

MANU/BH/0028/1967

Equivalent Citation: AIR1967Pat96

**IN THE HIGH COURT OF PATNA  
FULL BENCH**

Misc. Judl. Case No. 1016 of 1964

Decided On: 31.08.1966

Appellants:**Kamini Devi and Ors.**  
**Vs.**

Respondent:**Chairman of Buxar Municipality and Ors.**

**Hon'ble Judges/Coram:**

*R.L. Narasimham , C.J., R.K. Choudhary and Kamla Sahai , JJ.*

**Counsels:**

*For Appellant/Petitioner/Plaintiff: Sudhir Chandra Ghosh and Shyama Prasad Mukherjee, Advs.*

*For Respondents/Defendant: K.B.N. Singh and Sankat Haran Singh, Advs.*

**JUDGMENT**

**R.L. Narasimham, C.J.**

**1 .** In this application under Articles 226 and 227 of the Constitution the main question for decision is whether the Chairman of Buxar Municipality had jurisdiction to mutate the name of Jasoda Devi, respondent No. 2, in place of Ramdhani Ram, deceased, in respect of holding No. 100 of Ward No. II of Buxar Municipality. The said Ramdhani Ram died on the 3rd November, 1963. Three persons, claiming to be his heirs, applied to the Chairman of the Municipality under Sub-section (2) of Section 108 of the Bihar and Orissa Municipal Act, 1922. (hereinafter referred to as "the Act") and wanted that their names should be mutated in respect of his holding. One of them is petitioner No. 1. Srimati Kamini Devi, who claims to be the widow of the said Ramdhani Ram. She applied to the Chairman on the 3rd December, 1963.

The second was Srimati Jasoda Devi, respondent No. 2, who, claiming to be the daughter of the said Ramdhani Ram, applied on the 4th December, 1963. The third claimant was Sarju Prasad Jaiswal, petitioner No. 2, who claimed to be the daughter's son of the said Ramdhani Ram, and his application for mutation was made on the 20th January, 1964. Apart from filing their respective claims to be the sole heirs of the said Ramdhani Ram, respondent No. 2, Jasoda Devi, filed a formal objection, asserting that petitioner No. 1, Kamini Devi, was not the legally wedded wife of Ramdhani Ram. The Chairman made some sort of local inspection and found that all the three claimants were occupying portions of the said holding, but after a summary inquiry he came to the following conclusion:

"The claim of Jasoda Devi, daughter of late Ramdhani Ram, appears to be on sound footing, and she being the legal heir of Ramdhani Ram and as such I order that the name of Jasoda Devi be mutated in place of Ramdhani Ram for holding No. 100 of Ward No. 2. The other two contestants may seek the remedy, if aggrieved, in competent Court of law."

This order was passed by the Chairman in purported exercise of the power conferred by Clause (b) of Sub-section (1) of Section 107 of the Act.

**2.** Mr. Ghosh for the petitioners urged that by virtue of Sub-section (3) of Section 107, read with Section 117 (2) of the Act the objection of Jasoda Devi should have been referred to the committee described in Sub-section (2) of Section 117, and that the Chairman had no jurisdiction to dispose of it himself. In support of his contention he relied on a Bench decision of this Court in Narsingh Prasad v. Chairman, Gaya Municipality (MANU/BH/0048/1958 : AIR 1958 Pat 114 ; 1058 BLJR 43). The correctness of this decision was doubled in a later unreported decision of this Court in Vidyawati Devi v. Chairman, Arrah Municipality, Misc. Judl. Case No. 351 of 1961. D/-19-10-1965 (Pat). This case, therefore, was referred to the Full Bench mainly for the purpose of obtaining an authoritative pronouncement about the correctness of the view taken by the Division Bench in (MANU/BH/0048/1958 : AIR 1958 Pat 1141: 1958 BLJR 43).

**3.** Sections 107, 116, 117, 118 and 119 are found in Chapter IV which deals with "Municipal Taxation". Sections 89 to 97 have been placed under the sub-heading "Assessment of Taxes," and a further classification has been made under the heading "Assessment of Taxes on Persons." Section 89 deals with the preparation of assessment list for the first time, showing the name of the holding, the name of the owner or occupier of the holding who is liable to assessment and other particulars. Sections 98 to 112 have been placed under the sub-heading "Assessment of Taxes on the Annual value of Holdings." They mainly deal with the principles for estimating the annual value of a holding (Section 98); preparation of valuation list (Section 101), determination of rate of taxes on holdings (Section 104) and the preparation of assessment list (Section 105)

By virtue of Sub-section (1) of Section 100, holding tax is payable by the owner of the holding, whereas by virtue of Sub-section (2) of that section latrine tax is payable by the person in actual occupation. An assessment list prepared under Section 105 contains full description of the holding, its annual value, the name of the owner and occupier, the amount of tax payable, and other particulars. An assessment list originally prepared is revisable ordinarily once in every five years (see Section 106). Sections 113 to 119 have been classified under the sub-heading "General Provisions relating to Assessment" They provide for the appointment of an assessor (Section 113), publication of notice of assessment (Section 115), right to apply for review by a person dissatisfied with assessment or valuation (Section 116), hearing and determination of such applications by a committee (Section 117). Section 116, Sub-section (1), which is important for the present discussion, may be quoted in full-

"116 (1) Any person who is dissatisfied with the amount assessed upon him or with the valuation or assessment of any holding, or who disputes his occupation of any holding or his liability to be assessed, may apply to the commissioners to review the amount of assessment or valuation, or to exempt him from the assessment or tax."

It will be noticed that this application for review can be made only by a person who is dissatisfied (1) with the amount assessed on him, or (2) with the valuation or assessment of any holding or (3) who disputes his occupation or his liability to be assessed; and the scope of the review is further restricted to (a) the amount of assessment, or (b) the amount of valuation, or (c) the exemption from the assessment or tax. Thus the language of Section 116 (1) makes it abundantly clear

that the scope of the section is restricted only to those cases where the quantum of assessment of valuation or the right of a person to be exempted from the assessment or tax is under challenge. It cannot obviously apply to a case where a person wants to be merely substituted in place of a deceased assessee on the ground that the ownership of the holding has passed to him either by succession or valid transfer or otherwise, without in any way either challenging the quantum of assessment or valuation or claiming any right of exemption from Assessment or tax of the four sub-sections of Section 117. Sub-sections (1) and (2) are material for our discussion, the other two sub-sections being merely ancillary.

But both Sub-sections (1) and (2) of Section 117 contain the opening words "Application presented under the last preceding section", thereby making it clear that only those applications which deal with the matter described in Section 116 come within the scope of those two sub-sections and should be referred to the committees mentioned therein. Sub-section (1) deals with an application relating to assessment and Sub-section (2) to an application relating to a matter other than assessment. But both these sub-sections are subject to the limitations mentioned in Section 116. Sections 118 and 119 deal with limitation and finality of assessments and may be taken as consequential provisions.

**4.** Section 107 is a special section which deals with amendments and alterations to the assessment list in the interim period between the original general assessment and the revision of the same after the expiry of the statutory period as referred to in Section 106. This is made clear by the opening words of Sub-section (1) of Section 107, which are as follows: "The commissioners may from time to time alter or amend the assessment list in any of the following ways:--" There are eight clauses under this sub-section and Clause (b), with which we are primarily concerned here, is as follows:

"(b) by substituting therein for the name of the owner or occupier of any holding the name of any other person who has succeeded by transfer or otherwise to the ownership or occupation of the holding;"

The other clauses of this sub-section deal with liability to taxation or alteration in the valuation or assessment of a holding [See Clauses (a), (c), (d), (dd), (e) and (f)]. Clause (g) provides for correction of clerical or arithmetical errors. Thus the only clause in Sub-section (1) of Section 107 which has nothing to do either with the alteration of the quantum of assessment or of the valuation or the claiming of exemption from such assessment or tax is Clause (b), which deals solely with the mutation for the name of the assessee, the name either of his succeeding heir or of his valid transferee. Sub-section (2) says that the commissioners shall give at least one month's notice to any person interested, of any alteration which they propose to make under Clauses (a), (b), (c), (d) or (dd) of Sub-section (1), and of the date on which the alteration will be made. Clauses (e), (f) and (g) have been omitted from this sub-section mainly because no person can be interested in objecting to action being taken under those three clauses. Sub-sections (3) & (4) may now be quoted in full as their interpretation is of great importance for disposal of this petition:

"(3) The provisions of Sections 116 to 119 applicable to objections shall, so far as may be, apply to any objection made in pursuance of a notice issued under Sub-section (2) and to any application made under Clause (f) of Sub-section (1).

(4) Every alteration made under Sub-section (1) shall be signed by the Chairman and, subject to the result of an application under Section 116, shall take effect from the date on which the next instalment falls due, but the commissioners by such alteration shall not be deemed to have made a new or devised assessment list".

Sub-section (3) says that the provisions of Sections 116 to 119 applicable to objections shall, so far as may be, apply (1) to any objection made in pursuance of a notice under Sub-section (2), and (2) to any application made under Clause (f) of Sub-section (1). Clause (f) is separately treated because Sub-section (2) does not provide for giving of notice or inviting objections in respect of action proposed to be taken under that clause. But both in respect of objections made in pursuance of Sub-section (2) [viz. Clauses (a), (b), (c), (d) and (dd)] and in respect of applications made under Clause (f) the provisions of Sections 116 to 119 are made applicable "so far as may be". By using the words "so far as may be" the Legislature made it clear that the provisions of Sections 116 to 119 should not be mechanically applied in disposing of objections under Sub-section (2) of Section 107 but that they should be applied only in respect of those objections to which they would be, in terms, applicable: otherwise full effect will not be given to the words "so far as may be" which are equivalent to the Latin expression "mutatis mutandis" and mean "so far as may be applicable". The reason for putting these words is obvious.

I have already shown that Section 116 is limited to objections regarding the quantum of assessment or valuation or claim of exemption from assessment. This restricted scope of Section 116 is also incorporated in Sub-sections (1) and (2) of Section 117. Hence those objections under Sub-section (2) of Section 107 which relate either to the quantum of assessment (either reduction or increase) or valuation, or which relate to exemption from assessment or tax, alone should be dealt with under Sections 116 and 117. Thus Clauses (a), (c), (d), (dd), (e) and (f) of Sub-section (1) of Section 107 may, by virtue of Sub-section (3) of that section, come within the scope of Sections 116 and 117, and for the disposal of those objections or applications the committee contemplated by Sub-sections (1) and (2) of Section 117 alone will have jurisdiction.

But a mere claim for mutation which is objected to by a rival claimant will not come within the scope of Section 116, and hence Sections 116 and 117 will not be applicable to such an objection. It must be dealt with by the authority who is empowered by Sub-section (1) of Section 107 to make alterations and amendment to the assessment list, namely, "the commissioners". Thus on a construction of the various clauses of Sub-section (1) of Section 107 and Sub-sections (2) and (3) of that section and Sections 116 and 117 it must be held that any, objection to mere mutation of the name of the owner of a holding, either on the ground of inheritance or transfer or otherwise need not be referred to the committee described in Section 117 and can be disposed of by the commissioners themselves. Mr. Ghosh for the petitioners, however, urged that the words "so far as may be" should be construed as "so far as may be consistent" and that if any portion of the provisions of Sections 116 to 119 is found to be inapplicable in respect of objections made in pursuance of a notice issued under Sub-section (2) of Section 107, it will be proper for the Court to ignore that portion which appear to be inconsistent with the subject matter of the said objection and apply only the residuary part.

He fairly conceded that so far as Section 116 was concerned, this principle cannot obviously apply because it will not be possible to ignore any part of Section 116 with

a view to make the residuary part applicable to an objection under Clause (b) of Sub-section (1) of Section 107. But he urged that Sub-section (2) of Section 117 may be made applicable to such an objection by ignoring the opening words of that sub-section, namely, "All applications presented under the last preceding section. According to him, therefore, if these words in Sub-section (2) of Section 117 are ignored completely, there will be no difficulty in applying the residuary part of that sub-section to an objection to the mere mutation of the name of the assessee permitted by Clause (b) of Sub-section (1) of Section 107, and that such an objection should, therefore, be referred to a committee described in Sub-section (2) of Section 117. This rule of interpretation is not supported by any authority. The words "so far as may be" and the Latin equivalent "mutatis mutandis" only means, "so far as may be applicable." They can never mean "so far as may be consistent" so as to authorise a Court to ignore certain words in a statutory provision so as to make it consistent with another statutory provision.

No rule of interpretation can permit of such excision from a statutory provision. Moreover, Sub-section (4) of Section 107 makes it clear that the main provision to be applied is Section 116, and Sections 117, 118 and 119 will apply only subject to the limitations contained in Section 116. This is apparent from the language of Sub-section (4) of Section 107, which is to the effect that alteration made under Sub-section (1) of Section 107 shall take effect "subject to the result of an application under Section 116". This sub-section does not say that such alteration shall take effect subject to the result of the decision of a committee under Section 117. It is true that the procedure for dealing with an application under Section 116 is contained in Section 117, but unless the subject-matter of the objection comes within the scope of Section 116 it will not be proper to apply the provisions of Section 117. Section 117 does not stand in isolation but must be construed along with Section 116 for the reasons already mentioned.

**5.** The only authority mentioned by Mr. Ghosh in support of his contention, namely, *C. A Abraham v. Income Tax Officer, Kottayam* MANU/SC/0124/1960 : AIR 1961 SC 609, supports the opposite view. There also the words "so far as may he" occurring in Section 44 of the Income Tax Act came up for construction The material portion of that section was as follows:

"Where by business.. . .carried on by a firm ..... has been discontinued ..... . every person who was at the time of such discontinuance. .... . a partner of such firm ..... .shall in respect of the income, profits and gain of the firm be jointly and severally liable to assessment under chapter IV for the amount of tax payable and all the provisions of chapter IV shall, so far as may be apply to any such assessment."

Their Lordships construed the words "so Car as may be" as follows:

"The use of the expression 'so far as may be' in the last clause of Section 44 also does not restrict the application of the provisions of chapter IV only to those which provide for computation of income. By the use of the expression 'so far as may be' it is merely intended to enact that the provisions in chapter IV which from their nature have no application to firms will not apply thereto by virtue of Section 44."

Their Lordships did not say that it any portion of the provisions of chapter IV was inconsistent with the provisions dealing with assessment of a firm of which business

is discontinued, the inconsistency may be removed by ignoring the inconsistent portion and applying only the residuary part of chapter IV. They made it clear that what was intended by the expression "so far as may be" was that those provisions of chapter IV which from their nature have no application to firms will not apply to them by virtue of Section 44. Here also those provisions of Sections 116 to 119 of the Act which from their very nature cannot have any application to an objection raised to an alteration under any of the clauses of Sub-section (1) of Section 107 will not apply to those clauses. Thus on a construction of all the relevant provisions the following conclusions emerge:

(1) Where an application is made to amend or alter the assessment list under Sub-section (1) of Section 107 and no objection is raised by any person interested in the amendment or alteration under Clauses (a), (b), (c), (d) or (dd), the commissioners may make the necessary amendment or alteration themselves.

(2) If an objection is raised under any of the aforesaid clauses, it must be further examined whether the provisions of Sections 116 and 117 would by their very nature apply to those objections, that is to say, those objections which relate to quantum of assessment or valuation or claim for exemption from liability to tax, such as those described in Clauses (a), (c), (d) or (dd), should be disposed of in the manner indicated in Section 117, read with Section 116, by the appointment of the committees, and cannot be disposed of by the commissioners themselves. But objections to alterations to be made under Clause (b) of Section 107 (1) can be disposed of by the commissioners themselves and need not be referred to the committee described in Section 117, because in respect of those objections Section 116 has no application.

(3) An application made under Clause (f) of Sub-section (1) of Section 107, however, can be disposed of only under the provisions of Sections 116 and 117 and in respect of such an application the question of anyone raising an objection does not arise because Sub-section (2) of Section 107 has no reference to Clause (f). But even in the absence of any objection such an application can be disposed of only by the committee constituted under Section 117.

**6.** The decision of Division Bench of this Court in (MANU/BH/0048/1958 : AIR 1958 Pat 114 ; 1958 BLJR 48) in so far as it requires that a mere mutation application under Clause (b) of Sub-section (1) of Section 107 for substitution of the heir or transferee in place of the deceased assessee in the assessment list should be referred to a committee constituted under Section 117, is, speaking with great respect, incorrect and must be overruled. In that decision the significance of the words "so far as may be" occurring in sub section (3) of Section 107 was not noticed.

**7.** There can be no doubt that by virtue of the first part of Section 24 of the Act, the Chairman can exercise all the powers vested by the Act in the commissioners, the only restriction to the exercise of the power being that mentioned in the proviso to that section. Hence in the absence of any resolution to the contrary by the commissioners at a meeting, the Chairman can exercise all the powers of a commissioner under Section 107. Hence the action of the Chairman of the Buxar Municipality in directing mutation of the name of respondent No. 2 is within his jurisdiction.

**8.** Lastly it was contended by Mr. Ghosh that in view of the finding of the Chairman to the effect that all the three alleged heirs of Ramdhani Ram, namely, petitioner No. 1, petitioner No. 2 and respondent No. 2, were in joint occupation of the holding in question, he had no jurisdiction to direct the mutation of the name of respondent No. 2 only. This argument also is not sustainable. I have already referred to two sub-sections of Section 100. Sub-section (1) says that tax assessed on the annual value of the holding is payable only by the owner of the holding, and Sub-section (2) of that section says that latrine tax is payable by the persons in actual occupation of the holding. If the assessment list had dealt only with the person liable to pay latrine tax, the finding of the Chairman as to who was in actual occupation of the holding would be relevant.

But here it is not denied that the assessment list dealt with the liability to pay other taxes which were based on the annual value of the holding. These are payable only by the owner, and when the previous owner is dead, the Chairman, by some sort of summary inquiry, has to ascertain who in his opinion is the succeeding owner, either by inheritance or otherwise, to whom the title of the deceased is transferred. The last portion of his finding quoted earlier shows that he was of the view that the claim of the daughter, Jasoda Devi, respondent No. 2, was on a sound footing.

Hence he directed mutation of her name. The question as to who is in occupation of the holding is not material for the purposes of this case.

**9.** For these reasons the application is dismissed with costs. Hearing fee Rs. 200 payable jointly by petitioners Nos. 1 and 2 to respondent No. 2.

**R.K. Choudhary, J.**

**10.** I agree.

**Kamla Sahai, J.**

**11.** I agree.

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