Shibji Khestshi Thacker vs Commissioners Of Dhanbad Municipality ... on 28 February, 1978

Equivalent citations: 1978 AIR 836, 1978 SCR (3) 404, AIR 1978 SUPREME COURT 836, 1978 2 SCC 167, 1978 U J (SC) 291, 1978 2 SCWR 222, 1978 SCC (TAX) 101, 1978 BLJ 294, 1978 3 SCR 404, 1978 BLJR 244

Author: Ranjit Singh Sarkaria

Bench: Ranjit Singh Sarkaria, N.L. Untwalia, Jaswant Singh

PETITIONER:
SHIBJI KHESTSHI THACKER

Vs.

RESPONDENT:
COMMISSIONERS OF DHANBAD MUNICIPALITY AND ORS.

DATE OF JUDGMENT28/02/1978

BENCH:
SARKARIA, RANJIT SINGH
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SARKARIA, RANJIT SINGH
UNTWALIA, N.L.
SINGH, JASWANT

CITATION:
1978 AIR 836 1978 SCR (3) 404
1978 SCC (2) 167

ACT:
Bihar and Orissa Municipality Act, 1922, S. 106, construction of, whether mandatory or directory-Holding excluded from quinquennial revision at assessment, whether previous valuation and assessment lapses.

HEADNOTE:
The Commissioner of Dhanbad Municipality, instituted a suit against the appellant and respondents 2 to 5, for the recovery of holding tax and latrine tax, as arrears of Municipal Taxes for the first quarter of 1950-1951 to the third quarter of 1953-54, in respect of a 'holding' owned by them. The Trial Court dismissed, the suit inter alia on the ground that during a general revision of assessments u/s 106

of the Bihar and Orissa Municipality Act, in 1950-51, the Dhanbad Municipality had failed to revise the original assessment of the defendants holding and had thereby committed a breach of the mandatory provisions of S. 106. The old assessment on the basis of which the demand had been raised, had lapsed and there being no revised assessment of the holding, the Municipality was not entitled to realise any tax from the defendants with effect from April 1, 1950. The High Court allowed an appeal by the Commissioners of Dhanbad Municipality, but granted a certificate u/Art. 133(1)(b)(c) of the Constitution.

Dismissing the appeal the Court,

HELD : 1. The language of S. 106 is flexible enough to enable the Commissioners to leave out for some good reason, any holding from the revision of the valuation and assessment lists. The word "ordinarily", tones down the force of "shall" which immediately precedes it, and indicates that the requirements with regard to revision of the assessment in every five years and to include all the holdings, are not absolute but only directory, and can be departed from in extraordinary circumstances, or in the case of particular holdings for good reasons. [409 C-D]

2. In the case of a holding which is excluded from the quinquennial revision of assessments, the old valuation and assessment list do not lapse, but continue to remain in force till they are altered or amended in accordance with the procedure laid down in the Act, and when a new list is completed, then till the 1st day of April following such completion is reached. [409 F-G]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1230 of 1968.

(From the Judgment and Decree dt. 19-2-65 of the Patna High Court in First Appeal No. 514 of 1958).

Niren De and Sukumar Ghose for the Appellant. Bishan Narain & S. K. Sinha for the Respondent. The Judgment of the Court was delivered by SARKARIA, J. This appeal, on certificate, is directed against a judgment and decree, dated February 19, 1965, of the High Court of Patna. It arises out of these facts.

At all material times, holding No. 594, Ward No. 3 in the area of the urban Municipality, Dhanbad, was owned by the appellant and respondents /2, 3, 4 & 5. On this holding, a Cinema House known as "Ray Talkie" was constructed in March, 1948.

On March 31, 1948, the Commissioners of Dhanbad Municipality served a notice on the appellant and the respondents 2 to 5, under Section 1. 15(2) of the Bihar and Orissa Municipality Act, 1922

(hereinafter referred to as the Act) demanding a sum of Rs. 900/- as quarterly Municipal Tax. The appellant and respondents 2 to 5, applied for review of the assessment. Thereupon, the Review Committee reduced the, Municipal Tax to Rs. 8 10/- per quarter, i.e. Rs. 488/- as holding tax and Rs. 465/as latrine tax. Aggrieved, the assessees instituted a Title Suit No. 17/144 of 1949 in the Court of Munsif, Dhanbad, inter alia, praying for a declaration that the assessment was ultra vires and illegal inasmuch as it was not made under Section 9 8 (2), but under Section 9 8 (1) of the said Act The Munsif dismissed the Suit and the) dismissal was upheld in appeal by the District Judge, Purulia, under a judgment, dated June 17, 1952. A further appeal to the High Court by the assessees was dismissed on December 4, 1957. Default having been committed by the assessees in paying the tax, a demand notice, dated March 6, 1951, was served upon them requiring them to pay all arrear taxes then due, but they put off payment on one objection or the other. Subsequently, by their letter dated March 3, 195 1, the assessees raised,an objection on the ground that no assessment was made in respect of the holding in question. This letter- was considered by the Commissioners at a meeting held on November 19, 195 1. Through the Finance Committee, the assessment of holding tax was confirmed in the said meeting. Intimation of this confirmation was given to the assessees by a letter, dated December 18, 1.951.

Thereafter, demand notices were issued to the assessees, calling upon them to pay the tax in arrears, but they failed to do so.

On the preceding facts, the Commissioners of Dhanbad Municipality, instituted Suit No. 203 of 1953 in the Court of Subordinate Judge Dhanbad, against the appellant and respondents 2 to 5, for recovery of Rs. 12,655/- for the first quarter 1950-51 to third quarter 1953-54 in respect of the holding tax and latrine tax, as arrears of Municipal Taxes, in respect of holding No. 616, Ward No. 3, Dhanbad Municipality.

The defendants-assessees in their written statements, inter alia, pleaded that the Municipality was not entitled to recover the tax demanded, because the original assesment made on the annual value of the holding in question, was illegal inasmuch as the assessment should have been made on persons and not the annual value of the holding. The other objection raised was that although a general provision under Section 106 of the Act had been undertaken by the Municipality in 1950-51, the assessment of the holding of the defendants had not been revised with a mala fide and improper motive. The defendants did not get the advantage of a fresh assessment and as the old assessment and valuation lapsed on April 1, 1950, no tax could be realised from them on the basis of this lapsed assessment. They further pleaded that the alleged confirmation of the assessment of the holding on November 19, 1951 by the Commissioners, was illegal and without jurisdiction because no prior intimation about the alleged confirmation was given to them before issue of letter No. 1624/VII-2, dated December 18, 1951. The Trial Court by its judgment dated May 24, 1958, dismissed the Suit, inter alia, holding, that the failure, of the Municipality to revise the original assessment on the defendants holding during the general revision of assessments in 1950-51, was a breach of the mandatory provisions of Section 106 of the Act. As a result, the old assessment on the basis of which the demand had been raised bad lapsed and there being no revised assessment of the holding in question, the Municipality was not entitled to realise any tax from the defendants with effect from April 1, 1950.

Against that judgment, the Commissioners of Dbanbad Municipality preferred an appeal to the High Court at Patna, which allowed the appeal, holding-

(i) that the defendants had been rightly assessed on the annual value of the holding and therefore the defendants liability under Section 100 in that respect could not be disputed;

(ii) that the defendants had not been left out from the genera., assessment of 1950-51 with any mala fide or incorrect motive;

(iii) that from a proper construction of the relevant provisions of the Act, particularly the) word "list" used in singular in sub-

section (2) of Section 105, and the expression 'completion of a new list" in subsection (2) of Section 1.06, the intention was clear that if the valuation and assessment of a particular holding is not revised for any good reason, then the assessment entered in the previous valuation and assessment list in respect of that holding will remain in force. It is only when a now list of valuation and assessment in respect of a particular holding, is complete, the assessment of that list will substitute the previous assessment based on the previous list. Since the defendants hold- ing was left out from the general revision of 1950-51 for a valid reason, the suit demand based on the previous lists of valuation and assessment in respect of suit holding, could not lapse on April 1, 1950.

On the application of the, assessees, the High Court ;,ranted a certificate under Article 133 (1) (b) and (c) of the Constitution. Hence, this appeal.

Mr Niren De, learned counsel for the appellant has canvassed before us two posts First, under the scheme of the Act a general revision of assessment must take place quinquennially and such general revision must cover all the holdings within the Municipality. If a particular holding is left out from the revised general assessment, then, on the coming into force of the revised general assessment, the old assessment in respect of that holding also lapses. Since the appellants' holding was excluded from the five-yearly revision of assessment, the Municipality cannot legally recover tax in respect of it on the basis of the old assessment which had lapsed on April 1, 1950. Second in any case, enhancement of the rate of tax by the Municipality on the holding of the appellant, can-not be supported because in doing so, they have not followed the procedure prescribed by the Act; that they have not issued any proper notice or given any opportunity of being heard with regard to the enhancement, to the appellant, nor was any new assessment list, as required by Section 106, prepared.

Before dealing with these contentions, it will be proper to have a short look at the relevant provisions of the Act. 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". Section 102 speaks of the procedure for preparing the valuation list. It, inter alia, provides that the Commissioners may by notice, require

the owners or occupiers of all holdings to furnish them with returns of the rent or annual value thereof.

Section 103 provides for penalty for default in furnishing return.

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 clause (iii) of the proviso. to sub-section (1) of section 82 and to the provisions of sections 84 to 88 inclusive, the Commissioners, 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 determine 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 Commis- sioners 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 Govt., decrease the rate of any tax levied by them."

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 Commissioners shall cause to be prepared an assessment list", containing particulars enumerated in clauses (a) to (h) of that Section. It is Section 106, the construction of which is in question in the instant case. It runs as under

> "Revision and duration of list.-(1) New valuation and assessment lists shall ordinarily be prepared, in the same manner as the original lists, once in every five years. (2)Subject to any alteration or amendment made under section 107 and to the result of ,'any application under Section 116, every valuation and assessment entered in a valuation or assessment list shall be valid from the date on which the list takes effect in the municipality and until the first day of the April next following the completion of a new list."

Section 107 gives powers 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). Two of such ways, as provided in clauses (c) and (e), are as under :-

> "(c) By enhancing the valuation of, or assessment on, any holding, which has been incorrectly valued or assessed by reason of fraud, misrepresentation or mistake."

> "(e) Where the percentage on the annual value at which any tax is to be levied has been altered by the Commissioners under the provision of section 104, by making a corresponding alteration in the amount of tax payable in each case."' Then, sub-section (2) of this Section makes it obligatory on the Commissioners to give at least one month's notice to any person interested, of any alteration which they

propose to make under clause. (a), (b), (c), (d) or (dd), of sub-

section (1), and of the date on which the alteration will be made. It is to be noted that clause (e), extracted above, has. not been referred to in sub-section (2). Section 115 speaks of publication of notice of assessment. It says 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 through the municipality, of the place where the said list may be inspected. Sub-section (2) further requires that in all cases in which any property is for the first time assessed or the assessment is increased, notice shall be given thereof to the owner or occupier of the property, if known.

Having perused the various relevant provisions referred to by Mr. Niren De, we are of opinion that under the scheme of the Act, the old assessment does not come to an end in respect of a holding the moment new valuation and assessment lists are ordered to be prepared by the Commissioners of the Municipality; nor is there anything to show that if a holding is left out from the general revisional assessment for any good reason, then, in respect thereof, the old assessment comes to an end after five years ending on the first day of the April next following the completion of a new revised list. Mr. Niren De placed emphasis on the word "all", immediately preceding the word "holdings" in the latter part of Section 102, and submitted that it indicates that no holding can be left out from the preparation of valuation list. It is nobody's case that the appellants' holding was left out from the old assessment. So far as the revised assessment is concerned. Section 102 has to be read not in isolation but in conjunction with Section 106. The language of Section 106 is flexible enough to enable the Commissioners to leave out for some good reason, any holding from the revision of the valuation and assessment lists. The Word "ordinarily", tones down the force of "shall' which immediately precedes it, and indicates that the requirements with regard to revision of the assessment in every five years and to include all the holdings, are not absolute but only directory and can be departed from in extraordinary circumstances, or in the case of particular holdings for good reasons. This being the correct import of the word "ordinarily", it follows therefrom that in the case of a holding which is excluded from the quinquennial revision of assessment. the old valuation and assessment lists do not lapse but continue to remain in force till they are altered or amended in accordance with the procedure laid down in the Act. This position of the law is clear from a reading of the last clause of sub-section (2) of Section 106, which provides that every valuation and assessment entered in a valuation or assessment list shall be valid from the date on which the list takes effect in the municipality and until the first day of the April following the completion of a new list. The key word repeatedly occurring in the sub-section is "list" which appears to have been advisedly used in singular, in contradistinction to "lists' employed in plural, in sub-section (2) such distinctive use of the word "list" in these sub-sections, puts it beyond doubt that in respect of a holding which, for some reason, is not included in the five-yearly revision, the old valuation or assessment list continues till a new Est is completed and the 1st day of April following such completion is reached. In this view of the matter, the High Court was right in holding that the demand based on the previous list of valuation and assessment of the suit holding, did not lapse on the first of April 1950 for the mere reason that a general revision of valuation and assessment lists in the Municipality was undertaken and the appellant's holding was not subjected to that revision.

The first contention of Mr. De is accordingly rejected.- In regard to the second contention of Mr. De, we find that this plea was not taken at any stage before the Courts below. It was not even faintly adumbrated in the written statement filed by the defendant-appellant in the Suit. No issue was framed on this point, nor was any such argument advanced before the High Court. It is a mixed question of law and fact. It cannot be allowed to be raised at this stage, for the first time, in special appeal, as the plain- tiff-respondent had no opportunity to lead evidence to show that the requirements of the law had been complied with before increasing the assessment. We are told that similar suits have been filed by the Municipality against the appellant for recovery of tax pertaining to subsequent periods. If that be so, the appellant is at liberty to raise this objection in these Suits in a proper manner. But, in this case, for reasons already stated, we refuse to entertain this plea raised for the first time in this Court. No other point has been pressed into arguments on behalf of the appellant. The appeal fails and is dismissed with no order as to costs.

M. R. Appeal dismissed.