

Smt. Shyam Kishori Devi

Vs

Patna Municipal Corporation & Anr.

Civil Appeal No. 812 of 1963

(K. Subha Rao, M. Hidayatullah, R. S. Bachawat JJ)

04.02.1966

JUDGMENT

SUBHA RAO J. -

This appeal by special leave raises the question of the true construction of Sub-s. (1) of the S. 117 of the Bihar and Orissa Municipal Act, 1922 (B. & O. Act 7 of 1922), herein after called the Act.

Shrimati Shyam Kishori Devi, the appellant, is the owner of the premises known as "Krishna Bhawan" situate on Fraser Road in the Town of Patna. Originally it bore holding No. 239, but after the Patna Municipal Corporation Act, 1952, was passed it was given holding No. 264 in Circle No. 6 of the Patna Municipal Corporation. On August 4, 1944, the Patna Municipality was superseded by the Government initially for the a period of three years by the said period was extended from the time to time till the Patna Municipal Corporation Act, 1952, came into force. On March 29, 1946, the Government issued a Notification directing that S. N. Sarkar, Assistant Special Officer of the Patna City Municipality, shall also exercise and perform the powers and duties which might be exercised and performed by the Commissioners under s. 107, among the other sections, of the Act. On November 21, 1949, the Government of Bihar issued another Notification direction that the each of the three officer mentioned therein shall exercise and perform the powers and duties conferred and the imposed on a Committed constituted under s. 117 of the Act. One of the said officers was said S. N. Sarkar, who was also appointed under the earlier Notification dated March 29, 1946, to perform the duties and exercise the powers of the Commissioners.

During the periodical revisional assessment of the year 1950 in regard to the said premises, the valuation thereof was fixed at Rs. 1,800/- and its quarterly municipal taxes at Rs. 146-4-0; but as some additions were made to the said premises, on the May 10, 1951, the valuation of the said premises was raised to Rs. 2,400/- and its quarterly municipal taxes were fixed at Rs. 195/- On November 17, 1951 S. N. Sarkar, the Assistant Special Officer of the Municipality, issued a notice to the owner of the premises informing her that the assessment of her premises was proposed to be fixed as follows : House-tax Rs. 262-8-0, Latrine-tax Rs. 210/- and Water-tax Rs. 210/- per quarter under s. 107 of the Act. On December 20, 1952, the appellant filed a petition against the proposed enhancement of taxes before the said Assistant Special Officer, but he rejected the petition. Thereafter, the assessment list was amended on January 10, 1952, enhancing the valuation of the holding in question of Rs. 8,400/- and the quarterly municipal taxes to Rs. 682-8-0. Aggrieved by the said order, the appellant filed Title Suit No. 60 of 1952 in the Court of the Third Munsif at Patna for a declaration that the alteration made by the Assistant Special Officer in the assessment list was invalid and without jurisdiction and that the Municipality was not the entitled to relies the enhanced assessment. She also asked for a permanent injunction restraining the Municipality from the

realising the said enhanced tax from her. To that suit the Patna Municipality was made the 1st defendant and the Administrator of Patna, the 2nd defendant. The learned Munsif held that the order passed by the Assistant Special Officer was valid and dismissed the suit with costs. On the appeal, the learned Subordinate judge, Patna, held that the Assistant Special Officer had no jurisdiction to proceed under s. 107(c) of the Act. as there was no fraud, misrepresentation or mistake when the periodical assessment was made and on that ground, he allowed the appeal and decreed the suit. Thereupon, the respondents preferred a second appeal to the High Court of Patna. A Division Bench of that the Court held that after the supersession of the Municipality no committee could be constituted under s. 117 of the Act and that, therefore, the Special Officer, in the absence of any specific machinery to deal with such an application, had perfect jurisdiction to lay out his own machinery to dispose of the same. After holding that the Assistant Special Officer had jurisdiction to dispose of the application for review, the High Court held that it had not been established by the assessee that there was no mistake in the earlier assessment. In the result, the appeal was allowed, the judgment and decree of the learned Subordinate Judge were set aside and those of the trial Court were restored. The assessee has preferred the present appeal by special leave against the judgment and decree of High Court.

Mr. Ramanugrah, learned counsel for the appellant, argued that the High Court on a wrong construction of the relevant provisions of the Act. held that s. 117(i) of the Act had become unworkable and that no committee thereunder could be constituted after the supersession of the Municipality. He further contended that the High Court had thrown the burden of proof wrongly on the appellant but the it should have held that it was for the Municipality to established that there was mistake, fraud or misrepresentation in making the periodical revisional assessment and that, as there was no material place by the Municipality before the Court, it should have held that the condition precedent for reopening the earlier assessment had not been fulfilled.

Mr. S. P. Varma, learned counsel for the respondents, in addition to the contentions accepted by the High Court, sought to take a preliminary objection that the suit was not maintainable. As this question was not raised in any of the Court below, we did not permit him to do so.

The first contention turns upon the construction of the relevant provisions of the Act and the Notifications issued by the Government thereunder. It will be convenient at the outset to gather the relevant provisions at one place.

Section 386. (1) When an order of supersession has been passed under the last proceeding section, the following consequences shall ensue :-

- (a) all the Commissioners shall, as from the date of the order, vacate their offices as such Commissioners;
- (b) all the powers and duties which may, under the provisions of this Act, be exercised and performed by the Commissioners, whether at a meeting or otherwise, shall, during the period of supersession, be exercised and performed by such person as the State Government direct;

The relevant part of the Notification dated March 29, 1946 reads :

"..... in exercise of the powers conferred by clause (b) of sub-section (1) of section 386 of the said Act, the Governor of Bihar is

pleased to direct that Babu S. N. Sarkar Assistant Special Officer of the Patna City Municipality, shall also exercise and perform the powers and duties which may be exercised and performed by the Commissioners under the provisions of the sections 102, 105, 107, 111, 116, 122, 124, 125, 126 .....

The relevant part of the Notification dated November 21, 1949, reads :

..... the Governor of Bihar is pleased to direct that the each of the following officers shall exercise and perform all the powers and duties, conferred and imposed on a Committee Constituted under sections 117 and 118 of the said Act for the purpose of hearing and determining applications for review relating to assessment presented by the tax-payers of the Patna City Municipality, namely :-

1. Mr. Bhubaneswar Pd., Special Officer, I/C Patna City Municipality.
2. Mr. S. N. Sarkar, Assistant Special Officer, I/C of the Patna City Municipality.
3. Mr. Parmeshwar Dayal, Retired Deputy Magistrate".

Section 116. (1) Any person who is dissatisfied with the amount assessed upon him or with the valuation or assessment of any holding, or who disputes his occupation of any holding or his liability to be assessed, may apply to the Commissioners to review the amount of assessment or valuation, or exempt him from the assessment or tax.

Section 117. (1) Every application presented under the last preceding section relating to assessment made under section 107 shall be heard and determined by a Committee consisting of two Commissioners and two tax-payers of the municipality, nominated or elected in the prescribed manner by the commissioners at a meeting and one servant of the Government not below the rank of a Deputy Magistrate nominated by the District Magistrate in this behalf, provided that no Commissioner or tax-payer shall be a member of the Committee appointed to hear applications from the ward for which he was elected and that three members shall from the quorum.

The effect of the relevant provisions in the context of the facts of the case may be stated thus : Where an order superseding a municipality has been passed by the Government, all the Commissioners of the Municipality shall vacate their offices and their powers and duties, whether at a meeting or otherwise, shall be exercised and performed by such person or persons as the State Government may direct. The State Government accordingly issued two Notifications whereunder S. N. Sarkar, Assistant Special Officers of the Patna City Municipality, was appointed to exercise and perform the powers and duties under s. 107 of the Act. among others, and the each one of the three persons mentioned in the Notification dated November 21, 1949, to the exercise the powers and perform the functions of the Committee under s. 117 of the Act. Pursuant to the said Notifications, S. N. Sarkar, functioning in the place of the Commissioners, enhanced the valuation of the holding of the appellant and the assessment thereof under s. 107(c) of the Act, and rejected the review petition under s. 117(1) of the Act.

The question is whether he could have validly done so. It is not disputed that S. N. Sarkar had jurisdiction to take action under s. 107(c) of the Act, but the what is contended is that he had no jurisdiction to dispose of the review petition under s. 117(1) of the Act. If the Committee under s. 117 of the Act could have been validly constituted even after the supersession of the Municipality, S. N. Sarkar would not have jurisdiction to hear the review petition, for under that section it was the

function of the Committee to do so. Mr. Varma contends that after the order of supersession passed by the Government, all the Commissioners vacated their offices and thereafter it was impossible for the Commissioners to function as members of the Committee or to nominate or elect two other tax-payers to that Committee within the meaning of s. 117(1) of the Act and that, therefore, the Government validly appointed the Assistant Special Officer to exercise the powers and perform the functions of the Committee under the said section. If this construction be accepted all the sections whereunder certain powers were conferred and certain duties were imposed on the Commissioners would cease to be operative after the order of supersession. Only to avoid this contingency s. 386(1)(b) of the Act. in express terms says that the all the powers and duties which may under the provisions of the Act be exercised and performed by the Commissioners, whether at a meeting of otherwise, shall be exercised and performed by such person or persons as the State Government may direct. The effect of that clause is that all the powers and duties of the Commissioners conferred and imposed on them under the various sections of the Act whether to act in the a body or in committees or individually, would be exercised by such person or persons as the State Government might direct thereunder. If that be the interpretation of s. 386(1), the person or persons appointed by the State Government thereunder would take the place of the Commissioners in the various sections of the Act. So too, in section 117(1) of the Act, Which would run thus :

"Every application presented under the last preceding section relating to assessment made under..... s. 117..... shall be heard and determined by a Committee consisting of the person or persons appointed by the Government and two tax-payer of the Municipality nominated by the said person or persons and one servant of the Government not below the rank of Deputy Magistrate nominated by the District Magistrate in this behalf, provided that no person or persons nominated or tax-payer shall be member of the Committee appointed to hear applications from the ward for which he was elected and that three members shall from the quorum."

If that be the effect of s. 386 on s. 117, the Committee under s. 117 could have been constituted with one or more of the three persons nominated by the Government under s. 386(1)(b) of the Act and two tax -payer nominated by them and a Deputy Magistrate nominated by the Government. This construction will give full effect to s. 117 of the Act, whereas the construction suggested by the learned counsel for the respondents and accepted by the High Court would make it unworkable. It is a well-know rule of the construction that a court must construe a section, unless it is impossibel to do so, to make it workable rather than the to make it unworkable. In the words of Lord Bramwell, the words of a statute never should in interpretation be added to or substracted from without almost a necessity.

By the Notification issued by the Government on November 21 1949, if it was intended to replaced the Committee by one or other of the three persons mentioned therein, it would be beyond its, powers conferred under the provisions of s. 386(1)(b) of the Act. Under the said clause, the powers and duties which may under the provisions of the Act be exercised and performed by the Commissioners could be exercised and performed by such person or persons as the State Government may direct. But it does not empower the Government to replace persons or authorities other than Commissioners by persons nominated by it. But the said Notification may be reasonably confined to the scope of the authority of the Government. if so confined, it replaced only the two Commissioners by the person or persons mentioned therein.

The argument of the learned counsel for the respondents, if accepted, would lead to an anomaly. Section 117(1) would become unworkable and the same officer who revised the assessment would

sit in judgment over it.

For the foregoing reasons we hold that the order made by the S. N. Sarkar rejecting the objections filed by the appellant and enhancing the valuation of the suit holding to Rs. 8,400/- and the fixing the quarterly municipal taxes at Rs. 882-8-0 was without jurisdiction.

There are also merits in the second contention of the learned counsel for the appellant. The periodical revisional assessment of the premises was made in the year 1950 after making the necessary enquiry. It was altered on January 10, 1951, under s. 107(1)(d) of the Act. on the ground that the value had increased by additions made by the owner to the premises. The impugned revaluation of the building and the assessment were made in the year 1952 under s. 107(1)(c) of the Act, which reads :

"The Commissioner may from time to time after or amend the assessment list in any of the following ways :

(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."

Under this section, the burden is certainly upon the Commissioners before they could amend the valuation and the assessment already made to establish that the previous assessment was in the correctly made by reasons of fraud, misrepresentation or mistake. The High Court said that the not a word had been said in the evidence adduced by the parties that the rental taken into consideration by the special Officer while making the re-assessment in 1952 did not exist at the time of the periodical regional assessment. This observation was made on the assumption that the burden was upon the assessee. Indeed, when the appellant filed a petition in the suit under Order XI of the Code of Civil Procedure for the discovery of the relevant record of the three assessments and though the learned Munsif made an order directing the Municipality to do so, it failed to produce them. In the circumstances we must hold that the Municipality had not established the precondition for the re-assessment, namely, that the original periodical revisional assessment was vitiated by fraud, misrepresentation or mistake.

In the result, the appeal is allowed, the decree of the High Court is set aside and the suit is decree with costs throughout.

Appeal allowed.

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