IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5228 of 2015

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Veerayatan, Veerayatan Road, Ward No. 9, District: Nalanda, Rajgir-803116, Bihar represented through its Manager:

.... Petitioner/s

Versus

1. The State of Bihar represented through the Chief Secretary, Government of Bihar, Patna.
2. The Secretary, Urban Development and Housing Department, Government of Bihar, Patna.
3. The Nagar Panchayat, Rajgir, District: Nalanda, through its Executive Officer;
4. The Branch Manager, Bank of India, Ordinance Factory, Nalanda, Rajgir Branch, P.O. Rajgir, District: Nalanda, Bihar:803116.

.... Respondent/s

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Appearance:

For the Petitioner/s	:	Mr. Mrigank Mauli, Advocate Mr. Sanket, Advocate Mr. Sanjay Kumar, Advocate
For the State	:	Mr. Jai Shankar Barnawal, GA-5
For the Municipality	:	Mr. Deo Raj Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL ORDER

4 02-03-2016 Heard Mr. Mrigank Mauli, learned counsel appearing for the petitioner, counsel for the State and Mr. Deo Raj Kumar, learned counsel for the Municipality.

The petitioner *inter alia* prays for the following reliefs:

(i) To issue a writ of *certiorari* by quashing and setting aside following communications / notices / demands:-

a. Annexure-18 i.e. the Letter dated 28.2.2015 issued by the Branch Manager of the Bank of India, Ordinance Factory Rajgir, Rajgir Branch suspending the operation of Bank

Account of this petitioner i.e. A/C No. 4422100001001 by stopping the withdrawal from the account in view of orders of the Executive Officer, Nagar Panchayat, Rajgir, Nalanda with respect to outstanding towards Holding Tax (Property Tax) and its arrears thereof;

b. Annexure-3 (Series) i.e. the Letter no. 136 dated 06.03.2013 issued by the Executive Officer of the Nagar Panchayat, Rajgir, District: Nalanda with respect to demand of Holding Tax;

c. Annexure-3 (Series) i.e. Report of the Audit as discussed and enclosed in Letter No. 136 dated 06.03.2013 based whereupon Holding Tax and its arrears were demanded by the Executive Officer, Nagar Panchayat, Rajgir, District: Nalanda;

d. Annexure-4: Demand notice dated 15.03.2013 demanding Holding Tax from 2008 at new rate to the tune of Rs. 4, 12, 098.35;

e. Annexure:11: Demand Notice contained in Memo No. 831 dated 24.08.2013 demanding Holding Tax from 2008-09 to 2013-14 to the tune of Rs. 23, 72, 588/-;

f. Anneuxre-15: Demand Notice contained in letter no. 966 dated 29.08.2014 demanding Holding Tax 1987-88 to 2013-14 to the tune of Rs. 40, 49, 588/-;

g. Annexure-16: Demand Notice contained in Memo No. 1209 dated 08.11.2014 demanding Holding Tax from 1987-88 to 2014-15 to the tune of Rs. 28,84,688.45/-;

h. All other notices / orders/ memos by which demands were made whether communicated or not on the same grounds, facts and reasons on which the above orders are being tested;

(ii) To hold and declare that the Respondents are incorrect in demanding Holding Tax in view of Resolution of the erstwhile Rajgir Notified Area Committee dated 16.11.1993 (Annexure-1);

(iii) To any other relief or relief (s) which the petitioner may be found entitled to in the facts and circumstances of the case.

(iv) Cost of this litigation.

The short issue raised by Mr. Mauli, learned counsel appearing for the petitioner to question these orders is that even when vide public notice bearing No. 162/2012-13 issued on 15.3.2013 which was received in the office of the petitioner on 19.3.2013, the petitioners were asked to file their objections to the determination of the holding tax with effect from 2008 in view of the notification issued by the Department of Urban Development and Housing bearing Letter No. 35A-C dated 24.3.2008 and after corresponding with the respondent

Municipality for supply of the papers which were the basis for such determination , that the petitioner filed first of his objection on 24.4.2013 in response to the notice dated 06.3.2013 of the Executive Officer, Nagar Panchayat, Rajgir which was followed by a second objection filed on 15.5.2013 which objections are placed at Annexrue-7 and 10 to the writ petition and even when these objections remain pending before the Executive Officer for disposal on the issue raised thereunder, that the impugned demands have been issued. Mr. Mauli, with reference to the provisions of Sections 141 and 143 of the Bihar Municipal Act, 2007 has submitted that until such time that the objection filed by the petitioner for review of the determination of holding tax is disposed of by the Municipality by a speaking order, even his right of appeal stands foreclosed.

Although Mr. Deo Raj Kumar has laboured hard to contest the argument of Mr. Mauli to refer to the demands present at Annexure-15 and 16 but a plain reading thereof would show that it is a mere reiteration of the conclusion drawn by the Executive Officer to determine the holding tax of the petitioner without disposing of the objections. Apparently, the objection filed by the petitioner to the notice impugned at Annexure-4 present at Annexure-7 & 10 respectively to the writ petition remains pending with the Executive Officer of the Municipality. Although counter affidavits are on record but it does neither reflect nor confirm a disposal of the objections so filed by the petitioner purportedly under Section 141 of the Act requiring a review of the assessment.

In the circumstances discussed and in absence of disposal of the objections filed by the petitioner, the demands impugned herein cannot be upheld and are accordingly set aside. The matter is remitted back to the Executive Officer, Nagar Panchayat, Rajgir to consider the objections filed by the petitioner, copies of which are at Annexure-7 and 10 to the writ petition and dispose of the same in accordance with law and after an opportunity of hearing to the petitioner.

The writ petition is allowed with the direction aforementioned. The consequences shall follow.

(Jyoti Saran, J)

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