(1941) 07 PAT CK 0004

In the Patna High Court

Shiva Prasad APPELLANT

Vs

Commissioner of Darbhanga Municipality RESPONDENT

Date of Decision : 30-07-1941

Acts Referred:
Bihar and Orissa Municipal Act, 1922 — Section 116, 86

Citation : AIR 1942 Patna 81

Hon'ble Judges : Harries, C.J;Chatterji, J

Bench : Full Bench

Judgement

Chatterji, J.—This appeal arises out of a suit brought by the plaintiff against the Darbhanga Municipality for a declaration. that the assessment by the defendant Municipality of latrine tax in respect of the plaintiff''s shop buildings included in holdings Nos. 194, 195, 197 and 198 in Ward No. 7-A of the Darbhanga Municipality was illegal, ultra vires and without jurisdiction and for recovery of a sum of Rs. 179-1-0 which had been realised from the plaintiff. The plaintiff owns two blocks of buildings on a road side in Darbhanga town. These buildings are used exclusively as shops. These two blocks were treated by the municipality for the purpose of assessment as four holdings. The municipality assessed latrine tax on Q these four holdings at the rate of Rs. 20 per annum on each holding. Taxes at this rate were realised from the plaintiff by the municipality. Thereupon the plaintiff instituted a title suit (NO. 25 of 1931/59 of 1933) for a declaration that the assessment was ultra vires and for recovery of the sums that were realised from him. This suit was decreed, and the decree was upheld by this Court in second appeal. In 1933 the aforesaid four holdings were split up into 13 holdings and 13 different assessments of latrine tax were made. The municipality realised taxes for these 13 holdings. Thereupon the plaintiff y brought another suit (No. 158 of 1936) for a declaration that the assessment was ultra vires and without jurisdiction and for recovery of the monies which were realised by the municipality. This suit was also decreed.

2. In March 1935 the municipality amalgamated the 13 holdings into one holding

and also consolidated the latrine tax to Rs. 80. The plaintiff filed an objection u/s 116, Bihar and Orissa Municipal Act, against this assessment. The objection was allowed by a review committee only to this extent that the holdings were treated as four holdings as they originally stood, but the total amount of latrine tax remained as it was, that is to say, Rs. 20 was payable per annum for each holding. Subsequently, however, a special officer of the municipality ignored the order of the review committee and demanded payment of latrine tax from the plaintiff at the consolidated rate of Rs. 80 per annum. Under threat of distress warrant and certificate proceedings, the plaintiff had to pay Rupees 179-1-0 to the municipality. The plaintiff brought the present suit on 24th August 1937, for recovery of this sum of Rs. 179-1-0 on a declaration that the assessment of latrine tax was ultra vires and without jurisdiction. It is alleged in the plaint that the holdings consist only of shop buildings which contain no latrine, urinal or cesspool, and, therefore, the holdings were exempt from payment of latrine tax and the municipality did not observe the provisions of law before imposing the latrine tax. The suit was contested on the grounds, inter alia, that the suit was not maintainable and that the latrine tax was imposed on the holdings in question by the Commissioners at a meeting according to the provisions of law. The learned Munsif, overruling all the defences decreed the suit. On appeal the learned Subordinate Judge upheld the findings of the learned Munsif but dismissed the suit, holding that the suit was not maintainable inasmuch as the plaintiff had failed to take the specific grounds now raised in the plaint in the objection u/s 116, Bihar and Orissa Municipal Act. Hence this appeal by the plaintiff. Section 86, Bihar and Orissa Municipal Act (7 of 1922), imposes certain restrictions on the imposition of latrine tax. The section provides that the imposition of the latrine tax shall be subject to the following among other restrictions namely:

(a) that the tax shall be imposed only on holdings containing dwelling houses latrines, urinals or cesspools, and on holdings containing shops or places of Business in which, in the opinion of the Commissioners at a meeting, a latrine, urinal or cesspool is required.

3. Admittedly the holdings in question do not contain dwelling-houses, latrines, urinals or cesspools. Therefore, u/s 86, latrine tax could be imposed only if "in the opinion of the Commissioners at a meeting, a latrine, urinal or cesspool is required." In other words this formality must be observed as a condition precedent to the imposition of the latrine tax. In Chairman, Dhanbad Municipality Vs. Janeswar Bhakat and Others, . Mohamad Noor, J., held that:

Where under the clear provision of the law a particular class of holding is exempted from taxation unless certain things are done without which the Municipality has no jurisdiction to proceed with the assessment and when there is absolute want of jurisdiction, the civil Court can and must interfere in such a case.

4. Again in Commissioners of Darbhanga Municipality Vs. Shiva Prasad, , Wort, J.

held that tax could only be imposed by following the provisions of the Municipal Act and if the-provisions of the Act relating to formalities-had been complied with, the civil Court would have no jurisdiction to interfere with the decision of the Commissioners which is-final. It is to be mentioned that this decision of Wort J. was given in the first suit between these parties, namely, No. 25 of 1934/59 of 1933 to which I have referred. In this case the Courts below have concurrently found that the Commissioners of the municipality never at a meeting decided that a latrine, urinal or cesspool is required for the holdings in question. Upon this finding it must be held in view of the decisions quoted above that the assessment of latrine tax on the holdings, in question was ultra vires and without jurisdiction. The learned Subordinate Judge has however held that the plaintiff ought to have taken these specific grounds in his petition of objection filed u/s 116, Bihar and Orissa Municipal Act, and not having taken these objections there, he cannot maintain the present suit. He has relied on a decision of this Court in Chairman, Municipality Vs. Ramkumar Choudhury, . The facts of that case were quite different. There their Lordships had to deal with an assessment which was not ultra vires and with regard to which the assessee had preferred an objection u/s 116, Bihar and Orissa Municipal Act. Their Lordships held:

If an assessee desires to dispute his occupation of any holding or his liability to be assessed, it is necessary, u/s 116 of the Act, that he should apply to the Commissioners for review of the assessment or for exemption; his failure to do so debars his right under Sec 119, to raise such an objection in a suit.

Section 119 of the Act runs as follows:

No objection shall be taken to any assessment or valuation in any other manner than in this Act is provided.

5. This section, to my mind, contemplates'' that the assessment is made in accordance with the provisions of the Act, and if the assessee is to raise any objection to that assessment he must have recourse to the proceedings laid down in the Act. But where the assessment itself is ultra vires, the assessee need not take any proceedings under the Act. No doubt in this case the plaintiff did file an objection u/s 116 of the Act, but having regard to the fact that the assessment itself was ultra vires he need not have done so and could have at once brought a suit in the civil Court. The plaintiff cannot be in a worse position than if he had filed no objection at all u/s 116 of the Act. In my view therefore the decision in Chairman, Municipality Vs. Ramkumar Choudhury, , has no application to the present ease. I have no doubt that the decision of the learned Subordinate Judge is wrong and that of the Munsif was right. I would therefore allow the appeal, set aside the decision of the learned Subordinate Judge and restore that of the Munsif. The appellant will be entitled to costs in this Court and in the Court below.

Harries, C.J.

I agree.

