
(1996) 02 DEL CK 0073

In the Delhi High Court

Case No : Civil Writ Appeal No. 479 of 1996

Indian Hotels Co. Ltd.

APPELLANT

Vs

New Delhi Municipal Committee

RESPONDENT

Date of Decision : 01-02-1996

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1996) 1 AD 937 : (1996) 62 DLT 96

Hon'ble Judges : M.S.A. Siddiqui, J

Bench : Single Bench

Advocate : D.D. Thakur, Vinay Bhasin, Kapil Sibal, Ranjeet Kumar, B.B. Gupta and S.D. Salwan, for the Appellant;

Judgement

M.S.A. Siddiqui, J.

(1) The petitioner seeks quashing of the impugned assessment order fixing the annual rateable value of the Hotel Taj Palace, Inter Continental, Sardar Patel Marg, New Delhi at Rs.45,90,88,196.00 less 10% with effect from 1.4.1995.

(2) The validity of the impugned assessment order has been challenged on various grounds enumerated in the writ petition. The grounds of challenge are inter-connected and substantially relate to one matter i.e., measure for determination of the annual rateable value of the property in question. However, main grievance of the petitioner is that the taxing authority did not observe the law and failed in its duty to determine the annual rateable value of the property in question in accordance with Section 6 of the Delhi Rent Control Act as directed by the Apex Court in Civil Appeal No. 42-44/87 New Delhi Municipal Committee v. East India Ltd. It is further stated that the impugned order is without jurisdiction and as such it is null and void. Learned Counsel for the respondent raised a preliminary objection about maintainability of the writ petition. According to the learned Counsel for the respondents, the Ndmc Act provides an effective forum to resolve the dispute pertaining to the levy and assessment of property tax and the petitioner should exhaust the said alternative statutory

remedy before invoking extraordinary jurisdiction of this Court. Learned Counsel for the petitioner, on the other hand contends that existence of an alternative remedy does not affect the jurisdiction of this Court under Article 226 of the Constitution of India. It was also contended that this is a case where the taxing authority has committed a patent illegality by determining the rateable value of the property in question in violation of the law laid down by the Apex Court in *Ndmc v. East india Hotels Ltd.* (supra). It was further contended that the impugned assessment order is null and void and it is, Therefore, open to a party aggrieved by such illegal assessment order to move this Court under Article 226 of the Constitution for issuing appropriate writ for quashing it without his being obliged to pursue an onerous or inefficacious alternative remedy.

(3) At the outset I must make it clear that the New Delhi Municipal Council Act is a complete code in itself. It lays down the procedure for assessing the property tax. It further provides for right to appeal in case the assessed is not satisfied with the assessment order. Now would it be legitimate for this Court to ignore the provisions of the said Act providing the machinery to resolve the dispute pertaining to the levy assessment or collection of property tax and proceed to exercise its extraordinary jurisdiction at the initial stage. In *Siliguri Municipality and Others Vs. Amalendu Das and Others*, , it has been held that a levy or impost does not become bad as soon as a writ petition is instituted in order to assail the validity of the levy. It is 98 also well settled that when an alternative and equally efficacious remedy is open to a litigant he should be required to pursue that remedy and not to invoke the special jurisdiction under Article 226 of the Constitution of India. It is true that the existence of statutory remedy does not affect the jurisdiction of this Court under Article 226 of the Constitution of India, but as observed by the Supreme Court in *Rashid Ahmed Vs. The Municipal Board, Kairana*, , "the existence of an adequate legal remedy is a thing to be taken into consideration in the matter of granting writs." Thus the existence of an alternative remedy is a very material circumstance to be taken into account when the Court is called upon to issue a prerogative writ under Article 226 of the Constitution of India. In *Union of India (UOI) Vs. T.R. Varma*, , it was held that when such remedy exists, it will be a sound exercise of discretion to refuse to interfere in a petition under Article 226 of the Constitution, unless there are special or exceptional circumstances therefore. In this connection, emphasis is laid on the following observations made by the Supreme Court in *Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others*, :

"IT has become necessary, even now for us to repeat this admonition indeed is a matter of tragic concern to us. Article 226 is not meant to short circuit or circumvent statutory procedures. It is only where statutory remedies are entirely ill-suited to meet the demands of extraordinary situations as for instance where the very virus of the statute is in question or where private or public wrongs are so inextricably mixed up and the prevention of public injury and the vindication of public justice require it that recourse may be had to Article 226 of the

Constitution. But then the Court must have good and sufficient reason to by-pass the alternative remedy provided by statute. Surely matters involving the revenue where statutory remedies are available are not such matters. We can also take judicial notice of the fact that the vast majority of the petitions under Art. 226 of the Constitution are filed solely for the purpose of obtaining interim orders and there after prolong the proceedings by one device or the other. The practice certainly needs to be strongly discouraged. In *Municipal Corporation of Delhi Vs. C.L. Batra*, , The Supreme Court had occasion to consider an interim order made by this Court in the matter of property tax. The assessee filed a suit in this Court and obtained an interim order decisions legally r of stay against the recovery of property tax. While reversing the interim order of this Court, their Lordships of the Supreme Court pointed out that there was no satisfactory Explanation as to why the statutory remedy of appeal was allowed to be by-passed.

(4) In the instant case, there is no question here of the misconstruction of any provisions of law leading to a transgression of constitutional limits nor to any error relating to collateral fact. The error which is complained of, assuming it to be an error, is in respect of a matter, i.e. measure for determination of the annual rateable value of the property in question, which the assessing authority has complete jurisdiction to decide; that decision is legally valid unless corrected in an appropriate manner. It has been held in *Smt. Ujjam Bai Vs. State of Uttar Pradesh*, that "a mere misconstruction of a provision of law does not render the decision of a quasi- judicial tribunal void (as being beyond its jurisdiction). It is a good and valid decision in law until and unless it is corrected in the appropriate manner. So long as that decision stands, despite its being erroneous, it must be regarded as one authorised by law and where, under such a decision a person is held liable to pay a tax that person cannot treat the decision as a nullity and contend that what is demanded of him is something which is not authorised by law. The position would be the same even though upon a proper construction, the law under which the decision was given did not authorise such a levy". The said decision is also an authority for the proposition that where a quasi judicial authority has jurisdiction to decide a matter, it does not lose its jurisdiction by coming to a wrongful conclusion, whether it is wrong in law or in fact.

(5) Learned Counsel for the petitioner has invited my attention to Section 116 of the New Delhi Municipal Council Act, 1994 in support of his contention that the remedy provided under the Act is inefficacious as it imposes the condition for deposit of the amount of tax demanded by the Municipal Corporation and thus it affects substantive right of appeal u/s 115 of the Act. According to learned Counsel for the petitioner, such impairment of right of appeal by putting restrictions thereon and imposing more onerous condition makes the remedy illusory or nugatory. The Supreme Court in *Shyam Kishore and others Vs. Municipal Corporation of Delhi and another*, had rejected similar arguments that conditions imposed on right of appeal were onerous because no discretion had been given to the Appellate Authority to relax or waive the said condition. In my opinion, the Sub clause (b) of Section 116 of the Act does not make the appeal

provisions nugatory or illusory but by his own default to comply with the condition of deposit the appellant may fail to avail of the remedy by way of appeal. It was further contended that Section 115 of the Act makes no provision with regard to the refund of the deposits by the Corporation in the event the Appellate Authority holding that the annual rateable value was less than the assessed, and there is, thus deprivation of property without due authority. On a careful perusal of Section 115 of the Act, I am of the opinion that it is implicit that in that event, the Corporation must forthwith return to the appellant the excess amount. No moneys can legally be retained by the Municipal Corporation on that account. Thus the mere fact that an assessed might have to deposit the amount of tax when filing an appeal could not in any case justify him by-passing the remedies provided by the Act.

(6) Learned Counsel for the petitioner, relying on the decision of the Supreme Court in *Himmatlal Harilal Mehta Vs. The State of Madhya Pradesh and Others*, , has strenuously urged that the alternative remedy of appeal under the N.D.M.C. Act is nugatory or illusory. In the case of *Himmatlal Harilal Mehta (supra)*, the sales tax under Explanation II to Section 2(g) of the Central Provinces and Berar Sales Tax Act was held "ultra vires" the State Legislature

(7) In the instant case, there is no question of constitutional invalidity of any provisions of law. Thus the ratio decidendi of the said authority does not govern a case like in hand. There existed no special or exceptional circumstances to justify the petitioners by passing the alternative remedy which is available to him by way of appeal. Under these circumstances the petitioner cannot be permitted to abandon resort to the said alternative remedy and to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution.

(8) For the foregoing reasons, I am not inclined to interfere in the matter at this stage. The petition is dismissed accordingly.