(1951) 05 CAL CK 0007

In the Calcutta High Court

Case No : Matter No. 70 of 1951

Gayadinram APPELLANT

Vs

A.D. Khan and Another RESPONDENT

Date of Decision : 25-05-1951

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : 55 CWN 667

Hon'ble Judges : Bose, J

Bench : Single Bench

Advocate : K.K. Basu and S.P. Mitra, for the Appellant;B. Das, for the Respondent

Final Decision : Allowed

Judgement

Bose, J.—This is an application under Article 226 of the Constitution for Writs in the nature of Mandamus, Certiorari and Prohibition for cancellation of an order of assessment, dated the 6th December, 1950, and few direction upon the respondents to forbear from giving effect to that Order. The petitioner is the owner of premises No. 77, Park Street. Calcutta, which comprises the land originally numbered as premises No. 77D, Park Street, and the new building erected thereon. It appears that the building was requisitioned by the Government of West Bengal before the construction was completed. There is a suit pending in this Court (suit No. 1031 of 1948) for fixation of the rent of the premises and with regard to the Award of the Land Acquisition Collector, Calcutta.

2. On or about the 27th November, 1947 the petitioner was served with a notice dated the 17th November, 1947, purporting to be given by an assessor to the Corporation of Calcutta u/s 138 of the Calcutta Municipal Act intimating that the said premises had been assessed at an annual value Of Rs. 41,115 to remain; in force for 6 years from the commencement of the 4th quarter of 1947-48 in place of the former valuation of 34,020.

3. On the 1st December, 1947, the petitioner Tiled his objection to the said valuation, and asked for a time to be fixed for hearing the objection.

4. On the 7th August, 1950, the Deputy Assessor of the Corporation wrote to the petitioner asking to be informed as to when the Arbitration Board appointed. for fixing the rent would make the award.

5. On the 8th September, 1950, the Si Assessor of the Corporation sent a reminder and the petitioner replied stating that nothing had been done till then with regard to the fixation of rent.

6. On or about the 19th October, 1950, the petitioner was served with a Notice, dated the 10th October 1950 purporting to be issued by Assesor to the Corporation u/s 140 of the Act informing that the herring of the objection to the assessment would take place before the Special Officer on the 3rd November, 1950, and if the petitioner did not appeal the objection would be decided ex parte.

7. It appears that on the 3rd November, 1950. the representative, of the petitioner, one Mr. K. Mazumdar, appeared before the Special Officer but he did not supply all the information asked for by the Special officer and when the officer was about to confirm the assessment he asked for a month''s time to supply the required information, and the matter was there-upon adjourned till 6th. December, 1950.

8. On the 6th December, 1950, neither the petitioner nor his representative appeared before the" Special Officer but the petitioner send a letter, dated the 6th December, 1950, asking for a short adjournment on the ground of the representative''s illness, and forwarded a copy of a letter of his Solicitor containing- some information about rent fixed by the Land Acquisition Collector.

9. On the 6th December, 1950, the Special Officer passed an order to the following effect:--

Party applies for time. I see no reason to grant it. The application for time evades information on the point which I particularly asked for. Petition rejected. Case decided ex parte. Confirmed.

Sd. T.C. MUKHERJEE.

6. 12. 50.

10. Curiously, however, on the 7th December, 1950, the Sub-Assessor sent a reminder asking for the same information required by the letter of the 9th September, 1950, about the amount of rent "so that the payment of the outstanding bill in respect of the above premises is settled early after hearing of the objection hearing case". The letter gave the impression as if the objection case was still pending.

11. On the 29th December, 1950, the petitioner wrote a letter to the Special

Officer enquiring about the fate of his application for adjournment sent on the 6th December, 1950, and as to whether any assessment had already been made or not. No reply was received to this letter but instead two reminders came from the Sub-Assessor on the 15th January, 1951. and 8th February, 1951, asking for the same information as demanded b the letter of the 7th December, 1950.

12. On the 14th February, 1950, the petitioner again wrote to the Special Officer in the same strain in which he wrote the letter of the 29th December, 1950, but no reply was given to this letter.

13. Thereafter on enquiry at the Assessment Department the petitioner learnt that the assessment had already been made.

14. The petitioner thereafter wrote a letter to the Executive Officer asking for a fresh hearing of the objection ease but no steps appear to have been taken on this letter.

15. On the 16th March, 1951 the petitioner''s solicitor addressed a letter to the respondents Nos. 1 and 2 and to the Assessment Department asking for redress but; with no effect.

16. Thereupon this application was moved for the reliefs stated above.

17. On behalf of the respondents two affidavits affirmed or the 26th April, 1951, have been filed but from none of these affidavits any explanation as to the curious letters written by the Sub-Assessor on the 7th December, 1950, 15th January, 1951, and 8th February, 1951, is forthcoming. In fact the affidavits are absolutely silent about these letters.

18. It has been contended by Mr. K.K. Basu, the learned counsel for the petitioner, that the Special Officer. Mr. Mukherjee, had no jurisdiction to make the order of assessment, dated the 6th December, 1950. His argument is hat the Calcutta Municipal (Second) Amendment Act 1950 (West Bengal Act XLIV of 1950), which has conferred power on a Special Officer to deal with objection cases u/s 140 of the Calcutta Municipal Act has vested him with only the limited power of hearing objections only and he has no power to make any determination with regard to the objections. According to the learned counsel the amendment introduces in section 140(2) the words "Special Officer appointed by the Corporation for hearing objections" and there was no necessity for using the words ''''for hearing objections" unless the legislature intended to limit the power of the Special Officer to the matter of hearing objections only as a fact-finding officer. I am unable to accept this contention. The hearing of objections must necessarily involve a determination. A person who hears objections is bound to come to a finding or conclusion as to whether the objection is tenable or not. The finding or conclusion is the determination of the objection. It is difficult to dissociate determination from the hearing. The one is the integral part of the other. The object of using the words "for hearing objections" in the amendment was to exclude the possibility of any construction that the Special Officer had any

of the powers or functions of the Executive Officer or the Deputy Executive Officer as given to them by the Act other than the power of dealing with objections as contained in section 140 of the Act. The sub-sections (2) and (3) of section 140 should be read together. The omission of the words "Executive Officer or Deputy Executive Officer" in section 140 (2) by the amendment effected by the aid Act XLIV of 1950 also lends support to the construction I am placing on the effect of the amendment to section 140(2). By the omission of the words "Executive Officer or Deputy Executive Officer" the order passed by a Special officer is intended to be brought within the ambit of section 140 (2) of the Act. for otherwise there was no necessity of the deletion of the said words.

19. This contention of Mr. Basu must therefore, fail.

20. The other contention put forward by Mr. Basu is that the notice given by the Assessor under sections 138 and 140 of the Act are bad as he has no power to issue the said notices and so the entire assessment proceedings are without jurisdiction. His argument is that the Executive Officer alone has the power to issue such notice.

21. In answer to this contention of Mr. Basu, a delegation chart showing that the Executive Mr. H.D. dutt had delegated u/s 12(3) of the while he was in office, the powers or duties vested in the Executive Officer undertone 138 and section 140 (1) of the Act, to the Assessor, has been produced.

22. Mr. Basu argues that this delegation cannot be of any assistance in this case as this ceased to be in force when Mr. Dutt ceased to be in office. I am unable to accede to this contention. The powers and duties of the Executive. officer are attached to that statutory office and not; to the person holding that office The delegation is not by the holder of the office in his individual capacity but in his official capacity. The individual come and go but the statutory office remains and along with it the duties and. powers of the office remain. The persons to whom the powers or duties are delegated are officers of the Corporation. By virtue of the delegation they become clothed with these additional power So long as the Corporation remains the offices remain. It is only when the Corporation ceases to exist that the officer also will cease. To hold that with every case of death or removal or retirement of an Executive Officer the delegations made by him cease to be operative would lead to an intolerable situation. It is no doubt open to the successor of the office to revoke any part of the delegation made by his predecessor if he so chooses, but in the absence of any such revocation it must be deemed that the successor in office has accepted and approved of the delegation made by his predecessor. The present Executive Officer must be deemed to have accepted and acquiesced in the delegation made by Mr. H.D. Dutt unless there is anything to show to the contrary. So this contention of Mr. Basu must be rejected.

23. Mr. Basu further contended that Section 12(3) of the Act prevents an Executive Officer from delegating his powers and duties u/s 140 of the Act. But it

appears from the Delegation Chart produced by the Corporation that the then Executive Officer Mr. Dutt purported to delegate the functions u/s 140 (1) to the Assessor and pursuant to such delegation, in the present case, the Assessor has issued the Notice u/s 140(1) fixing time and place for hearing the objection. So the entire proceedings for assessment are bad.

24. The answer of Mr. B. Das, the learned counsel for the respondent''s, is that as section 140(1) does not refer to the Executive Officer specifically and as no power is vested in the Executive Officer by subsection (1) of section 140 the delegation is not hit by section 12(3), for it is only the delegation of powers and duties imposed on the Executive Officer u/s 140 which i- prohibited. It is true that section 140 (1) does not vest the Executive Officer with any power. but it enjoins the performance of certain duties, though no doubt of a ministerial nature. But many such duties even of a ministerial nature are imposed upon the Executive Officer, e.g., sections 136, 137, 138 of the Act. Moreover section 12(3) of the Act does not lay down any qualification to the effect that the duties specified u/s 140(1) can be delegated. It imposes an absolute bar on dele-ions of all powers and duties under all the sub-sections of section 140.

25. In my view the purported delegation of duties or functions u/s 140(1) cannot be held to be a valid or effective delegation. Section 503 of the Act which says that notices can be served or issued by the municipal officers, servants or other persons authorised by the Executive officer in that behalf cannot validate the notice u/s 140(1) given under the signature of the Assessor. The actual service of the notices or issuing, i.e., sending out of the notices from the office may be done by the municipal officers or servants but the notices must bear the nature of the Executive Officer wherever the Act imposes a, duty upon him to give the notices unless such duty is properly delegated. The Corporation is the creature of Statute and its Acts and the acts of its officers must strictly) comply with the provisions of the Statute. The notice, dated the 10th October, 1950. and the subsequent proceedings must therefore be held to be without jurisdiction.

26. It appears, however, from the various affidavits filed in these proceedings that the petitioner has not been fairly dealt with by the respondent No. 2 nor given a proper opportunity to present his case at the hearing u/s 140(2) of the Act. On the 6th December, 1950, a letter was sent to the Special Officer stating that the representative of the petitioner was lying ill and asking for a short adjournment.'' The petitioner is not even informed that his application for postponement is rejected, and the case is decided ex parte then and there. Not only is the case decided ex parte, but the petitioner is completely misled by the subsequent letters written by the Corporation giving him the impression that the investigation was still pending. When an adjournment is asked for on the ground of illness, and only a short adjournment is asked for, to presume that the petitioner is deliberately evading information and the application for time is not a bona fide. one is, in my view, not proper exercise of discretion. The affidavits filed by the petitioner and Mr. Mazumder explain why the requisite information

could not be furnished on the 3rd November, 1950, and why the representative of the petitioner could not be present personally on the 6th December, 1950. A short adjournment would not have harmed anybody, or at least an intimation that the application for time had been refused could have been given before confirming" the assessment ex parte. There was no indication given on the 3rd November, 1950, that if the petitioner or his representative failed to appear personally on the 6th December. 1950, the matter would be decided ex parte. The only thing stated in the order of the 3rd November, 1950, was that if information was not supplied by that date the assessment would be confirmed. It appears from the letter of the 6th December, 1950, written by the petitioner that some information was actually supplied. It may be that that is not the information which the Special Officer asked for. There may have been some misapprehension on the part of the petitioner or his solicitors as 1 the 1 attire of the information required, the representative being ill at the time.

27. In my view the Special Officer acted in an arbitrary and autocratic manner and the petitioner was completely misled by the conduct of the officers of the Corporation who wrote the subsequent letters.

28. In my view there has not been a proper compliance with the spirit and requirement of section 140(2) of the Act. The present case is not a case of non-appearance within the meaning of section 140(2). The petitioner''s representative did appear on the first day of hearing but could not appear on the second day on account of illness although he promised to appear on that day.

29. It is well settled that a court of law does not ordinarily exercise jurisdiction to review an exercise of discretion vested in a public officer entrusted with the discharge of public duties. If, however, the reasons given are irrelevant to the matter in hand, if people who have to exercise a public duty, by exercising their discretion take into account matters which the court consider not to be proper for the guidance of their discretion, then in the eye of law they have not exercised their discretion. In other words, to quote the words of Lopes, L.J.: "An arbitrary or capricious exercise of discretion would be no exercise at all." Queen v. Bishop of Loudon (1) (24 Q.B.D. 213; 243).

30. The discretion of the Special Officer had in the circumstances become coupled with a duty. See Julius v. Bishop of Oxford (2) (5 App. cases 214).

31. It was suggested that the petitioner has an alternative remedy by way of an appeal under the Act. I do not think that the remedy by way of appeal would be an adequate remedy in the present case in view of the fact that the petitioner did not get any opportunity to place any material or evidence before the Special Officer in support of the objections filed by him. In the circumstances, he has no legs to Stand upon and fight the Appeal. The existence of an alternative remedy is not an absolute bar to the Court exercising jurisdiction under Article 226 of the Constitution. In my view this petition should succeed. The Rule is made absolute to the extent that the Order of the 6th December, 1950 made by the Special

Officer is cancelled and the respondents are directed to deal with the Assessment case of the Petitioner in accordance with law. I make no order as to costs.

