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**Court** : Patna

**Decided On :** Jan-06-2000

**Judge** : N. Pandey and S.K. Singh, JJ.

**Appeal No.** : C.W.J.C. No. 10530 of 1996

**Appellant** : Rai Vimal Krishna and ors.

**Respondent** : State of Bihar and ors.

**Judgement** :

**Shiva Kirti Singh, J.**

1. The writ petitioners in this case are residents of town of Patna whose family, as claimed by them commands respect and owns substantial property in the shape of different holdings of Patna Municipal Corporation hereinafter referred to as the Corporation' situated in the new circle. The details of their various holdings is mentioned in a chart (Annexure-1). They appear to be aggrieved by imposition and recovery of Municipal tax at new rates on account of new assessment rates of 1993 (Annexure 17). The aforesaid rules entitled as the Assessment of Annual Rental Value of Holdings Rules, 1993 (hereinafter referred to as the Rules of 1993), were notified on 12th August. 1993 and are effective from 13.8.1993.

2. The validity of the Rules of 1993 is not in challenge in this writ application and it was admitted at Bar that the validity of these rules have been upheld by the

Supreme Court. A perusal of the 1993 Rules issued in exercise of powers conferred by Section 227 read with Sub-sections (i) & (ii) of Section 130 of Patna Municipal Corporation Act, 1951 (hereinafter referred to as the Act) shows that the rules classify holdings in the Corporation area on the basis of situation of the holding, use of the buildings and type of constructions. It also provides methods of calculation of carpet area for commutation of Annual Rental Value of a Holding. The annual rental value is provided as a multiple of the carpet area and the rental value, the rates whereof is also fixed under the 1993 Rules by the Corporation with the prior approval of the State Government having regard to the situation, use and type of constructions of the holdings. The rules also prescribe the rate of tax at which the municipal tax shall be assessed-on the basis of annual rental value and the Corporation has been given the power to revise the rate of tax from time to time with prior approval of the State Government.

3. The main grievances of the petitioners in this writ application are tax two fold. Firstly, that the provisions of Sections 133, 134 and 137 of the Act have not been followed by the Corporation in the matter of preparation of valuation list and assessment list and secondly that the publication of notice of assessment has not been done in the manner prescribed by Section 149(i) of the Act and an off-shoot of the second grievance is that even the newspaper publication of notice of assessment under Section 149 of the Act is not uniform in the sense that different notices for different areas of Corporation have been published on different dates and for small area, allegedly of 17 circles out of more than 270 circles, still remains to be notified under Section 149 of the Act. Thus, a grievance has also been made that the notice of assessment published in the newspapers vide Annexures-5 to 7 should not have been on different dates because liability of new rates of municipal taxes, as per Section 138(2) of the Act would be effective from the date on which the list takes effect in the Corporation and that would be the date of publication of notice of assessment under Section 149 of the Act. According to the petitioners, such action of the Corporation violates Articles 14 of the Constitution of India by imposing new rates of taxes from different dates Upon similar holding situated in different areas' of the Corporation.

4. For the purposes of appreciating the question involved in this case, it is useful to quote Section 149 of the Act which is as follows:

(1) When the assessment list mentioned in Section 13 has been prepared or revised, the Chief Executive Officer shall sign the same, and shall give public notice, by beat of drum and by placards posted in conspicuous places throughout Patna, or when any part of Patna has been assessed, then in that part of Patna, where the said list may be inspected.

(2) The Chief Executive Officer shall also in all cases in which any property is for the first time assessed or the assessment is increased give notice thereof to the owner of the property.

5. It is relevant to note further that after publication of notice of assessment under Section 149 of the Act, an aggrieved person has been given right to file application under Section 150 of the Act for reviewing the amount of assessment, or valuation, or exempting from the assessment of tax. All such applications containing objections to the notice of assessment are required by Section 150(2) of the Act to be made in writing within 30 days after the publication of the notice in Sub-section (1) of Section 149 or after receipt of the notice referred to in Sub-section (2) of that section, if such notice is received after the publication of notice under Sub-section (1) of Section 149. Thus, Section 149 through Sub-section (1) provides for public notice as well as personal notice to the owner of the property concerned through Sub-section (2) of the Act.

6. A peculiar feature noticeable in this writ application is that the petitioners have not pleaded lack of personal notice under Sub-section (2) of Section 149 of the Act and it is an admitted position that the petitioners have filed their objections under Section 150 of the Act before the competent authority and the same is said to be pending.

7. So far as the grievance of the petitioners regarding preparation of valuation list as per Section 133 and preparation of assessment list as per Section 137 of the Act is concerned, it is not in dispute that those steps are now required to be taken as per provisions laid down in the 1993 Rules and such steps have been taken by

the Corporation accordingly. Thus, there is no substance in the grievance of the petitioners in this regard.

8. The real controversy in this case is whether the provisions of publication of notice of assessment by beat of drum and by placards as required by Sub-section (1) of Section 149 of the Act is mandatory or it is merely directory and the Corporation, in good faith can resort to make such publication by means of public notice in newspapers. The other consideration would be as to what shall be the effect in this case of non-compliance with Section 149(1) of the Act. So far as the facts on this issue are concerned, there does not appear any dispute that the corporation has in this case, instead of making publication of notice of assessment under Sub-section (1) of Section 149 of the Act by beat of drum and placards, made publication by public notice published in local newspapers.

9. On the aforesaid issue it was strongly urged on behalf of the petitioner by placing reliance on various judgments of the apex Court reported in : [1965]2SCR653 Khurai Municipality v. Kamal Kumar, : [1969]3SCR341 State of Gujarat v. Shantilal Mangal Das, : [1985]3SCR995 Collector (District Magistrate) Allahabad v. Rajaram, : AIR 1989 SC630 Madan and Company v. Wazir Jaibir Chand and 1994 (1) PLJR (SC) 9 Shyam Nandan Prasad v. State of Bihar, that when the Act prescribes a particular mode for notice then notice must be given in that manner and no other mode of notice can be accepted as valid.

10. In support of the same proposition, reliance was also placed upon Bench decisions of this Court reported in A.I.R. 1943 Patna 76 Abdul Kadar v. Puri Municipality and : AIR1990 Pat224 Mansoor Ali v. Azizul Rahman.

11. The aforesaid judgments of the Supreme Court and of this Court clearly support the contention of petitioners and hence, it must be held that the manner of publication of public notice provided by Sub-section (i) of Section 149 of the Act is mandatory and a public notice under this subsection must be given by beat of drum and by placards pasted in conspicuous places. The action of the Corporation in giving such public notice through newspapers may be a bona fide and laudable action in keeping with the present modern days' realities but the same cannot be accepted as valid substitute for the mode of notice prescribed by the statute. While

referring this case to a Division Bench, learned Single Judge had referred to a Bench decision of this Court reported in 1991 (1) PLJR 21 The Services Housing Co-operative Society Limited Ranchi v. The State of Bihar and Ors., and had expressed some doubt in accepting the proposition laid down in that judgment. In that case Sections 134 and 482 of the Act were under consideration but the question was whether a notice through a newspaper could be accepted as valid in place of a notice required by the Act to be effected in a different manner. This Court held that the notice through a newspaper was not a valid notice as required by Section 482 of the Act. In my view, the judgment in the aforesaid case of the Services Housing Go-operative Society (supra), suffers from no infirmity and hence requires no further reconsideration.

12. No doubt, learned Counsel for the respondent tried to persuade us on the basis of judgments of the apex Court in : [1965]1SCR970 R.B. Sugar Company v. Rampur Municipality, : 1983 CriLJ448 Dalchand v. Municipal Corporation Bhopal and : AIR 1992 SC1846 Administrator Municipal Corporation, Bilaspur v. Dattatraya Dahankar, to hold that Section 149 (1) of the Act is directory and so long as the purpose of giving public notice achieved by resorting to a better mode of notice through newspapers, the substantial compliance with Section 149(1) should be accepted as valid as no prejudice has been caused to the public. However, the aforesaid judgments dealt with different provisions and different facts, situation and so far as Section 149(1) of the Act is concerned, there is no reason at all for resorting to different principles of interpretation of statutes and thereby change the manner of notice which has been clearly provided for by legislation. Holding this provision as directory is likely to cause confusion and mischief in future and it is not for this Court to constitute the wisdom of the Legislator with its own by holding that notice by newspaper will be sufficient in place of notice on the spot by beat of drum and placards.

13. The next question which now falls for determination in this case is as to what would be the effect of non-compliance with Section 149(1) of the Act vis-a-vis rights and claims of the petitioner. According to learned Counsel for the petitioners, the aforesaid non-compliance would render the entire notice of assessment so far published by the Corporation pursuant to redetermination of

valuation and assessment on the basis of 1993, Rules bad in law. On the other hand, on behalf of the respondent Corporation, it was submitted that this writ application has been filed by the petitioners of a family in their individual capacity for infringement of their individual rights and hence the effect of non-compliance with Section 149(1) of the Act should be judged only with respect to the petitioners. It was further submitted that new rates of municipal taxes pursuant to notice of assessment have been introduced in almost all parts of Patna Municipal Corporation since 1994 and 1995 and it would be against public interest to adjudge the validity of entire assessment notice at the instance of the petitioners and that if the new rates of taxes which are being realised since long are interfered with then the Corporation would be placed in great difficulty and the same shall adversely affect its functioning and public interest.

14. Since it has already been held above that Section 149(1) of the Act is mandatory, now the question is whether an act done in breach of mandatory provision is perforce a nullity. On this question, it is relevant to refer to a judgment of the apex Court in a case of Dhirendra Nath Gorai v. Sudhir Chandra : [1964]6SCR1001 . In paragraph 6 of the said judgment, the apex Court presumed the relevant provisions to be mandatory and thereafter came to a conclusion that even in the case of violation of a mandatory provision proper tests have to be applied to find out whether the deviation from law has taken away, the authority for the proceedings rendering it a nullity or whether the deviation is merely an irregularity. The relevant part of the judgment prescribing the test for the aforesaid purpose is as follows:

It is difficult some times to distinguish between an irregularity and a nullity; but the safest rule to determine what is an irregularity and what is a nullity is to see whether the party can waive the objection; if he can waive it, it amounts to an irregularity; if he cannot, it is a nullity.

15. For applying the aforesaid test to the facts of this case, it is again relevant to notice that Section 149 contains two sub-sections. Whereas Sub-section (1) provides for a public notice, Sub-section (2) provides for individual notice to the owners concerned. Reading the whole section together it is clear that an individual

owner has a right to get an individual notice besides a public notice for public at large. The limitation for filing application for review as provided by Section 150(2) also takes care of individual notice under Section 149 (2) of the Act. Thus, the purpose of notice under Section 149 of the Act is clearly for the benefit and protection of individual owners of holdings within the municipality and the owner concerned can dispense with such individual rights of notice without infringing any public right or public policy. Therefore, on applying the aforesaid test to the facts in this case it can be safely held that the deviation from law provided by Section 149 of the Act is only an irregularity and not nullity because a party can waive its objection to such a deviation and can proceed to avail of its individual remedy by filing application under Section 150 of the Act.

16. So far as the facts of this case are concerned, it is an admitted position that the petitioners have knowledge of publication of notice of assessment under Section 149 of the Act. They have not pleaded violation of Section 149 (2) of the Act and they have admittedly filed applications for review under Section 150 of the Act which are pending. In such a situation, the irregularity on account of admitted deviation from law provided by Sub-section (1) of Section 149 of the Act will not render the notice of assessment already published by the municipality a nullity and by filing their applications for review the petitioners of this case. I have, already taken a recourse to a suitable remedy so far as their objections on the merits of individual assessments are concerned. Hence, in the facts of the case the irregularity in publication of notice under Section 149(1) of the Act is not of any consequence so far as the petitioners are concerned, so as to warrant any interference in the matter by this Court and at this stage. The petitioners are given further liberty to raise all their grievances against the assessment of municipal taxes in their individual cases before the authorities of the Corporation, if they so desired, within 30 days of this order. A grievance was raised that the concerned authorities are not taking any steps to dispose of petitioners' applications for review although they are pending since long. The authority concerned is, therefore, directed to dispose of the petitioners applications expeditiously and in any case within three months from the date of production/communication of a copy of this order.

17. So far as petitioners grievance regarding application of new rates of taxes in different areas of the municipality from different dates is concerned, the same does not render the assessment with regard to the petitioners invalid more so when Section 149(1) of the Act postulates publication of notice under Section 149(1) even in any part of Patna. The respondent Corporation has given an explanation that different publications for different areas had to be done on account of lack of sufficient working hands and on account of administrative difficulties. In my view, since there is no allegation of any mala fide on this score, the Action of the respondents is saved in this case but keeping in view the spirit of Article 14 of the Constitution of India in view they would be well advised to take prompt steps in advance so that a general assessment for the entire area under the Corporation may be made effective from one date. They should equally be careful in future to avoid any deviation from the procedure of notice as provided by Section 149(1) of the Act.

18. With the aforesaid observations/directions, this writ application is finally disposed of. However, in the facts and circumstances of the case, there shall be no order as to costs.

**N. Pandey, J.**

I agree.

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