
(1998) 09 DEL CK 0064
In the Delhi High Court
Case No : L.P.A. No. 237 of 1996

D.R. Aggarwal and Another	Vs	APPELLANT
New Delhi Municipal Committee and Another		RESPONDENT

Date of Decision : 07-09-1998

Acts Referred:

Constitution of India, 1950 — Article 226
Delhi Municipal Corporation Act, 1957 — Section 169, 170

Citation : AIR 1999 Delhi 67 : (1998) 47 DRJ 553

Hon'ble Judges : Y.K. Sabharwal, J; Kripa Shankar Gupta, J

Bench : Division Bench

Advocate : H.N. Chaudhary, for the Appellant; S.S. Gautam, for the Respondent

Final Decision : Allowed

Judgement

Y.K. Sabharwal, J.—This Letters Patent Appeal is directed against the decision of learned single Judge whereby the writ petition of the appellate has been dismissed in liming on the ground that equally efficacious remedy of appeal is available to them. It has been held by learned single Judge that the writ petition is not tenable in view of the observations of the Supreme Court in the case of Shyam Kishore and others Vs. Municipal Corporation of Delhi and another, . Briefly the case of the appellants is as under :

The appellants are the sons of late Mr. Basheshar Nath who had let out the ground floor of property No. 61, Jor Bagh, New Delhi to Indian Oil Corporation Limited in the year 1969 at the monthly rent of Rs. 750/-. He had also let out the first and second floors in the year 1969 at a monthly rental of Rs. 675/- to M/s. Chowgule and Company Limited. The property tax for the years 1969-70 to 1988-89 had been assessed on the actual rental yield. The challenge in the writ petition was to the notices of assessments made in respect of rateable value for the years 1989-90, 1990-91 and 1993-94. The resolutions passed by New Delhi Municipal Committee (NDMC) pertaining to these years have been placed on record. For the year 1989-90, as per the Resolution No. 190 dated 15th March,

1993, the proposed annual value was taken by the NDMC at Rs. 2,04,540/-less 10 per cent. It is stated to be on rental basis. Similar is the position for the year 1990-91 (Resolution No. 191 dated 15th March, 1993). In respect of the year 1993-94 (Resolution No. 556 dated 22nd February, 1993) the proposed rateable value is Rs. 1,12,462/- less 10 per cent on comparable basis. Learned counsel for the appellants has also submitted that for the two intervening years i.e., 1991-92 and 1992-93 the house tax was levied on aforesaid actual rent amounts. The appellants have also placed on record the assessments made for the subsequent years i.e., 1995-96 and 1996-97 in support of the contention that the house tax has been levied on actual rent being paid, as aforesaid, by Indian Oil Corporation and M/s. Chowgule and Company. However, it was pointed out by learned counsel for the appellants that the rent for these two years was wrongly stated in the assessment orders as Rs. 1,050/- per month from Indian Oil Corporation Limited in place of Rs. 750/- per month. In this appeal we are not concerned with these merits. We have, however, noticed these facts in order to highlight the grievance of the appellants which was the subject matter of the writ petition which was dismissed in limine by the impugned judgment.

2-3. Learned counsel for NDMC contends that in view of the statutory remedy of appeal available to the appellants the writ petition was not maintainable and was rightly dismissed. On the other hand, learned counsel for the appellants contends that the remedy of appeal was onerous as it required the appellants as a precondition of hearing of appeal to deposit the house tax. Further contention urged on behalf of the appellants is that the statutory provisions cannot take away the constitutional remedies available under Article 226 of the Constitution of India to the citizens.

4. In support of the contention that the remedy of writ petition is barred, learned counsel for the respondents has relied upon the decision of the Supreme Court in the case of Mafatlal Industries Ltd. and Others Vs. Union of India (UOI) and Others, . The said decision has no applicability to the facts and circumstances of the present case. Further it may be noticed that in Mafatlal's case too the constitution bench held that so far as the jurisdiction of the High Courts under Article 226 of the Constitution of India or of Supreme Court under Article 32 is concerned, it remains unaffected by the provisions of the Act. There can, however, be no doubt that while exercising the jurisdiction under Article 226, the Court will examine various facets of the case before determining whether the facts of the case justify interference in exercise of discretionary and extraordinary jurisdiction vested in High Court under Article 226. The Court may also take into consideration the fact of availability of remedy of statutory appeal as also the precondition of deposit for hearing of the appeal and then decide on facts to entertain or not the writ petition. Reliance has also been placed on behalf of NDMC on the decision of the Supreme Court in the case of Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others, . In this decision too it was not held that the writ petition under Article 226 is not maintainable. What has been held is that the Court will examine

whether there are good and sufficient reasons to bypass the alternative remedy provided by the statute. The Court will also examine facts to determine whether the statutory remedy is ill-suited or not. This decision also does not in any manner show that a writ petition per se is not maintainable in the matters where the challenge is to the assessments made by the Municipal authorities.

5. The Full Bench decision of this Court in *Shri Shyam Kishore Vs. Municipal Corporation of Delhi and others*, , which was affirmed by the Supreme Court in *Shyam Kishore and others Vs. Municipal Corporation of Delhi and another*, was mainly concerned with the question of validity of the provisions of Section 170(b) of Delhi Municipal Corporation Act, 1957. The Supreme Court while affirming the said full bench decision only stated that the resort to Articles 226 and 227 should be discouraged when there is an alternative remedy. It is one thing to hold that on facts if it is so justified, a petition under Article 226 may be discouraged but it is another thing to hold that the writ petition is not maintainable. In *Shyam Kishore's* case (supra) the Supreme Court did not hold that the writ petition is not maintainable. It deserves to be emphasised that a statutory law cannot take away the constitutional powers of the Court. Reference may be made to the constitution bench decision of the Supreme Court in the case of *Himmatlal Harilal Mehta Vs. The State of Madhya Pradesh and Others*, , which rejected the contention that because a remedy under the impugned Act is available to the assessee, he is disentitled to relief under Article 226. Referring to an earlier decision in the case of *The State of Bombay and Another Vs. The United Motors (India) Ltd. and Others*, , it was held that the principle that a Court will not issue a prerogative writ when an adequate alternative remedy was available does not apply where a party has come to the Court with an allegations that his fundamental right has been infringed and sought relief under Article 226. Moreover, since the remedy provided by the Act is of an onerous and burdensome character and before the assessed can avail of it, he has to deposit the whole amount of the tax, such a provision can hardly be described as an adequate alternative remedy. The decision in *Himmat Lal's* case (supra) was again cited with approval by the Supreme Court in the case of *Srikant Kashinath Jituri and others Vs. Corporation of the City of Belgaum*, . In this case the Supreme Court while examining the question whether the remedy of suit and/or petition under Article 226 would be barred, held that such an onerous provision may be a ground for entertaining a writ petition on the ground that alternative remedy provided by the statute is not adequate or efficacious remedy but that can never be a ground for maintaining a civil suit. Both the jurisdictions are different and are governed by different principles. Article 226 provides a constitutional remedy. It confers the power of judicial review on High Courts. The finality clause in a statute is not a bar to the exercise of this constitutional power whereas the jurisdiction of a Civil Court arises from another statute, viz., Section 9 of the Code of Civil Procedure. In our view it has always been the law in our country that a constitutional remedy available to a Citizen cannot be barred by a provision regarding finality or alike in a statute.

6. In view of the aforesaid well settled legal I proposition, the writ petition could not have been dismissed in limine as not maintainable without going into the facts and circumstances of the case. Whether to interfere or not while exercising writ jurisdiction would depend on facts and circumstances of each case. In a given case, depending on the facts of that case, the Court may still come to the conclusion that in view of the facts and the remedy of appeal, it would not entertain the writ petition but it has not been so held in the judgment under appeal.

7. For the aforesaid reasons we set aside the impugned judgment and remand the writ petition for fresh decision. The parties shall appear before the learned single Judge on 22nd September, 1998. The appeal is disposed of in the above terms leaving the parties to bear their own costs.