(2011) 01 AHC CK 0319

In the Allahabad High Court

Case No : Civil Misc. Writ (Tax) Petition No''s. 1504 of 2006 and 40 of 2008

Clark Hotel Limited APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 24-01-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 243Q(1)
Municipalities Act, 1916 — Section 140
Uttar Pradesh Municipal Corporation Act, 1959 — Section 172, 173, 174, 174(1), 175
Uttar Pradesh Nagar Mahapalika (Depreciation of Buildings) Rules, 1983 — Rule 5

Citation : (2011) 3 ADJ 18

Hon'ble Judges : Yatindra Singh, J;Prakash Krishna, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. These two writ petitions question the validity of the house valuation as well as imposition of house tax under U.P. Municipal Corporation Act, 1959 (the Act) by the Nagar Nigam, Varanasi (the Corporation).

The Facts

2. Clark Hotel Limited (the Petitioner) is a company incorporated under the Companies Act 1956. It runs hotels in a different parts of the country. It also runs a five star hotel at 20/54-A, the Mall, Varanasi within the municipal limits of the Corporation.

3. The proceeding for the house valuation as well as house tax were taken against the Petitioner by the Corporation. Against the order for house valuation, an appeal was filed u/s 472 of the Act. In the appeal, the annual value was fixed at Rs. 55,000/- on 24.2.1978.

4. The Corporation filed an appeal against the aforesaid order. It was dismissed. Thereafter, the writ petition No. 307 of 1979 was also filed by the Corporation

that writ petition was dismissed on 23.3.1999.

5. Subsequently, some more rooms and halls were constructed by the Petitioner. Afresh notice was issued against the Petitioner and thereafter an order was passed.

6. The Petitioner filed an appeal against the subsequent order of the house valuation. It was dismissed on 9.12.1987. His second appeal was also dismissed on 14.2.1990.

7. The Petitioner filed writ petition No. 5020 of 1990 against the aforesaid orders. It was allowed by Single Judge on 13.2.2004 and the case was remanded back.

8. In pursuance of the order of the Single Judge dated 13.2.2004, the proceedings for reassessment were started. During its pendency, a notice dated 5.7.2006 was issued fixing annual value as well as imposing tax at 25% on the annual value for the period 2003-2004 and 2005-2006 and at 15% for the period 2006-2007.

9. The Petitioner filed his objection against the same. However, it was rejected on 12.9.2006 and the annual value was again assessed. The Petitioner filed writ petition No. 1504 of 2006 against the same.

10. After determination of the annual value, the tax was also fixed and a demand notice dated 24.12.2007 was sent to the Petitioner. The Petitioner has filed writ petition No. 40 of 2008 against the same.

Points for Determination

11. We have heard Shri BD Madhyan and Shri Tarun Gaur, counsel for the Petitioner, Shri Ashok Pandey and standing counsel for the Respondents. The following points arise for determination:

(i) Whether Section 174(1)(a) of the Act is discriminatory;

(ii) Whether annual value cannot be fixed without making Rule u/s 174(a) of the Act;

(iii) Whether the reduction in the period for the periodic assessment to two years is illegal;

(iv) Whether the Corporation could not assess the annual value and fix the house tax as there were no elected members;

(v) Whether fixation of annual value is illegal.

1st Point: Section 174(1)(a)--Not Discriminatory

12. Section 174 of the Act as well as Section 140 of the Municipalities Act, 1916 (the Municipalities Act) are titled ''Definition of ''annual value". Section 174(a) of the Corporation Act provides that the ''annual value'' has to be fixed on a proportion not below than five per cent on the estimated present cost of erecting

the building; whereas, Section 140(a) of the Municipalities Act provides that the "annual value" to be fixed, a proportion not exceeding five per cent on the estimated present cost of erecting the building.

13. The counsel for the Petitioner submits that:

Both enactments namely the Act and the Municipalities Act have been enacted by the State of UP;

One, prescribes for calculating annual value at not less than five percent and the other, prescribes not more than five per cent of value of erecting the building;

This is discriminatory and violates Article 14 of the Constitution.

14. The Act applies to municipal corporations; whereas, the Municipalities Act applies to the municipalities as well as to nagar panchayats. These terms have been adopted from the Constitution.

15. Article 243Q(1) of the Constitution of India defines municipal corporations, nagar panchayats, as well as municipal councils. It explains them as follows:

A municipal corporation consist of the larger urban area;

In our state municipal council is known as Municipality. It consist of a smaller urban area;

Nagar panchayat consists of a transitional area which is in transition from a rural area to an urban area.

16. The Act applies to the municipal corporations; whereas, the Municipalities Act applies to nagar panchayats as well as to municipalities (municipal councils) but does not apply to municipal corporations. The areas of operation of these two enactments are different. The Act applies to larger urban area; whereas, the other (the Municipalities Act) applies to the smaller urban area as well as to the rural area in transition to an urban area.

17. The larger urban area and smaller urban area as well as rural area in transition to an urban area fall in different classes. There are different kinds of problems and development plans. There can be different provisions.

18. In view of above, it cannot be said that Section 174(a) of the Act is discriminatory.

2nd Point: Rules Have Been Framed

19. The counsel for the Petitioner submits that:

Section 174(a) of the Corporation Act envisages rules to be framed. No rules have been framed in this regard;

The annual value cannot be fixed.

20. It is not correct to say that the rules have not been framed.

21. The State Government initially published the draft rules known as Uttar Pradesh Nagar Mahapalika (Depreciation of Buildings) Rules, 1983 vide notification No. U-372/XI-7-27-K-82 dated December 1,1983 by which the objections were invited. Thereafter, the rules were finalised and they were again published vide notification No. 461/XI-7-27-K-82 dated February 2,1984.

22. The rules indicated that:

While determining the annual value of the building mentioned in Section 174(1)(a) of the Act, the proportion shall be seven percent;

In Rule 5 of the rules, the depreciation has also been mentioned.

23. In view of above, it cannot be said there are no rules and the annual value cannot be determined.

3rd Point: Section 211--Not Illegal

24. The counsel for the Petitioner submits that:

Revising the list, every two years increases the tax excessively; The house tax is confiscatory.

25. Section 211 of the Corporation Act is titled ''Revision and duration of list''. Sub-section (1) of Section 211 of the Act provides that a new assessment list shall ordinarily be prepared in every two years. Prior to U.P Act No. 17of 1999, it used be five years. Thereafter, by this amending Act, it was amended to two years. Now, the assessment list is to be revised once in every two years in the manner prescribed under Sections 207 to 210 of the Corporation Act.

26. The annual value is to be calculated in the light of Section 174(1) of the Act. In a case of commercial building, the annual value is to be calculated in the light of Section 174(1)(a) of the Act. It provides that the annual value would be a proportion of estimated present cost of erecting the building less the depreciation.

27. The annual value is being revised every two years but the value is also being reduced by the depreciation.

28. In view of above, it cannot be said that it is arbitrary or confiscatory.

29. The counsel for the Petitioner submits that:

The annual value as well as the tax on the same has not been imposed by the elected body;

It has been done by the Assistant Municipal Commissioner;

It is illegal.

30. The counsel for the Petitioner has also relied on the Full Bench decision reported in Bisauli Vyapar Mandal and Ors. v. State of U. P and Ors. (2004) All CJ 2226 (the Bisauli case) in support of his submissions.

31. There is no assertion in the writ petitions that the proceeding for assessment of annual value or determining the tax was done at a time when the elected body was not functioning; at least, no such paragraph was brought to our notice. In view of this, the submission cannot be entertained. Even otherwise it has no merit.

32. In the Bisauli Case, a new tax was being imposed and the argument raised therein was that this could only be done by the special resolution. The Full Bench was of the view that Administrator being one person, cannot pass special resolution.

33. Chapter IX is titled as ''Corporation Taxation''. It has sub-chapters. Sections 172 to 198 deals with different taxes that can be imposed by the ''Corporation Taxation'' and how they are to be calculated.

34. Sections 199 to 206 are under sub-chapter ''Imposition of Taxes''. They deal with how a tax is to be imposed.

35. Sections 207 to 218 are sub-chapter ''Assessment and Levy of Property Taxes''. This is covered under Sections 207 to 280. They provide periodical assessment of the annual valuation u/s 211.

36. In the present case, no new tax is being imposed. The house tax is already imposed. Only periodical annual value is being assessed in terms of the Act and the rules framed therein. Thereafter, the Petitioner is asked to deposit the house tax as already resolved by the Corporation.

37. Section 207 provides that assessment list is to be prepared by the Municipal Commissioner. It is not to be done by any elected committee but by an official.

38. Section 213 of the Act is titled as ''Amendment and alteration of list''. Sub-section (1)(d) (Section 213(1)(d)) of the Act provides the revaluation or reassessment of any property, the value of which has been increased by additions or alterations to buildings. With effect from 21.11.2003, it provides that the municipal commissioner or an officer authorised by him may alter or amend the assessment list. In view of this, the Bisauli''s case is not applicable.

39. In the present case, the assessment has been made then revaluation on the annual assessment was done on 12.9.2006 by the Assistant Municipal Commissioner. It is subsequent to empowering the municipal commissioner to make annual assessment. In view of this, the Bisauli''s case is not applicable.

40. The word ''municipal commissioner'' is defined under Sub-section (39) of Section 2 of the Act. It includes assistant municipal commissioner as well. In view of above, the Bisauli''s case is not applicable.

41. There is no allegation in the writ petition that power of the Municipal Commissioner has not been conferred upon the Assistant Commissioner.

42. Apart from the above, this is a case where the annual value is being

assessed and the tax is being determined in pursuance of the direction issued by the High Court on 13.2.2004 in writ petition No. 5020 of 1990.

43. In view of above, the Bisauli''s case is not applicable.

44. In view of this, it cannot be said that there was any illegality in assessing the annual value and determining the tax on the ground that it was not done by an elected body; The assessment order or demand notice cannot be quashed on this ground.

5th Point: The Point Can be Raised in Appeal

45. The counsel for the Petitioner submits that:

The annual assessment has been fixed not on the estimated value of the building;

It includes finishing and furnishing;

It is excessive and illegal.

46. The annual assessment can be challenged in appeal u/s 472 of the Act. It is a question of fact and can be gone into on the basis of the evidence led by the parties. We see no justification to go into this question in the writ petition. The Petitioner may, if it is so advised, file an appeal u/s 472 of the Act.

47. While filing the appeal, it will also be open to the Petitioner to file an application to condone the delay.

Conclusions

48. Our conclusions are as follows:

Section 174(1)(a) of the UP Municipal Corporations Act, 1959 is not discriminatory.

The rules have been framed by the State Government u/s 174(1)(a) of the Act. The annual assessment cannot be quashed on this ground.

The reduction of period for new assessment to two years u/s 211 of the Act is not illegal.

The annual value has been fixed by the Assistant Municipal Commissioner cannot be set aside on the ground that it has not been done by the elected body.

So far as illegality regarding the quantum of annual assessment and tax is concerned, the Petitioner has an alternative remedy. He may avail the same.

49. In view of above, both the writ petitions are dismissed with the liberty to file an appeal as mentioned in the judgment.

