

Patna High Court

Raj Kumar Prasad vs State Of Bihar And Ors. on 28 October, 1998

Equivalent citations: AIR 1999 Pat 61, 1997 (2) ALT Cri 3

Author: N Pandey

Bench: N Pandey

ORDER N. Pandey, J.

1. Petitioner has questioned the validity of the notice under Section 204 of the Patna Municipal Corporation Act, 1951 thereafter called 'the Act') whereby the Chief Executive Officer had called upon him to pay arrears of municipal taxes within the stipulated time failing which steps were to be taken as per the provisions of Section 206 of the Act.

2. This is not in dispute that petitioner is the owner of the building which lies within the jurisdiction of the Patna Municipal Corporation nor any dispute has been raised about quantum of demand. The only question which has been raised is as to what would be the period of limitation prescribed for recovery of arrears of holding tax due to the Municipal Corporation.

3. According to the petitioner, a bare reference to the impugned notice dated 4-12-1987 would indicate that a demand has been made for payment of dues with effect from 1-4-1978 to 31-12-1987. Therefore, keeping in view the provisions as enumerated under Article 113 of the Limitation Act, any demand beyond the period of three years from the date of the notice was barred by limitation. On the other hand the plea of respondent Corporation is that demand for payment of arrears of holding tax was validly made since the period of limitation for realisation of such dues would be 12 years as prescribed under Article 62.

4. In the background of the facts noticed above, the point which needs decision is as to what period of litigation applies to the claim of the Patna Municipal Corporation in respect of arrears of holding taxes. Undisputedly Section 123 of the Act authorises the Corporation to impose various taxes on the holding situated within the notified area. Section 144 of the Act makes it clear that the sum due in respect of holding tax from any person, shall subject to prior payment of land revenue, if any, due to the Government, thereupon, be the first charge upon the said building on which taxes were levied. It was urged since no specific period has been prescribed under the Act in question for realisation of such dues, in view of the residuary Article 113 of the Limitation Act, any claim beyond the period of three years would be barred by limitation. In support of such a contention, reference was also made to a decision of this Court in the case of Nipendra Nath Roy Choudhary v. Commissioner of Chaibasa Municipality, AIR 1981 Patna 47 (FB).

5. Learned counsel for the respondent Corporation, on the other hand, contended since from a bare reference to Section 144 of the Act, it would appear that holding taxes would be the first charge on the building, in view of specific provision under Art. 62 of the Act, it would not be proper to apply the provisions of residuary Article 113 of the Limitation Act. Because Section 144 of the Act, specifically stated that taxes on a building would be first charge on such holding. Therefore, in view of the provisions of Article 62 of the Act, prescribing a period of 12 years for recovery of such charge, the judgment in the aforementioned case has to be rendered per incuriam by altogether failing to

take notice of such clear cut statutory provision.

6. This is not in dispute that in the case of NipendraNath Roy Choudhary (AIR 1981 Patna 47) (FB) (supra) while answering the question as to whether liability to pay the Municipal tax is created only after the name of the person is recorded in the records of the municipality as owner of such holding, the Court also observed that the suit in question having been filed beyond a period of three years, the claim was to be held barred by limitation. In that case, this was not the question whether the provisions of Article 62 or that of the residuary Article 113 of the Limitation Act would be applicable for the realisation of the claim of the municipal Corporation towards the dues of holding tax nor there was any consideration whether the house tax being the first charge on the holding can be realised within 12 years or three years as prescribed under the residuary article.

7. Though learned counsel placed reliance on the aforesaid judgment of this Court, but he has not been able to show as to why provisions of Art. 62 is not applicable when the statute clearly states that the house tax would be the first charge on that property. In fact the matter is not res integra, because similar provision appearing in the Bombay Municipal Act has been construed in the case of Shidrao Narayanrao Gumaste Patil v. Municipality of Athni AIR 1943 Bom 21, and it was held that arrears of house rent being the first charge on the immovable property are governed by Article 132 of the old Limitation Act, the corresponding Art. in the Limitation Act is admittedly Article 62. Even the Allahabad High Court in the case of Mt. Badunnissa v. Municipal Board Agra, AIR 1939 All 510 had also occasion to consider a similar matter and it was held that such a demand of arrears of house tax which is a charge on the immovable property is covered by Article 132 of the old Limitation Act.

8. A question identical to the present one also came up for consideration before the Delhi High Court in the case of Lakhmi Chand v. Municipal Corporation of Delhi, AIR 1988 Delhi 220 and it was held that the house tax being the first charge on the premises on which it is levied, the period of limitation for realisation of such dues would be 12 years as provided under Article 62 of the Limitation Act and not three years as required under the residuary Article 113.

9. Therefore, having given anxious consideration of the relevant statutory provision and different decisions as noticed above, I hold that the provision of Article 62 of the new Limitation Act is applicable to the demand in question, hence, the same was not barred by limitation when it was made.

10. As a result of such finding, this writ petition is dismissed as devoid of any merit, but without any order as to costs.