
(2009) 02 CAL CK 0068

In the Calcutta High Court

Case No : A.P.O. No. 239 of 2008, W.P. No. 505 of 2008

Anil Kumar Bhandari

APPELLANT

Vs

Kolkata Municipal Corporations and Others

RESPONDENT

Date of Decision : 16-02-2009

Acts Referred:

Calcutta Municipal Corporation Act, 1980 — Section 180, 183, 184, 199

Citation : (2009) 02 CAL CK 0068

Hon'ble Judges : Pratap Kumar Ray, J; Manik Mohan Sarkar, J

Bench : Division Bench

Advocate : Saptangshu Basu, Sakya Sen, Pradeep Jewrajka and S.P. Sharma, for the Appellant; A.K. Das Adhikary and Sandip Kr. De for the KMG., for the Respondent

Final Decision : Dismissed

Judgement

Pratap Kumar Ray, J.

The Judgment of the Court was delivered by:

1. Heard the learned Advocate appearing for the parties.
2. Challenging the judgment and order dated 12th May, 2008 passed by the learned Trial Judge in W. P. No. 585 of 2008, this appeal has been preferred.
3. By the impugned judgment under appeal, the learned Trial Judge dismissed the writ application. The writ petitioner/appellant challenged the revision of annual valuation from 22nd January, 2007 with effect from 3rd quarter 2000-2001 whereby the valuation was determined in respect of the premises concerned to the extent of Rs. 1,45,600/- on the ground that no notice u/s 184 of the Kolkata Municipal Corporation Act, 1980 was served. The learned Trial Judge disbelieved it by holding that as per averments in the writ application since the purchase of the property in the year 1990 the writ petitioner continued to pay all the taxes in response to the rate card as issued, but so far as the notice u/

s 184 for general revaluation was concerned, the same was not served upon him, could not be believed. The order of the learned Trial Judge reads such:

"The petitioner is questioning the rate card (at page 53) that was admittedly received by him sometime in February, 2007. He is also questioning a supplementary bill dated January 31st, 2007 and the notice of demand dated November 15th, 2007.

It is argued that the hearing officer of the Corporation heard the assessment proceedings on January 22nd, 2007 without giving any notice u/s 184 to the petitioner. Against the order of the hearing officer the petitioner was entitled to lodge an appeal with the Tribunal u/s 199 of the Kolkata Municipal Corporation Act, 1980. He did not lodge any appeal nor did he approach this Court immediately after February, 2007 alleging that the hearing officer made the order without giving any opportunity of hearing.

Mr. Das Adhikary, Counsel for the corporation has said that there is absolutely no reason to accept the case sought to be made out by the petitioner who admittedly received all notices, rate cards, bills, except, according to him, the notice u/s 184 giving him opportunity to submit objection and participate in the proceedings before the hearing officer. To this, Mr. Sen, Counsel for the petitioner, has said that the petitioner made representation dated June 19th, 2007 which was never considered.

On these facts, I find no reason to entertain the writ petition in exercise of my discretionary writ powers. Needless to say that the petitioner is at liberty to lodge appeal with the Tribunal, if he is otherwise entitled to do that. If really the hearing office made the order without giving him any notice u/s 184, in my opinion, he should have approached the appropriate forum or Court in February, 2007 or within a reasonable period thereafter. He chose not to do that.

For these reasons, I dismiss the writ petition. It is made clear that nothing in this order shall prevent the petitioner from lodging appeal with the Tribunal, if he is otherwise entitled to do that. There shall be no order for costs.

Urgent certified xerox copy of this order shall be supplied to the parties, if applied for, within three days from the date of receipt of the file by section concerned."

4. This appeal has been opposed by the Corporation. Since the writ application was dismissed, on the very first day of hearing, the Court allowed the Kolkata Municipal Corporation to file affidavit-in-opposition to the writ application and the appellant/writ petitioner to file reply thereto. In pursuance thereto affidavit-in-opposition and reply have been filed,

5. The case of the petitioner is that the purchase of the property was in the year 1990 and some time in March, 1998, he submitted an application seeking mutation of his name u/s 183 of the Kolkata Municipal Corporation Act, 1980 (hereinafter referred to as the said Act)- for brevity section 183 reads such:

"183. Notice of transfers. -(1) Whenever the title of any person to any land or building is transferred, such person, if primarily liable for the payment of (property tax) on such land or building, and the person to whom the title is so transferred shall, within three months after the execution of the instrument of transfer or after its registration, if it is registered, or after the transfer is effected, if no instrument is executed, give notice of such transfer in writing to the Municipal Commissioner.

(2) In the event of the death of any person primarily liable as aforesaid, the person on whom the title of such land or building devolves, shall, within six months from the date of death of the former, give notice of such devolution in writing to the Municipal Commissioner.

(3) The notice under this section shall be in such form as may be prescribed, and the transferee or the person on whom the title devolves shall, if so required, be bound to produce before the Municipal Commissioner any documents evidencing the transfer or devolution.

(4) If any person, who transfers his title to any land or building, fails to give any notice under this section to the Municipal Commissioner, he shall, in addition to any penalty to which he may be subject under this Act, continue to be liable for payment of the [property tax] on such land or building until he gives such notice but nothing in this section shall be deemed to affect the liability of the transferee for payment of the [property tax] on such land or building.

(5) The Municipal Commissioner shall, on receipt of a notice of transfer or devolution of title under this section [and upon payment of such fees as may be determined by regulations] record such transfer or devolution in a book and also in the Municipal Assessment Book.

(6) On a written request by the Municipal Commissioner, the Registrar of Assurances, Kolkata, or the District Registrar, 24-Parganas, shall furnish such particulars regarding registration of instruments of transfer of immovable properties in Kolkata as the Municipal Commissioner may from time to time, require.

(7) Notwithstanding anything contained in sub-section (6) the Registrar of Assurances, Kolkata, or the District Registrar, 24-Parganas shall furnish to the Municipal Commissioners, such particulars soon after the registration of an instrument of transfer is effected, or, if the Municipal Commissioner so requests, such periodical returns at such intervals as the Municipal Commissioner may fix."

6. In the affidavit-in-opposition the factum of such filing application for mutation has been denied by the Corporation. Admittedly, the writ petitioner/ appellant is not the records owner in the assessment register of the Corporation. Assessee of the Premises is still the erstwhile owner: The writ petitioner/appellant, did not pursue his application seeking mutation u/s 183 of the said Act and he did not agitate his grievance to the said authorities and also in the High Court at Calcutta

seeking necessary relief for mutation of his name despite purchase of the property since 1990 i.e. for the last 18 years.

7. The contention of the writ petitioner that the notice u/s 184 was not served upon him has not been verified in the affidavit portion as true to his knowledge. Only in paragraph 7 a contention has been made that no previous notice of hearing was issued u/s 184 sub-section (4) of the Act and no hearing was given. The paragraph 7 reads such:

"The information disclosed in the said rate card came as a total shock to the petitioner inasmuch as no previous notice of hearing was ever issued to the petitioner informing that hearing has been fixed on 22nd January, 2007 for determination of annual valuation. Neither was any notice given to the petitioner who was the owner of the flat in question of not less than 30 days by the Municipal Commissioner that he would proceed to revise the annual valuation under sub-section(2) of section 180 as required under sub-section(4) of section 184 of the said Act."

8. The paragraph 7 has been affirmed as submission before the Hon"ble Court. So far as the other contention about his filing mutation application, purchase of the property and subsequent action after receiving the annual valuation rate card, namely, filing of representation, those have been verified as true to his knowledge but, so far as the service of notice under subsection (3) of 184, there is neither any averment of non-service of notice nor any such averment has been verified at all. Furthermore, service of notice upon an occupier of the premises, even if it is assumed that the writ petitioner as the occupier, is required to be served under sub-section (3) of section 184. In the writ petition, there is no averment under sub-section (3) of section 184 even in paragraph 7 which has been affirmed as submission before this High Court. Only contention has been made that no hearing was given by issuing any notice under sub-section (4) of section 184. Sub-section (4) of section 184 does not deal with the service of notice but the actual provision is sub-section (3) of section 184. In absence of any averment to that effect that no notice was served and that too, with positive affidavit by affirming it as true to his knowledge, this Court cannot believe the statement made in the writ application about the grievance as raised. The view of the learned Trial Judge was, accordingly, justified to that effect.

9. It is a settled legal position that the writ application is decided on the affidavit evidence in terms of the The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others, , a Constitution Bench judgment. The averment made thereto is required to be authenticated by proper verification. The Apex Court considered this issue about the consequence and/or effect of any affidavit which is not properly verified. In the Constitution Bench judgment in the case of A.K.K. Nambiar Vs. Union of India (UOI) and Another, the Apex Court held that without proper verification a well drafted petition or affidavit would be without any value whatsoever. Relying upon the said judgment of the Constitution Bench, the Division Bench of this Court also passed judgment in the case of Lee Young

Sang & Anr. vs. Board of Trustees for Port of Calcutta, reported in 1998(1) CRN 63. Since the writ application is disposed of on affidavit evidence, the Apex Court accordingly held that affidavit must be properly verified and must clearly state what is based on knowledge and what is based on belief, more so, where allegations of mala fide are made defective affidavits have no probative value. It is further settled legal position that defective affidavits have no value. Reliance is placed in the case of Shivajirao Nilangekar Patil Vs. Dr Mahesh Madhav Gosavi and Others, , a judgment of three-Judges" Bench and another judgment in the case of State of Orissa Vs. J.P. Lath, . In the Barium Chemicals (supra) the Apex Court further held that when the averments are not based on personal knowledge, the source of information must be disclosed wherefrom the deponent derived knowledge and affidavit should be moduled on the line of Order 19 Rule 3 of Civil Procedure. Code.

10. Having regard to those settled legal positions, we find that non-service of notice under sub-section (3) of section 184 has not been averred in any paragraph and further there is no averments that no opportunity of hearing was given properly by verifying it to be true to the knowledge of the writ petitioner. Accordingly, we cannot believe the statement made in the affidavit portion in the form of the submission when particularly the other rate cards were duly received by the deponent writ petitioner as admitted by him in the writ application. The learned Trial Judge, as such, rightly disbelieved the contention made in the writ application about non-service of the notice under sub-section (3) of section 184 of the said Act.

11. There is a provision of the appeal under the statute. The writ petitioner did not prefer any appeal. The writ petitioner since has challenged the revision of assessment setting up an alleged case of violation of natural justice and statutory provision, namely, sub-section (3) of section 184, the law mandates that it would be properly verified by affirming the same as true to his knowledge so that the deponent may carry responsibility in the event the Corporation proves that notice was duly served. Judicial review under writ jurisdiction is required to be granted if and only if a proper case is made out on breach of statutory provision and/or violation of natural justice with proper averments. The Corporation has produced the records before us to satisfy that under certificate of posting the notices were duly served.

12. Having regard to such state of affairs we are not inclined to interfere with the judgment under appeal on the reasons as advanced by us. This writ application on the face of it is an application only to drag the matter and to avoid the property tax.

13. The appeal accordingly stands dismissed.

14. Let urgent certified copy of this judgment and order be supplied to the parties, if applied for, upon compliance with all requisite formalities.

Manik Mohan Sarkar. J.