

(1975) 07 PAT CK 0016
In the Patna High Court
Case No : Civil Revision No. 1307 of 1974

Sarajubala Devi

APPELLANT

Vs

The Chairman and Commissioner of Chaibassa Municipality

RESPONDENT

Date of Decision : 22-07-1975

Acts Referred:

Bihar and Orissa Municipal Act, 1922 — Section 100, 100(2), 105, 135, 3(18)

Citation : AIR 1976 Patna 243

Hon'ble Judges : H.L. Agrawal, J

Bench : Single Bench

Advocate : Arun Chandra Mitra, for the Appellant; S.K. Sarkar, for the Respondent

Final Decision : Dismissed

Judgement

H.L. Agrawal, J.—This application in revision by the defendant arises out of a suit by the Chairman and Commissioners of Chaibassa Municipality for recovery of Rs. 837.50, being the arrears of Municipal taxes for the period 1966-67 to 1968-69.

2. Admittedly Holding No. 188 in Ward No. 1 of the Chaibassa Municipality belonged to one Sudhir Kumar Ghose. The petitioner, claims to have purchased half portion of the said holding by a registered sale deed dated 20-1-1961 (Ext. E). The Municipality brought the suit for recovery of the arrears of taxes for the entire holding. According to the evidence on the record and the findings of the courts below, it is clear that the holding in question was not divided as yet, nor the name of the defendant was mutated over the portion of the holding said to have been purchased by her. The trial court recorded a finding that the defendant was the owner of the western half portion of the holding in question, and not of the entire holding. It, however, dismissed the suit for the reason that the Municipality having not apportioned the taxes in respect of half of the holding of the defendant, the court itself could not perform that duty in violation of the machinery provided under the Municipal Act itself, and, accordingly, dismissed

the suit. On appeal by the plaintiff, the court of appeal below came to a different conclusion that the title of the defendant was over the entire Holding No. 188 over which she was in possession as well and repelled the argument advanced on her behalf that the holding standing recorded in the Municipal Register for the period in question in favour of her vendor and others, she was not liable to the plaintiff's claim until she was mutated, and, accordingly, the suit has been decreed.

3. In this court Mr. Arun Chandra Mitra appearing for the defendant petitioner has seriously challenged the decision of the court of appeal below and contended that the plaintiff was not entitled to sue for recovery of the arrears of taxes from any other person except who happened to be recorded as owner in the Municipal records. He tried to derive support for his contention from several decisions of this court. I shall deal with them hereinafter.

4. In order to appreciate the point, it will be useful to refer to some provisions of the Bihar and Orissa Municipal Act, 1922 (hereinafter referred to as the "Act"). "Owner" has been defined in Section 3(18) of the Act as follows:

"Owner" includes-

(a) every person who is entitled for the time being to receive any rent in respect of the land with regard to which the word is used, whether from the occupier or otherwise:

(b) a manager on behalf of any such person;

(c) any agent for any such person; and

(d) a trustee for any such person:

Provided that no such manager, agent or trustee shall be liable to do anything required by this Act to be done by the owner, nor shall he be subject to any fine for omitting to do such thing, unless he has sufficient funds in his hands as such manager, agent or trustee to do such thing."

The next relevant section in point is Section 100 which provides that "any tax which is assessed on the annual value of holdings other than the latrine tax, shall be payable by the owners of holdings within the Municipality", Section 105 contemplates preparation of assessment list containing inter alia, the name of the owner and occupier, which list is to be prepared once in every five years, according to Section 106. Section 107 empowers the Commissioners to amend the assessment list from time to time only by entering therein the name of any person or any property which ought to have been entered, or by substituting therein for the name of the owner or occupier of any holding the name of any other person who has succeeded by transfer or otherwise to the ownership or occupation of the holding. For these alterations the Commissioners "have to give at least one month's notice to the persons interested, and thereafter a procedure for filing objections, hearing and filing application for review, etc. is

prescribed. There is one more relevant section, namely, Section 106 which casts an obligation on the transferee of a holding to intimate by notice in writing of such transfer to the Chairman within three months of the execution of the instrument of transfer, etc.

5. Mr. Mitra contended that the Municipal authorities were bound to substitute the name of the petitioner for the name of the owner of the holding in question in the assessment list as a condition precedent by following the procedure laid down u/s 107 of the Act before a suit could be instituted as, according to his contention, the Commissioners could institute a suit only on the basis of the records of the Municipality and not otherwise. In other words, his contention is that although the real owner of a holding may be a person different than that shown in the Municipal records, unless the real owner was substituted in the Municipal records, the Municipality could not institute a suit against the real owner,

6. Having examined the provisions of the Municipal Act carefully, it is not possible to accept the contention of Mr. Mitra which suffers from an apparent fallacy. Section 100, which is the taxing section, clearly makes the taxes payable by the owner of the holding. Coming to the definition of the expression "owner" which has already been quoted earlier, various categories of persons have been brought under its fold, for example, a manager, any agent, a trustee and even persons who may be entitled for the time being to receive any rent. The definition itself is not exhaustive and is simply illustrative. On examining the definition of the expression "owner", it cannot be argued that various categories of persons who have been contemplated thereunder could be mutated or recorded in the assessment list to be prepared u/s 105. The taxing section, therefore, clearly exposes the various types of persons described in the category of "owner" of a holding to the liability of payment of the Municipal taxes, for the simple fact of his being an owner, although this fact may not be recorded in the records of a Municipality.

The above view finds direct support from two authorities cited "by Mr. Sarkar appearing for the Opposite party and also from some of the authorities cited by Mr. Mitra himself. None of the authorities cited by Mr. Mitra has taken the view that recording the name of the owner was a condition precedent for suing him for the taxes. I must say that Mr. Mitra has not quite correctly understood the underlying principle and the ratio of the authorities which have been cited in his endeavour to support his proposition.

7. The earliest case in point of time is the case of Bhagalpur Municipality Vs. Maulavi Faik, . In this case the Bhagalpur Municipality had brought a suit against one of the sons of the recorded owner. The learned single Judge answering a similar objection said.

"The assessment list is not the final or sole test of liability; it may have become out of date as here through no fault of the Municipality, that does not debar them

from recovering the tax from the person liable to pay the same, in this case the heir of the former owner."

The suit was, accordingly, decreed to the extent of the right of the defendant as an heir to the property of his father. Mr. Mitra, however, contended that this decision must be deemed to have been impliedly overruled by a later Bench decision of this court in the case of Abdul Kadar Khan Vs. Chairman, Puri Municipality, . It cannot be said that the earlier decision referred to above should be deemed to have been impliedly overruled. In the latter case, the plaintiff appellant was challenging certain Municipal assessment as ultra vires on the basis of the revision of the assessment list on the ground that the Appellate Tribunal constituted for hearing review application was illegally constituted. The case reported in Abdul Kadar Khan Vs. Chairman, Puri Municipality, has, therefore, got no bearing at all on this question. More apposite is a Bench decision of this court in the case of Abrar Ali Kihan v. Patna City Municipality ILR (1962) Pat 338 strong reliance on which was placed by Mr. Sarkar. There, a suit was filed by the Municipality for realisation of taxes from persons who had already transferred the holding in question. The transferees applied for mutation of their names, but the Municipality refused mutation on the ground that there were some arrears of taxes and the suit was brought against the recorded owners. The matter ultimately went in Letters Patent Appeal where the suit was dismissed on these findings :

"It is, therefore, not open to the plaintiff-respondent in the present case to take advantage of its own laches or negligence in not entering the- mutation of title in its assessment list. As we have already pointed out, the defendants are not liable to pay municipal taxes for the period in question because they are not "owners" within the meaning of Section 3 (18) of the Act, read with Section 100 (1) of the Act."

According to the view of the above Bench decision, absence of the substitution of the name of the defendant in the assessment list prepared u/s 105 or absence of any step taken u/s 107 by substituting the name of the defendant petitioner as the owner of the holding in question, would not in any way affect her liability for the Municipal taxes by virtue of the provisions contained in Section 100 (1) of the Act. There is equally no force in the argument of Mr. Mitra that this right of the Municipality, if recognised, would abrogate the provisions of Section 107 and onwards, where a procedure is prescribed for determining the liability of a person as owner of any holding and to hear objections, if any, of the persons concerned. In Abrar AH Khan's case (supra) itself it has been laid down that the liability of a person in respect of a holding being a jurisdictional fact, the matter can be successfully agitated in a civil suit if a person is wrongly held to be a person as the owner of a holding. No prejudice, therefore, can be caused to such a person. In the instant case, however, the holding had been transferred in favour of the defendant much before the period for which the suit has been brought, so much so that the petitioner herself appears to have preferred an appeal against the

revisional valuation of the holding in question before the Review Committee constituted under the Act.

Mr. Mitra, however, put strong reliance upon another Bench decision of this court in the case of Patna Municipal Corporation v. Ladley Saran 1963 BLJR 214 where while dealing with the scheme of Section 109 of the Act, which by itself makes a distinction between the owner of a house and the owner of the land where they belong to two different persons, though comprised in the same holding, it was held that the word "owner" in Section 109 means only a person who is recorded as such by the Municipality, On the basis of this authority, Mr. Mitra purported to contend that it was necessary for the Municipality to record the name of the petitioner. As already indicated earlier, Mr. Mitra has not correctly appreciated the ratio of this case. As already pointed out, the learned Judge was considering the scheme of Section 109 of the Act and in that context it was held that the respondent being the owner of the holding and in allowing his lessee to make certain constructions over a piece of land, the Municipality could treat the old owner as the owner of the new structures also, unless they were separately recorded. The present case is not covered by Section 109 of the Act. Therefore, the case of Ladley Saran (supra) would have no application at all to the facts of the present case.

8. Some reliance was also placed by Mr. Mitra on another Bench decision of this court in the case of Satyadeo Narain Lal Vs. Municipal Commissioners and Others, . Here a suit was filed by the Bhagalpur Municipality against the landlords as well as the tenant of a holding for certain arrears of rent. The suit was contested only by the tenant whose name did not appear in the assessment register. The basis of his liability was a resolution of the Commissioners adopted on 31-7-1950, by which the tenants, and not the landlords were to be treated as "owner" of the holding in respect of Agricultural and Horticultural holdings, notwithstanding the provision of Section 100. The decree against the recorded landlords was maintained by the High Court but against the tenant, it was vacated on a view that the resolution by itself could not create any liability for the payment of the tax, and before such a tenant could be called upon to pay the tax, it was necessary to amend the assessment list in accordance with the procedure contemplated u/s 107 of the Act.

Now remains only the case of Sarat Kumar Acharya Vs. Mahesh Prasad Sahu, referred to by Mr. Mitra on this question. This case arose in a different situation. The owners of a holding had sold it by a registered sale deed dated 6-10-1959, but the name of the vendee was mutated on 1-10-1966 and the name of the vendors continued in the assessment register until that time and demand notices were issued to them up to 1965-66. His election as a Municipal Commissioner held in 1967 was set aside by the Election Commissioner on the ground that he was disqualified on account of arrears of Municipal taxes for his house. The matter came in Civil Revision to this court where it was held that as soon as an alteration is made in regard to the name of the owner, the transferee he-comes

liable to pay tax from the date of the transfer in his favour. It was accordingly held that the petitioner in that case was not to suffer any disqualification on the ground of the so-called arrears as the liability of the transferee had become retrospective right from the date of his purchase. The question, therefore, falling for consideration in the present case was not under consideration in the above case either.

9. None of the decisions relied upon by Mr. Mitra is an authority for the proposition propounded by him that unless a transferee was mutated in the assessment list by the Municipality, he could not be sued for the arrears of taxes.

10. Now remains a small question with respect to the liability for the latrine tax. Out of the total claim of Rs. 837.50, Rs. 80.40 appertains to latrine tax. Mr. Mitra contended that in any view of the matter, the petitioner cannot be held liable for this amount as the liability for the latrine tax was exclusively of the occupier so recorded in the Municipality records. Section 100 of the Act itself makes a distinction between other taxes and the latrine tax. By Sub-section (2), the latrine tax is made payable by the person in actual occupation of the holding, subject to the provision of Section 135. Section 135 provides that if any holding is occupied in severalty by more than one person, the Commissioners may levy latrine tax from the owner or such holding. There is no doubt that u/s 100, the liability for latrine tax rests upon the occupier. A question arises that if the occupier does not approach the Municipality for assessment of the latrine tax upon him, nor does the owner make a similar prayer, in that event the occupier cannot be sued for the latrine tax. In the instant case, however, as found by the court of appeal below, the petitioner herself was in occupation of the entire premises. Section 100 (2) read with Section 135 of the Act does not debar the Municipality from levy of latrine tax from the owner if he happens to be the occupier of the holding. In a case where the owner and occupier are two different persons, then the occupier cannot be subjected to latrine tax unless steps are taken against him to get him recorded as such by following the procedure u/s 107 of the Act. The decision cited by Mr. Mitra reported in *Patna Municipal Corporation v. Raja Ram Chandra Prasad*, 1962 BLJR 801 has got no application.

11. The liability upon the occupier to pay latrine tax is not absolute and may shift on the owner of the holding himself. If neither the owner nor the occupier take any step in getting the name of the occupier entered in the assessment register, the owner cannot escape the liability for the payment of the latrine tax. If an owner wants to avoid his liability and shift the same on the occupier, it is obligatory upon him to approach the Municipality and get this fact recorded in the relevant records. Having failed to do that, he cannot subsequently turn round and challenge the demand on the ground of lack of his liability on this account. I am supported in my view by a Bench decision of this court in the case of *Dalbhum Trades and Industries Ltd. v. Commrs. of Jugsalai Notified Area Committee* 1969 BLJR 283. The position in the instant case, as already said above, is found by the court of appeal below, is that the petitioner herself is also

the occupier of the premises and had also contested the assessment by filing review application before the Municipality.

12. For all the foregoing reasons and the questions raised on behalf of the petitioner having been answered against her as being devoid of any merit, this application must fail and is, accordingly, dismissed with costs. Hearing fee Rs. 32 only.