IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3275 of 2014

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1. Dr. Uma Shankar Pandey, S/o Late Rampreet Pandey
2. Dr. Hari Kishore Sah, S/o Late Sri Ram Lal Sah, resident of Village- Vijay Hata, Goshala Road, P.S- Siwan Muffasil, District- Siwan.

.... Petitioner/s

Versus

1. The State of Bihar, through the Principal Secretary, Department Of Urban Development, Government of Bihar, Secretariat, Patna.
2. The Collector, Siwan.
3. The Nagar Parishad Siwan through the Municipal Executive Officer, Siwan.
4. The Municipal Executive Officer, Nagar Parishad, Siwan

.... Respondent/s

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Appearance:
For the Petitioner/s : Mr. Nagendra Rai, Advocate
For the Respondent/s : Mr. Uma Shankar, Advocate
For the Municipality : Mr. Ravi Bhushan Verma, Advocate

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL JUDGMENT
Date: 16-12-2015

Heard Mr. Nagendra Rai, learned counsel appearing on behalf of the petitioners, learned counsel for the State and Mr. Ravi Bhushan Verma, learned counsel for the Municipality.

The petitioners are aggrieved by the demand raised by the respondent-Municipality in respect of the holding tax relatable to the house of the petitioners situated in village Vijay Hata, Circle-Pachrukhi in the district of Siwan.

Of the two petitioners herein, whereas petitioner no.1 has paid holding tax to the Municipality until 2006-07, the petitioner no. 2 has paid his taxes until the financial year 2013-14. Having deposited the taxes in question the petitioners seek to question the impost *inter alia* on grounds of absence of any notification including the village Vijay

Hata within the Siwan Nagar Parishad as envisaged under Section 6 of the Bihar and Orissa Municipal Act, 1922 (hereinafter referred to as 'the Act').

Mr. Nagendra Rai, learned counsel appearing on behalf of the petitioners submits that Section 6 of 'the Act' is mandatory and a condition precedent for inclusion of any area within the Municipality. According to Mr. Rai, espousing the cause for the petitioners there is no such notification including village Vijay Hata within the Siwan Nagar Parishad as mandated under section 6(c) of 'the Act' and in absence of such mandatory compliance, the raising of taxes by the Municipality is without the authority of law and that the petitioners are entitled for refund of the taxes deposited.

It is on this limited score that the matter has been contested.

The Municipality has filed several affidavits and while raising objections on grounds of alternative remedy, the issue is also contested on merits. It is stated in Paragraph-8 of the counter affidavit that although a major part of village Vijay Hata does not fall within the municipal area but the area within which the houses of these petitioners are located, has been included in the municipal area and in support of the statement, a gazette publication dated 15.7.2002 has been enclosed at Annexure-B. Mr. Ravi Bhushan Verma, learned counsel for the Municipality with particular reference to serial no.8 has submitted that the houses of the petitioners are situated on the hospital road which is a Principal Main road of the Municipality and item no. 5 refers to the house of the petitioner no. 2 falling on the Principal main street. It is specifically stated that the house of the petitioner no. 1 is situated on the same street just before the house of the petitioner no. 2. To buttress the stand that the area in which the houses of the petitioners are located falls within the municipal area that a supplementary counter affidavit is filed by the Executive Officer of the Nagar Parishad in which it has been explained at Paragraph-3 that vide notification dated 8.5.1985 issued under section 7(1) and (2) read with Section-18 of 'the Act', the area of the Siwan Municipality was extended and constituted in 32 wards. It is further explained that the Siwan Barharia Road divides village Vijay Hata into two parts and whereas the portion of the village lying west to the road falls within the municipal area, the area of the village lying east to the Siwan Barharia Road is excluded from the municipal area. It is specifically stated in the said paragraph that the houses of the petitioners lie west of the Siwan Barharia Road and falls in ward no. 10 of the municipal area. A map has also been enclosed with the supplementary counter affidavit at Annexure-E to support the stand.

A second supplementary counter affidavit was filed by the Executive Officer reiterating the position in Paragraph-4 and in Paragraph-5 thereof it has been stated that the petitioners appreciating the legal position have applied for approval and sanction of their map for construction of house on 4.7.1991 and which has been duly approved by the Nagar Parishad on 10.7.1991. It is stated that even the taxes have been deposited by these petitioners without any objection and although the petitioner no. 1 has deposited tax only until 2006-07, the petitioner no. 2 has deposited it until 2013-14. It is thus submitted that unnecessary bogey has been raised by the petitioners to avoid their liability.

Mr. Rai responding to the arguments has made reference to Annexure-7 to submit that a protest had been made by the petitioners on 30.11.2013.

I have heard learned counsel for the parties and I have perused the record. As I have observed at the outset, the entire claim of the petitioners rest on the plea that there is no notification as mandated under Section 6 of 'the Act' has been issued by the State Government to include any portion of village Vijay Hata within the Siwan Municipality. Even the notification dated 08.5.1985 placed at Annexure-D to the supplementary counter affidavit is being objected to by Mr. Rai *inter alia* on grounds that it does not reflect to be a notification under Section 7 rather is a notification under section 18(2) of 'the Act'.

Although the authorities were directed to place on record the required notification but despite time taken by learned State counsel as well as counsel for the Municipality, the notification under Section 6 of 'the Act' could not be placed on record and it was jointly submitted by the learned counsel that being an old notification, it has not been traced out. Be that as it may, the issue is whether the absence of the notification in view of the circumstances discussed and the documents on record of the proceedings, would make any deviation from the stand taken by the respondent-Municipality in favor of the petitioners. In my opinion, it would not make any difference. Whereas Section 6 of ‘the Act’ deals with the constitution of a Municipality including the alteration thereof, Section 7 relates to the extension of the provisions to a Municipality so constituted. Sections-6 and 7 thus is a complete process where under any area which originally does not form a Municipality is included within a Municipality. In my opinion the exercise of inclusion and extension is a composite exercise.

In the circumstances, even if the respondent have not been able to place on record the notification if any, issued under Section 6 of ‘the Act’, in view of the eloquent position reflecting from Annexure-D which is a notification dated 08.05.1985 extending the provisions of ‘the Act’ upon reconstitution of the wards and whereby the western portion of village Vijay Hata lying west of the Siwan Barhariya road is included in the Municipality constituting ward no. 10 and within which the houses of the petitioners are situated, there exists no confusion. This notification is dated 08.05.1985 and is followed by determination of holding tax vide notification dated 15.7.2002 placed at Annexure-B, which notification in Paragraph-8 specifically mentions the different categories of holdings existing on the Principal Main road and at item no. 5 includes the road running between the Hospital More until the house of the petitioner no. 2. It is the specific stand of the Municipality that the house of the petitioners situates on the Principal Main road. Despite the categorical stand taken by the Municipality in Paragraph 8 of the counter affidavit and Paragraph 3 of the supplementary counter affidavit in reference to these notifications and to submit that the houses of the petitioners fall within the municipal area, these statements have not been contested or denied by the petitioners.

Although, Mr. Rai seeks to rely on the stand taken in the rejoinder to contest the position but even in the rejoinder the stand taken by the Municipality has not been contested nor the statement on facts have been denied. The very fact that these two petitioners have obtained sanction of map for their houses consequent upon the inclusion of the area within the Municipality vide the notification dated 08.05.1985 (Annexure-D) and have also paid taxes until the filing of these writ petitions, in my opinion a mere eventuality that the respondents have not been able to place on record the notification under Section 6, if any, in view of the uncontested position reflecting from notifications issued under Section 7 read with Section 18 of 'the Act' as well as the determination of the holding tax by the Municipality coupled with specific statements regarding the houses of these petitioners falling in municipal area, they can raise no objections to the imposts.

Even the attempt of Mr. Rai to question the notification dated 08.5.1985 placed at Annexure-D on grounds that it has no reflection of its issuance under Section 7 has no merit in view of the language reflecting from the notification which itself denotes its intent and even if the language is faulty but there is no confusion that it has been issued in exercise of powers vested under Section 7(1) read with Section 18(2) of 'the Act' which position is clearly discernible.

For the reasons aforementioned I am not persuaded with the arguments advanced by Mr. Rai to interfere with the demands so raised.

The writ petition is dismissed.

(Jyoti Saran, J)

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