
(1957) 08 CAL CK 0029

In the Calcutta High Court

Case No : Civil Revision Case No. 317 of 1957

Gourepore Co. Ltd.

APPELLANT

Vs

Chairman, Naihati Municipality and Another

RESPONDENT

Date of Decision : 28-08-1957

Acts Referred:

Bengal Municipal Act, 1932 — Section 129, 148, 15, 67

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 1, Order 1 Rule 10, Order 1 Rule 3

Constitution of India, 1950 — Article 19(1), 227

Citation : AIR 1958 Cal 151 : 62 CWN 227

Hon'ble Judges : Sinha, J

Bench : Single Bench

Advocate : Atul Gupta, Anil Kumar Das Gupta, Ranjit Kumar Banerjee and Bimal Kumar Banerjee, for the Appellant; Arun Kumar Dutta, Anil Kumar Sen and Samarendra Nath Banerjee, for the Respondent

Final Decision : Allowed

Judgement

Sinha, J.—The petitioner in this case is the Gourepore Co, Ltd., a Company registered under the Indian Companies Act, which is the owner of a Jute Mill situate within the jurisdiction of the Naihati Municipality, in the District of 24-Parganas. It is a large Mill, and occupies a large tract of land and it appears that the total area covered is 172.2667 acres, of which the area covered by buildings is 97 bighas 8 cottas. There are warehouses, quarters, club-houses, markets and, various other kinds of structures or installations. It is stated that for nearly a quarter of a century, the Mills have constituted a single holding, being Holding No. 236, Ferry Fund Road, Ward No. V. The valuation of the holding up to March 1954-55 was Rs. 6,36,313. Some time in October 1954, with a view to prepare the quinquennial revision of assessment 1954-55, u/s 137 of the Bengal Municipal Act, 1932 (hereinafter called the "Act"), notice was given by the Assessor u/s 134. On the 9th of November 1954, the Manager of the petitioner-Company furnished a return. It showed the net value of the building as Rs. 59,43,945 and reasonable ground rent per annum as Rs. 24,820. A

supplementary statement was also submitted under protest for the water-works installation.

(2) The word "holding" has been defined under the Act as follows:--

"Section 3(21): "holding" means land held under one title or agreement and surrounded by one set of boundaries:

Provided that where two or more adjoining holdings form part and parcel of the site or premises of a dwelling house, manufactory, warehouse or place of trade or business, such holdings shall be deemed to be one holding for the purposes of this Act.

Explanation. -- Holdings separated by a street or other means of communication shall be deemed to be adjoining within the meaning of this proviso."

3. On the 13th of January 1955, some of the Commissioners of the Municipality together with certain of the rate-payers, wrote a letter to the Chairman of the Municipality, the relevant part whereof is as follows:

"According to Clause (21) of Section 3, "holding" means land held under one title or agreement, and surrounded by one set of boundaries provided that where two or adjoining holdings form part or parcel of the site or premises..... of a manufactory such holding shall be deemed to be one holding. The mill holdings though separated by streets and surrounded by different sets of wall are regarded as one holding and are therefore under-assessed in comparison with similar holdings in the neighbourhood. Though the rent realised from the mill bustee and the mill markets can be ascertained easily, these are assessed not on rental basis but on its present market values plus the ground rent; but we find that according to Section 129, the final decision of the question whether any land is to be included within one holding rests with the Commissioners who can also determine whether lands within a Municipality are held under one title or agreement, so our humble suggestion is that the matter be first placed as early as possible before the Law Committee for ascertaining their views and then before the Commissioners at a meeting for their final decision....."

It appears from a copy of the letter set out in Annexure 2 to the Affidavit in opposition affirmed by Ramkrishna De that on the very day that the letter was written, a direction was given, presumably by the Chairman, for calling a meeting for the purpose of considering the same on the 20th January 1955. The letter was officially received on the 14th January. A special meeting of the Commissioners of the Municipality was held on the 27th January 1955. It is admitted that no notice was given to the petitioner-Company of this meeting or that it was proposed to split up its Holding No. 236, Ferry Fund Road in Ward No. v. The Commissioners passed a resolution, the relevant part whereof is as follows:--

"Whereas questions have arisen as to whether the different lands in Holding No. 80, Ghosepara Road (Ward No. II). Holding No. 236, Ferry Road (Ward No. V)

and Holding No. 74, Ghosepara Road (Ward No. I). And whereas the Commissioners after careful consideration have come to the finding that inclusion of so many parcels palpably separated from each other by different set of boundary within a single holding is not proper. Now, therefore, it is resolved that Holding No. 80, Ghosepara Road (Ward No. II) be split into 6 holdings and Holding No. 236, Ferry Fund Road, be split into 10 holdings as per Schedule "A" given below, being butted and bounded according to description in the said Schedule "A" and that for the purpose of assessment these may be treated as separated holdings."

In Schedule "A", the said Holding No. 236, Ferry Road, Ward No. V, has been split up into 10 holdings. The petitioner-Company was thereupon, assessed on the basis of the 100 holdings, and notice of the new assessment being served upon the Company, it came to know for the first time that the original holding had been split up into ten holdings. On or about the 25th April 1955, the Company preferred an objection u/s 148, against the valuation and assessment. Objection was taken to the splitting up of the original holding into 10 holdings, and one of the objections was that the procedure of splitting up of one holding into 10 holdings, without notice, for the purpose of re-valuation, is bad in law and renders the assessment inoperative against the holding concerned. The valuation and assessment were reviewed by the Assessment Review Committee but this objection appears to have been totally ignored.

4. The rule was issued on the 1st of February 1957, directing the opposite parties to show cause why a writ in the nature of mandamus should not issue directing them to forbear from giving effect to the resolution dated the 27th January 1955, and the assessment based thereon, and for other reliefs.

5. Section 129 of the Act runs as follows:--"129. For the purpose of, and subject to, Clause (21) of Section 3 --

(a) if a question arises whether any land is included within one holding, the decision thereof shall rest with the Commissioners at a meeting;

(b) the Commissioners at a meeting shall determine what class of ownership shall be accepted as the test for determining whether lands within a municipality are held under one title or agreement."

It is clear that the question as to whether any land is included within one holding, means one holding as defined in Clause (21) of Section 3. Section 129 lays down that if such a question arises, the Commissioners at a meeting are to decide the question and can lay down the tests, subject always to the provisions of Section 3(21). In other words, the decision cannot be made by anybody else. The whole question in this application is as to whether the Commissioners can do so, without notice to the parties whose right in property will be affected by the decision and without hearing their objections if any. According to Mr. Gupta appearing on behalf of the petitioner, the division of a holding into several holdings, whereby the valuation for purposes of assessment may be, and in this

case actually is, vastly increased, increases the burden of taxation on the land, and thereby affects the owners' right of property. According to him, any provision of law which enables such a splitting up of holdings, to be done behind the back of the owner and without notice upon him, is violative of the fundamental right to hold property, as is guaranteed by the Constitution under Article 19(1)(f). Thus, if Section 129 is construed as laying down that such an action should, or can be taken, without notice to the owners, it would render the section bad as infringing the fundamental rights of the petitioner, Mr. Gupta has referred me to a decision of mine in the case of Ajoy Kumar Ghose Vs. Corporation of Calcutta and Others, . I have relied there upon two English decisions: The first is Cooper v. Wandsworth Board of Works (1863) 143 ER 414 (B). The 76th Section of the Metropolis. Local Management Act, 18 & 19 Vict. C. 120, empowered the District Board to alter or demolish a house, where the builder had neglected to give notice of the intention to build, seven days before proceeding to lay or dig the foundation. It was held that this did not empower the Board to demolish the building, without first giving the party guilty of the omission an opportunity of being heard. Earle, C. J., held that the provisions of the statute are subject to the well-known qualification that no man is to be deprived of his property without his having an opportunity of being heard. This principle has been followed in Hopkins v. Smethwick Local Board of Health (1890) 24 QBD 712 (C), where Wills, J., held that in condemning a man to have his house pulled down, a judicial act was implied, and justice demanded that the man should be heard.

6. Mr. Gupta has also referred me to another decision of mine, Arathoon Mackertoon Arathoon Vs. Corporation of Calcutta and Others, . This related to the question of amalgamation of different premises. I held that assuming that the power of amalgamation existed in the Commissioners, the exercise of that power affected the right of property of the rate-payer and consequently must be done upon notice to him. Mr. Dutt appearing on behalf of the respondents has not seriously challenged the proposition, that an action taken by a public body which affects the right of property of a citizen must be upon notice to him. His case, however, is that when a holding is split up by the Commissioners at a meeting, in exercise of the power conferred by Section 129, the proper procedure for objecting to the splitting up of the holding is u/s 148 of the Act. In order to appreciate this argument, it would be necessary to examine the scheme of the Act in providing an opportunity of objecting to the valuation and assessment. Chapter V of the Act relates to "Municipal taxation". Section 123 gives power to the Commissioners to impose taxes including a rate on holdings situated within the Municipality, assessed on the annual value. Section 128 lays down how the annual value of a holding was to be calculated. It will be necessary to refer to this section later on. I have already set out the provisions of Section 129. Section 131 lays down how assessment is to be made in case of land or building being amalgamated into one or more new premises. Section 135 lays down that when it was decided to impose any rate to be assessed on the annual

value of holdings, the assessor was to determine the same in the manner provided in Ch. V of the Act, and to enter such value in a valuation list. Section 134 enables the assessor to call for returns. Section 136 lays down as to the contents of the assessment list. Section 137 relates to the quinquennial revision of the valuation. Section 138 empowers the Commissioners at a meeting to direct alteration or amendment of the assessment list. Then we come to Section 148, which runs as follows:--

"148. (1) Any person who is dissatisfied with the amount assessed upon him or with the valuation or assessment of any holding, or who disputes his occupation of any holding, or his liability to be assessed, may apply to the Commissioners to review the amount of assessment or valuation or to exempt him from the assessment of rate.

(2) No such application shall be received after one month from the date of publication of the notice required under Sub-section (1) of Section 147, or the service of the notice required under Sub-section (2) of that section or after the expiration of one month from the date of service of the first notice of demand for payment at the rate in respect of which the application is made, whichever period shall last expire."

7. In this particular case, the single holding of the petitioner was divided into ten holdings u/s 129, but without any notice to the Company. The Company did prefer an objection and one of the objections was that the splitting up of the holding being without notice, was bad in law. u/s 149, every application presented u/s 148 is to be heard and determined by a committee consisting of the Chairman and not less than two, and not more than 4 Commissioners, appointed by the Commissioners at a meeting. This is called the "Assessment Review Committee". It is true that the decision made by the Committee contains no reference to the objection taken; but Mr. Dutt may be right if it can be established that the Committee had jurisdiction to decide this point. In that case, the Company having preferred an objection and having been heard in support thereof, can have no further complaint. The point therefore is as to whether the Assessment Review Committee could go into the question of the splitting up of the holding, in an objection preferred by a ratepayer u/s 148. According to Mr. Gupta, it has no such jurisdiction. According to Mr. Dutt, not only it has jurisdiction to do so, but it is the only way in which the decision of the Commissioners for splitting up of the holding, could be objected to. In my opinion the contention of Mr. Gupta is the correct one. Section 148 clearly lays down as to what is the scope of an application for review under it. The objections which can be preferred under that section relate to the amount of assessment, or with the valuation or assessment of any holding, or the liability to be assessed. When an assessment is made, it is made of a holding, which is the unit of assessment. Such a unit must be the one which appears in the records of the Municipality. The only body which can alter an existing holding that is to say, a holding as described in the records is the Commissioners at a meeting u/s 129, It

is clear that any decision in respect thereof rests with the Commissioners at a meeting, and in no other body. There is no warrant for saying that the Assessment Review Committee, which is a smaller body of the Commissioners, can sit in appeal or review against such a decision. In other words, it is for the Commissioners at a meeting to decide as to what should be the holding, that is to say, the unit of assessment; and upon that basis the valuation and assessment must proceed. Nobody but the Commissioners at a meeting can decide as to what a "holding" shall be, and neither the assessor nor the Assessment Review Committee, nor any other person or body, other than the Commissioners at a meeting, can disturb such a finding, relating to what a holding shall be, for the purposes of assessment. In my opinion therefore, the question whether land is included within one holding or several holdings is a question which has to be decided by the Commissioners at a meeting u/s 129, and no objection lies against such a finding u/s 148. If that be so, the question becomes pertinent as to whether a decision u/s 129 can be arrived at without notice upon the owner of the holding and without hearing his objections if any. In my opinion, the argument of Mr. Gupta upon this point is correct. If Section 129 is construed to mean that the Commissioners at a meeting can split up a holding, or decide what lands are to be included in a holding, without any notice to the owners of the holdings, it would be clearly violative of the fundamental rights of the owners to acquire and hold property as guaranteed under Article 19(1)(f) of the Constitution. But it is not necessary to declare Section 129 as invalid, because the Court must lean against holding a provision of a statute to be illegal, and it is possible to save it by holding that it must be implied, that such a decision made by the Commissioners at a meeting must be made after giving notice to the owner of the holding, and after considering any objection preferred in that behalf. This, in my view, is the correct interpretation of Section 129.

8. In this case it will be observed that the Commissioners took action upon a complaint made by several persons, including some of the Commissioners themselves. I have set out above the letter dated the 13th January 1955. The objection made therein is that the mill holding, though separated by streets and surrounded by different sets of walls, has been recorded as one holding. Coming to the resolution u/s 129, also set out above, we find that the reason for the decision was that the inclusion of so many parcels, palpably separated from each other by different sets of boundary, within a single holding, was not proper. The objections set out in the letter dated 13th January, as also the grounds set out in the resolution entirely ignore the definition of "holding" in Clause (21) of Section 3. A reference to the definition set out above would show that it does not necessarily matter if holdings are separated by streets or walls, provided they are adjoining holdings, as a matter of fact, in the affidavits the Company has pointed out that most of the streets originally belonged to the Company, and were donated by them to the Municipality. But, be that as it may, the grounds set out in the objection or the resolution, do not constitute any prima facie grounds for deciding that the lands or premises are not parts of the same holding as

denied by the Act. This defect has now been realised, and it is for the first time in the affidavit in opposition that it is stated that the Company's holding included lands which were not adjoining, but separated by holdings belonging to third persons. No particulars have been given, and the allegation is denied. Of course, if it came up before me merely as a question of a disputed fact to be decided, I could do nothing about it. The question for my determination however, is not whether the facts are such as they are stated by either party, but, as, to whether the facts being disputed, the Company ought to have had an opportunity of being heard. If the decision rested merely on the points of objection raised, and the grounds as contained in the resolution, the Company could have pointed out that they do not warrant the division of the holding into more than one holding. On the other hand, if it was alleged that there are holdings belonging to third parties cutting into the single holding of the petitioner, that is to say, if the several plots included in the single holding were not adjoining plots, then the Company could have shown by evidence that such was not the fact. It has been deprived of any opportunity of meeting the objections raised or that might have been raised, or such as might have been operating in the minds of the Commissioners not disclosed in the records. In my opinion, it would not only be unjust to deprive it of this opportunity, but it would clearly violate the fundamental rights guaranteed under the Constitution. In this case, the Company did not raise the point about the splitting up of its holding. It is argued that unless the owner or any person interested in the land raised the question, the question cannot be said to arise u/s 129. This however would be too narrow an interpretation of the section. But where the question has not been raised by the owner himself but by others, or by the Commissioners themselves, it is all the more reason why they should be notified. In this particular case, the Company was totally ignorant of the proceedings resulting in the splitting up of its holding.

9. Mr. Dutt has referred me to a decision of the Patna High Court, Chairman, Municipality Vs. Ramkumar Choudhury, (E). In that case, the Municipality of Arrah filed a suit in the Provincial Small Causes Court, for recovery of arrears of Municipal taxes due from the defendant. The defendant took the objection that the assessment was invalid because the Commissioners had failed to comply with the provisions of the Bihar and Orissa Municipal-Act, that the assessment was excessive, and that he was not himself the person in actual occupation of the holding, The Small Cause Court Judge dismissed the suit, finding that the assessment was invalid because the Commissioners had not, at a meeting before the assessment was made, decided u/s 99 of the Bihar and Orissa municipal Act, as to what test should be applied in determining whether a particular property should be treated as held under one title or agreement. A Division Bench of the Patna High court set aside this decision on the ground that Section 99 did not come into operation at all. In the assessment proceeding, the assessee had taken an objection on the ground that the Municipal taxes were not payable because the land was assessed to cess, that the land was outside the Municipal limits or should be treated as if it were, and on no other ground. At the hearing

of the suit, an objection was taken that the objector was not in occupation of the land, which new ground was not allowed to be taken at that stage. James, J., stated as follows:--

"Section 99 does not prescribe the procedure which as a matter of course and on all occasions must be followed by municipalities before assessment is made. It comes into operation only when the question arises of how the words in Clause (9) of Section 3 held under one title or agreement" are to be interpreted. Then the Commissioners are to decide at a meeting what tests shall be applied. That is to say the matter is not one which can be decided by the executive officers of the Municipality, the Chairman or the Vice-Chairman or the Assessment Committee. It must, if the question arises, be decided by the Commissioners at a meeting."

In my opinion, this fully supports what I have held above. The wording of Section 99 of the Bihar and Orissa Act is similar to Section 129 of the Bengal Act. The right as regards the decision in respect of the nature of a holding is expressly given to the Commissioners at a meeting, and this decision is final and cannot be questioned by any other body within the Municipality including the Assessment Review Committee. Thus, there is no scope for challenging this action in the assessment proceedings; that is to say, in an objection against the valuation and assessment, which is based on the holding as a unit. In making such assessment or valuation, the assessor, or the Committee, cannot go behind the finding of the Commissioners at a meeting as regards the nature or description of the unit which they must consider, and the land which such a holding should contain. In other words, they can do nothing about altering the holding as decided by the Commissioners at a meeting. They are compelled to accept such findings as the basis of their computation.

10. Province of Bombay Vs. Kusaldas S. Advani and Others, , for the proposition that the decision of the Commissioners at a meeting being administrative, a writ of certiorari does not lie. As a matter of fact, in this case Mr. Gupta is fully satisfied with a writ in the nature of mandamus, and it is unnecessary to go into the complicated question whether the decision of the Commissioners at a meeting, was quasi-judicial or not.

11. Lastly, a point has been taken as to non-joinder of parties. Firstly, it is said that the decision of the Assessment Review Committee being the subject-matter of the application, the members of the Committee ought to have been made parties. The short answer to this is Section 15 of the Act. The Assessment Review Committee is only a part of the main body of Commissioners and Section 15 makes it incumbent that the Municipal Commissioners can only be sued as a body corporate, and as Commissioners. In my opinion, this application is not bad on this ground.

12. Lastly, it has been urged that an Executive Officer has been appointed u/s 67 of the Act, and therefore he should have been made a party. In fact, Mr. Dutt argued that the Executive Officer should have been substituted in place of the

Commissioners. In my opinion, there is nothing in this point. The Municipality has not been superseded, nor is the Executive Officer in the position of an Administrative Officer appointed upon supersession. All that happens upon the appointment of an Executive Officer is that he becomes the principal Executive Officer of the Commissioner. The Commissioners do not cease to function, but certain powers are vested in the Executive Officer. Under the circumstances, I do not see why he should have been made a party, or substituted as the sole respondent.

13. The reason why this application has been made and why the petitioner-Company has been greatly prejudiced by the splitting up of the holding, will be realised by reference to a recent amendment in Section 128 of the Act. u/s 128, the annual value of a holding shall be deemed to be the gross annual rental at which the holding may reasonably be expected to let. Under Clause (2) of Section 128, if the gross annual rental cannot, in the opinion of the assessor, be easily estimated, or ascertained, the annual value of such holding shall be deemed to be an amount which may be equal to, but may not exceed 7-1/2 per centum on the value of the building or buildings on such holding at the time of such assessment plus a reasonable ground rent for the land comprised in the holding. We then come to the proviso which runs as follows:--

""Provided that, where the value of the building or buildings on the holding exceeds three lakhs of rupees, the percentage on the annual value to be levied in respect of so much of the value as is in excess of three lakhs of rupees shall not exceed one-half of the percentage determined by the Commissioners u/s 135."

Thus, if it is one holding then the Company secures substantial benefit under the proviso. Whereas, if it is divided into smaller holdings, it loses the advantage of the benefit conferred by the proviso and the burden is substantially increased. Consequently, such an action could not be taken without notice upon the petitioner or without hearing its objection. The resolution of the Commissioners at a meeting, dated the 27th January 1955, which was passed without giving any notice to the petitioner or without considering its objection is therefore bad. As the assessment and valuation proceeded upon the basis of this resolution, the entire assessment proceeding has become bad.

14. In the premises, this application must succeed and the rule is made absolute and a writ is to issue in the nature of mandamus, directing the respondents not to give effect to the resolution of the Commissioners dated the 27th January 1955, so far as it affects Holding, No. 236, Ferry Fund Road, Ward No. V of the Naihati Municipality, and also to forbear from giving effect to the valuations and assessment mentioned in the petition, pursuant thereto or on the basis of the splitting up of the said holding into 10 holdings. This includes the decision of the Assessment Review Committee dated 27th December 1956. This will not prevent the Commissioners from re-considering the matter upon notice to the petitioner and after its considering objection, nor to re-assess the property according to law.

15. There will be no order as to costs.