A SHREE BHAGWATI HOSIERY MILLS PVT. LTD. AND ANR.

v.

BHAGALPUR MUNICIPAL CORPN. AND ANR.

[M. N. VENKATACHALIAH AND N. M. KASLIWAL, JJ.]

B DECEMBER 19, 1991

Bihar and Orissa Municipal Act, 1922—Section 107—Letting Value—Enhancement—Effective from 1.7.1980.

The appellant No. 1 in C.A.No. 5036 of 1991 owned three holdings,
C **which were parti lands. The Municipal Corporation fixed the annual letting value of the holdings in the general revisional assessment of 1976-77 at Rs. 2 per each holding. The valuations were increased from the fourth quarter of 1979-80 by the Municipal Corporation from Rs. 2. to Rs. 10. each. During 1980-81 the three holdings were merged into one holding.**

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The appellant in C.A.No. 5037 of 1991 owned two holdings which were also parti lands and the annual letting value of the two holdings was fixed at the general revisional assessment of 1976-77 at Rs. 158 and Rs. 203, respectively.

E **Both the appellants constructed godowns separately on their holdings in the year 1978 and they were rented to the Food Corporation. Under the agreements the rents were fixed at the rate of 50 paise per sq.feet per month on floor measurement. The rate was inclusive of service charges and the municipal taxes as applicable from time to time. The Food Corporation of India occupied the godowns on 10.5.1978.**

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On a report submitted by an employee of the Municipality on 4.3.1980 regarding the godowns constructed by the appellants and let out to Food Corporation of India, a notice was issued on 18.3.1980 under Section 107(2) of the Municipal Act to the appellants as well as to the Food Corporation of India.

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The appellants did not appear nor filed any objection. The Food Corporation of India sent a letter dated 9.4.1980 in which the taking of godowns on rent was admitted. As no objection was filed by the plaintiffs, the Municipal Corporation passed an order of assessment on 22.4.1980 calculating the annual rental value on the basis of the agreement between
H **the Food Corporation of India and the appellants, so far as the order of**

assessment dated 22.4.1980 was concerned, it had become final and the appellants had no right to challenge the same. A

On 23.5.1980 the Municipal Corporation served demand notices on the appellants for payment of Rs. 5,43,627 in resect of the three holdings of the appellant in CA No. 5036 of 1991 and for payment of Rs. 3,64,530.36 paise in respect of the two holdings of the appellants in CA No. 5037 of B 1991, as holding taxes for the period of second quarter 1978-79 to first quarter of 1980-81, which was determined on the basis of monthly rents paid by the Food Corporation of India to the appellants from 10.5.1978.

The appellants challenged the demand notices of the Municipal Corporation by filing a suit in the Court of Subordinate Judge. C

The Trial Court decreed the suit and directed that the plaintiffs were not liable to pay the tax contained in the demand notices and also restrained the defendants permanently from realising any municipal tax other than that fixed in the general revision of assessment 1976-77. D

The Municipal Corporation filed appeals challenging the Judgment of the Trial Court before the First Additional District Judge.

Partly allowing the appeals, the Appellate Court held that the municipality had authority to make reassessment and revaluation of the holdings and that there was no illegality in the revisional assessment done E u/ss. 98(1) and 107(1)(c)(d) of the Act. But it was also held that the municipality did not act in conformity with law in issuing the demand notice u/s. 117 and the Municipal Corporation was directed to afford reasonable opportunity to the plaintiffs of being heard on the objections to the assessment and set aside the grant of injunction. F

The plaintiffs aggrieved against the judgment of the First Appellate Court filed second appeals in the High Court. The High Court holding that the valuation as fixed by the Municipal Corporation was neither arbitrary nor excessive as the agreement between the plaintiffs and the Food Corporation of India indicated that the municipal tax, the latrine tax and G water tax were included in the rental of the holdings, dismissed the appeals, against which these appeals were filed by special leave by the plaintiffs.

The appellants contended that under the scheme of the Municipal Act as provided under Section 107(4) the alterations effected by the Mu- H

A nicipal Corporation could be effective from the date on which the next instalment falls due, i.e., from 1.7.1980 and not from 1.7.1978 that the Municipal Corporation had appealed against the judgment of the trial court and the Additional District Judge had allowed the appeals in part only; that the Municipal Corporation did not file any appeal or cross-objection in the High Court against the judgment of the lower appellate B Court and the plaintiffs alone had challenged the judgment and decree of the First Appellate Court by filing second appeal in the High Court; that the High Court had no jurisdiction to grant further relief to the Municipal Corporation, which was not granted even by the lower Appellate Court; that the High Court in the second appeal set aside the order passed by the lower Appellate Court directing the Municipal Authorities to dispose of C the objections of the plaintiffs, as contemplated under Section 117 of the Act and thereafter to issue demand notice; and that the High Court committed a serious error by making such direction which was absolutely uncalled for.

Partly allowing the appeals of the appellants-plaintiffs, this Court,

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HELD: 1. The enhancement of the letting value was valid on account of the value of the holding having been increased by construction of godowns and the same had become final as no objections were filed under Section 107(2) of the Municipal Act. [513 F]

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2. Sub-section (4) of Section 107 of the Municipal Act provides that any alteration made under sub-section (1) shall take effect from the date of next instalment falling due i.e. from 1.7.1980 as the order altering the value of the holding was done by order dt. 22.4.80 in the present case. [513 G]

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3. For the municipal tax of the earlier periods the appellants-plaintiffs had no liability to pay tax on the enhanced valuation. The Municipal Corporation shall be entitled to realise the tax at the enhanced valuation on and from 1.7.1980. [514 E-F, G]

G CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 5036-37 of 1991.

From the Judgment and Order dated 18.7.90 of the Patna High Court in S.A.No. 164/1988 and S.A. No. 165/1988.

Dr. Shankar Ghosh, Ms. Malini Poduval, K.K.Rai and B.K.Jha for the Appellants.

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S.K.Dholakia, Ms. Pankaj Bala Verma, D.B.Vohra and Gopal Bhushan Prasad for the Respondents. A

The Judgment of the Court was delivered by

KASLIWAL, J. Special leave granted.

B

Both these appeals are directed against the common Judgment of Patna High Court dated 18.7.1990 passed in Second Appeal No. 164 of 1988 and Second Appeal No. 165 of 1988. The appellant Shree Bhagwati Hosiery Mills Pvt. Ltd., being owner of Municipal holding Nos. 69, 70 and 71 situated on the Central Jail Road in Ward No. 9 of Bhagalpur Municipality filed title suit No. 102 of 1980 on the allegations that all the three holdings were merely parti C lands and the annual letting value of all the three holdings fixed in the general revisional assessment of 1976-77 were as under :-

Holding No. 69 Rs. 2.
Holding No. 70 Rs. 2.
Holding No. 71 Rs. 2. D

The aforesaid valuations were increased from the fourth quarter of 1979-80 by the Bhagalpur Municipality from Rs.2 to Rs. 10 each. During 1980-81 the above-mentioned three holdings were merged into one holding as holding No. 69 (new).

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The appellants Shree Lal Kejriwal and others owned holding Nos.66 and 68 situated on the same Central Jail Road in Ward No.9 of Bhagalpur Municipality. These two holdings were also parti lands and their annual letting value assessed at the general revisional assessment of 1976-77 were as under:-

F

Holding No.66 Rs.158.
Holding No.68 Rs.203.

He filed title suit No.103 of 1980.

Both the appellants under agreement with the Food Corporation of India G constructed godowns separately on their aforesaid holdings in the year 1978. Rents of the godowns payable by the Food Corporation of India under the agreements were fixed at the rate of 50 paise per sq. feet per month on floor measurement. The rate was inclusive of service charges and the municipal taxes as applicable from time to time. The Food Corporation of India occupied the godowns on 10-5-1978. H

A The municipality on 23.5.1980 served a letter along with demand notice for payment of Rs. 5,43,627 in respect of holding Nos. 69, 70 and 71 and for payment of Rs. 3,64,530.36 paise in respect of holding Nos. 66 and 68 as tax on holdings for the period of second quarter 1978-79 to first quarter of 1980-81. This tax on holdings was demanded on the annual valuation of the holding determined on the basis of monthly rental paid by the Food Corporation of B India to the appellants from 10.5.1978 onwards.

The appellants challenged the aforesaid demand by filing a suit in the Court of subordinate Judge, Bhagalpur. The Trial Court decreed the suit and directed that the plaintiffs were not liable to pay the tax contained in the demand notice issued on wrong and illegal assessment and valuation. The Trial C Court also restrained the defendants permanently from realising any municipal tax other than on the basis of the valuation fixed in the general revision of assessment 1976-77 without complying with the provisions of Section 107 of the Bihar and Orissa Municipal Act, 1922 (hereinafter referred to as the 'Municipal Act') or till next general revisional assessment. The Bhagalpur Municipal Corporation filed appeals challenging the Judgment of the Trial D Court. First Additional District Judge, Bhagalpur held that the municipality had full right and authority to make reassessment and revaluation of the holdings in question. It was also held that due notice as contemplated under Section 107(2) of the Municipal Act were served upon the plaintiffs and there was no irregularity or lack of jurisdiction or illegality in the revisional assessment of the holdings done under Section 98(1) and under Sec. 107 (1)(c)(d) of the E Municipal Act. However, Learned Additional District Judge further held that the municipality did not act in conformity with law and judicial procedure in issuing demand notice without compliance of the provisions contained in Section 117 of the Municipal Act i.e. without deciding the objections made by the plaintiffs against the assessment and valuation in accordance with the F provisions of the Municipal Act. Learned Additional District Judge, therefore, directed that the Municipal Corporation shall afford reasonable opportunity to the plaintiffs of being heard on the objections to the assessment as contemplated under Section 117 of the Municipal Act and shall proceed thereafter to demand the taxes from the plaintiffs. The additional District Judge further directed that in view of the direction mentioned above the grant of G injunction was unwarranted and of no consequence and as such the order of the learned trial court granting injunction was set aside. The appeals were allowed in part in the manner indicated above.

The plaintiffs aggrieved against the judgment of the First Appellate Court filed Second appeal in the High Court. The High Court held that even H according to the findings of the lower Appellate Court, the tax was levied on

the basis of the rental of the holdings. The High Court further observed that the valuation as fixed by the municipality was neither arbitrary nor excessive. The agreement between the plaintiffs and the Food Corporation of India clearly indicated that the municipal tax, the latrine tax and water tax were all being realised by the plaintiffs from the Food Corporation of India. These taxes were included in the rental of the holdings. The High Court expressed its ability to appreciate as to what remained to be considered and decided by the Committee under the provisions of Sec. 117 of the Municipal Act. The High Court further found that it was not a case in which the objections were not disposed of at all, as the learned Appellate Court seems to have thought. It was another question as to whether time should have been granted to the plaintiffs or not. But all the same, their objections had been disposed of. Even if the plaintiffs had been allowed some time to argue their case, it appears that the result would have been the same. The entire assessment which had been challenged was based on the plaintiff's own admission in the agreement between the plaintiffs and the Food Corporation of India. The High Court found that the plaintiffs had been realising the municipal tax. the latrine tax and the water tax etc., from the Food Corporation of India along with the rent since 1978 when the agreement was arrived at and had pocketed the said amount. The High Court thus dismissed all the appeals.

A B C D

It may be made clear at this stage that though one Devki Nandan Kejriwal who was the owner of holdings Nos. 65 and 67 had also filed the title suit No.104 of 1980 and Second Appeal No.166 of 1988 and the High Court had dismissed all the three Second Appeal Nos. 164, 165 and 166 of 1988 by the impugned Judgment dated 18.7.1990, but only Shree Bhagwati Hosiery Mills Pvt. Ltd., and Shree Lal Kejriwal and others have come in appeal before us. So far as Deoki Nandan Kejriwal who had filed second Appeal No. 166 of 1988 in the High Court has not challenged the Judgment of the High Court and the same has become final against him.

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In order to appreciate the arguments advanced on behalf of the appellants, it would be necessary to mention some additional facts which are clear from the record. The appellants were owners of parti lands and had constructed godowns on the plots of land and rented out the same to the Food Corporation of India and gave possession on 10.5.78. The monthly rentals were fixed in pursuance to agreements between the appellants and Food Corporation of India and the rents were inclusive of any taxes to be charged by the municipality. The municipality was entitled to impose tax on holdings situated within the municipality assessed on their annual value under Section 82(1)(b) of the Municipal Act. Section 98(1) of the Municipal Act defined "Annual value of holdings" as follows:-

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A "The annual value of a holding shall be deemed to be the gross annual rental at which the holding may reasonably be expected to let".

Section 107 provided for the amendment and duration of list. The provisions of Section 107 relevant for our purpose read as under:-

B

Section 107-*AMENDMENT AND DURATION OF LIST:-*

(1) The Commissioners may from time to time alter or amend the assessment list in any of the following ways:-

C (a) .....

(b) .....

(c) by enhancing the valuation of or assessment on any holding which has been incorrectly valued or assessed by reason of
D fraud, misrepresentation or mistake;

(d) by revaluing or re-assessing any holding that value of which has been increased by additions or alterations to buildings;

E (dd) .....

(e) .....

(f) .....

F (g) .....

(2) The Commissioners shall give at lease one month's notice to any person interested of any alteration which they purpose to make under Clause (a), (b), (c), (d) or (dd), of sub-section (1), and of the date on which the alteration will be made.

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(3) The provisions of Sections 116 to 119 applicable to objection 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).

H (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 revised assessment list. A

On a report submitted by M.A. Rehman an employee of the Municipality on 4.3.1980 regarding the godowns constructed by the appellants and let out to Food Corporation of India, a notice was issued on 18.3.1980 under Section 107(2) of the Municipal Act to the appellants as well as to the Food Corporation of India. The said notice was validly served upon the plaintiff appellants but inspite of that they did not appear nor filed any objection. The Food Corporation of India sent a letter dated 9.4.80 in which the taking of godowns on rent was admitted. As no objection was filed by the plaintiffs, the Municipal Corporation passed on order of assessment on 22.4.1980 calculating the annual rental value on the basis of the agreement between the Food Corporation of India and the appellants. It is thus clear that so far as the order of assessment dated 22.4.1980 is concerned, it has become final and the appellants have no right to challenge the same. Dr. Shankar Ghosh, Learned Senior Advocate appearing on behalf of the appellants was unable to make any submission showing any illegality in the assessment order dated 22.4.1980. B C D

The contention which now remains to be considered is whether the assessment at enhanced rate of tax can have any retrospective effect. It has been contended on behalf of the appellants that under the scheme of the Municipal Act as provided under section 107(4) the alterations effected by the municipality could be effective from the date on which the next instalment falls due i.e. from 1.7.1980 and not from 1.7.1978. E

We find force in the above contention. We have already held that the enhancement was valid on account of the value of the holding having been increased by construction of godowns and the same had become final as no objections were filed under Section 107(2) of the Municipal Act. However, sub-section (4) of Section 107 of the Municipal Act clearly provides that any alteration made under sub-section (1) shall take effect from the date on which the next instalment falls due. In the present case the order altering the value of the holding was done by order dated 22.4.1980 and as such, the order shall take effect from the date of next instalment falling due from 1.7.1980. F G

Learned counsel for the appellants also contended that the Municipal Corporation had gone in appeal against the judgment of the trial court and the learned Additional District Judge had allowed the appeals in part only. Learned Additional District Judge had arrived at the conclusion that the demand of taxes

A from the plaintiffs through demand notice was not legal as the assessment was not final within the meaning of Section 117(4) of the Municipal Act since it was without the compliance of the statutory provisions of Section 117 of the Act. The First Appellate Court as such had directed that the appellants shall afford reasonable opportunity to the plaintiffs respondents of being heard on the objection to the assessment as contemplated under Section 117 of the Bihar B and Orissa Municipal Act and shall proceed thereafter to demand the taxes from the respondents. it was contended that the Municipal Corporation did not file any appeal or cross objection in the High Court against the aforesaid Judgment, and plaintiffs alone had challenged the Judgment and decree of the First Appellate Court by filing second appeal in the High Court. It has thus been argued that the High Court had no jurisdiction to grant further relief to the C Municipal Corporation, which was not granted even by the lower Appellate Court. The High Court in the second appeal filed by the plaintiffs set aside the order passed by the lower Appellate Court directing the Municipal Authorities to dispose of the objections of the plaintiffs, as contemplated under Section 117 of the Act and thereafter to issue demand notice. The High Court thus committed a serious error in holding that in the special facts and circumstances D this direction appeared to be absolutely uncalled for and the same will serve no purpose.

There appears to be some force in the above contention raised on behalf of the appellants, but in view of the fact that the matter relates, in respect to the liability of the plaintiffs for the Municipal Tax of the years 1978 to 1980, to E which more than a decade has already elapsed as such we had ourselves given full opportunity to the learned counsel for the appellants to argue on the merits of the objections. The only contention raised on behalf of the appellants was that they had no liability to pay tax prior to 1.7.1980. We have already held this question in favour of the appellants. It is not in the interest of justice now to F remand the matter as directed by the First Appellate Court.

In view of the circumstances mentioned above, we allow the appeals in part and direct that the Municipal Corporation Bhagalpur shall be entitled to realise the tax at the enhanced valuation on and from 1.7.1980. With this modification the Judgment of the High Court is maintained. In the facts and G circumstances of the case, the parties are directed to bear their own costs.

V.P.R. Appeals allowed.