(2000) 08 CAL CK 0042

In the Calcutta High Court

Case No : Civil Appellate Jurisdiction, Appeal from Original Decree No. 161 of 1989, Suit No. 326 of 1979

Corporation of Calcutta APPELLANT

Vs

Prodyat Kumar Chowdhury and Another RESPONDENT

Date of Decision : 02-08-2000

Acts Referred:

Calcutta Municipal Act, 1951 — Section 180, 236(3)
Calcutta Municipal Corporation Act, 1980 — Section 168(2), 180, 182, 236
Constitution of India, 1950 — Article 12, 19, 226, 24

Citation : (2001) 1 CALLT 279

Hon'ble Judges : Satyabrata Sinha, J;Hrishikesh Banerji, J

Bench : Division Bench

Advocate : Mr. Anindya Kr. Mitra and Mr. Das for Adhikari, for the Appellant; Mr. Jayanta Mitra and Mr. Joydeep Kar. Advs., for the Respondent

Judgement

S.B. Sinha, J.—A suit was filed by the Calcutta Municipal Corporation hitherto before known as "Corporation of Calcutta" against the Respondent for recovery of consolidated rates and taxes in respect of holding No. 15A. St. George Terrace. Hastings, Calcutta for the 4th Quarter of 1960-61 on the annual valuation of Rs. 33,480/-, The said suit had been dismissed by the learned trial Judge by reason of the impugned judgment.

2. Mr. Anindya Mitra and Mr. Das Adhikari, learned Counsel appearing on behalf of the appellant in support of this appeal, inter alia, submitted that in terms of the directions contained in the Judgment & Order dated 10th November, 1976 passed by Ramendra Mohan Dutta. J. in Matter No. 411/76 the suit ought to have been decreed. The direction in the Judgment is as follows :--

"This will not entitle the petitioner to ask for re-opening for assessment for any period which is prior to the period mentioned in the notice dated 12th June, 1965."

3. The Defendant No. 2 had filed the aforementioned writ application questioning

the valuation made by the Plaintiff in relation to its Cold Storage and Factory, as contained in the Notice dated 12th June, 1965 whereby and whereunder from the 2nd Quarter of 1965-66 annual valuation of the said holding, without giving an opportunity of hearing to the Respondent herein, had been raised to Rs. 52,380/-.

4. The learned Judge in the said writ application, inter alia, held that the said notice was per se illegal, as the same had been issued in utter violation of section 168(2) of the Calcutta Municipal Corporation Act. The operative portion of the said Judgment reads thus :--

"That being the position the Rule herein must be made absolute and the Corporation is required to act in accordance with law by giving a hearing in respect of the objection filed pursuant to the special notice u/s 180 of the Calcutta Municipal Act, 1951 dated 12th June, 1965. In respect of the said objection matter the Corporation of Calcutta has to proceed u/s 168(3) in respect of the petitioner company and to arrive at the annual value after giving necessary deductions regarding the cost of maintenance of the said plant machinery and implements and the cost of maintenance of the said cold storage in accordance with law. This will not entitle the petitioner to ask for re-opening for assessment for any period which is prior to the period mentioned in the notice dated 12th June, 1965. The Corporation is directed to give credit to the petitioner in respect of all amounts already paid since the period subsequent to the period covered by the said notice dated 12th June, 1965 in making such assessment and to realise the excess amount. If any so to be found due or to refund if any amount in excess of the amount due has been recovered."

5. An appeal taken from the said Judgment was dismissed by a Division Bench by a Judgment dated 18th May, 1982.

6. The Calcutta Municipal Corporation is a ''State'' within the meaning of the Article 12 of the Constitution of India. Although it always complains of financial crunch, despite long lapse of time, it has not yet cared to complete the assessment proceedings in terms of the said Judgment.

7. Curiously enough it filed the suit on 30th April, 1989 i.e. immediately after the Appeal Court passed the order dismissing the appeal on 6th March, 1989.

8. The learned trial Judge having regard to the decision of Dutta, J. (Bangasri Ice & Cold Storage Ltd. & Anr. v. Corporation of Calcutta & Ors. reported in 1977(1) CLJ 522) held that the suit of the Appellant was barred under the principles of res judicata.

9. The learned counsel appearing on behalf of the Appellant would contend that the defendant/respondent was not entitled to question the annual valuation in respect of the 4th Quarter of 1960-61 having regard to the decision of this Court in Pushpalata Monday and Another Vs. Corporation of Calcutta, and Sk. Md. Sheliadhan Shawkat & Ors. v. Corporation of Calcutta, reported in 1982(2) CLJ

41. Our attention in this connection has also been drawn to a decision of the apex Court in Common Cause Registered Society Vs. Union of India (UOI) and Others, .

10. On the other hand, the contention of Mr. Jayanta Mitra & Mr. Joydeep Kar, the learned Counsel appearing on behalf of the Respondents, is that the claim of the Plaintiff/Appellant is ex facie bad in law.

11. In the earlier writ application, it is true, that this Court was concerned with the validity of the Notice dated 12th September, 1996, in terms whereof consolidated rate was demanded for 2nd Quarter of 1965-66 onwards on the basis of annual valuation of Rs. 52,380/-.

12. The Plaintiff in its plaint contended :--

"The annual valuation of the said premises was Rs. 18,360/- and later on was revalued and the annual valuation thereof was fixed at Rs. 33,480/- with effect from quarter 1960-61 and the defendants became liable to pay the Corporation rates in respect of the said premises for both shares of taxes on the annual valuation of Rs. 33,480/- on and since 4th quarter 1960-61.

A sum of Rs. 1,57,314.98P. is remaining due and payable by the defendants to the plaintiff Corporation as per particulars given herein below :--

Particulars

(a) Both share bills from 1st qr. 1969-70 to 1st. qr. 1978-79 @ Rs. 1401.98 each share per quarter. -- Rs. 1,03,746.52

(b) Both share supplementary bills from 1st qr. 1962-63 to 3rd. qr. 1966-67 @ Rs. 444.15 each share per quarter (date of presentation being 17th July, 1973). -- Rs. 16,877.70

Interest on the rate-bills chargeable u/s 236(3) of the Calcutta Municipal Act (Act XXXIII of 1951) as amended by section 45 of the Calcutta Municipal (Amendment) Act, 1952 (W.B. Act Upto 30.6.76 @ Rs. 6% per annum ...) -- Rs. 20,090.28

Interest on the rate bills chargeable u/s 236(3) of the Calcutta Municipal Act (Act XXXIII of 1951) as amended by section 45 of the Calcutta Municipal Amendment) Act, 1976 from 1.7.76 to 31.7.78 @ 12% per annum. -- Rs. 16,600.48

Total -- Rs. 1,57,314.98"

13. It was not revealed the date when the said annual valuation was revalued. The particulars of claim set out in the Plaint show that a supplementary bill had been issued. It is, however, not difficult to find out on which date such revaluation had been made. It appears from the judgment of Datta, J. that the revaluation was made on 28th February, 1971.

14. From the 2nd Quarter of 1956 to 1st Quarter of 1959 the annual valuation

was assessed at Rs. 10,800/-. The valuation in respect of 2nd Quarter of 1959 to 1st Quarter of 1966 was assessed at Rs. 18,360/-. There is no dispute with regard to the aforementioned annual valuation. The disputed annual valuation was from 2nd Quarter 1966 to 1st Quarter 1970 which was calculated @ Rs. 33,480/-. The annual valuation of 2nd Quarter of 1965-66 was further revised to Rs. 52,380/- which was the subject matter of the earlier writ application.

15. Curiously, even a competent witness has not been examined on behalf of the appellant. The appellant examined one Khetra Mohan Nag in support of its case. A document was produced by, the said witness allegedly having been received by him from the Law Department but the original thereof had not been produced. Exhibit--''A'' was, therefore, inadmissible in evidence. It would be interesting to read some of the questions and answers from the deposition of the said witness which clearly depicts his total ignorance on the subject matter of the suit.

"Q : Did you have any occasion to deal with, handle and apprise of yourself any matter relating to your assessment of the premises under chapter 11A of the Calcutta Municipal Assessment Act?

A : We were not in the assessment department in discharging our duties.

Q : So, you know nothing about the assessment?

A : That is so.

Q : You cannot tell my lord whether the bills are correct and have been made after correct assessment or not?

A : That is so."

16. Justice Dutt in his Judgment dated 10th November, 1976 noticed :--

"in 1959 the value of the said building was to the extent of a sum of Rs. 3,63,621.39 as shown in the balance sheet of the company. Since then there has been no addition in respect thereto. The petitioners now state that the Corporation of Calcutta in breach of the mandatory provision of the Calcutta Municipal Act and without giving notice u/s 180 of said Act and without adjudication of the objection raised by the petitioner u/s 182 thereof had been assessing the rates as will appear from the following chart;

Assessment Prevailing Qrtly. Tax owner''s shares Qrtly. Tax Occupier''s shares Annual valuation assessed.

Assessment from 303.12P 303.12P Rs. 10,800/-

2nd Qtr. 1956 to 1959.

From 2nd Qtr. 1959 to 1966 (1st Qr. of 66). 539.33P 539.33P Rs. 18,360/-

From 2nd Qtr. 1966 to 1970 1,401.98P 1,401.98P Rs. 33,480/-

17. It was further noticed :--

"The petitioners grievance in this application inter alia, is that by notice dated 11th June, 1959 the assessor u/s 180 purported to assess the said premises at Rs. 34,400/- with effect from 2nd quarter of 1959-60 until a fresh valuation would be made. In doing so that annual valuation of the said premises was made on the basis of and according to the estimated yearly rental value thereof although the said buildings standing thereon at no point of time, had been let out to and/ or are not settable to in terms of the covenants and stipulations of the said leases.

Learned counsel has referred to a red post card dated 29th March, 1963 in which it appears that the annual value of the said premises together with the buildings thereon was suo motu assessed and determined at Rs. 18,360/- as against the valuation of Rs. 32,400/- as contained in the said purported notice dated 11th June, 1959 and that would show the lack of proper application of mind in arriving at the said valuation of Rs. 32,400/-. It is contended that the fact that the said red card as aforesaid containing the said valuation had been sent to the petitioners would clearly go to prove that there had not been any final valuation in respect of the said premises under the provisions of section 182 of the Act. The objections recorded by the petitioners were never heard or decided before the final order regarding valuation was made."

18. It is, thus, evident that although at one point of time the annual valuation was made at Rs. 33,480/-, the same had been suo motu re-determined by the plaintiff at Rs. 18,360/-. The plaintiff, although a State, before filing the suit did not consider this aspect of the matter at all.

19. It, thus, took recourse to suppression overt and suggestion false as it did not disclose the date when the valuation was refixed at Rs. 33,480/- Dutt, J. in no uncertain terms opined that the defendant shall not be entitled to question the valuation prior to the period of 2nd quarter of 1965-66 but that does not mean that it would not be allowed to question any refutation of valuation which was made subsequent to the passing of the said judgment.

20. What was meant by the said observation was that any valuation issued prior thereto shall not be open to question but the learned Judge neither had the occasion nor could direct the Defendant/Respondent to question the validity of any subsequent valuation. Admittedly, the particulars of the claim set out in the plaint show that a supplementary bill had been issued, Such supplementary bill. In view of the law laid down by Dutta, J. in his Judgment which has been upheld by the Division Bench, could not have been issued in derogation of the directions made therein.

21. In view of the findings aforementioned, we are of the opinion that the decisions upon which reliance has been placed cannot be said to have any application whatsoever inasmuch as any order that had been passed in violation of the judgment of this Court and the mandatory provisions of the statute would be a nullity.

The appeal is, therefore, dismissed with costs. Counsel''s fee assessed at 100 Cms.

H. Banerji, J.—I agree.

2. Appeal dismissed

