

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1038 of 2015
IN
Civil Writ Jurisdiction Case No. 19784 of 2012**

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Nagar Parishad, Khagaria through its Executive Officer

.... Appellant/s

Versus

1. The State of Bihar
2. The Principal Secretary, Urban Development and Housing Department Govt. of Bihar.
3. The Deputy Secretary, Urban Development and Housing Department Govt. of Bihar, Patna.
4. The District Magistrate, Khagaria.
5. Vishwa Vijay Pal s/o Shivadhin Prasad Resident of Mohalla- Hajipur, Ward No. 19, P.O./ P.S./ District- Khagaria.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Rakesh Chandra, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA

and

HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

Date: 30-11-2016

I.A. No. 4324 of 2015:

The interlocutory application has been filed for
condonation of delay of 215 days in filing the appeal.

On a consideration of the facts and circumstances
mentioned in the application, the delay in filing the appeal is
condoned.

I.A. No. 4324 of 2015 is, accordingly, disposed
of.

Heard learned counsel for the appellant-Nagar
Parishad, Khagaria.



The appeal is directed against the order dated 18.10.2012 passed in CWJC No. 19784 of 2012 by a learned Single Judge of this Court by which the writ petition has been disposed of with the observation that the municipal rates provided under the notification of the State Government dated 9.5.2011 shall be applicable to the Municipal holdings with effect from the date of issue of the notification and liberty was granted to the premises owner to question any assessment made on the basis of the said notification with regard to wrong classification of the municipal holding as commercial. The Nagar Parishad is aggrieved by the aforesaid order to the extent that the said notification dated 9.5.2011 has been held to operate prospectively whereas Nagar Parishad has been collecting taxes from 1.4.2010.

The sole question, therefore, in this appeal is as to whether the appellant could have imposed the new enhanced taxes with effect from 1.4.2010 to which the approval itself has been granted by the State Government on 9.5.2011.

It is the submission of learned counsel for the appellant that the Khagaria Nagar Parishad is not a new Municipal Board, rather it has been in existence since 1981 and has been collecting holding taxes since then. It is submitted by learned counsel that there is no provision in the Bihar Municipal Act to collect taxes at any rate by the Municipal Board and the



power to collect such taxes flows from the provisions of Article 243 X of the Constitution of India. Therefore, the notification dated 9.5.2011 clearly is in the nature of approval which will operate from the date from which the Municipality had been collecting the taxes.

In support of the same, learned counsel relies upon a decision of the Supreme Court in the case of Associate Cement Companies Limited Vs. State of M.P. & anr. : (2005) 5 SCC 347 particularly, paragraphs 14 to 16 of the said judgment.

For a proper consideration of the submissions of learned counsel for the appellant, the provisions of Article 243-X of the Constitution of India and Section 127 of the Bihar Municipal Act, 2007 are quoted below:-

Article 243X. Power to impose taxes by, and Funds of, the Municipalities.- The Legislature of a State may, by law –

- (a) authorize a Municipality to levy, collect and appropriate such taxes duties, tolls and fees in accordance with such procedure and subject to such limits;
- (b) assign to a Municipality such taxes, duties, tolls and fees levied and collected by the State Government for such purposes and subject to such conditions and limits;
- (c) provide for making such grants-in-aid to the Municipalities from the Consolidated Fund of the



State; and

(d) provide for constitution of such Funds for crediting all moneys received, respectively by or on behalf of the Municipalities and also for the withdrawal of such moneys therefrom, as may be specified in the law.”

“Section 127. Power to levy taxes.-

(1) Subject to the provisions of section 10, the Municipality shall have, for the purposes of this Act, the power to levy the following taxes:-

- (a) property tax on lands and buildings (including vacant land)
- (b) surcharge on transfer of lands and buildings,
- (c) tax on deficit in parking spaces in any non-residential building,
- (d) water tax,
- (e) fire tax,
- (f) tax on advertisements, other than advertisements published in newspapers,
- (g) surcharge on entertainment tax
- (h) surcharge on electricity consumption within the municipal area,
- (i) tax on congregations,
- (j) tax on pilgrims and tourists, and
- (k) toll –
 - (i) on roads, bridges, ferries and navigable channel and
 - (ii) on heavy trucks which shall be heavy goods vehicles, and buses, which shall be heavy passenger motor vehicles, within the meaning of



the Motor Vehicles Act, 1988, plying on a public street or as may be provided for under orders by the State Government.

(1) Communication towers and related structures/Disc antennas.

(2) Subject to the prior approval of the State Government, the Municipality may, for raising revenue for discharging its duties, and performing its functions, under this Act, levy any other tax which the State Legislature has the power to levy under the Constitution of India.

(3) The levy, assessment and collection of taxes under this Act shall be in accordance with the provisions of this Act and the Rules and the regulations made there under,

Provided that every person liable to pay Property Tax on lands and buildings shall within 30 days of acquisition land or building or both, intimate the Municipality of such acquisition of property for assessment of Property Tax. Failure to give such information shall make him liable to assessment from the date of acquisition of property together with penalty in the range of 25 per cent to 100 per cent of the arrears becoming due on account of suppression of information as may be prescribed under rules by the State Government. Person may make self-assessment and make payment of any levy or tax under this Act and rules and regulations made thereunder;

Provided further that if any willful suppression of material information essential for assessment of Property Tax is found in such self-assessment, such person shall be liable for payment of differential



amount and a fine of not less than fifty percent and upto 100% of such differential amount.

(4) (1) The holding in the Municipal area shall be classified by the Municipality on the following criteria:-

(a) Situation of the holding –

- (i) Holdings on the Principal Main Road,
- (ii) Holdings on the Main Road,
- (iii) Holdings other than sub-clauses (i) and (ii)

(b) Use of the Holding –

- (i) Purely residential,
- (ii) Purely commercial or industrial (whether self owned or otherwise),
- (iii) Partly residential and partly commercial/industrial,
- (iv) All Holdings other than sub-clauses (i), (ii) and (iii)

(c) Type of Construction –

- (i) Pucca building with R.C.C. Roof,
- (ii) Pucca building with asbestos/corrugated sheet (stone or any other permanent material) roof,
- (iii) All other buildings not covered in sub-clauses (i) and (ii).

(d) Type of Occupancy:-

- (i) Self-Occupied;
- (ii) Tenant Occupied

(e) Type of non-residential use of Holdings

- (i) Hotels, restaurants, clubs, cinema houses, Guest Houses, Marriage Halls and all places of entertainment;
- (ii) Shops, show rooms;



- (iii) Commercial offices, banks, hospitals and nursing homes, dispensaries, laboratories
 - (iv) Government Offices and Institutions
 - (v) Industries, workshops;
 - (vi) Schools, colleges and other educational institutions, research institutions;
 - (vii) Educational and social institutions run by charitable trust on no-profit no-loss basis for the benefit of poor, physically challenged, social security of women and children;
 - (viii) Religious places, and
 - (ix) Any other holdings not covered under (i) to (viii).
- (2) For the purpose of determining whether a holding is situated on principal Main Road, on the Main Road or on any other Road, road facing the main entrance of each holding shall be the deciding factor. In case where the properties are located on more than one road, Principal Main Road shall prevail over the Main Road and the Main Road shall Prevail over the other Road.
- (5) Subject to the approval of the State Government, the Municipality may from time to time, publish the list of principal main roads as well as main roads and if necessary modify the lists for the purposes of this Act.
- (6) For the purpose of calculation of Annual Rental value of a holdings measurement of carpet area shall be calculated as under :-
- (i) Rooms – Full measurement of Internal Dimension,
 - (ii) Covered Verandah- Full measurement of



Internal Dimension,

- (iii) Balcony/Corridor, Kitchen and Store- 50 per cent measurement of Internal dimension,
- (iv) Garrage- One-fourth measurement of internal dimension,
- (v) Area covered by bath room, latrines, portico and Staircase shall not form part of the Carpet area.

Provided that in cases where the property is found locked, or is not accessible for the measurement of carpet areas for any reason whatsoever, the Municipality shall take into consideration 75 percent of the plinth area of the property as carpet area for the purposes of assessment of Property Tax until the property becomes accessible in subsequent year.

- (7) (i) The rate of rental value per sq. ft. shall be fixed by the Municipality with the prior approval of the State Government having regard to the situation, use (type of construction occupancy of the holdings and type of non-residential use of holdings).
 - (ii) The Annual Rental Value shall be (calculated) as a multiple of the Carpet area and the rental value fixed under sub-rule (1).
 - (iii) The rental value per sq. ft. of carpet area for different classes of holdings shall be published from time to time by the Municipality with the prior approval of the State Government.
- (8) Tax shall be assessed on the basis of Annual Rental value on the following rates:



- (i) Holding Tax – at the rate of 2.5% per cent of Annual Rental Value,
 - (ii) Water Tax- at the rate of 2 per cent of Annual Rental Value,
 - (iii) Latrine Tax- at the rate of 2 per cent of Annual Rental Value.
 - (iv) Tax on any other item included in 12th schedule of the Constitution of India on such rate as prescribed.
 - (v) Property Tax on vacant land shall be levied annually within minimum and maximum of Rs. One and Rs. 5 respectively per square meter of vacant land depending on the situation of land falling in the criteria given in Section 127(4) (1)(a). The rates to be levied shall be determined from time to time under the Rules to be framed by the State Government.
- (9) The Municipality may revise the rate of Tax on Annual Rental Value with the prior approval of the State Government.
- (10) The State Government may provide differential methods for calculation of the annual rental value of tenanted property and certain categories of non-residential holdings from among those mentioned in Clause (d) and (e) of Sub-Section (4)(i) of Section 127 of this Act.
- (11) (i) Those portions of the holdings/buildings which are places, centers and institutions of spiritual and religious are used for commercial purposes, office buildings, boarding and/or lodging facilities whether free of charge



or where fee or donation is charged, shall be charged property Tax, as per the category to which they belong.

(ii) All hutments or dwelling units situated in slums having a total plinth area of less than 250 square feet shall be exempted from payment of Property Tax.

(12). If any difficulty arises in giving effect to this section, the Government shall in consistent with the provisions of this section have power to issue any direction in the matter.

(13) (i) The Municipality shall carry out upward revision of rental value of holdings under Section 7(i) once in every five years and through a public notice, inform all owners of holdings and assesees about the change in the method of assessment on account of such revision.

(ii) The Municipality shall also reclassify the roads on which holdings are situated once in every five years and take it into consideration for determining the rental value of holdings.”

It is evident from a consideration of the provisions of Article 243-X of the Constitution of India that the Constitution by itself does not grant any power to the Municipality to levy, collect and appropriate any taxes, duties, tolls and fees, rather it has granted power to the State Legislature to authorize the Municipality to levy, collect and appropriate such taxes, duties etc. Thus, the power of Municipality, inter alia, to levy or collect taxes, duties, etc., can only flow from any legislation enacted by



the State Legislature and not directly from Article 243-X of the Constitution.

Such legislation is the Bihar Municipal Act, 2007, in Section 127 of which it is provided that the Municipality shall have, inter alia, power to levy Property Tax of lands and buildings including on the vacant land. It is however, made clear that the levy, assessment and collection of such taxes shall be in accordance with the provisions of the Act, Rules and Regulations made thereunder by sub-section (3) of the said Section. Sub-Section (4) lays down that the holding in the Municipal area has to be classified by the Municipality on the criteria laid down thereunder with respect to the situation of the holding, use of the holding, type of construction, type of occupancy and the type of non-residential use of holdings, etc. It is thereafter provided by sub-section (5) that the Municipality may from time to time publish the list of principal main roads as well as main roads and if necessary modify the lists for the purposes of the Act but subject to the approval of the State Government. Sub-section (7) further makes it clear that the rate of rental value per sq. ft. shall be fixed by the Municipality with the prior approval of the State Government having regard to the criteria provided in the sub-section. It is also laid down thereunder that the rental value per sq. ft. shall be published from time to time by the Municipality



with the prior approval of the State Government.

So far as the rate of tax is concerned, the same is provided in the Act by sub-section (8). Thereafter sub-section (9) is very relevant in the present matter as it stipulates that the Municipality may revise the rate of Tax on Annual Rental Value with the prior approval of the State Government. Sub-section (10) gives the power to the State Government to issue any direction, if any difficulty arises in giving effect to such provision.

From the aforesaid scheme of the Act, it is evident that the levy of property tax on different holdings within the area of the Municipality is to be done by first dividing the entire area into principal main road, main road and other roads and further classifying the same as commercial or residential or partly commercial or partly residential as also on the basis of the type of construction and other different criteria as has been laid down in sub-section (4) of Section 127, but it is not within the power of the Municipality to unilaterally publish the same unless approval has been granted by the State Government.

It is such approval of the classification of different holdings on the basis of the situation as also the type of construction, etc. and use of the holdings within the area of Khagaria Ngar Parishad which has been approved by the State Government by the notification dated 9.5.2011.



It is true that the Khagaria Nagar Parishad had been levying holding taxes from a prior date but by the notification dated 9.5.2011 approval had been granted by the State Government to revise the rate of taxes on Annual Rental Value in terms of sub-section (9) of Section 127. Sub-section (9) makes it clear that such revision can only be with the prior approval of the State Government. Thus it cannot be said that for levy of tax for those areas, rates as per notification dated 9.5.2011 was either in existence or permissible in the legal sense even though the Municipality in question had been levying such taxes at those higher rates. Collection of such tax was clearly contrary to the provisions of Section 127(9) and other sub-sections thereunder. Such levy would obviously be hit by the provisions of Article 265 of the Constitution of India which directs that no tax shall be levied except by authority of law, because the authority for collection of such enhanced taxes was derived by the Nagar Parishad after the notification dated 9.5.2011 was issued by the State Government. Hence, there could have been no collection of holding tax at the higher rate prior to 9.5.2011 by the Khagaria Nagar Parishad.

In this regard reliance placed by learned counsel for the appellant upon Associated Cement Companies case (supra) can be of no avail as the law laid down therein was on the



basis of very different provisions, which is evident from a perusal of the said decision. Such is not the scheme of levy of property tax under the Bihar Municipal Act. Thus, the decision cannot govern the present matter and is wholly irrelevant so far as the applicability of the provisions under the different sub-sections of Section 127 of the Bihar Municipal Act for levy of Municipal Tax is concerned.

For the aforesaid reasons, we find no merit in the appeal. It is, accordingly, dismissed.

(Ramesh Kumar Datta, J)

(Birendra Kumar, J)

S.Pandey/-

AFR/NAFR	AFR
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