IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1026 of 2001

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Smt. Sadhana Sinha wife of Sri Basant Kumar Sinha, resident of Kachchri Chowk, Mohalla Mungeriganj Ward No.9, P.S. Begusarai T own, District Begusarai.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Secretary, Department of Urban Development, Govt. of Bihar, Patna.
3. The District Magistrate, Begusarai.
4. The Chief Executive Office r, Begusarai Municipality, Begusarai.

.... Respondent/s

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Appearance :
For the Petitioner/s : Mr. DRONACHARYA, Adv.
For the Respondent/s : Mr. Manoj Kumar Jha, AC to GP-26.
For the Res. No.2 Mr. Jitendra Singh, Sr. Adv.
Mr. Tej Pratap Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT
Date: 15-04-2015

Heard counsel for the petitioner and the respondents.

In the present case, petitioner prays for quashing the District Gazette dated 21st February 1997 by which the rate of municipal tax has been fixed on the basis of measurement of carpet area as per classification of roads in the town of Begusarai.

The short facts of the case is that petitioner is resident of Begusarai. Before publication of impugned notification, Begusarai Municipality used to fix the municipal tax of Holding on the basis of Annual Rental Value of Holding but by the impugned notification issued by the Collector, Begusarai, the rate of tax has been fixed on the basis of carpet area of the Holding. By the impugned notification, the objection has been sought from the assessees to raise their objection. In pursuance thereof, petitioner and others filed objection on different ground. First they raised objection on the manner making assessment of tax which is claimed to be dehors to the provisions of the Act so much so that the District Magistrate does not have power to decide the manner the tax is to be fixed, such power has been conferred only to the Commissioner of the Municipality.

Basically reliance has been placed on Section 82 of the Bihar and Orissa Municipal Act 1922 where it has been provided that the Commissioner of the Municipality from time to time at a meeting convened expressly for that purpose would decide the rate of tax of Holding will be subject to the sanction of the State Government. Emphasis has been given that though sanction was given by the Government but Section 82 envisages the Commissioner of the Municipality has jurisdiction to fix tax of Holding. The Collector does not have jurisdiction to decide the manner, mode and classify the area for the purpose of imposing tax. It has further been submitted that t he Bihar Municipal Act 1922 is different to Patna Municipal Act 1951 as Section 130 of the Patna Municipal Act provides save as may be prescribed by rules made by the State Government, the annual rental value of holding shall be deemed to be the gross annual rental at which the holding may reasonably expected to let. On reading of Section 130 of the Patna Municipal Act it appears that it makes a prescription of giving leverage to the State Government to make Rule in the matter of fixation of tax and fee and Section 82 of the Bihar & Orissa Municipal Act 1922 is not pari meteria to Patna Municipal Act 1951, as in Section 82 power has been conferred to Commissioner of the Municipality. The Legislature has not provided such power to the Collector in the mater of fixation of tax and fee.

Counsel for the petitioner has placed reliance on 2000(4) PLJR 146 (Jahanabad Nagar Palika Kardatee Sangrah Samiti v. State of Bihar) and submits that this Court has made a competitive discussion provided in what manner Section 82 of the Bihar and Orissa Municipal Act 1922 is not comparable to Section 130 of the Patna Municipal Act.

Learned counsel for the Begusarai Municipality submitted that facts of case at hand is slightly different to the case relied upon by the petitioner, as in that case, order of appellate Committee was under challenge before this Court whereas objection filed in the present case is still pending for adjudication.

Another submission has been made that the judgment reported in 1995(1) PLJR86 (State of Bihar v. Sachdanand Kishore Prasad Sinha) has not been discussed except reference of the same has been given.

Having considered the rival contention of the parties, firstly this Court discuss the applicability of the judgment of Sachchidanand Kishore Prasad Sinha case (supra) as has been decided in the context of Patna Municipal Corporation. There the Hon'ble Supreme Court has held that the fixation of tax of holding in terms of new method cannot be said to be illegal, mere possibility of a better classification, considering intrinsic complexity of fiscal adjustment diverse element, a considerable wide discretion and latitude in the matter of classification for taxation purpose is permissible, as this wisdom lies with the legislature and executive to fix the tax and fee. But the present case is arising from the Bihar Municipal Corporation Act. In the present case challenge has been made about lack of jurisdiction of power of the Collector, on approval of State Government, classified the holding for fixing holding tax corresponding to different areas of Begusarai.

In Jehanabad Nagar Palika Kardtee Sangrah Samiti case (supra) this Court has discussed in what manner the provision of Bihar Municipal Corporation Act is different to Patna Municipal Corporation Act and has arrived to a conclusion that under the Bihar Municipal Corporation Act, the State Government cannot issue the instruction and direction for fixation of tax of Holding of municipality, it is only the Commissioner, Municipality has jurisdiction to fix the tax subject to sanction of the State Government.

The Court has taken into consideration different provisions of the Bihar Municipal Corporation Act and also discussed in what manner and method to be supplied for fixation of tax for the holding situated in the Municipality governed by the Bihar Municipal Corporation, discussing whole issue has held that the St ate has no role in changing criterion of fixation of tax. The judgment in Jahanabad Nagar Palika Kardatee Sangrah Samiti v. State of Bihar(supra) is completely applicable as the points raised in the present case have been discussed thread-barely and decided the same.

It has been informed by the counsel for the petitioner that the judgment of the Single Bench was subject matter of LPA No. 978 of 2000 and the same has been affirmed vide order dated 28th March 2003.

In view of the aforesaid discussion, this Court is of the view that the Collector of the district under Section 82 of the Bihar and Orissa Municipal Act 1922 does not have jurisdiction to issue the notification fixing the manner and method to be followed for fixation of tax of Holding, the impugned notification dated 21st February 1997(Annexure-1) is hereby quashed and this petition is allowed. Liberty is given to the Municipality to fix the tax of holding prior to Bihar Municipality Act, 2007 in the manner provided under Section 82 of the Bihar and Orissa Municipal Act 1922.

(Shivaji Pandey, J)

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