

(2014) 02 JH CK 0034
In the Jharkhand High Court
Case No : L.P.A. No. 692 of 2004

Smt. Krishna Sadhukhan

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 14-02-2014

Acts Referred:

Citation : AIR 2014 JH 90 : (2014) 3 AJR 28 : (2014) 2 JLJR 164

Hon'ble Judges : R. Banumathi, C.J.;S. Chandrashekhar, J

Bench : Division Bench

Advocate : Arvind Kumar Choudhary, Advocate for the Appellant; Anil Kumar Jha, Advocate for the Respondent No. 3, Advocate for the Respondent

Judgement

R. Banumathi, C.J.—This appeal is filed against the order dated 25.06.2004 dismissing W.P. (C) No. 1523 of 2003 in and by which the learned Single Judge declined to quash the enhancement of Municipal Tax fixed at Rs. 23,053.15 quarterly for Holding No. 103 (New) which comprises of Hotel and Market Complex. The first writ petitioner namely Late Manindra Nath Sadhukhan was the legal owner of Holding No. 94(Old) - 103(New) of Ward No. 13, Deoghar Municipality. Late Manindra Nath Sadhukhan gifted a part of the aforesaid holding measuring 9281 Sq. Ft. by Gift Deed dated 19.03.1996 to his daughter-in-law - the appellant-Krishna Sadhukhan/second writ petitioner. In the said gifted property, Prabha Hotel and Market Complex has been constructed.

2. Case of the appellant is that Late Manindra Nath Sadhukhan was the owner of the entire holding and was paying Municipal Tax of Rs. 286.86 per quarter in the year 1997-98. The appellant received a notice dated 28.01.1999 with regard to increasing of Holding Tax to Rs. 23,053.15 quarterly with effect from 01.04.1998 for the entire Holding No. 103(New). The appellant moved a petition dated 11.03.1999 before the appellate authority u/s 116 and 118 of the Act and the aforesaid appeal was disposed of vide order dated 07.05.1999 whereby annual rental value of the aforesaid Holding No. 103(New) was assessed to Rs. 2,25,000/- and accordingly the tax was fixed at Rs. 23,053.15 per quarter.

Grievance of the appellant is that she was continuously representing before the Municipal authorities, Deoghar for separate assessment of the residence and Prabha Hotel Complex and inspite of several representations the respondents had not separately assessed the Holding Tax of the said two Complex. Alleging that the enhancement of the Holding Tax from Rs. 286.86 per quarter to Rs. 23,053.15 per quarter is arbitrary, Late Manindra Nath Sadhukhan and the appellant filed writ petition W.P. (C) No. 1523 of 2003 seeking to quash the impugned enhancement of tax for Holding No. 103(New) and also seeking for a direction upon the respondent authorities to separately assess the Hotel Complex (Prabha Hotel) situated within the entire Holding No. 103(New).

3. The learned Single Judge tagged many writ petitions pertaining to the issue of re-assessment of Holding Tax by Deoghar Municipal authorities. After referring to the general submissions in all the writ petitions and various provisions of Bihar Municipal Act, 1922, the learned Single Judge held that the enhancement of Holding Tax etc. has been made in accordance with Sections 84, 85(c), 86(a) and 86(e) of the Act whereunder restrictions on imposition of Holding Tax etc. has been laid down. Accepting the contention of the Deoghar Municipality, the learned Single Judge dismissed the writ petitions by the common order holding that taking into consideration the fair rent/the annual value of the house, as per the individual cases, the Holding Tax has been determined and there was no arbitrariness in the enhancement of the tax. Being aggrieved by dismissal of the writ petition, the appellant has preferred this appeal.

4. We have heard Mr. Arvind Kumar Choudhary, the learned counsel for the appellant, Mr. Anil Kumar Jha, the learned counsel appearing for the respondent-Municipality and J.C. to G.P.-III appearing for the State of Jharkhand.

5. Late Manindra Nath Sadhukhan was the legal owner of Holding No. 94(Old) and Holding No. 103(New) of Ward No. 13 within Deoghar Municipality. Late Manindra Nath Sadhukhan (first writ petitioner) is the father-in-law of the second writ petitioner/appellant-Krishna Sadhukhan. Out of the said property of 32900 Sq. Ft., an extent of 9281 Sq. Ft. was settled in favour of the appellant by way of deed of gift dated 19.03.1996. In the said gifted property, the appellant had constructed Market and Hotel Complex known as Prabha Hotel Complex. In the said Complex there are about 24 rooms with attached latrine-cum-bathrooms constructed in the first floor and in the ground floor there are 22 shops which were all rented and in the ground floor Syndicate Bank is also inducted as a tenant over an area of 3200 Sq. Ft. which pays rent of Rs. 12,880/- per month.

6. The general assessment of the Deoghar Municipality was taken up in the year 1988-89. As per Section 106(1), new valuation and assessment lists shall ordinarily be prepared once in every five years. As per Sections 82 and 106(1) of the Act after five years the assessment was to be revised in the year 1993-94, but it could not be done within five years of the last assessment and it was taken up in the year 1996-97. Assessment of all the holdings in Deoghar Municipality including the holding in question [Holding No. 103(New)] was revised by the

Municipal authorities after making enquiry and after completing all the formalities in accordance with law. In the present case, in respect of Holding No. 103(New) original Holding Tax of Rs. 286.86 per quarter was enhanced to Rs. 23,053.15 per quarter with effect from 01.04.1998.

7. The learned counsel for the appellant contended that the appellant was continuously representing before the Deoghar Municipal authorities for separate assessment of the Prabha Hotel Complex situated in Holding No. 103(New) and the residential complex and inspite of several representations, the respondent had not separately assessed the Holding Tax. The learned counsel contended that enhancement of Holding Tax without such separation is arbitrary. The learned counsel further submitted that the 3rd respondent ought to have segregated Prabha Hotel Complex and ought to have separately levied Holding Tax for the residential portion and for Prabha Hotel Complex and the enhancement is vitiated.

8. In support of the contention that the appellant was continuously representing before the Municipal authority for separate assessment of the residential complex and Prabha Hotel Complex, reliance was placed upon Annexure-5 Series to the memo of appeal. Annexure-5A is the form of application for mutation (dated 12.06.1996) wherein the appellant requested for mutation of the land gifted to her in J.B. No. 2982 in Tauzi No. 1/27 measuring and extent of 9281 Sq. Ft. out of 32900 Sq. Ft. Annexure 5A is only a form of application for mutation requesting for mutation of the land in question. Request for separate mutation of the land gifted to the appellant was only consequent to the gift deed executed in her favour and the same is of no assistance to the appellant in the case.

9. Annexure-5 dated 20.12.2000 filed by Late Manindra Nath Sadhukhan was addressed to the 3rd respondent informing Deoghar Municipality about the construction of Prabha Hotel Complex by the appellant and requesting for fresh assessment notice. It is a matter of record that Annexure-5 was filed subsequent to the enhancement of Holding Tax. It is also pertinent to point out that Late Manindra Nath Sadhukhan had not taken any follow up action on the Annexure-5 filed on 20.12.2000. Infact, being aggrieved by the assessment, first writ petitioner Late Manindra Nath Sadhukhan filed a petition for review in Form-C u/s 116 and 118 of the Act before the Commissioner. We may usefully refer to the columns 1 to 7 of the said review petition which are as under:-

10. In the said review filed u/s 116 of the Act, Late Manindra Nath Sadhukhan has stated that there is no addition or alteration in the building and the Municipality does not provide any amenities. In the review petition, neither the appellant nor Late Manindra Nath Sadhukhan have stated about the deed of gift and construction of the Prabha Hotel Complex by the appellant. In the review petition nothing was stated about the earlier representation and prayer for separate assessment. At this juncture, it is relevant to refer to the submissions of the learned counsel appearing for Deoghar Municipality that after filing the review petition, the appellant did not appear before the appellate authority/ Commissioner and the Respondent authority fixed the valuation of the holding as

Rs. 2,25,000/-. Having filed the review petition and when either the appellant or Late Manindra Nath Sadhukhan did not appear before the authorities, the objection raised by the appellant assailing the enhancement is not sustainable.

11. Learned counsel for the appellant submitted that before enhancement the provisions of the Act was not followed and there was arbitrary enhancement of tax on the Holdings and prayed for quashing of the enhancement.

12. In order to appreciate the above contention, we may usefully refer to the relevant provisions of Bihar Municipal Act, 1922. Section 98 is also relevant which provides for assessment of taxes on the annual value of holdings, as quoted hereunder:

98. Annual value of holdings - (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 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 exceed, seven and a half per centum of such cost, in addition to a reasonable ground rent for the land comprised in the holding;

Provided that, where the actual cost so ascertained or estimated exceeds one lakh of rupees, the percentage on the annual value to be levied in respect of so much of the cost as in excess of one lakh of rupees shall not exceed one fourth of the percentage determined by the Commissioners u/s 104.

(3) The value of any machinery or furniture which may be on a holding, shall not be taken into consideration in estimating the annual value of such holding under this section.

13. Section 101 provides that "when it has been determined to impose any tax to be assessed on the annual value of holdings, the Commissioners, after making such inquiries as may be necessary, shall determine the annual value of all holdings within the municipality as hereinafter provided, and shall enter such value in a valuation list."

14. Section 102 speaks of the procedure for preparing the valuation list. It, inter alia, provides that the Commissioners may, by notice, required the owners of occupiers of all holding to furnish them with returns of the rent of annual value thereof.

15. Section 104 deals with the determination of rate of tax on holdings. The material part of the Section reads as follows:-

Subject to the provisions of clauses (iii) of the proviso to sub-section (1) of section 82 and to the provisions of sections 84 to 88 inclusive, the Commissioner, at a meeting to be held before the close of the year next preceding the year to

which any tax which is assessed on the annual value of holdings will apply, shall determined the percentage on the valuation of holdings at which the tax shall be levied, and the percentage so fixed shall remain in force until the order of the Commissioners determining such percentage shall be rescinded, and until the Commissioners at a meeting shall determine some other percentage on the valuation of holdings at which the tax will be levied from the beginning of the next year;

Provided ... further that the Commissioners shall not without the previous sanction of the State Government decrease the rate of any tax levied by them.

16. Section 105 provides for preparation of assessment list. It lays down that "as soon as possible after the percentage to which the tax is to be levied for the next year has been determined under the last preceding section, the Commissioner shall cause to be prepared an assessment list" containing particulars enumerated in clauses (a) to (h) of that section.

17. Section 106 while deals with revision and duration of list, which ordinarily to be prepared in the same manner, once in every five years, Section 107 gives the power to the Commissioners to alter or amend the assessment list from time to time in any of the ways, enumerated in clauses (a) to (g) of sub-section (1). Under sub-section (ii) of Section 107 it is obligatory on the part of the Commissioners to give at least one month's notice to any person interested, of any alteration which they propose to make under clauses (a) to (d) and (dd) of sub-section (1).

18. The learned counsel for the respondent - Municipality has submitted that before the revisional assessment for the year, 1998-99 started, as required under the provisions of the Act - Section 115 of the Act, general announcement through loudspeaker as well as by beat of drum was made by the respondent authority. The State Government appointed the Assessing Authority who in course of the revisional assessment asked the appellants to produce the documentary evidence including cash-memo, credit-memo, challan and proof of purchase of the cement, concrete, bricks, iron rod, sand, wood etc. used by assessee in construction of the building. However, Late Manindra Nath Sadhukhan did not produce any evidence and therefore, the Assessing Authority proceeded to assess the valuation of the holding. Notices on different dates were issued to the appellants directing them to pay the holding tax. After receiving the notice, Late Manindra Nath Sadhukhan filed the objection/review application in the prescribed form known as Form-C u/s 116 of the Act. Thereafter, notice was issued to Late Manindra Nath Sadhukhan to appear before Respondent No. 3 and produce evidence in support of his case however, Late Manindra Nath Sadhukhan did not appear before the respondent authority and therefore, after perusal of the records, the valuation of the holding was confirmed.

19. The learned counsel for the appellant then contended that no notice was served upon the appellant before the assessment of valuation and such non-

issuance of notice vitiates the enhancement. In para-11 of the judgment the learned Single Judge has elaborately dealt with this contention and we may usefully refer to the findings of the learned Single Judge which reads as under:-

11. In the present case, the learned counsel for the Deoghar Municipality brought to the notice of the Court that the Board of Municipality was dissolved u/s 385 of the Act, 1922 and after such dissolution the State Government has appointed and delegated the power to Special Officer u/s 381. The Special Officer is competent to exercise power u/s 381 and 386 of the Act, 1922 is not in dispute. After dissolution, the then State of Bihar issued a Notification bearing No. 2894/N.B.B. Patna dated 24th August, 1991, whereby the Special Officer was asked to initiate a proceeding for revisional assessment. An assessor was appointed which was changed from time to time. The Special Officer gave notice to interested persons by dint of general loudspeaker announcement and by beat of drum, as required under the provisions of the Act and informed the people of Deoghar Municipality that revisions assessment will commence. The Assessor, thereafter, took steps for revisional assessment and made inquiry. Demand notices were issued to the respective property owners, copies of which have also been enclosed with some of the writ petitions, whereby, they were informed that on the basis of revisional assessment, the holding tax may be enhanced. In many of the - cases, the owners of the holdings made objections under Sections 116 and 118 of the Act, 1922 in prescribed form "C", after receipt of demand notice. Having received those objections, the Special Officer again issued notices to the respective holding owners, whereby, they were informed to appear on the date, as was fixed for hearing. In many of the cases, the holding owners appeared before the appellate committee, as was constituted by the State Government but many of the holding owners did not prefer to appear before the appellate committee.

20. It is now well settled that the principles of natural justice cannot be put in a straight-jacket formula. Its applicability depends on several factors in the facts and circumstances of a particular case. If the procedure adopted was fair or where the person who has complained of violation of statutory provision with respect to service of notice, had sufficient knowledge about the proceeding or who has failed to approach the authority, cannot be permitted to take the plea of violation of principles of natural justice. As pointed out by the learned Single Judge, the demand notices were issued to the respective property owners. In the present case the copy of the demand notices have also been enclosed in the writ petition as Annexure-3 dated 28.01.1999, whereby they were informed that on the basis of the revisional assessment, the Holding Tax may be enhanced. After receipt of the demand notice, Late Manindra Nath Sadhukhan filed objection u/s 116 of the Act in the prescribed Form-C. Since Late Manindra Nath Sadhukhan and also the appellant did not appear before the appellate committee, the valuation of the holding was assessed to Rs. 2,25,000/- and thereupon the tax was fixed as Rs. 23,053.15. On behalf of respondents it was submitted that only after disposal of the review by the Commissioner fresh demand notices were

issued by the Special Officer calling upon the concerned holding owners to pay the Municipal Tax as per revised Holding Tax. When the assessment was the general assessment of the Deoghar Municipality and when there was sufficient public notice, the appellant cannot contend that the provisions of the Act were not followed.

21. The learned counsel for the appellant then contended that earlier for the entire holding the tax was only Rs. 286.86 per quarter and the same was enhanced multifold to Rs. 23,053.15 per quarter and such huge enhancement is arbitrary and is liable to be quashed.

22. As pointed out earlier, assessment of valuation was made by the authority who has been duly appointed by the State Government. It is the contention of the Deoghar Municipality, the enhancement of Holding Tax has been enhanced legally in accordance with law. We may usefully refer to relevant Sections of Bihar Municipal Act, 1922. Section 84 deals with restrictions on the imposition of the tax on holding. As per Section 84(1) the tax on holding shall not be imposed at rate exceeding twelve and half percentum on the Annual value of holding. Section 85 deals with restriction on the imposition of the water and lighting taxes. As per Section 85(c) the rate on the Annual Value of holding at which the tax may be imposed shall not exceed twelve and a half percentum water tax, and three percent in the case of the lighting tax. Section 86(e) deals with the tax on any holding the valuation of which does not exceed twenty five rupees per annum, and that the tax on any other holding shall not be imposed at rate exceeding seven and a half percentum on the annual value of the holding except in the Patna City Municipality in which it shall not exceed ten percentum on such annual value. Section 86A deals with Restrictions on the imposition of Drainage tax. As per Section 86A(c) the tax on the annual value of holdings at which the tax may be imposed shall not without the previous sanction of the State Government, exceed seven and a half percentum.

23. As pointed out earlier, the ground floor has 22 shops which are rented out. In the ground floor an area of 3200 Sq. Ft. is rented out to Syndicate Bank which is paying rent of Rs. 12,880/- per month. In the first floor there are about 24 rooms with attached latrine-cum-bathrooms constructed over 9281 Sq. Ft. So far as the 24 rooms are concerned, they are said to be let out on rent of Rs. 200/- to Rs. 400/- per day and the Hotel is situated in the central place and the rooms are big in size and well furnished and ventilated and the said building has been constructed after investment of several lacs of rupees. However, the annual valuation of the holding has been determined only at Rs. 2,25,000/-. As per the above said provisions, the tax was calculated on the annual valuation of Rs. 2,25,000/- as under:-

24. Even though the tax of holding in question was calculated at Rs. 96,750/-, what was imposed was only Rs. 92,212.60 per annum which comes to Rs. 23,053.15 per quarter. In fact the 3rd respondent has adopted a liberal approach in levying the Holding Tax and the enhancement of Holding Tax is in accordance

with the provisions of law and cannot be said to be arbitrary.

25. The learned counsel for the Deoghar Municipality submitted that taking advantage of the filing of the L.P.A., the appellant has not paid any tax to Deoghar Municipality. It was also submitted that Deoghar Municipality is a local body and 40% of the amount is given to the Municipality by the Government as a loan and 30% is allotted to the Municipality by the State Government and rest 30% is to be managed by the Municipality by its own sources. The only source of Municipality is based on the realization of Holding Taxes from the tax payers. Apart from paying monthly salary to its employee and other administrative expenses, the Municipality has to maintain roads, construct new roads, maintain the road lights, provide water to the people of Deoghar Municipality. That apart the Municipality has to maintain sewerage, remove water logging, clean drainage and provide the civic amenities. It was submitted that in the months of Sawan and Bhado Mela number of pilgrims used to come from different parts of the country as well as foreign country for religious purpose and in these two months Municipality spend huge amount for providing facilities to the pilgrims for which number of roads have been constructed/repared within the Municipal area, several hand-pumps have been installed for the pilgrims as well as for the citizen of the town and that without resources it is impossible for the Municipality to discharge its civic responsibilities in an effective manner.

26. Though the learned Single Judge has not individually dealt with the writ petitions, the learned Single Judge has considered all the common issues raised by the appellant along with the other writ petitions. We do not find any reason warranting interference with the order of the learned Single Judge and the Letters Patent Appeal is liable to be dismissed. This Letters Patent Appeal is dismissed. The appellant is directed to deposit the entire arrears of Holding Tax along with interest (if not already paid) as per the provisions of Bihar Municipal Act, 1922 within a period of four weeks from today. On failure to deposit the entire arrears amount along with the interest, the 3rd respondent is directed to proceed against the appellant in accordance with law.