

(2017) 01 OHC CK 0021

In the Orissa High Court

Case No : 139 of 1989

V. Shyamasundar Rao

APPELLANT

Vs

Berhampur Municipal Council

RESPONDENT

Date of Decision : 27-01-2017

Acts Referred:

[Orissa Municipal Act, 1950](#), [Section 147\(2\)](#)

Citation : (2017) 01 OHC CK 0021

Hon'ble Judges : A.K. Rath

Bench : SINGLE BENCH

Advocate : Budhiram Das

Judgement

1. This is a defendant's appeal against a reversing judgment.
2. The respondent as plaintiff instituted the suit for recovery of arrear municipality taxes for the years from 1981-82 to 1983-84 amounting to Rs.9259.39 paise. The case of the plaintiff is that the defendant is the owner of a house situated in Berhampur Municipality. He paid taxes under the provisions of the Orissa Municipal Act every year in four quarterly instalments. He has committed default in the payment of the taxes amounting to Rs.9259.39 paise. In spite of repeated demands, he did not pay.
3. Pursuant to issuance of summons, the defendant entered appearance and filed written statement denying the assertions made in the plaint. According to him, the enhancement of the tax was made arbitrarily without issuing demand notice to him and as such the same is infraction of principle of natural justice.
4. On the interse pleadings of the parties, learned trial court struck five issues. To substantiate the case, the plaintiff had examined two witnesses and on its behalf two documents had been exhibited. On behalf of the defendant, one witness was examined and one document had been exhibited.
5. Learned trial court came to hold that the enhancement of tax without one

month's notice is without jurisdiction. It further held that the plaintiff is entitled to an amount of Rs.1257.04 paise only. The suit was decreed in part. Assailing the judgment and decree, the plaintiff filed T.A. No.80/85 in the court of the learned District Judge, Ganjam, Berhampur, which was subsequently transferred to the court of the learned 1st Additional District Judge, Ganjam, Berhampur and renumbered as T.A. No.97/88. Learned lower appellate court held that P.W.2 in his deposition stated that the defendant appealed against the assessment before the A.D.M. The A.D.M. revised the valuation which was not challenged. D.W.1 in his deposition stated that the assessment was revised to Rs.1046.28 paise per quarterly by the A.D.M. Since the defendant preferred appeal, it cannot be said that there was no notice earlier to the suit to attract Sec.147(2) of the Orissa Municipal Act. The defendant nowhere in the written statement has taken the plea of non-service of notice under Sec.147(2) of the Orissa Municipal Act. Held so, learned lower appellate court allowed the appeal and set aside the judgment and decree of the learned trial court and decreed the suit.

6. The second appeal was admitted by a Bench of this Court on the following substantial question of law.

"Whether the learned lower appellate court was justified in holding on the materials available on record that despite non-compliance of Section 147(2) of the Orissa Municipal Act, holding tax is recoverable ?"

7. Heard Mr. Budhiram Das, learned counsel on behalf of Mr. N.C. Pati, learned counsel for the appellant. None appears for the respondent.

8. Mr. Das, learned counsel for the appellant submitted that in case of enhancement of tax, notice under Sec.147(2) of the Orissa Municipal Act is compulsory. No notice was issued. In view of the same, the suit is liable to be dismissed. He relied on the decision of the apex Court in the case of G. Narayan Murty (and after him) Smt. G. Simhachallamma vs. Berhampur Municipality and others, 1986(II) OLR-483.

9. Section 147(2) of the Orissa Municipal Act, which is the hub of the issue, is quoted hereunder.

"(2) The Executive Officer shall give at least one month notice to any person interested, of any alteration which he proposes to make under Clauses (a), (b), (c) or (d) of Sub-section (1) and of the date on which the alteration will be made."

10. The aforesaid provision was the subject matter of interpretation in G. Narayan Murty (and after him) Smt. G. Simhachallamma (supra). A Division Bench of this Court in paragraphs 13 and 14 of the report held thus:

"13. Coming back again to Sec.147 of the Act, Sub-sec.(3) thereof merits a closer scrutiny. It speaks of two things. Firstly, that the provisions of Secs.153, 154, 155, and 156 shall apply to any objection made in pursuance of a notice issued under Sub-sec.(2), thus, clearly contemplating that "the person

interested" has to make an objection in pursuance of the notice issued under Sub-sec.(2) and that he has got a right of filing an appeal contemplated under Clause (f) of Sub-sec.(1). The direction in the notice (Ext.5) to the petitioner instead to file straightway an appeal, therefore, is destructive of the very object and purpose of the notice contemplated by the legislature and denied him to place his objection before the assessing authority where he could raise all questions of facts under Sub-sec.(2). Even the filing of an appeal would not cure the infirmity as already indicated and held in the decision in AIR 1936 Patna 322 (supra).

In the case of Commissioner of Patna City Municipality v. Bishmbhardeo Narain (AIR 1937 Patna 586), where the notice under the Bihar and Orissa Municipal Act instead of being served under Sec.107(2) Analogous to Sec.147(2) of the Orissa Municipal Act was served under Sec.115(2) of the same Act, and although in pursuance of the said defective notice the assessee appeared before the Committee, it was held that the same did not cure the defect of non-service of the notice under Sec.107(2).

14. In that view of the matter, the issuance of a notice under Sec.147(2) of the Municipal Act giving one month's notice to the person interested of any alteration of the assessment list proposed to be made under any of the clauses of Sub-sec.(1) is a condition precedent for ultimately effecting the alteration, and thus it is a jurisdictional fact. The question of compliance or non-compliance of this legal requirement therefore can be raised and decided in a civil suit."

11. In view of the authoritative pronouncement of the case in G. Narayan Murty (and after him) Smt. G. Simhachallamma (supra), the irresistible conclusion is that one month's notice under Sec.147(2) of the Orissa Municipal Act is a sine qua non before enhancement of taxes by the Municipality.

12. The reasons assigned by the learned lower appellate court is difficult to fathom. In paragraph 3, 4 and 6 of the written statement, it is specifically pleaded that before enhancement of taxes, no demand notice was issued. Merely because, the defendant preferred appeal before the A.D.M. challenging the enhancement of taxes, the same cannot be construed that before the enhancement was made, notice was issued. There is no material on record that before enhancement of tax, the plaintiff had issued notice under Sec.147(2) of the Orissa Municipal Act.

13. Learned lower appellate court fell into patent error of law in decreeing the suit. The judgment and decree of the learned lower appellate court is set aside. The suit is decreed in part. No costs.