(1971) 02 CAL CK 0003

In the Calcutta High Court

Karnani Properties Ltd. APPELLANT

Vs

Corporation of Calcutta and Others RESPONDENT

Date of Decision : 19-02-1971

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (1971) 02 CAL CK 0003

Hon'ble Judges : Sabyasachi Mukharji, J;Arun Kumar Mukherjea, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Sabyasachi Mukharji, J.—This appeal arises out of the judgment delivered and order passed by B. N. Banerjee, J. on the 20th May, 1968. The Petitioner filed an application under Article 226 of the Constitution challenging the validity of certain assessment orders in respect of premises held by the Petitioner as mentioned in the petition as well as the rate bills issued in respect thereof. The Petitioner company is the owner of 17 different premises in the Park Street at Calcutta. The case of the Petitioner shortly is that, prior to coming to operation of the Calcutta Municipal Act, 1951 thee were certain valuations in respect of the said premises. The Calcutta Municipal Act came into operation on the 1st of May, 1952. Some time prior to 26th June, 1954, according to the Petitioner, there was a general revaluation of all lands and buildings in Ward No. 53, in which ward the said premises at that time were, made u/s 172(2) of the aforesaid Act. The Petitioner has contended that as a result of the said general revaluation under the Calcutta Municipal Act, 1951 the old valuation made or subsisting under the Calcutta Municipal Act, 1923, came to an end. It has been further asserted that with effect from the 2nd quarter of 1954-55 the Assessor of the Corporation of Calcutta purported to amalgamate different premises of the Petitioner in the manner following and imposed the following annual valuation thereon: -

(A) Premises Nos. 21 and 23, Park Street into one premises numbered as 21, Park Street, annual value Rs. 23,722/-.

(B) Premises No. 25A, 25B and 27A, Park street into one premises numbered as 27A, Park Street, annual value Rs. 2,17,023/-.

(C) Premises Nos. 29, 31, 33, 35, 37, 39, 43, 45, 55 and 57, Park Street into one premises numbered as 29, Park Street annual value Rs. 79,097/-.

2. According to the Petitioner, the Petitioner was informed of the amalgamation and of the new valuation by notices issued u/s 180 of the Calcutta Municipal Act, 1951, all dated 6th July, 1954. The Petitioner objected to the amalgamation and imposition of the new valuation. In as much as the Corporation of Calcutta did not entertain the objection, the Petitioner moved this Court under Article 226 of the Constitution and obtained a rule Nisi in Matter No. 135 of 1964. The said rule was made absolute by Sinha, J. (as his Lordship then was) on the 5th of December, 1955. By the said order passed by this Court, the Corporation was restrained and prohibited from giving effect to the said notices issued by the Corporation u/s 180 of the Calcutta Municipal Act, 1951 and dated 6th of July, 1954 and also from giving effect to any amalgamation of the Municipal premises contained in the said notices, without following the procedure laid down and the order resulting in the said amalgamation and also the impugned notices resulting and the proceedings, mentioned in the said Matter No. 135 of 1954, were quashed. The said order had further directed that the said order would not prevent the Corporation from proceeding in accordance with law. According to the Petitioner, in as much as there was only one valuation on the amalgamated premises and the same had been quashed by the aforesaid order, there remained no valuation for the premises for the purpose of being assessed to consolidated rates with effect from the 2nd quarter of 1954-55.

3. The Petitioner has further stated that thereafter the Commissioner of the Corporation of Calcutta issued several notices u/s 175 read with Section 207(2) proviso (i) of the Calcutta Municipal Act, 1954, proposing to amalgamate the said premises of the Petitioner and to value the amalgamated premises u/s 172(3)(b) read with Section 174(4) of the said Act with effect from the 2nd quarter of 1954-55. The Petitioner has mentioned in the petition the said several notices. Objections were filed on the ground that the Commissioner had no jurisdiction or power to amalgamate the said premises and as such the notices were illegal. The Petitioner has stated further that thereafter the Assessor and the Corporation of Calcutta had sent to the Petitioner certain special notices u/s 180 of the Calcutta Municipal Act, 1951, intimating to the Petitioner of the valuation assessed on the Petitioner''s premises on the basis of the estimated rent less statutory allowances and further intimated to the Petitioner the said valuation would remain in force from the 2nd quarter of 1954-55 until further valuation. The Petitioner has further stated about the particulars of the said notices in the petition and the same have been noted in the judgment under appeal. On 25th of April, 1960 the Petitioner filed written objection u/s 181 of the Act to the notices contending that (a) the assessor had no jurisdiction to make the said valuation and the assessment on the said premises and the notices were illegal and issued without

jurisdiction, (b) that there was no valuation of the premises and as such the assessor had no jurisdiction to effect an increase further on what was alleged by the Petitioner as non-existing valuation, (c) that no notice u/s 178 having been issued or published after the amalgamation and as the valuation had been quashed by this Court as mentioned hereinbefore, the assessor had no jurisdiction to issue the said notices for retrospective assessment with effect from 2nd quarter of 1954-55. It appears that in the meantime, on 18th of April, 1960 the Assistant Assessor of the Corporation of Calcutta wrote four several letters to the Petitioner intimating that the 4 notices of amalgamation as mentioned hereinbefore, some dated 9th of March, 1960 and some dated 12th of March, 1960 stood cancelled and the premises would be separately valued. Objection was again filed by the Petitioner and the Corporation purporting to act u/s 182, according to the Petitioner, passed an order on the 22nd March, 1963 restoring the existing valuation, that is to say, the valuation as it stood prior to 1954 in place of the increased valuation with effect from the 2nd quarter of 1954-55. In the result the valuation of the several premises stood at certain figures and these have been indicated in the said notices and noted in the judgment under appeal. It is not material for the purpose of this appeal to refer to them in detail. The Petitioner again disputed validity of the aforesaid orders on the ground the Respondents lacked jurisdiction and had acted arbitrarily in making the said orders and as such the orders were nullities and secondly, on the ground the Respondents had no power to restore old valuation, and thirdly, on the ground that as the valuations had not been gone during the currency of the valuation period the same were nullities. The Corporation of Calcutta on the 12th of September, 1960 issued special notices u/s 160 of the Act intimating to the Petitioner about certain increase in the valuation on the Petitioners'' said several 17 premises with effect from 2nd quarter of 1960-61. The valuation proposed to be increased have been mentioned in the petition and noted in the judgment under appeal. It is also not material for the purpose of this appeal to refer to them in detail. The Petitioner filed objection to the said notices again on the ground that the notices were illegal and without jurisdiction that there was no previous valuation on the said premises and as such the Corporation of Calcutta had no jurisdiction to issue said notices, or to assess, and that as notices u/s 178 had not been issued or published after the amalgamation orders had been quashed by this Court the Corporation and the Assessor lacked jurisdiction to issue the impugned notices or to increase the valuation. As a result of the said objections filed there was an order of reduction of the valuation of premises in the matter indicted in the said order and mentioned in the petition and noted in the judgment under appeal. The aforesaid orders were communicated to the Petitioner by letters dated 1st of April, 1963.

4. In the petition under Article 226 of the Constitution the Petitioner challenged the legality of the reduced valuation on the ground that the Respondent No. 3 that is to say the Special Officer, Corporation of Calcutta, had no jurisdiction to pass the impugned orders and the orders were illegal and nullities. The Petitioner

has also challenged the rate bills issued. The Petitioner has contended that on 12th September, 1959 the Respondent, the Corporation and the Commissioner had caused to be sent to the Petitioner certain rate bills of dated 21st August, 1959 beginning from the 2nd quarter 1954-55 to first quarter of 1960-61. The Petitioner has challenged the rate bills on the following grounds.

(a) there was no valuation on the premises when the rate bills were presented, (b) amalgamation order was not cancelled before 18th of April, 1960 and the bills on non-amalgamation basis could not be made out on 21st August, 1959 and (c) the Respondent, the Corporation of Calcutta had acted illegally and without jurisdiction in assessing the consolidated rates on the said premises without following the procedure prescribed under the Calcutta Municipal Act, 1951. The Petitioner has further stated that out of mistake it had paid Rs. 2,24,364.36 P. towards the sum of the said bills, the Petitioner has asked for appropriate writs for cancellation of the orders of restoration of valuation dated 22nd March, 1963 order of reduction of valuation dated 22nd March, 1963 and the rate bills sent to the Petitioner. The Petitioner as mentioned hereinbefore has also claimed return of Rs. 2,24,364.36 P. alleged to have been paid out of mistake. Affidavits were filed on behalf of the Corporation to which it will be necessary to refer in detail later in this judgment. We have the further mention that during the hearing of this appeal the Corporation wanted to rely on certain documents, namely, the pleadings in the previous proceedings as well as the relevant assessment register and certain books of the Corporation. We direct the Corporation to disclose the said documents by letter and had further directed that the said documents which the Corporation intended to rely at the first hearing of the appeal should be disclosed and opportunity should be given for inspection of the said documents. Inspections were given of the said documents and they were produced before us at the time of hearing of this appeal. We would refer to some of them at the appropriate stage in this judgment. The application under Article 226 of the Constitution came up for hearing before B. N. Banerjee, J. The learned Judge by a judgment delivered on 20th of May, 1968 directed that the Respondent, the Corporation should not realize taxes at any rate in excess of pre-1954 valuation from the Petitioner company for the period prior to second quarter of 1960-61 and all sums paid by the Petitioner company towards the rate bills should be adjusted on the aforesaid basis. With this direction, the learned Judge has discharged the rule Nisi and dismissed the application made by the Petitioner Company. Being aggrieved by the said judgment and order of B. N. Banerjee, J., dated 20th of May, 1968 the Petitioner company has preferred this appeal.

5. At the hearing of this appeal, Counsel for the Petitioner contended that prior to June, 1954 there was a general valuation in accordance with Section 172 of the Calcutta Municipal Act, 1951 and thereafter the premises of the Petitioner were amalgamated as mentioned hereinbefore. It was argued that as a result of the order of this Court by Sinha, J. as indicated above, and after the setting aside of the order of amalgamation and the valuation there was no valuation of the

premises because, counsel contended, that after the general valuation u/s 172 in 1951 the old valuation under 1923Act in respect of the said premises had vanished. Counsel urged that the assessment books would corroborate the same. In the result it was contended that after the order of this Court on the 5th of December, 1965 there was no valuation in respect of said 16 premises until the Corporation made a fresh valuation u/s 172 of the 1951 Act. It was then urged that there was a second attempt to amalgamated by the notices dated 9th of March and the 12th of March, 1960 respectively which was only cancelled and withdrawn by the Corporation on the 18th of April, 1960. It was, therefore, urged that prior thereto notices dated 31st of March and 6th of April, 1960 which were the impugned notices in this case were issued. It was urged the said notices were bad because the amalgamation and the valuation which had been set aside were set aside on the ground of illegality and not on the ground of irregularity as indicated in the notices and as permitted by the section. Secondly it was urged that the second attempt was withdrawn only on the 18th of April, 1960 therefore it was argued that the notices issued prior to the withdrawal for the second time was wholly illegal and without jurisdiction. Thirdly and mainly it was argued that as the amalgamation and the amalgamated valuation had been quashed there was no existing valuation. Therefore no question of increasing the valuation arose. It was further argued, the second notices were not also in compliance with Section 172 of the Calcutta Municipal Act and there was no public notice u/s 178 of the said Act. It was then argued that rate bills were issued retrospectively, it was contended that there could not be retrospective valuation and all valuation should be prospective. As mentioned hereinbefore, there were two affidavits, filed on behalf of the Respondents one was by Sudhir Ranjan Bakshi, affirmed on the 21st of December, 1964. He was the Officiating Assessor of the Corporation at the relevant time. It has been stated therein that some of the premises were amalgamated and the amalgamated premises were revalued for annual valuation with effect from the second quarter of 1954-55, that is to say, 1st of July, 1954. The said amalgamations were quashed by the order of this Court dated 5th of December, 1955, as mentioned hereinbefore. By the notices dated 9th of March, 1957 and 12th of March, 1957 it was proposed again by the Respondents to amalgamated some of the premises, but pursuant to the judgment of the Court of Appeal in the case of (1) Sree Sridhar Jieu and Others Vs. Corporation of Calcutta and Others, holding that there was no power to amalgamate the premises except on the application of the owner, the said amalgamation proceedings were dropped and the individual premises were valued separately and special notices were served on the owner. The owner in this case field letter of objection dated 25th of April, 1960, the objections were disposed of by the Special Officer on the 22nd March, 1963 upholding the Petitioners'' objection and restoring the existing valuations. There was an another affidavit by Sudhir Ranjan Bakshi affirmed on the 22nd of January, 1964 where apart from referring to the records certain legal points were taken. It is not necessary to refer in detail to the said affidavits.

6. Before the position is further considered, it will be necessary to refer to the relevant statutory provision. Part IV of the Calcutta Municipal Act, 1951 contains the provisions for taxation. Section 165 authorises the Corporation of Calcutta to impose consolidated rate in the manner indicated in the said section. Sections 166-167 deal with the question how the consolidated rate should be imposed. Sections 168, 169, 170 and 161 deal with the question how the assessment of lands and buildings to the consolidated rate should be made and also with the question of remission in certain cases and revaluation in certain contingencies. Section 172 deals with the question of assessment of annual value and the duration of such assessment, it would be necessary to set out the relevant portion of the said section:

172(1) The valuation of any land or building situated in the several wards, the respective numbers and boundaries of which are specified in Schedule V, which has been made before the commencement of this Act, and which is in force at the commencement of this Act shall remain in force and be deemed to be the valuation for the purpose of assessment of consolidated rate on such land or building under this Act until a fresh valuation is made under this Act.

(2) A general valuation under this Act shall be made by the Commissioner or if the State Government so directs, by such agency as the State Government may by notification in the Official Gazette, appoint. Such valuation shall have effect from the beginning of the quarter following that in which a notice u/s 178 is issued and shall remain in force in respect of each ward for a period of six years, and may be revised thereafter at the termination of successive periods of six years.

(3) . . .

(a) . . .

(b) any land or building the valuation of which has been cancelled on the ground of irregularity or which for any other reason has no annual value assigned to it under this Act, may be valued by the Commissioner at any time during the currency of the period prescribed in respect of such land or building by Sub-section (1) or Sub-section (2) in accordance with such rules as may be made by the standing Finance Committee;

(c) . . .

(d) . . .

7. It is not necessary for the present purpose to refer to Sections 173 and 174 of the Act. Section 175 deals with the case of assessment in respect of amalgamation of the premises. It is also not necessary to consider this section in this application. Section 178 provides as follows: -

178(1). When the valuation u/s 172 of the lands and buildings in any ward has been completed, the Commissioner shall cause the respective valuations to be entered in a list and give public notice of the place where such list may be inspected.

(2) Such notice shall be advertisement in local newspapers and also by placards posted up in conspicuous places throughout such ward.

(3) The Commissioner shall also cause a placard to be posted up in each bustee, showing separately for each hut standing on the bustee the valuation assigned to it in the valuation list.

(4) The persons having custody of the valuation list shall permit any person to inspect it and to make extracts from it.

(5) No fee shall be charged for any such inspection; but there shall be payable, by all persons other than owners or occupiers of land in the ward and their agents, a fee of one rupee in respect of each entry extracted.

8. Section 180 provides that the Commissioner shall in all cases in which any land, bustee or building is for the first time valued, or in which the valuation of land, bustee or building previously valued is increased u/s 172, give special notice thereof to the owner and occupier and it further states that when the valuation is so increased the said notice shall contain a statement of the grounds of such increase. Section 181 deals with the notice of objection, Section 182 deals with the entry of objection and investigation thereof by the Commissioner or Deputy Commissioner, Section 183 deals with the appeals to Small Cause and Sub-section (1) of Section 184 provides that every valuation made u/s 172 shall, subject to the provisions of Sections 181, 182 and 183, be final. Section 185 provides for maintenance of keeping of Municipal assessment books. The only other section which is relevant for the present purpose, is Section 207. The material portion relevant for the present purpose is to the following effect: -

207(1). When an objection to a valuation has been made u/s 181, the consolidated rate shall, pending the final determination of the objection, be payable on the previous valuation in the usual manner.

(2) If, when the objection has been finally, determined the previous valuation is altered, then

(a) Any sum paid in excess shall be refunded or allowed to be set off against any present or future demand of the Corporation under this Act, and

(b) Any deficiency shall be deemed to be an arrear of the consolidated rate and shall be payable and recoverable as such.

Provided . . . .

9. The main question with which we are concerned in this appeal, is whether prior to the purported valuation of the premises of Petitioner on amalgamation in July, 1954 there was a valuation made of the premises of the Petitioner u/s 172 of the Calcutta Municipal Act 1951. According to the Petitioner there was such a

general valuation of the said premises prior to June, 1954 in accordance with the provisions of Section 172 of this Act. According to the Respondents, the general valuation and the valuation on amalgamation of the premises were done by the same operation. It was urged by Counsel for the Petitioner that the general valuation in respect of the said premises and the valuation under amalgamation were done by the same operation in this case had not been stated by the Corporation. Reading the pleadings and the documents properly, we are of the opinion that it cannot be said the Corporation has not stated that fact. The Petitioner has not adduced any evidence that any valuation were put on the premises of the Petitioners as a result of the general valuation made in 1954 prior to the purported amalgamation of the premises in July, 1954. The Petitioner has referred to the Public Notice dated 26th of June, 1954 issued in respect of Ward No. 53 in which the Petitioners'' premises at the relevant time belonged. The said Public Notice which was issued under provisions of Section 178 of the Calcutta Municipal Act, 1951 has been annexed to the petition. But the said notice stated that the valuation of the land and building noted therein had been completed, all the valuation list could be inspected at the Municipal building. The Petitioner has stated that the Petitioner did not inspect the valuation list, the Petitioner was not in a position to adduce any positive evidence to show that the premises belonging to the Petitioner had been valued as a result of the general valuation in respect of which the said public notice had been issued in June, 1954. Furthermore the petition by the Petitioner company, resulting in the order passed by Sinha, J. (as Lordship then was) on the 5th of December, 1955, did not contain any averment or evidence that there was a general valuation made prior to amalgamation in respect of the premises of the Petitioner, under the Calcutta Municipal Act, 1951, Counsel for the Corporation of Calcutta contended before us as it had been proposed to amalgamate these premises, the amalgamation and valuations were done by simultaneous operation and on the amalgamated premises valuations had been put by the Corporation. It appears to us that in the context of events this probably had happened. The version of the Corporation is in consonance with the probability of the situation, if the premises were in contemplation of being amalgamated it was unlikely that the same would be valued a month prior there to the amalgamation and further valuation would be made on amalgamation. It was more likely both were done by the same operation. Counsel for the Corporation, as mentioned hereinbefore, wanted to rely on the Assessment Book, Objection Register and the book containing the valuation list. As observed before after inspection of these documents had been given by the Corporation to the Petitioner we allowed the Corporation to produce the said books at the hearing of this appeal and we have looked into the same. It was urged by counsel for the Petitioner that these documents were unreliable. It was contended that these did not give a complete picture, that the ward number had not been properly mentioned, that all the intermediary stages, that is to say, the amalgamation, cancellation of amalgamation, fresh notice of amalgamation, withdrawal thereof and the restoration of the premises to the unamalgamated stage, had not been entered or had not even correctly recorded. It was further urged that these books had not been relied at the time of the hearing before the learned trial Judge and the Corporation should not be permitted to rely on these documents at this late stage. We are, however, unable to accept these criticisms. In the affidavit on behalf of the Respondents, reference was made to the relevant records, furthermore the original books had been produced and we do not find any merit in the criticisms advanced on behalf of the Petitioner. There is however another aspect of this question. As noted before u/s 172 of the Act valuation made prior to the coming into operation of 1951 Act remains "until a fresh valuation is made under this Act". The question is when is a valuation under the Act made ? Section 178 provides that when a valuation under the new Act is "completed" a list would be published. In case of increase of valuation, Section 180 provides for giving special notice, Section 181 provides for objection and Section 183 provides for appeal on valuation made. It has been provided u/s 184 that valuation made u/s 172 should be "final" subject to the provisions of Section 181, 182 and 183. It appear therefore that three different expressions have been used, namely, "valuation is made" "valuation is completed" and "valuation of final". Counsel for the Corporation urged that unless the objections were disposed of or appeals were disposed of the valuation was not final and until the valuation was final the valuation was not made as contemplated u/s 172 of the Calcutta Municipal Act, 1951. In this connection Section 207 is relevant, it provides for the payment until the objections are decided. It is not necessary for us in this appeal however to decide this controversy because we have come to the conclusion on the facts that prior to the amalgamated valuation in July, 1954 there was no valuation made under the 1951 Act in respect of the said premises. It is undisputed that there were separate annual valuation in respect of the several premises belonging to the Petitioner under the 1923 Act before 1951 Act came into operation. Then 1951 Act came into force and there was amalgamation u/s 175 of the Act. Sinha, J.: (as his Lordship then was) by his order dated 5th of December, 1955 quashed the said attempt as the said valuations were not lawful because the amalgamation was unlawful. Therefore since the valuation on amalgamation was not lawful the valuation which was there prior to 1954 continued, that is to say, the valuation under 1923 Act continued. That in our opinion is the correct effect of the order of Sinha, J.:

10. It was then contended that the power of valuation of the Corporation, on cancellation of a valuation for irregularity was a limited power exercisable u/s 172 of the Act during the currency of a valuation period. This contention is without substance. Because the pre-1954 valuation, that is to say, the valuation under 1923 Act continued and we are in agreement with the learned Judge that the order of restoration of valuation was not necessary except for giving effect to the order of this Court for administrative purpose. Therefore the Corporation was competent to levy tax on basis of 1954 valuation with effect from 2nd quarter of 1954-55.

11. It was next urged that there was a proposal of amalgamation of the said premises for the second time and there was no withdrawal of the proposed

amalgamation before 18th of April, 1960, the restoration of old valuation on 22nd March, 1963 prior to 18th April, 1960 was bad. So far as the contention that notices were issued prior to the withdrawal of notices for amalgamation, we are unable to accept this contention. The notices of amalgamation which appear at pages 62 onwards of the Paper Book only proposed amalgamation by the notices issued dated 9th of March, 1957 and 12th of March, 1957. There was no order of amalgamation. Until there was an order for amalgamation pursuant to the said notices there was no impediment on the part of the Corporation to proceed on the basis as if there was no amalgamation. Furthermore there is evidence that the notices of the said amalgamation had been withdrawn.

12. The next contention on behalf of the Appellant was regarding the notice for revaluation with effect from the 2nd quarter of 1960-61, the Petitioner contended the procedure as enjoined u/s 178 had not been followed. It was further asserted that as there was no valuation of the premises existing there was no jurisdiction for the Respondent to issue such notice. We are also unable to accept this contention of the Appellant. We have held that the pre-1954 valuation was existing at the relevant time. In this case furthermore there was a general valuation and general notice has been issued and thereafter the valuation of the premises of the Petitioner had been proposed to be increased. We do not find there was any noncompliance with the provisions of Section 178 or the procedure enjoined thereby. The procedure u/s 178 was followed in respect of the proposed increased valuation in the said ward in 1960.

13. The learned Judge has held notices u/s 180 of the Act which proposed to increase the valuation from the second quarter of 1954-55 had one infirmity. According to the Learned Judge the premises could be revalued and the valuation thereon increased prospectively in each period of valuation but it was not permissible in law to increase the valuation in 1960 with effect from the 2nd quarter of 1954-55. During the relevant period, the pre-1954 valuation continued. The notices is so far as they proposed increase in the valuation retrospectively with effect from the 2nd Quarter of 1954-55 were therefore bad. We are in respectful agreement with the learned Judge on this point and no argument was advanced by the Corporation on this aspect of the question.

In the aforesaid view of the matter we are unable to accept the contentions urged in support of this appeal. The appeal accordingly fails and is hereby dismissed with costs. The judgment and order of B.N. Banerjee, J.: dated 20th of May. 1968 are confirmed. All interim orders are vacated.

Arun Kumar Mukherjea, J.

14. I agree.

