(1997) 09 CAL CK 0002

In the Calcutta High Court

In Re: Kanailal Ghosh

Date of Decision : 30-09-1997

Acts Referred:
Calcutta Municipal Corporation Act, 1980 — Section 189
Constitution of India, 1950 — Article 227

Citation : (1998) 1 CALLT 227

Hon'ble Judges : Rabin Bhattacharyya, J

Bench : Single Bench

Advocate : S. Mottra and Subhasish Panchal, for the Appellant;

Judgement

Rabin Bhattacharyya, J.—I have been addressed by the learned counsel appearing for the petitioner in connection with the application initiated under Article 227 of the Indian Constitution 1950 to set at naught the impugned order No. 17 dated 5.9.97 directing the Tribunal to hear out the appeal being M.A.A No. 210 of 1994 and pending decision in the appeal the operation of the impugned order be stayed.

2. After having heard the learned counsel for the petitioner, it appears, he has challenged the constitutionality of Section 189 of the Calcutta Municipal Corporation Act, 1980 as it offends the basic structure of the Constitution.

3. In challenging the impugned order, the petitioner is emphatic that the Calcutta Municipal Corporation Act 1980 lays down the provisions for appeal, an appeal alone against an order of assessment for valuation being made by the executive and the decision will attain finality snapping of the valuable right accrues to an assessee. The deposit of the consolidated rate of Municipal taxes up to date could never be a ground for an appeal as it affects the very basis of the Constitutional rights available to an assessee. In the context, the impugned order is liable to be struck off the record to accord relief to an assessee affected by the assessment.

4. In the light of such submission, I am not unmindful or oblivious that Calcutta Municipal Act is a special statute making room for determination of valuation in accordance with the provisions of law. Tills court would be slow to interfere with

the order unless it could be shown to the satisfaction of the court that the assessment was made contrary to the provisions of law. Until this day, Section 189 of the Calcutta Municipal Act, 1980, however, stood the test of time and its constitutionality as challenged by the learned council for the petitioner is beyond any controversy. Section 189 of the Calcutta Municipal Corporation Act, 1980 envisages the deposit of consolidated rates on the enhanced rate as the precondition of filing an appeal and so long as the appeal is not disposed of, the assessee is stricken with the legal liability to continue to deposit the rates and taxes, as determined by the authorities.

5. There is no shred of obscurity, in the instant case, that the assessee could not explore remedy u/s 189 of the Calcutta Municipal Corporation Act, 1960 as such his inaction and failure to compliance with the provisions of law denued him of his right to initiate an action under Article 227 of the Indian Constitution, 1950, it is not a case which attracts the jurisdiction of this court under Article 227 and, accordingly, the application stands disposed of with the above observations.