
(1956) 12 CAL CK 0014
In the Calcutta High Court
Case No : A.F.O.O. No. 242 of 1955

Corporation of Calcutta

APPELLANT

Vs

Narayan Chandra Das

RESPONDENT

Date of Decision : 06-12-1956

Acts Referred:

Bengal Municipal Act, 1932 — Section 215

Constitution of India, 1950 — Article 226

West Bengal Municipalities (Procedure and Conduct of Business) Rules, 1995 — Rule 10, 14, 8

Citation : AIR 1957 Cal 447

Hon'ble Judges : Chakravartti, C.J; Mallick, J

Bench : Division Bench

Advocate : Satya Brata Dutta, for the Appellant; Sankar Ghose and Protap Chandra Choudhury, for the Respondent

Final Decision : Dismissed

Judgement

Chakravartti, C.J.—This is an appeal from an order of Sinha, J., dated 27-7-1955, whereby the learned Judge quashed an order of assessment in respect of a property owned by the respondent and gave certain consequential directions.

2. The appellant is the Corporation of Calcutta. The premises concerned is situated in an area which appertained formerly to what was once the Tollygunge Municipality. It appears that in the year 1951, there was a general assessment and in the course of that assessment, the respondent's property which is Premises No. 46 Izazatulla Lane was assessed to a valuation of Rs. 270/-. The Tollygunge Municipality was superseded by an order of the State of West Bengal on 26-11-1951, for the period of one year, but the period of supersession was subsequently extended from time to time. Upon superseding the Municipality, the State of West Bengal appointed one Shri Priya Nath Bose to be the Administrator and to exercise all the powers and discharge all the duties which might be done by the Chairman and the Commissioners of the Municipality, whether at a meeting or otherwise. The Administrator, upon assuming office, made special

arrangements for a public exhibition of the new assessment lists and those were exhibited on 2-1-1952. The respondent who was dissatisfied with the assessment made upon his property filed an objection before the Administrator u/s 148 Bengal Municipal Act, That objection was filed on 30-1-1952 and was disposed of on 21-5-1952. The Administrator gave effect to the respondent's objection to a certain extent and reduced the valuation from Rs. 270/- to Rs. 240/-.

3. It is said that in July, 1952, there was a numerously signed representation submitted to the Municipality by which objections were taken to the valuations of properties of several persons. So far as the respondent is concerned, he served on the Administrator a solicitor's notice on 19-12- 1952, but having obtained no relief, moved this Court under Article 226 of the Constitution on 12-1- 1953. Shortly thereafter, the area which was previously under the jurisdiction of the Tollygunge Municipality came to be merged in the territorial jurisdiction of the Calcutta Corporation by virtue of the provisions of Section 594, Calcutta Municipal Act, 1951 and a notification issued thereunder. The merger took place with effect from 1-7-1953. It was then that the Corporation of Calcutta was substituted in the records of these proceedings in the place and stead of the Administrator of the Tollygunge Municipality and that is how the Corporation came to be interested in the matter.

4. The only ground urged before Sinha, J., who issued and disposed of the Rule obtained by the respondent was that in arriving at the valuation of his property, the Assessor of the Tollygunge Municipality had not acted in accordance with Rule 10 of the Rules of Procedure to be followed by an Assessor of municipal taxes as prescribed u/s 215 (a) and (b). Bengal Municipal Act, 1932. It was said that the Assessor had made no report, showing the basis on which he had made the assessment. Nor had he prepared a note showing how he had arrived at the assessment which differed from the assessment of similar and comparable properties in the vicinity. The learned Judge held that the irregularity complained of by the respondent had been established, but he preferred to base his order on what he considered to be a stronger ground. He pointed out that in the Field Book and the Assessment List which had been prepared, the area of the property had been given as one cotta, whereas, in fact, it was admittedly two cottas and a half. The learned Judge thought that this want of conformity with reality was sufficient to vitiate the entire assessment proceedings and he did not require any other reason to quash the assessment. Accordingly, he made the Rule absolute, quashing the order of assessment and restraining the appellant-Corporation from realising tax at the rate arrived upon at the reassessment, but leaving it free to realise tax at the old rate until a proper reassessment was made.. It was against that order that the present appeal was preferred.

5. One should not have thought that a body like the Corporation of Calcutta would consider it necessary or proper to prefer an appeal from an order of that character. By it the Corporation had been in no way prejudiced. All that the learned fudge held was that the Assessor of the Tollygunge Municipality had not

observed the rules which he was required by law to follow and, therefore, the assessment made by him, as reviewed by the Administrator, could not stand, but, at the same time, the Corporation of Calcutta which had now come to be the assessing authority, would be at liberty to make a fresh reassessment by observing the correct procedure. It will be noticed that it was not even an act of any officer of the Corporation of Calcutta which was held to have contravened the law. One can understand a public body trying to vindicate its officers when their action has been wrongly held to be illegal, although no substantial interests might be at stake, but in the present case, no officer of the Corporation of Calcutta was involved directly or indirectly. The right of the Corporation of Calcutta to make a proper assessment and to realise the taxes properly payable was in no way placed in jeopardy by the learned Judge's order, but the Corporation appears, nevertheless, to have taken the view that it was necessary to have the learned Judge's order set aside.

6. In support of the present appeal, the learned Advocate for the appellant-Corporation contended, in the first place, that the application of the respondent for relief by way of a writ was liable to be thrown out summarily on the ground that in obtaining the Rule nisi from the learned Judge, he had suppressed certain material facts. The fact suppressed was stated to be the proceedings had before the Administrator by way of a review. What the respondent had done in his application under Article 226 was that he had simply mentioned the valuation of Rs. 240/- Without reference to the initial valuation of Rs. 270/- and its subsequent reduction to the figure determined by the Administrator. I am unable to see how, if the fact said to have been suppressed had been disclosed, it could have dissuaded the learned Judge from issuing the Rule nisi which he was influenced by the alleged non-compliance with Rule 10 to issue. The principle which is applicable in such cases is well-settled. A person invoking the assistance of a Court by way of one of the high prerogative writs is required to exhibit complete candour and if he withholds from the Court some fact which, if disclosed, would have stood in the way of the Judge issuing the Rule nisi, his application becomes liable to be dismissed without any further consideration. I am entirely unable to see how the present case can be said to come under that category.

7. Somewhat connected with the first ground taken by the learned Advocate was his objection to an amendment of the petition of the respondent allowed by the learned judge, which the learned Advocate characterised as belated and mala fide. Belated the application may have been, but I am unable to see how any question of -mala fides arises. The original suppression might at least have been mala fide, but how the amendment by which the respondent was at last making a disclosure of the fact, not previously disclosed, could be mala fide, it is impossible for me to follow. In any event, In view of what I have stated with regard to the first objection of the learned Advocate for the appellant, it is unnecessary to consider his second; ground any further. If the effect of the original omission to refer to the proceedings before the Administrator had been

to disentitle the respondent from any relief on his application; it might have been said with justice that he should not have been allowed to put his petition in order by an amendment and thereby to relieve himself of the disqualification which he had incurred. I have already pointed out that the omission was not such that it could entail the consequence which the learned Advocate for the appellant pleaded for. The second ground taken is thus of no more assistance to him than the first.

8. It was next contended that whether the order made by the Administrator as the reviewing authority was right or wrong, he had full jurisdiction to make the order and If he had jurisdiction, the order made by him could not be quashed by a writ of certiorari, even if in the view of the Court it was wrong. In advancing that argument, the learned Advocate was obviously thinking of certain old decisions which purported to limit the relief by way of certiorari to cases of want of jurisdiction. It is now well-established that if an order impugned by an application for a writ is vitiated by a patent illegality, such as a manifestly wrong view of the law or reliance upon materials procured without observance of the procedural laws applicable, such an order can be quashed by a writ of certiorari. The third argument of the learned Advocate must also fail. It was next said that the Respondent having elected to seek the ordinary remedies and having exhausted them, could not fall back on the special remedy by way of a writ. The argument is answered by the fact that the reviewing authority is the first authority who deals with an assessment in a quasi-judicial manner.

9. It was then contended that the application made to this Court by the respondent was bad, because it asked only for a partial relief. What the learned Advocate meant was that the respondent instead of mentioning only the valuation of Rs. 240/-, as determined by the Administrator, should also have mentioned the original valuation of Rs. 270/- as made by the Assessor. The argument was that even if the Court quashed the assessment as made by the Administrator, the other assessment of Rs. 270/- would still survive and, therefore, the Court could not and would not make an order which would be, for all practical purposes, ineffective. In advancing that argument, the learned Advocate was apparently under a misapprehension, because after the original valuation was reduced by the Administrator to Rs. 240/-, his valuation was the only valuation which was surviving and it could by no means be said that the original valuation made by the Assessor was still alive. At the date of the application made to this Court, there was only one surviving valuation and that was the valuation made by the Administrator. The fourth ground urged by the learned Advocate must, therefore, be equally unsuccessful.

10. It was lastly contended that once the matter had reached the Administrator as the reviewing authority, compliance or non-compliance with Rule 10 ceased to be of any importance, because in deciding the question of the valuation of the property the reviewing authority was required to follow Rule 14 of the Rules of Procedure, to which I have already referred, to follow the procedure laid down in

Rule 8. Rule 8, it was pointed out, contained nothing similar to the provisions of Rule 10 and, therefore, since it was the order of the Administrator which was being challenged, no challenge could be founded on the non-compliance of a rule which the Administrator was not required to follow. I am afraid, this argument also is based upon a misapprehension. Rules 1 to 10 of the Rules of Procedure are intended, in the first instance, to apply to the original assessment proceedings and to be followed by the Assessor. The Rules to be followed by the reviewing authority are Rules 11 to 14 and by Rule 14, as I have already stated, the Review Committee is required to follow generally the procedure laid down in Rule 8. But so far as the reviewing authority is concerned, the question of determining the true valuation of the holding concerned comes only at the second stage of the proceedings before it. The first stage relates to an examination of the assessment, as made, and to finding out whether it had or had not been made in accordance with the rules. In carrying out that examination of the assessment, it is plainly relevant for the reviewing authorities to see whether Rule 10 had or had not been observed. If the reviewing authority comes to hold that the assessment, as made, cannot stand, then it enters upon the second chapter of the proceedings before it and proceeds to make a valuation on its own account. It is only at that stage that Rule 8 comes into play so far as the reviewing authority is concerned and, therefore, it is entirely wrong to say that the reviewing authority was not at all required to pay any regard as to the compliance or non-compliance With Rule 10 by the Assessor.

11. It was also said that even if the order made by the learned Judge was carried out, the valuation of Rs. 270/- would continue to remain in the assessment list and, therefore, the order passed by the learned Judge would be ineffective. It is difficult to appreciate that argument, because once the order made by the reviewing authority is quashed on the ground that it was based upon material not legally supportable, the basis of that order must fall along with it and it would be the duty of the officers of the Corporation to make corresponding corrections in the assessment list, if the original valuation of Rs. 270/-was still to be found anywhere in its pages.

12. In my view, this appeal is entirely devoid of merit. I have discussed each one of the points advanced before us by the learned Advocate, but have been unable to find any substance in any one of them. The appeal is, accordingly, dismissed with costs, the hearing-fee being assessed at three gold mohurs.

Mallick, J.

13. I agree.