

(1976) 01 PAT CK 0014

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 424 of 1973

Yadunandan Prasad

APPELLANT

Vs

Shrimati Saudamini Sinha and Others

RESPONDENT

Date of Decision : 28-01-1976

Acts Referred:

Bihar and Orissa Municipal Act, 1922 — Section 107(1), 108, 24, 37A, 37B

Citation : (1976) 01 PAT CK 0014

Hon'ble Judges : S.K. Choudhuri, J; Hari Lal Agrawal, J

Bench : Division Bench

Advocate : Shambhu Nath, No. 2, for the Appellant; R.B. Mahto, Govt. Pleader No. 4, S. Rafat Alam, Jr. Counsel to Govt. Pleader No. 4 and Shivanad Pd. Sinha, for the Respondent

Final Decision : Allowed

Judgement

H.L. Agrawal, J.—In this application under Articles 226 and 227 of the Constitution of India, the petitioner has obtained a rule from this Court as to why the order dated the 8th of March 1973 (Annexure 1) passed by the Chairman of the Giridih Municipality (respondent No. 3) in regard to the mutation of the names of the owners with respect to a Municipal holding situated within the Giridih Municipality be not quashed and cancelled on the ground that he was not a competent authority to deal with the matter in view of the amendments made by Bihar Act 20 of 1965 to the provisions of the Bihar and Orissa Municipal Act (briefly "the Act"). The relevant facts are these:

2. Holding No. 461, in Ward No. 2, of the Giridih Municipality, originally belonged to one Sharbanand Lal. On his death, the same was recorded in the names of his three sons, namely Girija Shankar Pd., Yadunandan Prasad (the petitioner) and Gopi Krishna Prasad, in the year 1950. The aforesaid holding was given in usufructuary mortgage by the aforesaid three brothers to the Hazari-bagh Mica Mining Company. By a sale deed dated the 8th of July 1970, only Girija Shankar and Gopi Krishna Prasad, the two brothers of the petitioner, sold the entire

holding in favour of respondents Nos. 1 and 2, who applied for mutation of their names in the Giridih Municipality under the provision of Section 108 of the Act which requires a notice to be given to the Chairman regarding transfer of title to any holding within the prescribed period, and on the said application, the names of respondents Nos. 1 and 2 were ordered to be mutated by the Chairman by the impugned order dated the 8th of March, 1973, which is under challenge as already said above. The attack by the petitioner on the impugned order is made in view of the amendments made by Bihar Act 20 of 1965 to the Act (hereinafter referred to as "the Amending Act").

3. In order to appreciate the point raised, it is necessary to refer to some of the provisions of the Act. Section 107 (1) of the Act provides for amendment and alteration of the assessment list from time to time by the Commissioner, inter alia,

"(a)

(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;

XX XX XX"

Section 24 of the Act, as it originally stood, i.e. before the amendment made in the year 1965, empowered the Chairman to transact the business connected with this Act, or for the purpose of making any order authorised thereby, exercise all the powers vested by this Act in the Commissioners. Section 107 of the Act empowers the Commissioners to amend and alter the assessment list, which power was exercisable by the Chairman by virtue of the provision of Section 24, and in exercise of this power, the respondent Chairman passed the impugned order.

4. By the Amending Act, the original Act was amended ,by inserting Sections 37-A to 37-E and two schedules as Fifth and Sixth Schedules. Section 37-A empowers the State Government to appoint an Executive Officer in any Municipality, and u/s 37-B the executive power for the purposes of carrying on the administration of the Municipality, subject to the provisions of the Act and of any rules and bylaws made thereunder and the general control of the Commissioners at a meeting, vest in him, who is to exercise the powers, functions and duties vested in or imposed on the Chairman, Vice-Chairman or the Commissioners, as the case may be under the sections specified in the Fifth Schedule. One of the sections specified in the Fifth Schedule is Section 107 which, as already said above, deals with the power to amend and alter the assessment list. Amendment was also made to Section 24 of the Act by the aforesaid Amending Act and the general powers of a Chairman, as indicated earlier, were qualified by addition of the expression "except such powers as are under this Act exercisable by the Executive Officer". It is manifest, therefore, that the power which was originally exercisable by the Chairman in accordance

with Section 24 of the Act before its amendment by the Amending Act with respect to mutation of the name of any person with respect to any holding under Clause (b) of Section 107 (1) of the Act was taken away from him and vested in the Executive Officer. Prima facie there does not seem to be any doubt in this respect.

5. Mr. Shambhu Nath No. 2, learned counsel appearing for the petitioner, however, contended that inasmuch as Section 108 of the Act did not fall in the Fifth Schedule and that notice is still to be given to the Chairman of the fact of the transfer title to any holding, the power has still to be exercised by the Chairman. There is no force in this contention. Section 108 contemplates simply giving of notice to the Chairman and lays down the procedure for filing the same. It does not prescribe or mention the procedure to be followed in dealing with the notice after receipt. The only provision in that regard is contained in Clause (b) of Section 107 (1), and at no other place. It is, therefore, clear that by the amendment made in the year 1965, the Legislature clearly intended that although the notice of transfer of title to any holding is to be given to the Chairman, the necessary alteration has to be made by the Executive Officer on that basis. It is apparent from the provision of Section 107 and Sections 116 and 117 that an order passed u/s 107 in regard to the mutation of the name of the owner of a holding, on any account, need not be referred to the Committee, as was also laid down by a Full Bench decision of this court in *Kamini Devi and Another Vs. Chairman of Buxar Municipality and Another*, .

6. I may also usefully refer to a Bench decision of this Court in the case of *Nalini Bihari Dutta v. The Executive Officer of Daltonganj Municipality* 1973 BBCJ 141 in a revision application u/s 115 of the CPC at the instance of the defendant out of a suit instituted by the Executive Officer of a Municipality for recovery of arrears of certain professional tax against him. The defendant had taken an objection in the trial Court that the suit by the Executive Officer was not maintainable as it could be filed only by the Commissioners of the Municipality, as originally laid down in Section 130 of the Act. By the Amending Act, Section 130 which empowered the Commissioners to bring any suit, was included in the Fifth Schedule mentioned above. The trial Court, therefore, had decided the question of maintainability of the suit against the defendant, and on account of the aforesaid amendment by the Amending Act, its order was affirmed by this Court.

7. For the reasons discussed above, I feel satisfied that the respondent Chairman had ceased to be a competent authority who could deal with the application of respondents Nos. 1 and 2 and pass the impugned order for mutation of their names with respect to the holding in question and it was the Executive Officer who was the competent authority to pass any order on the same. The impugned order passed by respondent No. 3 is, therefore, ultra vires and without jurisdiction and has got to be set aside.

8. This application is, accordingly, allowed and the order dated the 8th of March, 1973 (Annexure 1) passed by respondent No. 3 is hereby quashed. Let a writ of

certiorari issue accordingly.

It will, however, be open to the respondents Nos. 1 and 2 to press their application afresh before the Executive Officer of the Municipality for consideration who will dispose of the same in accordance with law.

In the circumstances of the present case, however, I shall make no order as to costs.

S.K. Choudhuri, J.

I agree.