

IN THE HIGH COURT OF ORISSA AT CUTTACK

S.A. No.113 of 1988

In the matter of appeal under Section 100 of the Code of Civil Procedure assailing the judgment and decree dated 10.12.1987 and 15.12.1987 respectively passed by the learned Additional District Judge, Sambalpur in Money Appeal No.4 of 1986 confirming the judgment and decree dated 28.06.1986 passed by the learned Munsif, Sambalpur in Money Suit No.44 of 1985.

Burla Notified Area Council, *Appellant*
through its Executive Officer

-versus-

Lalchand Gupta *Respondent*

Appeared in this case by Hybrid Arrangement
(Virtual/Physical Mode):

For Appellant - Mr.A.N.Routray
(Advocate)

For Respondent - Mr.Budhiram Das
(Advocate)

CORAM:
MR. JUSTICE D.DASH

Date of Hearing : 05.08.2022 : Date of Judgment:08.08.2022

D.Dash,J. The Appellant, i.e, Burla Notified Area Council through its Executive Officer, has filed this Appeal under Section-100 of the Code of Civil Procedure, 1908 (for short, 'the Code') in assailing the judgment and decree dated 10.12.1987 and 15.12.1987 respectively passed by the learned Additional District Judge, Sambalpur in Money Appeal No.4 of 1986.

By the same, the Appeal filed by the present Appellant, being the unsuccessful Plaintiff in M.S. No.44 of 1985 of the Court of the learned Munsif, Sambalpur under Section 96 of the Code has been dismissed and thereby the Trial Court's judgment and decree entitling the Appellant (Plaintiff) to recover a sum of Rs.1473.30 (Rupees One Thousand Four Hundred Seventy Three and Thirty Paise) only towards the holding tax for the years 1982-83, 1983-84 and 1984-85 with pendentelite and future interests @ 6% as well as holding the Appellant as not entitled to recover the lighting tax from the Respondent (Defendant) for those years have been confirmed.

The present Appeal at the instance of the Plaintiff is only on the question whether the Courts below have rightly refused to hold that the Appellant (Plaintiff) has no right to recover lighting tax from the Respondent (Defendant) for the years 1982-83, 1983-84 and 1984-85.

2. For the sake of convenience, in order to avoid confusion and bring in clarity, the parties hereinafter have been referred to, as they have been arraigned in the Trial Court.

3. The Plaintiff's case is that the Defendant is the owner of a house assigned with holding no.1052 situated in Ward No.2 in the Burla Notified Area Council. The Defendant is said to have defaulted in paying the holding tax and lighting tax to the Plaintiff for the periods 1983-83, 1983-84 and 1984-85 coming to Rs.2946.60 (Rupees Two Thousand Nine Hundred Forty Six and Sixty Paise). The Plaintiff having issued notice to the Defendant, when he did not Respondent, the suit has come to be filed.

4. The Defendant contested the suit in stating that his house is situated at a distance of four kms from the township of Burla and it is

not within the limit of Notified Area Council, Burla. It is further stated that, the Council has not provided any electric light facilities/service in the area where the house of the Defendant situates and as such he has no liability to pay the lighting tax demanded.

5. On the above rival pleadings, the Trial Court, coming to answer the issue as to the entitlement of the Plaintiff to realize the holding tax and lighting tax, as claimed, on examination of the evidence and their evaluation, has finally held that the Defendant is only liable to pay the holding tax but not the lighting tax. The reason for this is that the evidence on record when clearly lead to show that the Notified Area Council had not provided the lighting facilities in the area and as such that service being made available to the Defendant; the same is not realizable form him and he is not liable to pay the same.

The suit being thus decreed in part, the Plaintiff having carried the Appeal, has not been successful in overturning that part of the decree, which had gone against it in holding that the Defendant is not liable to pay the lighting tax as demanded.

6. The Appeal has been admitted on 29.07.1988 to answer the following substantial question of law:-

“Whether the judgment of the lower appellate court is vitiated on account of non-consideration of Ext.4 which is material document.”

7. Learned counsel for the Appellant submitted that the Courts below have completely ignored the judgment passed in the earlier suit, i.e, M.S. No.3 of 1982 between the parties wherein the Defendant has been held liable to pay both holding tax as well as lighting tax for the earlier years. He further submitted that the Defendant having all the

opportunity to contest that suit that he is not liable to pay either holding or the lighting tax or both when has not availed the same in challenging that order, in the present suit, the Courts below ought not to have gone into that question as to the liability of the Defendant in paying the holding tax as demand on that head for prior period has been upheld. He further submitted that the Courts below have absolutely assigned no reason as to how the Defendant would wriggle out of the liability of paying and lighting tax, on the face of the order that had been passed in the earlier suit, which has been admitted in evidence and marked Ext.4. It was submitted that in view of the earlier order passed in M.S. No.3 of 1982, the Courts below were not permitted to look into the evidence as to if as asserted by the Defendant, there is no provision for lighting provision in the area where the house of the Defendant situated as the demand on that head has been upheld therein.

8. Learned counsel for the Respondent submitted that the Courts below have concurrently found that the lighting facilities in the area where the house of the Defendant is situated had not been provided and that being a concurrent finding of fact, in the absence of any compelling reason or perversity in appreciation of evidence; this Court should refrain from tinkering with the same. He further submitted that in view of such finding and in view of the provisions contained in section 133 and 133 Orissa Municipal Act, 1950, there is no scope for this Court to hold that the lighting tax under section 131(1)(d) of the said Act cannot be levied in the absence of service rendered by the Plaintiff-NAC. He submitted that the earlier suit being decreed ex parte; that order (Ext.4) has no bearing in the decision on that score.

9. Keeping in view the submissions made, I have carefully read the judgments passed by the Courts below.

10. The present suit has been filed by the Plaintiff-NAC for realization for arrear of holding tax and lighting tax from the Defendant in respect of his holding in Ward No.2 within the limit of the Notified Area Council. The courts below have held that the Defendant is liable to pay only the holding tax but not the lighting tax. The reason is that such facility/service as to lighting is not being provided by the Plaintiff in the area where the holding of the Defendant situates, the Plaintiff's demand on that score is bad and illegal. It is true to say that the provision of section 133 of the Orissa Municipal Act reads that such tax shall not be leviable until the lamps in the area have been lighted. But, here it is not in dispute that the Plaintiff had earlier filed a suit for recovery of such taxes, i.e, holding tax and lighting tax from the Defendant in respect of that very the holding in Ward No.2 within the limit of NAC for prior years and the same had been decreed holding the Defendant liable to pay both holding as well as the lighting tax. The Defendant has accepted the judgment and decree passed in the earlier suit. Therefore, said conclusion that the Defendant is liable to pay the lighting tax as the lighting facility has been provided in wholly binding on him and he is precluded from questioning that such service as to lighting in the area has not been provided and, therefore, he is not liable to pay the lighting tax. The Defendant having already been held liable to pay the lighting tax for earlier years; he cannot wriggle out of the liability for later years in asserting/claiming that no such service being not available he has no liability. Thus, the Courts below, in view of the order of the Civil Court under Ext.4 ought not to have entered into the arena of examining the evidence as to if in that area, such lighting facilities/services have been

provided by the Plaintiff or not as that had stood finally order earlier. The substantial question of law is thus answered in favour of the entitlement of the Plaintiff to recover the lighting tax from the Defendant as per the demand.

The suit filed by the Plaintiff-NAC is thus decreed holding the Plaintiff-NAC entitled to recover the claimed sum of Rs.2946.60 (Rupees Two Thousand Nine Hundred Forty-Six and Sixty Paise) towards the holding tax as well as the lighting tax for the periods 1982-83, 1983-84 and 1984-85 with pendentelite and future interest @ 6% per annum till realization.

11. In the result, the Appeal stands allowed. There shall, however, be no order as to cost.

(D. Dash),
Judge.

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