IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19707 of 2015

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1. Rai Vimal Krishna son of Late Rai Udaya Krishna
2. Rai Ohm Krishna, son of Late Rai Udaya Krishna
3. Smt. Indira Rani, Wife of Late Rai Abhaya Krishna
4. Rai Atul Krishna, son of Rai Abhaya Krishna
5. Rai Sanjay Krishna, Son of Rai Abhaya Krishna
6. Smt. Kusum Krishna, Wife of Rai Amal Krishna
7. Rai Amal Krishna, son of Late Rai Vinai Krishna, All residents of Anand Bagh, P.O.- Patna City, P.S.- Khajekalan, in the Town and District of Patna

.... Petitioner/s

Versus

1. The Patna Municipal Corporation, having its office at Budh Marg, Patna through the Commissioner cum Chief Executive Officer.
2. The Commissioner cum Chief Executive Officer, Patna Municipal Corporation, having its office at Budh Marg, Patna
3. The Executive Officer, New Capital Circle, Patna Municipal Corporation, Harding Road, Patna
4. The Executive Officer, Patna City Circle, Meena Bazar, Patna Municipal Corporation, Patna- 800007

.... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Manoj Kumar, Adv.
For the Respondent/s : Mr. Hargovind Singh Himkar, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL ORDER

6 30-03-2016 Heard Mr. Manoj Kumar learned counsel for the petitioners and Mr. Sanjay Prakash Verma, learned counsel for Patna Municipal Corporation.

The limited relief prayed by the petitioners in this application is for a direction to the Municipal Commissioner-cum-Chief Executive Officer, Patna Municipal Corporation to give effect to his own order dated 24.11.2006, a copy of which is placed at Annexure-3 to the writ petition.

The short argument advanced by Mr. Manoj Kumar in support of the relief prayed is that although under the order passed which is dated 24.11.2006 certain benefits were allowed to the petitioner while some were rejected but such determination ought to have been followed by an assessment order which is missing in the present case. He submits that the petitioner has raised his objections to the rejections contained in the order and which are pending. He thus submits that in absence of an assessment order passed under Section 141 of the Bihar Municipal Act, 2007 (hereinafter referred to as 'the Act'), the petitioner is precluded to take recourse to the statutory remedy available to him and also not in a position to pay his tax in conformity with the statutory requirements. He further submits that based on self assessment, the petitioners have been depositing their tax without an assessment order.

A counter affidavit has been filed and to call it a shoddy expression would be an understatement. There is specific response to the issue noted. In fact paragraphs 5, 7 and 15 of the counter affidavit confirms the laches on the part of the Municipal Commissioner in implementation of his order placed at Annexure-4. A reference is made to the rules stated to have been enforced in 2013 to submit that the petitioner should make his own assessment but I fail to appreciate as to how the 2013 rules so referred to can be made retrospective and why since after passing of the order in 2006 there has been no assessment.

There is again no response as to how the 2013 rules would nullify the statutory obligations appearing in Section 141 of 'the Act' which cast a duty on the municipal authority to pass an assessment order and at the same time also gives a right to the assessee to file his objections by way of a review.

In paragraph 15 of the counter affidavit, the Municipal Commissioner has mentioned that steps are being taken for assessment of tax of about 150 holdings which is stated to include the petitioner. In the circumstances discussed and taking note of the submission made by the Municipal Commissioner in paragraph 15 of the counter affidavit, the writ petition is disposed of with a direction to the Municipal Commissioner, Patna Municipal Corporation or the authority conferred with such statutory powers to pass appropriate orders of assessment in accordance with law bearing in mind the order dated 24.1.2006 and after opportunity of hearing to the petitioners. The petitioners shall appear either in person or through their authorized representative before the Municipal Commissioner along with copy of this order on or before 5.4.2016 and whereupon he shall proceed to carry out the direction aforementioned expeditiously for it shall only be in the best interest of the Corporation.

The writ petition is disposed of accordingly.

(Jyoti Saran, J)

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