
(2016) 08 AHC CK 0279
In the Allahabad High Court
Case No : Writ Tax No. 831 of 2015

Dr. Arun Kumar

APPELLANT

Vs

Nagar Nigam Bareilly

RESPONDENT

Date of Decision : 22-08-2016

Acts Referred:

Nagar Nigam Adhinyam, 1959 — Section 174(1)(b)

Uttar Pradesh Municipal Corporation (Property Taxes) Rules, 2000 — Rule 4A, Rule 4B

Citation : (2017) 2 ADJ 638

Hon'ble Judges : Sudhir Agarwal and Dr. Kaushal Jayendra Thaker, JJ.

Bench : Division Bench

Advocate : Manish Goyal and Ankita Jain, Advocates, for the Petitioner in Writ Tax No. 831 of 2015; Shivnath Singh and Satyam Singh, Advocates, for the Respondents in Writ Tax No. 831 of 2015; Vishwa Pratap Singh, Advocate, for the Petitioner in Writ Tax No. 212 of

Final Decision : Allowed

Judgement

1. Heard Sri Manish Goyal and Sri Vishnu Pratap Singh, learned counsel for petitioners and Sri Satyam Singh, Advocate for Nagar Nigam.
2. Rent list dated 30th May, 2015 published by Nagar Nigam determining rate under Section 174(1)(b) of Nagar Nigam Adhinyam, 1959 (hereinafter referred to as "Act, 1959") read with Rule 4A & 4B of Uttar Pradesh Municipal Corporation (Property Taxes) Rules, 2000 (hereinafter referred to as "Rules, 2000") for assessment of annual value of buildings for determining House Tax and Water Tax has been challenged on the ground that said determination has been made in violation of procedure prescribed in the Rules read with Section 174 of Act, 1959.
3. With the consent of parties, for the purposes of reference of pleadings, Writ Tax No. 831 of 2015 is taken as the leading case.
4. Brief facts sated therein are that petitioners are residents of Bareilly. Respondent, Nagar Nigam, Bareilly is a Municipal Corporation constituted under

Act, 1959 and governed by various provisions there under.

5. Under Section 173 Nagar Nigam is empowered to levy different kinds of "Property Tax" enumerated therein vide sub section (1) as under : -

"(a) a general tax on a graduated scale;

(b) water tax in areas where water is supplied by Corporation;

(c) drainage tax in areas provided with sewer system by Corporation;

(d) a conservancy tax in areas in which Corporation undertakes collection, removal and disposal of ex-crementitious and polluted matter from privies, urinals and cesspools."

(emphasis added)

6. Sub section (2) of Section 173, states that taxes under sub section (1) shall be levied on "annual value" of building or land as the case may be. A proviso inserted in sub section (2) by U.P. Act No.17 of 1999 provides minimum and maximum rate of taxes leviable by Corporation and reads as under : -

"Provided that the aggregate of the property taxes shall in no case be less than 22 per cent and not more than 32 per cent of the annual value of the building or land or both assessed to such taxes, so however, that the general tax shall not be less than 10 per cent and not more than 15 per cent, the water tax shall not be less than 7.5 per cent and not more than 12.5 per cent, the drainage tax shall not be less than 2.5 per cent and not more than 5 per cent and the conservancy tax shall not be more than 2 per cent of the annual value."

(emphasis added)

7. Since "Property Tax" under Section 173 is founded on "annual value" of buildings or land, Section 174, defines "annual value" and reads as under.

"174. Definition of "annual value".

-(1) "Annual value" means -

(a) in the case of railway stations, colleges, schools, hostels, factories, commercial buildings, and other non-residential buildings, a proportion not below 5 per cent, to be fixed by rule made in this behalf of the sum obtained by adding the estimated present cost of erecting the building less depreciation at a rate to be fixed by rules, to the estimated value of the land appurtenant thereto; and

(b) in the case of a building or land not falling within the provisions of clause (a), twelve times the value arrived at on multiplying the carpet area of the building, or the area of the land, by the applicable minimum monthly rate of rent per square foot of the carpet area in the case of building or the applicable minimum monthly rate of rent per square foot of the area in the case of land, as the case may be, and for this purpose the minimum monthly rate of rent per square foot

shall be such as may be fixed once in every two years by the Municipal Commissioner on the basis of the location of the building or the land, nature of the construction of the building, the circle rate fixed by the Collector for the purposes of the Indian Stamp Act, 1899 and the current minimum rate of rent in the area for such building or land and such other factors, and in such manner, as may be prescribed:

Provided that where the annual value of any building would, by reason of exceptional circumstances, in the opinion of the Corporation, be excessive if calculated in the aforesaid manner, the Corporation may fix the annual value at any less amount which appears to it equitable.

Explanation.- For the purpose of calculation of annual value the carpet area shall be calculated as under: -

- (ii) Covered Verandah - full measurement of internal dimension;
- (iii) Balcony, Corridor, Kitchen and Store-50 per cent measurement of internal dimension;
- (iv) Garage - one-fourth measurement of internal dimension;
- (v) Area covered by bathroom, latrines, portico and staircase shall not form part of the carpet area.

Explanation II.-The standard rent, the agreed rent or the reasonable annual rent of a building for the purposes of the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 shall not be taken into account while calculating the annual value of that building.

(2) Where the Corporation so resolves, the annual value for the purpose of assessment of property taxes shall -

(a) in the case of land and owner-occupied residential building which is not more than ten years old, be deemed to be 25 per cent less and if it is more than ten years but not more than twenty years old, be deemed to be 32.5 per cent less, and if it is more than twenty years old, be deemed to be 40 per cent less than the annual value determined under clause (b) of subsection (1); and

(b) in the case of residential building let on rent, which is not more than ten years old, be deemed to be 25 per cent more, and if it is more than ten years but not more than twenty years old, be deemed to be 12.5 per cent more than the annual value determined under clause (b) of subsection (1), and if it is more than twenty years old, be deemed to be equal to the annual value determined under clause (b) of sub-section (1).

8. Section 174 provides two methods to compute "annual value", one in respect of non residential, commercial or such building as are used for public purposes and another for those which are residential building. Section 174(1)(a) deals with method of determining "annual value" in respect of railway stations, colleges,

schools, hostels, factories, commercial buildings and other non residential buildings. The methodology applied by Legislature for determining annual value for property covered by Section 174(1)(a) is that firstly, estimated present cost of erecting the building shall be determined, and rate of depreciation shall be applied to such building. Depreciation rate would be fixed by Rules. The reduced cost of erecting building i.e. which comes after reducing depreciation at the rate fixed by Rules, it shall be added to the admitted value of land. "Annual value" would be 5 per cent or such as fixed by Rule of the value arrived at above. We may demonstrate annual value of property governed by Section 174(1)(a) as under.

"Present cost of erecting building - (depreciation at a rate fixed by Rule) + estimated value of land appurtenant to property = whatever value comes, "annual value" would be 5 per cent or such higher as fixed by Rules."

9. Similarly, Section 174(1)(a) applies to building or land not covered by clause (a) of sub-section (1) of Section 174. In this category annual value would be determined, firstly, by working out carpet area of building or where it is land; area of land, multiplied by minimum monthly rate of rent per square foot of the carpet area in case of building, or minimum monthly rate of rent per square foot of the area of land. Whatever value comes, it shall be twelve times thereof would be "annual value". In other words, the determination may be demonstrated as under.

"(a) For Building - Carpet area of building x minimum monthly rate of rent per square foot x 12

(b) Land ? area of land x monthly minimum rate per square foot."

10. With respect to monthly minimum rate of rent per square foot under Section 174(1)(b), statute requires that it shall be fixed once in every two years by Municipal Commissioner on the basis of (a) location of building or land, (b) nature of construction of building, (c) circle rate fixed by Collector for the purpose of Indian Stamp Act, 1899, (d) the current minimum rate of rent in the area for such building or land, and (e) such other factors, as the case may be.

11. Explanation 1 of Section 174 gives details as to how annual value of carpet area shall be calculated and Explanation-II makes it clear that agreed rent , standard rent or reasonable annual rent of a building for the purposes of Uttar Pradesh Urban Buildings (Regulations of Letting, Rent and Eviction) Act, 1972 (hereinafter refereed as "Act, 1972") shall not be taken into account while calculating annual value of that building.

12. Sub-Section (2) further provides that Corporation so resolves, annual value for the purposes of assessment of property taxes shall be in the case of land and owner occupied residential building which is not more than ten years old, be deemed to be 25 per cent less and if it is more than ten years but not more than twenty years old, be deemed to be 32.5 per cent less and if it is more than

twenty years old, be deemed to be 40 per cent less than the annual value determined under clause (b) of sub-section (1). Further in case of residential building let on rent, which is not more than ten years old, it can be deemed to be 25 per cent more, and if it is more than ten years but not more than twenty years old, be deemed to be 12.5 per cent more than the annual value determined under clause (b) of sub-section (1), and if it is more than twenty years old, be deemed to be equal to annual value determined under clause (b) of sub section (1).

13. For the purposes of preparation of assessment and levy of property tax, procedure has been prescribed in Sections 207 to 213. Section 207 contemplates preparation of an assessment list by Municipal Commissioner determining area wise rental rates in accordance with manner prescribed in the rules. Section 207-A gives an option to owner or occupier of property to self assessed property of tax and deposit the same and for that himself determine annual value of building in accordance with Section 174 and deposit property tax so assessed by him in such manner, together with a statement of such self assessment, in such form, as may be prescribed.

14. Section 207-B provides that every owner or occupier of house or land shall submit a property return for the purposes of annual rental value up to a date as may be prescribed. Sub-section (2) makes failure of submitting such return, penal, which is compoundable in view of Section (3) of Section 207-B. Section 208 obliges Municipal Commissioner to publish list prepared under section 207 in accordance with the manner prescribed in the rules. Section 209 obliges Municipal Commissioner or an Officer authorised by him to dispose of objections against assessment list prepared under section 207 in the manner prescribed in the rules. Section 211 contemplates new assessment list ordinarily in every two years in exercise of power under Sections 174 to 207-A and 221-B of Act, 1959,

15. Competent Authority i.e. State Government has framed rules, namely, Uttar Pradesh Municipal Corporation (Property Taxes) Rules, 2000 (hereinafter referred to as "Rules, 2000"). The aforesaid rules exclude the area which has been included in the city within last ten years and a building constructed on a plot of land measuring 30 square meter or having a carpet area of 15 square meter, if the owner of the building does not possess any other building in the city. These rules came into force from the date of publication in gazette i.e. 22nd April, 2000.

16. Nagar Nigam, Bareilly under took exercise for determination of rent in terms of Section 174 read with Rules 2000 for the period :-

(i) 2001 upto 2003

(ii) 2003 upto 2005

(iii) 2007 upto 2009.

17. Petitioners did not dispute aforesaid fixation and paid house tax in terms of determination of annual value for the aforesaid period, either through self

assessment form or on the basis of bills raised by Nagar Nigam, Barielly.

18. Rent list was published for 2010-12, and objections were decided. It was decided that proposed list, would be effective from 1- 4-2011 and shall be published in two local news papers, but rental value was arbitrarily enhanced without objections and publications.

19. By resolution dated 12-2-2014, Nagar Nigam discarded rent list for 2011-12 but instead of implementing said list, a new proposal was made for revision of rent based upon per square foot for carpet area in the case of building and per square foot of the area in the case of land by publication of another list dated 10-4-2015. Objections were filed by various persons including petitioners. Personal hearing was afforded on 31-5-2015 and final list was published on 31.5.2015.

20. It is said that finalization of rent rate list is illegal and contrary to rule 4A (1) (ii) of Rules, 2000. Final list was published on 31st May, 2015 while objection was decided on 16-6-2015 and July, 2015 which was in violation of Rule 4B of Rules, 2000. It is also said that entire exercise has been done by officers of Nagar Nigam and not by Municipal Commissioner who is authorised under Act, 1959 and Rules 2000. Further no decision could have been taken by Municipal Commissioner without any resolution of Board. From paras 37 to 42, of writ petition with reference to various provisions in Act, 1959 and Rules, 2000 it has been sought to demonstrate that in making final assessment, procedure prescribed in Rules has not been followed by Respondents.

21. Nagar Nigam has filed a counter affidavit but therein contents of paras 33 to 38 of writ petition, though denied, but there is no averment and any material to show that procedure laid down in various provisions as discussed and referred above, was followed by Nagar Nigam.

22. Learned counsel appearing for respondent, Nagar Nigam, after some arguments, fairly did not dispute that in determining rates under Section 174, which are impugned in the writ petition, Nagar Nigam has failed to follow the procedure prescribed in various provisions of Act, 1959 as referred to above.

23. When law requires something to be done in a particular manner anything done otherwise will be paid and illegal. This principle was recognised in *Nazir Ahmad v. King-Emperor* AIR 1936 PC 253 and, thereafter it has been reiterated and followed consistently by Apex Court in a catena of judgements, which we do not propose to refer all but would like to refer a few recent one.

24. In *Dhananjaya Reddy v. State of Karnataka* 2001 (4) AIR 9 in para 23 of the judgment the Court held :

"It is a settled principle of law that where a power is given to do a certain thing in a certain manner, the thing must be done in that way or nothing at all."

25. In *Commissioner of Income Tax, Mumbai v. Anjum M.H. Ghaswala* 2002 (1)

AIR 633, it was held :

"It is a normal rule of construction that when a statute vests certain power in an authority to be exercised in a particular manner then the said authority has to exercise it only in the manner provided in the statute itself."

26. The judgments in Anjum M.H. Ghaswala (supra) and Dhananjaya Reddy (supra) laying down the aforesaid principle have been followed in Captain Sube Singh & others v. Lt. Governor of Delhi & others 2004 (6) AIR 440.

27. In Competent Authority v. Barangore Jute Factory & others 2005 (13) AIR 477, it was held :

"It is settled law that where a statute requires a particular act to be done in a particular manner, the act has to be done in that manner alone. Every word of the statute has to be given its due meaning."

28. In State of Jharkhand & others v. Ambay Cements & another 2005 (1) AIR 368 in para 26 of the judgment, the Court held:

"It is the cardinal rule of interpretation that where a statute provides that a particular thing should be done, it should be done in the manner prescribed and not in any other way."

29. In effect a similar question was considered by Division Bench of this Court [in which I was also a member with Hon"ble S.R. Alam, J., (as His Lordship then was)] in Daya Shankar Singh v. State of U.P. and others, 2008(2) ESC 1220 and this Court has observed:

"A modification, amendment etc., therefore, is permissible by exercising the power in the like manner and subject to like sanction and conditions in which the main provision was made initially. Since, Staff Regulations were framed admittedly with the previous sanction of the State Government and by publication in the official Gazette, same can be amended only following the same procedure and not otherwise. Therefore, the proposal/resolution passed by the Board of Directors, UPSWC by no stretch of imagination can be said to have the effect of either amending Regulation 12 of Staff Regulations or to bind UPSWC and its employees to be governed by such resolution/proposal which are inconsistent with the existing provisions contained in Staff Regulations."

30. In that view of the matter, we find that impugned final rate list and list of Rental Value cannot be sustained.

31. In view of the above stand of respondents and considering the fact that non observance of procedure prescribed in Act, 1959 is virtually admitted, this writ petition is allowed. Impugned final rate list 30.5.2015 issued by respondent-1 and list of Rental Value, dated 10.4.2015 are hereby set aside. However, this judgment will not preclude respondents from proceeding afresh to determine Annual Value in accordance with Section 174, after following procedure prescribed in Act, 1959 and Rules 2000.

32. No costs.