(1994) 08 KAR CK 0015

In the Karnataka High Court

Case No : Writ Petition No. 20131 of 1992

Karnataka State Construction Corporation Ltd. APPELLANT

Vs

Commissioner, Bangalore City Corporation RESPONDENT

Date of Decision : 03-08-1994

Acts Referred:

Constitution of India, 1950 — Article 226
Karnataka Municipal Corporations Act, 1976 — Section 143
Karnataka Taxation Rules, 1957 — Rule 8, 9

Citation : (1994) ILR (Kar) 2968 : (1994) 4 KarLJ 331

Hon'ble Judges : Hari Nath Tilhari, J

Bench : Single Bench

Advocate : Bhuvana and Subbanna Associates, for the Appellant; K. Nagaveni and Ashok Haranahalli, for the Respondent

Judgement

Hari Nath Tilhari, J.—I have heard Smt. Bhuvana, Counsel for the petitioner and Smt. K. Nagaveni, holding brief for Sri Ashok Haranahalli, Counsel for the opposite parties.

2. The petitioner i.e., the Karnataka State Construction Corporation has filed this Petition under Article 226 of the Constitution of India, for the quashing of the notice issued by the respondents on 3-1-1992 bearing No. DA8, PR.52/91-92, a copy of which is Annexure - A to the Writ Petition as well as dated 22-5-1992 bearing No. DA8.PR.16/92-93, a copy of which is Annexure ''C'' to the Writ Petition. The notice dated 3-1 -1992 i.e., Annexure ''A'' has been issued u/s 143 of the Karnataka Municipal Corporations Act, 1976 read with Rules 8 and 9 thereof. By this notice, it has been indicated that assessment has been made of the tax as mentioned at page-2 of Annexure ''A'' and total amount under that notice has been indicated as Rs. 9,51,060/-. In this notice, it has been mentioned that objections to the assessment referred to in this notice may be filed within 30 days from the date of receipt of the Special Notice. So, by this notice, the petitioner has only been required to submit its objections against the assessment made by the Bangalore City Corporation. It appears from the record

that vide Annexure ''B'', objections have been filed in pursuance of this notice dated 3rd January 1992. Thereafter, it appears that, on 22nd of May 1992, a notice has been issued by the Bangalore Mahanagara Palike i.e., Bangalore City Corporation to the Chairman of the petitioner-Corporation serving the bills and requiring the petitioner to arrange for payments of the property tax relating to the year 1991-92 and 1992-93 amounting to Rs. 11,88,826/- to avoid penalty from the current year 1992-93.

3. It may be mentioned here that, according to the allegations made in para-5 of the Writ Petition, it has been very clearly stated that Respondent No. 1 has not passed any order, so far, on the objections filed by the petitioner vide Annexure ''B'' to the Writ Petition nor sent any reply. Instead, Respondent No. 2 issued the notice dated 22-5-1992.

4. Objections have been filed on behalf of the opposite parties. In para-8 of the reply or the objections of the respondents, it has been clearly stated that the show cause notice dated 3-1-1992 was served on the petitioner. But, it does not appear from the counter objections that whether the petitioner-Corporation had filed objections in reply to the notice issued by the Bangalore City Corporation. The said allegations to the effect that the petitioner did file objection to provisional assessment have not been denied by the respondent-Corporation. There appears to be no denial of the allegations of para-5 of the Writ Petition that the petitioner''s objections have not, so far, been disposed of or decided and that, without deciding the matter and without disposing of the objections with respect of the assessment matter, the notice for realisation has been issued.

5. In these circumstances, Smt. Bhuvana, Counsel for the petitioner, submitted with vehemence that the bills for realisation without disposing of the objections have been illegally issued. There being no denial of assertion made in para-5 of the Writ Petition in para in the counter affidavit. With regard to paras-4 and 5 of the Writ Petition that the petitioner had filed objections-Annexure ''B'' and thereafter his objections were not disposed of or decided by the authorities, it has to be presumed that the allegations made in the Writ Petition are correct. It is trite principle of law that, when the allegations made on affidavit are not denied or controverted, allegations are taken to be correct See Juggi Lal Kamla Pat Vs. Ram Janki Gupta and Another, and SURENDRA TIWARI v. STATE OF U.P. 1994 ALJ 547

6. In this view of the matter, I find that the objections filed by the petitioner against the assessment of the property tax have not, so far, been disposed of. The proposed assessment of tax cannot be taken to have become final and unless the final assessment has not been done after disposing of the objections, no notice of demand could be issued.

7. Having thus considered, I find that the notice contained in Annexure ''C'' is illegal and as such, it is liable to be quashed or to be declared inoperative. It is open to the opposite parties to consider and dispose of the petitioner''s

objections to the proposed assessment of Properly Tax according to law by a speaking order and after disposal of those objections, when final assessment has been made, the opposite parties may issue fresh notice thereof. With these observations, the Writ Petition is being hereby allowed. The notice dated 22-5-1992, a copy of which is Annexure ''C'' to the Writ Petition is being held to be illegal, null and void, is hereby quashed. The opposite parties are directed not to proceed with the recovery of Property Tax etc. against the petitioner on the basis of notice of demand dated 22-5-1992 as well as not to impose any fine on the basis of that notice of demand dated 22-5-1992. The parties shall bear their own costs.