

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6510 of 2020

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M/s Vishnu Sugar Mills Ltd. having registered Office at C-3/3, Gillander House, 8 Netaji Subhash Road, Kolkata- 700001 and local office at Vishnu Sugar Mills, Gopalganj through its General Manager, Sri Sasidhar Panicker, Son of Late Raghav Panicker, Resident of Village- Vishnu Sugar Mills, Gopalganj.

... .. Petitioner

Versus

1. The State of Bihar through the Secretary, Urban Development and Housing Department, Government of Bihar, Vikash Bhawan, Bailey Road, Patna- 800001
2. The Secretary, , Urban Development and Housing Department, Government of Bihar, Vikash Bhawan, Bailey Road, Patna- 800001
3. The Executive Officer, Nagar Parishad, Gopalganj.

... .. Respondents

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Appearance :

For the Petitioner	:	Mr. Ashish Giri, Advocate
For the Respondents-State:		Mr. Kinkar Kumar, SC-9
For the Respondent No.3:		Mr. Rajeev Ranjan, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
and
HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH)
Date : 15-07-2022

In the present application, the petitioner has prayed
for the following reliefs:

- (i) To issue a writ/order/ direction in the nature of certiorari for quashing the letter no. 797 dated 24.02.202 issued under the signature of the Executive Officer, Nagar Parishad, Gopalganj demanding payment of remaining amount of



holding tax to the tune of Rs. 17,01,833.00 to be paid within one week (Annexure-9).

(ii) To issue a writ/order/ direction in the nature of certiorari for quashing the letter no. 193 dated 14.01.2020 issued under the signature of Executive Officer, Nagar Parishad, Gopalganj by which a demand of Rs. 17,51,833.00 has been raised as holding tax for the year 2019-20 (Annexure-5).

(iii) To issue a writ/order/ direction in the nature of certiorari for quashing the letter no. 3282 dated 19.12.2019. issued under the signature of Executive Officer, Nagar Parishad, Gopalganj by which a demand of Rs. 17,51,833.00 has been raised as holding tax for the year 2019-20 (Annexure-3).

(iv) To hold and declare that the demand of holding tax for the year 2019-20 to the tune of Rs. 17,51,833.00 is contrary to law and in violation of the provisions of the Bihar Municipal Act. 2007 and that the petitioner is not liable to pay the same.

(v) To hold and declare that the assessment and payment made by the petitioner to the tune of Rs. 50,000/- as holding tax for the period 2019-20 in terms of letter no. 1084 dated 12.02.2020 be accepted and that no further amount is liable to be paid.

(vi) To pass ex-parte / ad interim ex-parte interim relief during the pendency of the writ application



staying the demand letter no. 797 dated 24.02.2020 by which the petitioner has been directed to deposit the remaining amount of Rs. 17,01,833.00 as holding tax for the year 2019-20 and/or preventing the respondent from taking any coercive step for recovery pursuant to the said letter

(vii) To any other relief or reliefs for which the petitioner is found to be entitled in the facts and circumstances of the case.

2. The petitioner-company has a sugar mill at Gopalganj.

3. It is the case of the petitioner that the respondent-Nagar Parishad, Gopalganj has been collecting holding from the petitioner in relation to the said sugar mill property located at Gopalganj calculated to be Rs.50,000/- for the year 2012-13 as would appear from the letter dated 13.03.2013 as contained in Annexure-1 to the writ petition. Similarly, the holding tax was paid by the petitioner for the year 2013-14, 2014-15, 2015-16, 2016-17, 2017-18 and 2018-19. However, the respondent-Executive Officer, Nagar Parishad, Gopalganj vide letter no.3282 dated 19.12.2019 issued a demand notice for holding tax for the year 2019-20 to the tune of Rs.14,84,604/- and delayed penalty amount of Rs.2,67,229/-. Thus, a total demand



of Rs.17,51,833/- was made by the respondent-Nagar Parishad from the petitioner.

4. On receipt of the demand notice, the petitioner sent a legal notice dated 25.01.2020 to the respondent clarifying that no construction or re-construction/modification was taken under the premises of the petitioner and there was no question of any increase in the holding tax.

5. In response to the legal notice, a reply was sent on behalf of Nagar Parishad dated 03.02.2020 by which it was stated that Nagar Parishad has the power of reviewing the rate and, in such exercise of power, the holding tax has been determined and the same has been done in accordance with Section 127(3) of the Bihar Municipal Act, 2007 (for short 'the Act of 2007').

6. The petitioner again wrote to the respondent-Nagar Parishad vide letter dated 12.02.2020 stating therein that the tax is to be calculated in terms of provisions of Section 127 of the Act of 2007 and, in absence of change in the property of the petitioner in question, there cannot be any increase in holding tax. It was also stated that the revision of rate of tax on annual rental value without prior approval of the State Government was wholly illegal and unjustified. Thus, the petitioner after writing



a letter, deposited a cheque amounting to Rs.50,000/- on 12.02.2020 itself as holding tax for the year 2019-20. Again without dealing with and considering the issues raised by the petitioner, the respondent-Executive Officer, Nagar Parishad, Gopalganj vide letter dated 24.02.2020 issued a demand notice for Rs.17,01,833/- after deducting the amount of Rs.50,000/- deposited by the petitioner as remaining amount of holding tax to be paid for the year 2019-20.

7. Mr. Ashish Giri, learned counsel for the petitioner submitted that the demand made by the respondent-Nagar Parishad is contrary to the provisions prescribed under Clause (9) of Section 127 of the Act of 2007 which provides that the municipality may revise the rate of tax on annual rental value with the prior approval of the State Government. He contended that it is an admitted case in which the prior approval of the State Government was not obtained before issuing the demand of enhanced rent.

8. Mr. Kinkar Kumar, learned Standing Counsel-9 appearing for the State submitted that the State has already clarified its position by way of filing counter affidavit and supplementary counter affidavits. He contended that the Urban Development and Housing Department, Municipal



Administration, Directorate, Government of Bihar vide letter No. 1426 dated 30.05.2022 had sought clarification from the Executive Officer, Nagar Parishad, Gopalganj as to whether prior approval of the State Government on the classification of rent as per the provisions contained in Sections 127(5) and 7(1) of the Bihar Municipal Property Tax (Assessment, Collection and Recovery) Rules, 2013 had been taken or not and, if such approval had been taken then copy of said departmental letter may be made available. Thereafter, reminders were issued pursuant to which the Executive Officer, Nagar Parishad, Gopalganj has sent a report, which would suggest that no prior approval under the aforesaid provisions of the Act and Rules has been taken by the respondent-Nagar Parishad, Gopalganj. He contended that a show cause against the Executive Officer, Nagar Parishad, Gopalganj seeking his explanation on the revision of tax without approval of the State Government has also been issued on 21.06.2022.

9. Mr. Rajesh Ranjan, learned counsel appearing for the respondent-Nagar Parishad, Gopalganj has conceded that prior to the revision of rate of tax on annual rental value approval of the State Government is mandatorily required, which has not been taken in the present case. He contended that



since the State Government has framed a model rule, the respondent-Nagar Parishad was under impression that it can revise the rate on that basis. Thus, it had sent notice for payment of enhanced rent to the petitioner. However, after realizing the correct position of law, the Nagar Parishad has decided not to pursue its demand of enhanced rent from the petitioner till the prior approval of the State Government is obtained.

10. We have heard the learned counsel for the parties and perused the materials on record.

11. The Constitution of India empowers the legislature of a State to authorize a municipality to levy, collect and appropriate such taxes, duties, tolls and fees in accordance with such procedure and subject to such limits. The taxes on lands and buildings in fact fall in the State list in the Constitution. The State legislature in turn assigns the taxing power to the municipal governments in their jurisdiction. Municipal governments have no original powers of taxation.

12. The Act of 2007 was enacted by the State legislature to consolidate and amend the laws relating to the municipal governments in the State of Bihar in conformity with the provisions of the Constitution of India as amended by the Constitution (Seventy-fourth Amendment) Act, 1992, based on



the principles of participation in, and decentralization, autonomy and accountability of, urban self-government at various levels, to introduce reforms in financial management and accounting systems, internal resource generation capacity and organizational design of Municipalities, to ensure professionalisation of the municipal personnel, and to provide for matters connected therewith or incidental thereto. It came into force with effect from 05.04.2007.

13. It is pertinent to note here that Part IV Chapter XV of the Act of 2007 deals with the provisions relating to the sources of internal revenues of the municipalities.

14. Section 127 of the Act of 2007 deals with the power to levy various kind of taxes by the municipality.

15. Section 127(7) of the Act of 2007 provides the Municipality, the power to levy different kind of taxes including the property tax on lands and buildings.

16. The relevant provisions such as sub sections (1) (7) & (9) of Section 127 of the Act of 2007 may now be noted:-

“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.



- (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.

(l) Tax on profession.

(2) xxx	xxx	xxx
(3) xxx	xxx	xxx
(4) xxx	xxx	xxx
(5) xxx	xxx	xxx
(6) xxx	xxx	xxx

(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



(ii) The Annual Rental Value shall be calculated as a multiple of the Carpet area and the rental value fixed under sub-rule (1).

8. xxx xxx xxx

17. In the instant case, it is not in dispute that the rental value of the holding of the petitioner has been revised by the respondent-Nagar Parishad, Gopalganj without prior approval of the State Government. In absence of the prior approval of the State Government in terms of sub sections (7) & (9) of Section 127 of the Act of 2007 the revise rent on the property of the petitioner is without jurisdiction and authority of law.



nos.3282 dated 19.12.2019, 193 dated 14.01.2020 and 797 dated 24.02.2020 as contained in Annexure Nos.3, 5 & 9 respectively issued under the signature of the Executive Officer, Nagar Parishad, Gopalganj.

19. It is made clear that the respondent-Nagar Parishad shall be at liberty to revise rent after having necessary approval from the State Government in accordance with law.

(Ashwani Kumar Singh, J.)

(Dr. Anshuman, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22-07-2022
Transmission Date	NA

