

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3015 of 2021

Notre Dame Academy Munger, Peepal Painti Road, Munger, through the Secretary of its Managing Committee, Sr. Reena S.N.D. Female aged about 66 Years Daughter of Late Joseph Thekkel, resident of Notre Dame Convent, Peepal Painti Road, P.S. Munger Town, P.O. Munger-811201 District-Munger.

... .. Petitioner/s

Versus

1. State of Bihar through the Secretary, Urban Development Departemnt, New Secretariat, Govt. of Bihar, Patna.
2. Munger Municipal Corporation through Municipal Commissioner, Munger Municipal Corporation, Munger-811201, Munger Town P.S., District-Munger.
3. Municipal Commissioner, Munger Municipal Corporation, Munger-811201, District-Munger.
4. Executive Officer, Munger Municipal Corporation, Munger -811201, Munger Town P.S., District Munger.

... .. Respondent/s

Appearance :

For the Petitioner	:	Mr. K.M.Joseph
For the State	:	Mr. Yogendra Pd. Sinha, AAG-7 with Mr. Rajeev Kumar Sinha, AC to AAG-7
For the Corporation	:	Mr. Anjani Kumar, Sr. Adv with Mr. Amit Kumar Jha, Adv

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE MADHURESH PRASAD)

Date : 22-06-2022

The petitioner's school claims to be an educational institution being run for charitable purposes without any purpose of profit. The premises, situate at the Peepal Painti Road, Munger, from where they are running the institution has been assessed under Section 127 of the Bihar Municipal Act 2007 ('Act of 2007' for short) for the purposes of



holding tax on rates applicable to principal main road. Accordingly, a demand has been raised for arrears and current holding tax on rates applicable to principal main roads. The total outstanding has been quantified at Rs. 9,93,578/- for the period between financial year 1997-98 to 2010-11, vide communication dated 21.06.2011 issued by the Municipal Commissioner, Munger Municipal Corporation.

The petitioner's school does not agree with the said demand raised by the Municipal Corporation on two grounds: One, that being a charitable institution and due to the fact that the building is used as religious residence for religious women in the Catholic Church, it is exempt from the tax demand under Section 124(2) of the Act of 2007. The second issue raised by the petitioner's school is that there is no notification issued in terms of Section 127 of the Act of 2007 notifying Peepal Painti Road, Munger as a principal main road. In the absence of such notification, the Municipal Corporation cannot demand holding tax from the petitioner's institution, which is situated on Peepal Painti Road, accessing holding tax at the rate applicable to principal main roads.



Under these circumstances, the petitioner's school filed an objection petition against the demand raised under communication dated 21.06.2011.

Vide objection dated 29.07.2011, petitioner has claimed that Peepal Painti Road should be treated as under "Others" category, and not principal main road. By this objection, petitioner also requested the Municipal Corporation to provide the details of calculation based on which the demand was arrived at. The detailed calculation was communicated by the Municipal Corporation under its communication dated 04.08.2011.

It would be relevant to mention here that the respondent-Corporation, during pendency of the instant writ proceedings has admitted the petitioner's institution to concession on holding tax instead of exemption vide order dated 04.04.2018. In view thereof, the petitioner's counsel, for the present, is not raising any issue regards grant of exemption from holding tax by virtue of being a charitable institution. Since the issue has not been raised in the instant proceedings on account of concession granted by the respondent-Corporation, the Court would refrain from entering into, much less deciding the said issue.



In the circumstance, Mr. K.M Joseph, learned counsel for the petitioner has confined his arguments against the demand raised by the Corporation only on the ground that there being no notification under Section 127(5) of the Act of 2007 notifying Peepal Painti Road as a principal main road, the demand for holding tax raised by the Municipal Corporation treating Peepal Painti Road as Principal Main Road, was legally unsustainable. Learned counsel for the petitioner has relied upon decision of division bench of this court in the case of *Nagar Parishad, Khagaria vs. the State of Bihar & others* reported in **2017 (1) BBCJ 411**.

The petitioner had filed a review petition against the demand, which has been rejected under order dated 15.04.2017 passed by the Municipal Commissioner, Munger Municipal Corporation (hereinafter referred to as “the Municipal Commissioner” for short). The demand of holding tax based on assessment of the petitioner’s premises treating it as being situated on a principal main road has been affirmed.

Petitioner, thereafter, filed an appeal under Section 143 of the Act of 2007 against the impugned demand. The petitioner’s appeal under Section 143 of the Act of 2007 filed



before the District Judge has also been rejected under order dated 10.02.2020 passed in M.T.A No. 01 of 2017/C.I.S No. 1 of 2017 passed by the learned Additional District Judge-II, Munger.

The petitioner has prayed for quashing of the order of the Appellate Authority dated 10.02.2020, under Section 143 of the Act of 2007; as well as the earlier order dated 15.04.2017 passed on the review petition by the Municipal Commissioner. The petitioner in substance has assailed the demand for holding tax treating the petitioner's premises to be situated on a principal main road, on the ground that there is no notification issued under Section 127 of the Act of 2007 notifying Peepal Painti Road as a principal main road.

The learned senior counsel for the Munger Municipal Corporation has tried to justify the demand based on conclusion of a Tax Daroga in support of which they have also filed a sketch map (Annexure 'A' to the counter-affidavit filed on behalf of respondent nos. 2 to 4) showing the locality in which Peepal Painti Road is situated.

The admitted position, based on the pleadings, is that the petitioner's holding is situated on Peepal Painti Road. Respondent-Corporation contends that Peepal Painti Road is



situated between Sahid Bhagat Singh Chowk and Sojhi Ghat: Also that Peepal Painti Road connects two principal main roads, namely, Lallu Pokhar Road and Belan Bazar Patna Road of the Munger Municipal Area. They have also stated that Peepal Painti Road is in the heart of the town where several schools and commercial institutes are situated. There is substantial commercial activity in the vicinity of this road. Considering these factors, Peepal Painti Road has been put under the category of the principal main road by the Municipal Board in its general meeting held on 01.07.2019.

After taking into consideration concession in holding tax granted by the State Government vide order dated 04.04.2018 as stated in paragraph 11 of the counter-affidavit filed by respondent Nos. 2 to 4, the Municipal Commissioner, Munger vide his communication dated 07.05.2021 bearing letter No. 1362, has revised the assessment of holding tax and issued a revised demand of Rs. 7,50,944/- as arrears of tax. Penalty has also been imposed on arrears, quantified at Rs. 12,67,082/-. The admitted position is that under protest, the petitioner's school offered to immediately deposit the demand for arrears of holding tax which was accepted by letter dated 15.06.2021



issued by the Munger Municipal Corporation. Accordingly, the demand of arrears of holding tax, Rs. 7,50,944/- has been deposited in the bank account of the Munger Municipal Corporation on 19.06.2021.

In view of this development, the petitioner's liability to pay penalty for delayed deposit of the amount of holding tax, in the opinion of this Court would arise only if this Court were to conclude that the demand for holding tax treating the petitioner's holding to be situated on principal main road was just and legal. If this Court, on the other hand, were to conclude that there was no legal/statutory basis for demand of holding tax in respect of petitioner's holding on Peepal Painti Road, treating it as a principal main road, it is more than obvious that the petitioner cannot be saddled with any penalty for delayed payment of such unjust demand.

On consideration of the submissions advanced by the parties, this Court would find that the Municipality's power to levy taxes flows from Section 127 of the Act of 2007. Sub-section (5) of Section 127 which is relevant to the issue in the instant case is, thus, reproduced;

“(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.”

Sub-section (7) of Section 127 is also relevant to the issue being considered in the instant proceedings and is also reproduced;

“(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 the built-up area for different classes of holdings shall be increased by minimum 15% every 5 years. The municipality may also increase the rental value and rates at any time during the five year period with the prior approval of the



government.]”

These two statutory provisions cast a duty on the Municipality to publish a list of the-

- (i) principal main roads,
- (ii) main roads, or
- (iii) other than principal main roads and main roads ('other' for short).

Such publication is subject to approval of the State Government in this regard.

The Act of 2007 further requires the Municipality, with prior approval of the State Government, to publish rental value per sq. ft., having regard to situation of the holding on either of the three categories of roads published under sub-section (5).

Thus, it is only after a holding is identified based on its situation on principal main road, main road, or other road, as per a notification under Section 127(5) that its rental value is required to be assessed based on the rate per sq. ft. notified under Section 127(7), having regard to situation of the holding, nature of construction and use.

The admitted position in the present case is that



neither any notification has been issued under sub-section (5) nor under sub-section (7) of Section 127 of the Act of 2007. The justification for assessment of petitioner's holding by treating it to be situated on a principal main road by learned senior counsel for the Munger Municipal Corporation, with reference to the locality, including its commercial importance, etc. is not germane in the context of the extant statutory provisions under the Act of 2007.

The certification of the Tax Doroga justifying calculation of holding tax by treating the petitioner's holding as being situated on a principal main road by relying upon irrelevant factors such as the fact that the Peepal Painti Road connects two very important roads; it is situated in the heart of the town; or that the area is commercially vibrant, is legally unsustainable.

Section 127(5) of the Act of 2007, as taken note of above, mandates the publication of categorisation of the roads, as Principal Main Road, Main Road, or Other Road. The Act of 2007 does not leave it to the discretion of the Municipality without approval of the State Government to decide the category of a road based on the locality in which the holding is situated. Thereafter, the Act of 2007 mandates



that as per the situation of the holding on either of the three categories of roads, the rate of rental value per sq. ft. is to be fixed having regard to the use, type of construction, occupancy, etc. which also has to be fixed by the Municipality with prior approval of the State Government. Once the statute provides for determination of holding tax in the aforesaid manner, determination of holding tax at the general meeting of the Munger Municipal Corporation dated 01.07.2019 is without any statutory basis, and is arbitrary. It is not only without statutory authority, but such determination is also in violation of the mandatory requirements contained in sub-section (5) and sub-section (7) of Section 127 of the Act of 2007. The demand of holding tax treating the petitioner's holding to be situated on a principal main road is, thus, without any authority of law and contrary to the statutory provisions contained in sub-section (5) and sub-section (7) of the Act of 2007.

This Court has also examined decision of division bench in the case of *Nagar Parishad Khagaria* (supra). Paragraphs 10, 11 and 12 of the decision clearly support the case of the petitioner and are considered worth reproduction and are being quoted as follows:



“10. 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.

11. 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.

12. 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.”

This Court, therefore, has no hesitation in holding that the petitioner is not liable to pay holding tax by treating the holding to be situated on a principal main road, as Peepal Painti Road, on which the petitioner's holding is situated has never been notified under Section 127(5) of the Act of 2007, as principal main road.

Having concluded thus, this Court would consider it only just to specify the consequences of such declaration. This Court would, thus, hold that the respondent-Municipal Corporation, therefore, cannot charge any penalty for the period in question. Since the petitioner has already deposited the demand of holding tax at the unjustifiable and illegal rates treating the holdings to be situated on a principal main road, this Court would further direct that the petitioner's liability to holding tax be re-assessed treating her holding to be situated on “Other” category road, and communicate a calculation chart based on such assessment to the petitioner within 8 (eight) weeks from today. Let the balance excess of



payment made by the petitioner, which as per submission of the petitioner’s counsel is miniscule, be utilised/adjusted towards liability on account of holding tax arising after the period in question.

This writ application stands allowed in the above-noted terms.

(Madhuresh Prasad, J)

I agree
Chakradhari Sharan Singh, J:

(Chakradhari Sharan Singh, J)

SUMIT/-

AFR/NAFR	NAFR
CAV DATE	19.05.2022
Uploading Date	27.06.2022
Transmission Date	NA

