

**(1976) 12 DEL CK 0024**

**In the Delhi High Court**

**Case No :** Civil Writ Appeal No"s. 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 825, 826, 827, 828 and 829 of 1969

C.P. Singh and Co.

APPELLANT

Vs

New Delhi Municipal Committee

RESPONDENT

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**Date of Decision :** 17-12-1976

**Acts Referred:**

**Citation :** (1977) ILR Delhi 633

**Hon'ble Judges :** A.B. Rohtagi, J

**Bench :** Single Bench

**Advocate :** T.N. Sethi, V.P. Nanda and B.J.Nayyar, for the Appellant;

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## **Judgement**

Avadh Behari Rohatgi, J.

(1) These are 29 writ petitions. They raise a common question of law. They were heard together. This judgment will govern them all.

(2) M/S. C. P. Singh and Co., petitioner in this case, are the owners of a building known as Thapar House bearing No. 124 in Janpath Lane, New Delhi. This building has been sub-divided by the respondent New Delhi Municipal Committee into different tenements for purposes of assessment of house-tax as a matter of convenience.

(3) The various tenements have been let to different tenants. The owners are Realizing from the tenants, apart from rent, charges for air-conditioning and geysers.

(4) By a resolution dated 16th December, 1960 the committee had decided that for purposes of determining the annual value of a building u/s 3 of the Punjab Municipal Act, 1911 (the Act) the committee will exclude from consideration the charges for airconditioning and geysers.

(5) In 1964 the committee changed its mind. They decided to withdraw the

rebate for air-conditioning and geysers etc. w.e.f. April 1, 1961. On September 11, 1964 they passed a resolution to this effect.

(6) On October 3, 1964 the committee issued notice u/s 67 of the Act to the owners. In the notice they said that their tenements ""had been under assessed through fraud, accident or mistake" and they propose to revise the list by amending it u/s 67 of the Act. The ground of revision was this. Till September 11, 1964 the assessment of the premises was made after excluding the airconditioning charges etc. On September 11, 1964 it was. decided that with effect from 1st April, 1961 the assessment list should be revised "on the basis of actual rent after including the air-conditioning charges".

(7) The owners protested. They filed their objections and said that the notice dated October 3, 1964 should be withdrawn as there was no case for amendment of the assessment list with retrospective effect.

(8) The committee gave a hearing to the owners on November 20, 1964. At the end of the hearing they passed a resolution on that very date They held that the assessment list be revised for the assessment years 1962-63, 1963-64 and 1964-65." By amendment they withdrew the rebate for air-conditioning and geysers and included the charges Therefore in the determination of the annual value of the tenements. This decision was communicated to the owners by a letter dated November 30,1964.

(9) The owners appealed. u/s 84 of the Act appeal lies to the deputy commissioner against the order of assessment of the committee. The appeal is heard by the Additional District Magistrate who exercises the power of the Deputy Commissioner in this respect.

(10) Now what happened is that the owners preferred only one appeal on December 29, 1964 in respect of all the tenements. This was appeal No. 77 (Misc.) of 1965.

(11) There were a number of tenements. The committee had sent 36 assessment orders to the owners in respect of the three assessment years. In respect of these 36 assessment orders the owners preferred one appeal within the period of limitation, as I have said. On May 25. 1965, the owners filed two more appeals. It seems that later on the owners realised that there may be an objection from the side of the Committee that one appeal is not competent in respect of 36 assessment orders relating to different tenements. Therefore, on February 24, 1966, the owners filed 36 appeals before the A.D.M. This was done ex abundanti cautela in order to avoid any objection from the opponent.

(12) The A.D.M. heard all the appeals. By his order dated May 29, 1969, he dismissed 35 appeals holding that they were barred by time. He treated appeal No. 77 (Misc.) of 1965 which was filed in his court on December 29, 1964, as within time. That appeal he decided on merits. Though that appeal related to all the three assessment years 1962-63, 1963-64 and 1964-65 and was directed

against all the 36 assessment orders of the committee dated November 30, 1964, in respect of the several tenements in question, he treated this appeal as for the year 1961-62. On merits, he held that the Committee had no power to make an assessment retrospectively. He. Therefore, allowed this appeal and quashed the order of enhancement.

(13) On August 28, 1969, the owners brought 29 writ petitions in this Court praying for certiorari to quash the decision of the Additional District Magistrate, dated May 29, 1969 as by a common judgment he had disposed of all the 36 appeals which had been brought before him.

(14) In these writ petitions three questions arise for consideration. One is of limitation. The second is regarding the power of the Committee to amend the list u/s 67 with retrospective effect. Third is the question whether charges for air-conditioning, geysers etc. should form part of the annual value u/s 3 of the Act. I will take these questions separately.

(15) On the first question the Additional District Magistrate dismissed all the appeals of the owners except one on the ground that they were barred by limitation. His reasoning was simple. He took the view .that for each assessment year there ought to be a separate appeal and such appeals were in fact brought by the owners but after the limitation had expired. One appeal he thought could not cover all the tenements and all the three assessment years. u/s 85 a prayer was made to him that he should condone the delay. He refused. In the result he dismissed all the appeals except one.

(16) Now section 84, in so far as it is material, provides :

""84.(1) An appeal against the assessment or levy of any or against the refusal to refund any tax under this Act shall lie to the Deputy Commissioner or to such other officer as may be empowered by the State Government in this behalf."

(17) The question for consideration is this. Are the owners, having availed of the statutory remedy, entitled to come to this court under Article 227 of the Constitution ? Counsel for the committee argues that since the appeals of the owners were held to be barred by time it is not a case in which this Court ought to exercise its powers under Article 227 of the Constitution. It is said that the question of limitation and condensation of delay u/s 5 of the. Limitation Act or for that matter u/s 85 of the Act raises essentially a question of fact and, Therefore, this court ought not to interfere with the decision of the authority. He has referred me to A.V. Venkateswaran, Collector of Customs, Bombay Vs. Ramchand Sobhraj Wadhwani and Another, Syed Yakoob Vs. K.S. Radhakrishnan and Others, , Parry and Co. Ltd. Vs. P.C. Pal and Others, and Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others, .

(18) I am afraid I cannot agree with this line of reasoning. The Deputy Commissioner exercising the power conferred on him by section 84 while hearing an appeal against the assessment made by the Committee is a statutory

tribunal. Under Article 227 this court has the power to see that it does not exceed its limits and acts within the bounds of its jurisdiction. If it goes wrong on any question of law or exercises discretion whimsically or arbitrarily it will result into miscarriage of justice. There is no other remedy available to an assessed except an appeal to it. The appeals brought before the Additional District Magistrate, he held to be barred by time. The question is: Is there a remedy available to do justice between the parties ? Should this court act under Article 227 to right a wrong ?

(19) The facts of this case are sufficiently clear. It is not disputed that one appeal was brought on December 29, 1964. That appeal was within time. That appeal related to all the 36 orders passed by the Committee on 30th November, 1964. These orders related to different tenements. The covered the three assessment years. All these assessment orders withdrew the rebate which had been enjoyed by the owners since 1960. By including the charges for air-conditioning and geysers the Committee fixed the annual value for different tenements. This was the common point-and in fact the only point-which was the subject-matter of appeals before the A.D.M.

(20) On May 25, 1965, the owners brought two appeals, presumably relating to different assessment years so that the three appeals brought till then would cover the assessment years of 1962-63. 1963-64 and 1964-65. This later on they felt was not enough. Then they brought 36 appeals on February 24, 1966. Now section 85 of the Act provides for limitation of appeal. That section so far it is material reads:

"85(1)No appeal shall lie in respect of a tax on any land or building unless it is preferred within one month after the publication of the notice prescribed by section 66 or section 68, or after the date of any final order u/s 69, as the case may be, and no appeal shall lie in respect of any other tax unless it is preferred within one month from the time when the demand for the tax is made: Provided that an appeal may be admitted after the expiration of the period prescribed Therefore by this section if the appellant satisfies the officer before whom the appeal is preferred that he had sufficient cause for not presenting the appeal within that period."

(21) The proviso to section 85 clearly gives power to the appellate authority to entertain the appeal even when it is preferred after the period of limitation provided the appellant has shown sufficient cause for not presenting the appeal within the period of one month. The expression "sufficient cause" is quite familiar and has been in use in other statutes for a great many years. In section 5 of the Limitation Act the same term has been used.

(22) The leading case on the point is Krishna vs. Chathappan, 13 Mad 269 decided by the Madras High Court in 1889. The court observed that the words "sufficient cause" should receive a liberal construction so as to advance substantial justice when no negligence nor inaction, nor want of bonafides is

imputable to the appellant "And this view has been generally followed. The view of the Madras High Court has now also received the approval of the Supreme Court. ( Ramlal, Motilal and Chhotelal Vs. Rewa Coalfields Ltd., . By and large it would go a long way to help a person in seeking the indulgence if he satisfies the court that he had acted honestly and in good faith.

(23) An error in law can be a sufficient cause within the meaning of section 5. That was held by the Madras High Court as long ago as 1889 in the leading case referred to above. The fundamental rule, which has been universally recognised as the true rule of guidance for the exercise of discretion u/s 5 is to see whether the party claiming the indulgence has been reasonably diligent in prosecuting his appeal. (See AIR 1946 13 (Federal Court) and Brij Inder Singh vs. Lala Kanshi Ram and others, AIR 1917 P.C. 156. To my mind the owners acted honestly and diligently. They brought one appeal within time relating to all the 36 assessment orders. Later on they moved an application u/s 5 of the Limitation Act. There it was said that by way of abundant caution now 36 appeals were being filed and delay should be condoned. On these undisputed facts I think the Additional District Magistrate ought to have condoned the delay. Probably on legal advice it was thought in the beginning that one appeal is good enough. Later on a separate appeal for each assessment year and for each tenement was filed. This was all. Refusal to exercise discretion in circumstances such as these cannot be said to be a sound exercise of discretion.

(24) The question of sufficient cause is not a question of fact as has been contended. The question as to whether the facts and circumstances constitute sufficient cause is one of law and not of fact: See Kishan Chand vs. Mohammad Husain, AIR 1942 Lah 94, Arura vs. Karam Din, AIR 1947 Lahore 76 and Inder Singh Des Raj and Others Vs. Harnam Singh Gian Singh, .

(25) In King vs. Port of London Authority, 1920 Ac 1, the House of Lords in construing a similar word of English statute said :

"No doubt the relevant facts should be found by the learned Judge and then it becomes a question of law whether these facts are such as to constitute reasonable cause within the provisions of the statute."

(Also see Shotts Iron Co. vs. Fordyee, 1930 A.C. 503.

(26) Take this case All the relevant facts have been found by the Additional District Magistrate. No fact is in dispute. On three occasions appeals were filed. There is an application for condensation of delay. On these facts can it be said that the petitioner has failed to show a sufficient cause for condensation of delay ? This is a question of law. In the writ jurisdiction I think the court can set the authorities right if they go wrong on a question of law.

(27) Apart from this consideration there is yet another reason. The appeals to the A.D.M. were held to be barred by limitation. Take that to be so. The power of superintendence and control conferred by Article 227 of the Constitution can be

exercised even through the appeal to the Tribunal was barred by time. There is no rule of limitation fixed for preferring an application under Article 227. Of course a party has to act diligently and expeditiously. The mere fact that the owners were late in filing the appeal to the A.D.M. may be a bar u/s 85 of the Act. But it is not a bar in the way of this court in giving relief to a petitioner in an appropriate case under Article 227 of the Constitution : (See Detoa Vs. Phagu, . This principle is in fact an extension of the principle of alternative remedies. A party should avail of the statutory remedy. But that is not an inflexible rule. There is no total bar to a right to relief in this court under Article 227, if for one reason or another the appeal of a party is held to be barred by time. If this court is satisfied that the petitioner acted honestly and diligently in pursuing his statutory remedy this court will not be deterred in exercising its extraordinary jurisdiction under Article 227.

(28) So much about the question of limitation. Now I come to the second question. Has the Committee power to amend the list u/s 67 with retrospective effect ? This question is now settled by a full bench of this Court in Life Insurance Corporation vs. New Delhi Municipal Committee, ILR (1973) Del 2. The Committee have no power to amend the list retrospectively. During the currency of the assessment year the list can be revised on the ground of fraud, accident and mistake. This is what the full bench has said.

(29) Now I turn to the third question. From 1960 to 1964 the owners were allowed rebate for air-conditioning and geysers. This was not held to form part of the annual value. This is how the Committee looked at the matter then. In 1964 they changed their opinion. They took a different stand. They started including charges for air-conditioning in the annual value. The owners of properties were naturally affected by this view. In another case an assessed challenged this action of the Committee. A division bench of this court (Prakash Narain and R. N. Aggarwal, JJ) in Bansi Dhar vs. New Delhi Municipal Committee; (1974) 76 P.L.R. 167 (The report is misleading. It shows as if it was a decision of R. N. Aggarwal J. alone) has held that the committee has no power to include the charges of air-conditioning etc. in the annual value while making an assessment u/s 3 (1) (b). It is not in dispute that in this case as in the division bench ruling the assessment has been made under clause 3 (1) (b).

(30) In the case of Bansi Dhar (supra), the division bench said :

"The Punjab Municipal Act was enacted in the year 1911. Keeping in view the time, when the Act was enacted, in our opinion, the word "appurtenance" in clause (b) would mean an outhouse, barn, garden or orchard attached to a house. The said expression will certainly not include machinery or electrical appliances. The word "furniture" normally is understood to mean tables, chairs, beds, wardrobes, desks, stove etc. The word "furniture" will also not include machinery and electrical appliances. If the framers of section 3(1) had intended the word "appurtenances" to include machinery and electrical appliances, there appears to be no reason why deduction for such articles would not have been

allowed as it has been done in the case of furniture. On a plain reading of clause (b), we are inclined to hold that the expression "appurtenances and any furniture" does not include machinery and electrical appliances."

(31) The other reason which commended to the division bench was that the proviso to clause (e) of section 3(1) clearly excludes the inclusion of machinery in the annual value. That proviso, it was held, applies not to clause (e) alone, but also to the other clauses, namely, (a) and (b). The division bench thought that there was a statutory prohibition to the inclusion of machinery and, Therefore, charges for air-conditioning and electrical appliances such as geysers etc. cannot be included in determining the annual value.

(32) Counsel for the Committee tried to assail before me the correctness of the division bench ruling and cited a number of authorities. He urged that this ruling ought to be reconsidered and in any case should not be followed. Sitting signally as I do I am bound by the division bench ruling. Following the division bench I would hold that the decision of the Committee to include charges for air-conditioning and geyser etc. in the computation of the annual value was plainly wrong.

(33) For these reasons I would accept all the writ petitions and quash the decision of the Committee as embodied in its resolution dated November 20, 1964 which was communicated to the petitioner by letter dated November 30, 1964, withdrawing the rebate for air- conditioning and geysers. In the circumstances, I leave the parties to bear their own costs.