

(1998) 02 CAL CK 0015

In the Calcutta High Court

Case No : Civil Appellate Jurisdiction APOT NO. 750 of 1997, G.A. No. 4558 of 1997, W.P. No. 2285 of 1996, APOT No. 751 of 1997, G.A. No.4559 of 1997, W.P. No. 2281 of 1996, APOT No. 752 of 1997, G.A. No. 4560 of 1997 and W.P. No. 2284 of 1996

Calcutta Municipal Corporation and Ors

APPELLANT

Vs

M/s. Bala Bestos India Ltd,
 Calcutta Municipal Corporation and Ors Vs Benoy Krishna Banerjee
 Calcutta Municipal Corporation and Ors Vs Nirmala Debi Saraf

RESPONDENT

Date of Decision : 10-02-1998

Acts Referred:

Calcutta Municipal Corporation Act, 1980 — Section 178, 178(1), 178(2)
Constitution of India, 1950 — Article 226, 227

Citation : (1998) 2 CALLT 249 : (1998) 1 CHN 492

Hon'ble Judges : Satyabrata Sinha, J;Dibyendu Bhusan Dutta, J

Bench : Division Bench

Judgement

The Court

1. These appeals arise out of a common Judgment and order passed by a learned single Judge of this court in Writ Petition No. 2281 of 1996, whereby and whereunder the petitioners" writ petition questioning the orders of revision in valuation of the premises dated 27.8.1996 as contained in annexure "F" to the writ application were allowed.

2. The basic fact of the matter is not in dispute. The petitioners are residents of separate flats situated in a multi-storeyed building at premises No. 14, Ballygunge Park. Calcutta-19.

3. From annexure "A" to the Writ Application it appears that one Mr. Aditya Kanoria, who is said to be the original owner of the land and the building, had furnished the details as regards the Floor No., Unit No., Name and Address of the Occupier, the Unit Area Sq. Ft. Including Common Areas, Value of Agreements (Rs.), Dates of Agreements, Dates of Registration of Land. Date of Possession.

Accommodation Type, Car Parks, Drivers' Quarters/Stores, etc. of the flats occupied by 21 persons. Pursuant to or on the basis of the said details furnished by the said Sri Kanoria, the Calcutta Municipal Corporation had assessed 21 Owners of flats separately and pursuant whereunto a notice as contained in annexure "C" to the writ application had been issued, in the grounds of revision mentioned in the said notice, it is stated that the same was done as "a new value of the new buildings on mutation and apportionment on estimated yearly reasonable rental value less statutory allowance of repairs with effect from March 1995-96. The petitioners filed objections to the said notice on or about August 21, 1996, as contained in annexure "D" to the writ application wherein no challenge was thrown as regards the orders of mutation. Even the authority of the Calcutta Municipal Corporation to make annual valuation in respect of each flat separately had not been questioned. Upon giving an opportunity of hearing, the valuation so made was reduced by the Hearing Officer by the impugned order dated 27.8.1996, as contained in annexure "F" to the writ application. Fourteen out of 21 of the occupiers of the flats without preferring any appeal as against the said order as envisaged under subsection (6) of section 189 of the Calcutta Municipal Corporation Act, filed 14 writ applications claiming, inter alia, the following reliefs :

"(a) A writ of and/or a writ in the nature of Mandamus commanding the respondents and each of their men, agents and subordinate to withdraw, cancel and rescind the purported determination of annual valuation of the flat No. 021 at premises No. 14, Ballygunge Park, Calcutta-700019 at Rs. 1,04,140/- with effect from 3rd Quarter 1995-96 as communicated by the Memo. No. 33539 dated 27.08.1996 being annexure "F".

(b) A writ of and/or writ in the nature of Certiorari directing the respondents and each of them, their men, agents and subordinates to certify and transmit the records relating to the case to this Hon'ble Court for doing conscionable Justice by quashing the purported Memo. No. 33539 dated 27.8.1996 being annexure "F".

(c) A writ of and/or a writ in the nature of prohibition directing the respondents and each of them and their men, agents and subordinates to forbear from giving any effect and/or further effect and/or from taking any steps pursuant to and in furtherance of the purported determination of annual valuation in respect of flat No, 021 at premised No. 14, Ballygunge Park, Calcutta-700019 at Rs. 1,04,140/- with effect from 3rd Quarter 1995-96 as communicated by Memo. No. 33539 dated 27.08.1996 being annexure "F".

4. A bare perusal of the judgment passed by the learned trial Judge would show that although no question was raised as regards the applicability of sub-section (2) of section 178 of Calcutta Municipal Corporation Act or the right of the Calcutta Municipal Corporation to mutate the names of the writ petitioners, liberty was granted to argue on the said questions. The learned trial Judge, in his impugned judgment, has held that annual valuation of the respective flats had

not been questioned in the writ application, nor did the petitioners throw any challenge to the method adopted in arriving at such valuation. The learned trial Judge rightly held that on the aforementioned grounds, the writ application would not be maintainable. However, the learned trial Judge proceeded on the basis that the impugned order of valuation as contained in annexure "F" to the writ application, was bad in law for non-compliance of the provisions of section 178(2) (ii).

section 178(1) and 178(2) (ii) of the Act read as follows :

Under the rules as aforesaid-

Section 178. Municipal Assessment Code--(1) The State Government may by rules provided for the detailed procedure for determination of the annual value of lands or buildings in Calcutta and for other matters connected therewith, and such rules together with any regulations made under this Act shall constitute the Municipal Assessment Code.

(2) Under the rules as aforesaid

(i)

(ii) all lands or buildings, to the extent these are continuous or are within the same curtilage or are on the same foundation and are owned by the same owner or co-owners as an undivided property, shall be treated as one unit for the purpose of assessment under this Act.

Provided that if such land or building is sub-divided into separate shares which are not entirely independent and capable of separate enjoyment, the Municipal Commissioner on application from the owners or co-owners may apportion the valuation and assessment among the co-owners according to the value of their respective shares treating the entire land or building as a single unit.

5. Sub-section (1) of section 178 provides that the State Government may by rules provided for the detailed procedure for determination of the annual value of lands or buildings in Calcutta and for other matters connected therewith, and such rules together with any regulations made under this Act shall constitute the Municipal Assessment Code.

6. Sub-section (2) of section 178, as noticed hereinbefore, starts with the prefix "under the rules as aforesaid" and in that view of the matter, there cannot be any doubt whatsoever that sub-section (2) of section 178 refers to the rules which may be framed in terms of sub-section (1) of section 178. Admittedly, no such Municipal Assessment Code has been made by the State Government.

7. Mr. Das Adhikari, learned counsel appearing on behalf of the appellants, relying on the basis of the various decisions of the apex court, inter alia, submitted that the said Act itself provides for an efficacious alternative remedy. The learned counsel further submitted that the learned Judge had decided the case on the basis of the questions not raised in the writ application and

furthermore such questions even had not been raised in the objection petition filed by the petitioners before the Hearing Officers. The learned counsel, in support of his aforementioned contention, has placed strong reliance upon Titaghur Paper Mills Co. Ltd. and Another Vs. State of Orissa and Others, ; Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others, : Shyam Kishore and others Vs. Municipal Corporation of Delhi and another, ; State of Goa and Others Vs. A.H. Jaffar and Sons, ; and M/s. Shoes East Ltd. Vs. Allahabad Bank, .

8. The learned counsel further submits that keeping in view the principles contained in section 178(3), read with other provisions of the said Act. the hearing officer cannot be said to have misdirected himself in law in passing the impugned orders. The learned counsel contends that even no averment has been made in the writ application to the effect as to whether the petitioner are owners of separate flats in terms of the provisions of Apartment Ownership Act.

9. Mr. Pradip Chose, learned senior counsel appearing on behalf of the respondents, on the other hand, submits that from a perusal of the impugned notice it would appear that the intermediate valuation has been made purported to be in terms of section 180 of the Calcutta Municipal Corporation Act which would, without any sufficient or cogent reason, be violative of section 171 read with sections 174 and 179 of the said Act. The learned counsel contends that although the points before us were not specifically raised in the writ application, this court may, in exercise of its equitable jurisdiction, allow the writ petitioners to raise such questions.

10. Having heard the learned counsel for the parties, we are of the opinion that in view of the fact that the writ petitioners have an efficacious alternative remedy, the learned trial Judge erred in entertaining the writ application particularly in view of the fact that the questions raised before the learned trial Judge or before this Bench had not been raised in the writ application. We may also take note of the fact that such questions and particularly the question of absence of jurisdiction relating to the mutation of the names of the petitioners or for that matter the authority or jurisdiction of the assessing Officer to make assessment of composite rate in respect of each separate flat had not been questioned.

11. In a writ petition, the petitioner is not only bound to follow the rules of pleadings but is also bound to produce evidences to show that the averments made in the writ application are correct. Ordinarily, a writ court would not allow the petitioner to urge a question which has not been raised in the writ application unless from the records a satisfaction is arrived at that no disputed question of fact is involved and the point so raised is a pure question of law which arises on admitted facts.

12. Such is not the position here. Here the questions raised before the learned trial Judge or before us were not raised in the writ applications. Had such points

been taken in the writ petition, it would have been open to the appellants to file an affidavit-in-opposition and/or to produce the records to show that the assertions made before us are not correct.

13. We may further record that the writ petitioners did not question the vires of the provisions of sub-section (6) of section 189 of Calcutta Municipal Corporation Act As indicated hereinbefore, even the learned trial Judge has found that the petitioners cannot be permitted to question the actual valuations made by the Assessing Officer. The scope of Judicial review under Article 226 of the Constitution of India is very limited. This court, while exercising its power of judicial review, is not concerned with the merits of the decision, but may interfere with the order impugned in the writ application if and when it suffers from illegality, irrationality or procedural irregularity in its decision making process.

14. A question of jurisdiction may also involve investigation into the jurisdictional facts. Although in certain cases the court may entertain a writ application while such a question of lack of Jurisdiction in the authority concerned is raised, normally the court asks the statutory authority to determine such jurisdictional facts at the first instance.

15. In the decisions cited by Mr. Das Adhikari, it has clearly been held by the apex court that where there exists an efficacious alternative remedy, the writ court should not ordinarily entertain the writ application. It is true. as has been pointed out by Mr. Ghose, that there may be certain exceptions to the said rule. But in the instant case, there does not exist any. The writ application was disposed of at the motion stage. Keeping in view the allegations made in the write application, and particularly the fact that the questions upon which the writ application, had been allowed, have not been raised before the Hearing Officer or in the writ application, the same should not have been allowed to be raised and the petitioners ought to have been asked to avail the statutory alternative remedy.

16. In this connection, we may refer to the decision of the apex court in Shyam Kishore and others Vs. Municipal Corporation of Delhi and another, , wherein the apex court held that :

"42. If the provision is interpreted in the manner above suggested, one can steer clear of all problems of constitutional validity. The contention on behalf of the Corporation to read the provision rigidly and seek to soften the rigour by reference to the availability of a recourse to the High Courts by way of a petition under Articles 226 and 227 in certain situations and the departmental instructions referred to earlier does not appear to be a satisfactory solution. The departmental instructions may not always be followed and the resort to Articles 226 and 227 should be discouraged when there is an alternative remedy. A more satisfactory solution is available on the terms of the statute itself. The construction of the section approved by us above vests in the appellate authority

a power to deal with the appeal otherwise than by way of final disposal even if the disputed tax is not paid. It enables the authority to exercise a judicial discretion to allow the payment of the disputed tax even after the appeal is filed but, no doubt, before the appeal is taken up for actual hearing. The interpretation will greatly ameliorate the genuine grievances of, and hardships faced by, the assessee in the payment of the tax as determined. Though an assessee may not be able to acquire an absolute stay of the recovery of the tax until the dispute is resolved, he will certainly be able to get breathing time to pay up the same where his case deserves it. If this interpretation is placed on the provision, no question of unconstitutionality can at all arise."

17. The said decision has been followed by the apex court in its subsequent decisions in *St. Mary's School and others etc. Vs. Cantonment Board, Meerut and others*, : and *Union of India and another Vs. M/s. Jesus Sales Corporation*, .

18. As regard non communication of reasons in the impugned notices we may note that, in *Assistant G.M., Central Bank of India, v. Municipal Corporation, Ahmedabad*, reported in *Judgment Today* 1995 Vol. 4 SC 310. It is stated as follows :

"39. We must deal with one another contention urged by Sri Rohinton Nariman. He submitted that the special notice issued in his case under Rule 15(2) of Chapter-VIII of Schedule-A is totally devoid of any particulars or grounds upon which the assessment was sought to be enhanced. He relies upon the general proposition that a show cause notice must contain the relevant particulars and grounds sufficient to put the person concerned on notice of the proposed action and its basis. Absence of such particulars and grounds in such show cause notice, he submits, vitiates the special notice itself. The High Court has rejected the contention in the following words :

"Notice u/s 15(2) is issued after entry in the assessment book has been made. Sub-rule (2) of Rule 15 requires that the special written notice to the owner or the occupier shall specify the nature of such entry. In other words, the special notice must inform the owner about the entries mentioned in rule 9, clauses (a), (b), (c) and (d), because the said rule 15 has to be read with rules 9 and 13. When a statute specified as to what should be the contents of a notice, and that is so specified in rule 15(2), the general principles enunciated by the aforesaid decisions and of the other High Courts would not be applicable. For the purposes of giving an opportunity to an owner or an occupier to file a complaint, all that he has to be informed is what the Commissioner has entered in the assessment book. One of the items, which is entered. Is the rateable value. The Commissioner is under no obligation to inform as to how the rateable value, which is entered in the assessment book, has been arrived at. It is for the owner to complain if he finds the rateable value to be high. The principles for fixation of rateable value are well-known. Ordinarily, a rateable value will be arrived at after particulars had been given by the owners or occupiers under rule 8 of the said Rules. On the receipt of the notice. It will be for the complainant to lead evidence

and prove as to what should be correct rateable value. A hearing is contemplated by rule 18 and if the assessee requires any classification with regard to the entry made in the assessment book, we see no reason as to why this classification would not, ordinarily, be given. Be that as it may, rule 15(2) does not require the giving of any particulars in addition to what is stated therein. The aforesaid decisions of various courts therefore, can be of no assistance to the respondents."

40. We agree with and affirm the reasoning of the High Court and accordingly reject the contention."

19. In view of the aforementioned authoritative pronouncement of the apex court, we are of the view that it was a fit case in which the learned trial judge ought not to have exercised to entertain the writ application, and ask the petitioners to avail statutory alternative remedy. In this view of the matter, we are of the opinion that the petitioners' remedy is to avail a statutory alternative remedy by preferring an appeal before the Municipal Assessment Tribunal as contemplated under sub-section (6) of section 189 of the Calcutta Municipal Corporation Act. We may note that the appeal which may be preferred by the writ petitioners, might have become barred by limitation, but we are sure, keeping in view the fact that the petitioners were advised to file this writ application before the Tribunal, if any application for condonation of delay is filed, shall take into consideration the said and pass an appropriate order as regard condonation of delay in accordance with law.

All parties are to act on a xeroxed signed copy of this dictated order on the usual undertakings.

20. Appeal disposed of