

(1959) 08 PAT CK 0018

In the Patna High Court

Case No : Civil Revision No"s. 557 and 568 of 1956

Satyadeo Narain Lal

APPELLANT

Vs

Municipal Commissioners and Others

RESPONDENT

Date of Decision : 07-08-1959

Acts Referred:

Bihar and Orissa Municipal Act, 1922 — Section 100, 107, 107(1), 107(2), 38(1)

Citation : AIR 1960 Patna 84

Hon'ble Judges : V. Ramaswami, C.J;Kanhaiya Singh, J

Bench : Division Bench

Advocate : S.K. Mazumdar, for the Appellant; S.C. Sinha, for the Respondent

Final Decision : Allowed

Judgement

Kanhaiya Singh, J.

1. These are two applications u/s 25 of the Provincial Small Cause Courts Act against the decisions of the Small Cause Court Judge decreeing two suits of the Bhagalpur Municipality for recovery of municipal tax in respect of two holdings. Defendants Nos. 1 to 3 are the landlords of these holdings and defendant No. 4 is the tenant under them. The landlords did not enter appearance, though duly served. Defendant No. 4 alone contested the suits. His defence was that the landlords were the owners of the holdings and were recorded in the Assessment List and the Demand Register, that he was a mere occupier and not an owner of the holdings and was never assessed with tax, nor was any demand made upon him and that he was, therefore, not at all liable to pay the taxes claimed in the two suits.

2. The learned Small Cause Judge overruled the defence and decreed the suits ex parte against defendants Nos. 1 to 3 and on contest against defendant No. 4. Now, the latter has come up to this Court in revision.

3. The facts as admitted by the witnesses for the municipality, about which there is now no longer any controversy, are these : The two holdings consist of

culturable lands and are under crop. Defendants Nos. 1 to 3 in both the suits are the landlords of these holdings and defendant No. 4, who is the petitioner before us, is the occupancy raiyat and pays rent to them. He himself cultivates the lands and receives no rent from anybody else. The holdings contain no buildings at all. In the municipal records the landlords, namely, defendants Nos. 1 to 3, were recorded as the owners of the holding and their names appear both in the Assessment list and in the Demand Register. They have been paying municipal taxes so far. The petitioner was never assessed with municipal tax and his name was not mutated in the Assessment List and the Demand Register. He never paid any tax at all nor was any demand for tax made upon him before the institution of these suits. Subsequently, on the application of Sri Basant Lal and others and in exercise of the powers vested in them u/s 99(b) of the Bihar and Orissa Municipal Act, 1922, the Commissioners at a meeting on 31-7-1950, passed the following resolution :

"In view of the provisions made in Section 99 of the B and O Municipal Act this board hereby resolved that in respect of Agricultural and Horticultural" holdings within the limit of Municipality tenants and not the landlords should be regarded as "Owner" of the holding as provided in Section 100 of the Act and the tenants should be assessed accordingly." (exhibit 1 in both the suits).

On the strength of this resolution, defendant No. 11 is sought to be made liable for the municipal tax. But the admitted facts are that the notice of this resolution was not served upon the petitioner. His name was also not mutated in the Assessment List or the Demand Register, and there was never any fresh, assessment of the holdings so far as he was concerned. Notwithstanding this, resolution, the landlords aforesaid appeared as assessees in the municipal records prior to the institution of these suits.

4. On these facts, an argument was advanced on behalf of the petitioner that he was not at all liable for the payment of the municipal tax. The submission of the learned counsel on his behalf is that unless he was assessed with municipal tax and his name was mutated in the Assessment list, he had no liability for payment of the municipal tax. This contention, in my opinion, is well founded and sound in law and must be accepted as correct. It is against all canons of justice to impose, as in the instant case, tax upon any person without notice I have examined the provisions of the Bihar and Orissa Municipal Act, 1922, and I do not find any thing therein which subjects the petitioner or for the matter of that any person residing in the municipality, to liability for tax without notice and without mutation of his name in the relevant records of the municipality.

5. Mr. S. C. Sinha appearing for the Municipality contended with some vehemence, though absolutely wrongly, that what was assessed in these suits was holding and not the occupier, and, therefore, it was not incumbent to mutate his name in the municipal records and that liability for payment of the tax arose immediately on the passing of the resolution aforesaid and his name need not appear in the municipal records. In support of his contention he referred to

Section 380 of the Bihar and Orissa Municipal Act, 1922, which is in the following terms :

"380. (1) No assessment list or other list, notice, bill or other such document specifying or purporting to specify, with reference to any tax, charge, rent or fee, any person, property, thing or circumstance shall be invalid by reason only of a mistake in the name, residence, place of business or occupation of the person or in the description of the property, thing, or circumstance, or by reason of any mere clerical error or defect of form; and it shall be sufficient that the person, property, thing or circumstance is described sufficiently for the purpose of identification, and it shall not be necessary to name the owner or occupier of any property liable in respect of a tax. (2)

He laid greater emphasis upon the last portion of this section viz., "it shall not be necessary to name the owner or occupier of any property liable in respect of a tax". His contention is that it was not necessary at all to name the petitioner, in the Assessment List. To say the least, this argument is simply preposterous. It ignores the other provisions of this section. It does not say at all that the name of the owner or occupier should not appear in the Assessment List or other list or documents of the municipality. It only says that any mistake in the name, residence, place of business or occupation of the person or in the description of the property, thing, or circumstance shall not invalidate the Assessment list or other list.

It is a saving clause which seeks to save clerical errors or mistakes which may through inadvertence creep in the Assessment List or other Municipal records. Further, it provides that for the purpose of the municipal record all that is necessary is that the person, property, thing or circumstance should be sufficiently described for the purpose of identification, and so long as this description is complete and sufficient, it will not be at all necessary to name the owner or occupier of any property liable; in respect of a tax. "For instance, where the name of any lady is not known she may be described in the municipal record as the wife or widow of so and so, and it is a sufficient description as contemplated by Section 380 of the Act.

The object "of this section is not to obliterate the name of the owner or occupier from the Assessment list but to safeguard against clerical errors or mistakes in the description of the name or the property which may occur despite due diligence. The meaning of the Provisions of this section taken as a whole is manifest enough. It does not dispense with the recording of the name of the owner or occupier; rather it affirms that the person liable in respect of the tax must be mentioned in the assessment list and sufficiently described either by name or otherwise and lays down that any mistake in so recording will not invalidate the assessment list. This contention, therefore, has to be mentioned only to be rejected outright.

6. The next contention of Mr. Sinha was that the petitioner's liability for payment

of tax arose on. the passing of the resolution aforesaid by the Municipality and no further notice was necessary. This contention is equally absurd and devoid of any merit. Section 100 of the Act provides that any tax which is assessed on the annual value of holdings, other than the latrine tax, shall be payable by the owners, and latrine tax by the persons in actual occupation, of holdings within the Municipality. This section makes owners liable for payment of the municipal tax and not occupiers. Section 99(b), however, empowers the municipality to decide who will be deemed to be owner for the purposes of Section 100 of the Act.

It provides that the Commissioners at a meeting shall decide, in regard to holdings in general or to any class of holdings in particular, what tests shall be applied for determining whether properties within the municipality are held under one title or agreement. Pursuant to this power the Bhagalpur Municipality did pass the resolution, and effect of this resolution is that thenceforth tenants will be considered as owners of the holdings and thus liable for municipal tax and not the landlords as before. But, to say that the resolution by itself is sufficient to saddle the tenants with liability to tax without any further action is a different thing altogether.

The resolution does not purport to make the tenants automatically liable for payment of tax. All that it lays down is that the tenant and not landlords should be regarded as owner of the holding as provided in Section 100 of the Act and the tenant should be assessed accordingly. It is implied in the resolution that in order to give effect to it, proceedings for assessment of tax on the tenants will have to be taken. There is nothing in the Act to support the extreme contention put forward by Mr. Sinha. He urged that a public notice was given and referred to Section 115 of the Act. I fail to understand how this section can be pressed into service. It provides that when the assessment list mentioned in Section 89 or Section 105 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 said list may be inspected.

It will be seen that public notice of assessment list is to be given in the manner laid down in Section 115 only when the assessment list is prepared u/s 89 or Section 105 or is revised u/s 106 of the Act. Nothing of the sort was done in this case. There was no preparation of the original assessment list nor did the resolution operate to revise? the assessment list. Apart from this, there is no evidence that even this general public notice was given in the present case. The effect of the resolution was to amend or alter the assessment list which, had already been prepared and which stood so far as the disputed holdings were concerned in the names of the landlords (defendants Nos. 1 to 3). By this resolution, the names of the landlords were to be expunged and the name of the tenant mutated in their place. This case, therefore, falls u/s 107 of the Act. It is in the following terms :

"107. (1) The Commissioners may from time to time alter or amend the assessment list in any of the following ways :

(a) by entering therein the name of any person or any property which ought to have been entered, or any property which has become liable to taxation after the publication of the assessment list u/s 115;

(b) 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;

* * * * *

(2) The Commissioners shall give at least one month's notice to any person interested of any alteration which they propose to make under Clauses (a), (b), (c), (d) or (dd) of Sub-section (1) and of the date on which the alteration will be made.

(3) The provisions of Sections 116 to 119 applicable to objections shall, so far as may be, apply to any objection made in pursuance of a notice issued under Sub-section (2) and to any application made; under Clause (f) of Sub-section (i).

(4) Every alteration made under Sub-section (1) shall be signed by the Chairman and. subject to the result of an application u/s 116, shall take effect from the date on which the next instalment falls due, but the Commissioners by such alteration shall not be deemed to have made a new or revised assessment list."

It will be seen that the proper course for the Commissioners was to substitute in the assessment list the name of the tenant for the names of the landlords. This they did not do. If this alteration had been made, then Sub-section (2) immediately came into operation, and after this amendment it was incumbent upon the Commissioners to give at least one month's notice to any person interested of any alteration which they proposed to make under Clause (a) or (b) and also of the date on which the alteration would be made. This salutary provision was not followed by the Commissioners of the Municipality, and I do not think how this imposition of tax can bind the tenant.

Had they made the necessary alteration and given the statutory notice, the tenant would have raised objections if he was so advised, as provided in Section 116. By the subterfuge adopted by the Municipality the tenant had been denied the opportunity of laying his case before the prescribed authority, and when he has been denied the opportunity given him under the law, he cannot be made liable for the tax. It is unfortunate that the Commissioners failed to follow these provisions and attempted to realise tax from the tenant without warrant. Although no alteration was made in the assessment list as it ought to have been done u/s 107 (1) nonetheless the effect is the same.

The tenant cannot be bound by such imposition without notice. Mr. Sinha was patently wrong when he said that no notice was necessary. On the contrary, the

law makes the service of notice imperative. I may further point out that Sub-section (4) of Section 107 makes it perfectly clear that the amendment or alteration of the assessment list in accordance with the provisions of Sub-section (1) shall not be deemed to have made a new or revised assessment list. It is thus plain that in a case of amendment or alteration of the assessment list, as provided in Section 107, the provisions of Section 115 of the Act have no application.

It follows that a resolution by itself did not create liability for payment of tax and before the tenant was called upon to pay the tax, it was necessary to amend the assessment list and give notice thereof to the tenant, as provided in Sub-sections (1) and (2) of Section 107 of the Act. Mr. Sinha had referred to several decisions, namely, *Dharanikar Parah and Others Vs. Chairman of Commissioners of Tamluk Municipality and Others*, *Municipal Commissioners Vs. Kapur Chand Lall*, *Bhuban Mohan Basak and Others Vs. The Chairman of the Municipal Commissioners of the Dacca Municipality*, and *Chairman, Municipality Vs. Ramkumar Choudhury*, . I do not propose to examine them. They have not the remotest relevancy to the facts of the present case. Accordingly, I hold that the petitioner is not liable for payment of the municipal tax.

7. In the result, both these applications are allowed and the suits as against the petitioner are dismissed with costs. The petitioner will be entitled to the costs of this Court also together with a consolidated hearing fee of Rs. 100/-.

Ramaswami C.J.

8. I agree.