omission to serve notices on some of the Municipal Commissioners, was not based merely on the fact that there was no deliberate attempt to suppress notices on them. All facts and circumstances have been taken into consideration, including the oral evidence adduced by one of the witnesses for the plaintiffs. According to the learned counsel for the appellants, further, a conclusion as to whether there has been an accidental omission to serve notices of the meeting within the meaning of Section 57 (2) of the Act is a pure question of law, but on this point also it is difficult to, accede to the contention. For a conclusion as to whether there had been accidental omission to serve notices on some of the Municipal Commissioners or not, the final court of fact had to go into the oral and documentary evidence on record

and only after doing that, the findings were remitted to this court. The learned single Judge has also come to the conclusion that the findings of the learned Additional Subordinate Judge were based on the entire evidence on record and the learned single Judge has also referred to the deposition of plaintiffs' witness No. 2 and to the entries in exhibit D as dealt with by the court of appeal below. Therefore, the arguments mentioned above advanced on behalf of the appellants must fail. The learned counsel has thereafter referred to Sections 3, 5 and 7 read with Section 82 of the Municipal Act and has contended that as service of notices on all the Municipal Commissioners had not been made in accordance with Sections 3, 5 and 7, the Commissioners could not have levied professional tax, in view of Section 82. But, Section 82 itself states that notices shall be given for a meeting for any express purpose, subject to the provisions of this Act and, the provisions of Section 57 (2) cannot be disregarded altogether. Section 357 must also be read with Section 57 (2) and when on a mixed question of fact and law, the learned single Judge of this court has come to the conclusion that there was a mere accidental omission to serve notices for the meeting of the 30th March, 1955 upon some of the Municipal Commissioners, it is difficult to hold that any error of law has been committed which requires interference at this stage. In my opinion, no such point has been successfully urged by the counsel for the appellants as can induce us to set aside "the judgment of this court in this appeal. The appeal is, therefore, dismissed, but under the circumstances there will be no order for costs of this appeal.

K.B.N. Singh, J.

3. I agree.