(1998) 04 AHC CK 0118

In the Allahabad High Court

Case No : C.M.W.P. No. 42979 of 1993

Keshav Lal Khatri and others — APPELLANT

Vs

Mukhya Nagar Adhikari, Nagar Maha Palika, Varanasi and others — RESPONDENT

Date of Decision : 09-04-1998

Acts Referred:
Uttar Pradesh Municipal Corporation Act, 1959 — Section 213, 213(1), 472

Citation : (1998) 3 AWC 1712

Hon'ble Judges : D.K. Seth, J

Bench : Single Bench

Advocate : M.M. Sahai, for the Appellant; S.C., Sankatha Rai and A.K. Singh, for the Respondent

Final Decision : Disposed Of

Judgement

D.K. Seth, J.—The alleged ex parte order mutating the name of opposite party No. 4 was objected to by the petitioner whereupon the Executive Committee, after considering the objections, set aside the alleged ex parte order and passed a fresh order which is Annexure-3 to the writ petition on 25th September, 1993. In the said order. It was mentioned that both the parties were heard and the papers were perused and the order dated 23rd February, 1993 is cancelled. By an order dated 25th September. 1993, this order was set aside by the Mayor asking the Executive Committee to decide the matter afresh. Mr. M. M. Sahai, learned counsel for the petitioner has assailed the order dated 19th October, 1993 passed by the Mayor on the ground that the Mayor had no jurisdiction to intervene in the matter inasmuch as the order dated 25th September. 1993 by which the order dated 23rd February. 1993 was cancelled and the application of opposite party No. 4 was rejected was an order under sub-section (1) of Section 213 of the Uttar Pradesh Municipal Corporations Adhiniyam, 1959 which is appealable in view of Section 472 of the said Act. The appellate authority is an authority other than the Mayor as is apparent from Section 472 of the Act.

Therefore, according to him, the said order is wholly without Jurisdiction and cannot be sustained. Though he had sought to argue on the question of merits of the case but 1 am not prepared to enter into the merits of the case.

2. Mr. Ajai Kumar Singh, on the other hand, contends that the Executive Committee has no power to review and, as such. It cannot cancel the order dated 23rd February, 1993 neither it can reject the application of the respondent No, 4, therefore, the order dated 25th September, 1993 is wholly without jurisdiction and, as such. It was rightly set aside by the Mayor and, therefore, according to him, the order impugned is wholly Justified. Alternatively, he submits that since the order dated 25th September, 1993 is without Jurisdiction, therefore, both the orders dated 19th October, 1993 as well as 25th September, 1993 may be quashed and the matter may be decided afresh. A copy of the order dated 23rd February, 1993 has been produced by Sri Ajai Kumar Singh in the matter which is taken on record.

3. After having heard the learned counsels for both the parties at length, it appears from the said order that the objection filed by the objector was held to be ineffective, therefore, the said order was not an ex parte order. However, the name of the objector does not find place in the said order and it also does not discuss what was the objection raised by the objector. On the basis of the prayer for re-consideration by Keshav Lal Khatri, the order was reconsidered and. therefore, in effect, the same is a review of the earlier order, is the contention of Sri Ajai Kumar Singh.

4. Now it is to be seen as to whether there is a scope of review by the Executive Committee in respect of its earlier order. So far as Section 213 of the Act is concerned, it does not provide for review of its own order. It is a settled principle of law that unless review is specifically provided for such power cannot be inhere in the authority but the exception to the said interpretation would be unless the statute otherwise implies such a situation, the review cannot be wholly barred. In Section 213 of the said Act, it has been provided that the Executive Committee or a Sub-Committee appointed for the purpose may, at any time, alter or amend the assessment list:

(a) by entering therein the name of any person or any property which ought to have been entered or any property which has become liable to taxation after the authentication of the assessment list ; or

(b) by substituting therein for the name of the owner or occupier of any property the name of any other person who has succeeded by transfer or otherwise to the ownership or occupation of the property ; or

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(g) by correcting any clerical, arithmetical or other apparent error ; after giving notice to any-person interested in alternation or amendment.

5. It is alleged by Sri M. M. Sahai that no notice was given to him but he has not been able to mention the name of the objector along with the objection submitted by him in the order dated 23rd February, 1993.

6. Be that as it may, the scheme of the section itself shows that it is open to the Executive Committee to amend or alter the assessment list in respect of the matter as mentioned above at any time after giving notice to the parties. This power to amend or alter does not come to an end. Once it is exercised, it remains still open to be amended or altered again provided proper materials are produced by the parties and the Executive Committee decides the same after giving opportunity of hearing to both the parties after notice. Therefore, by implication it does not bar the consideration of an earlier decision by the Executive Committee in appropriate cases, but then there must be sufficient material to alter or amend once again the assessment list. In the present case, both the parties were given opportunity of hearing while reconsidering the earlier order. Therefore, according to Sri Sahai, it was well within the Jurisdiction to review the order. Now as I have observed that by implication, the power of review is not precluded, therefore, the Executive Committee has Jurisdiction to review its earlier order if sufficient materials are produced before it.

7. Since I do not propose to enter into the merits of the case, 1 do not make any observation with regard to the order passed by the Executive Committee. The matter is, however, open to appeal u/s 472 of the Act. Mr. AJai Kumar Singh submits that he is not sure as to whether any appeal is filed or not by his client. If any appeal is filed and if the same has not been decided, the same should be decided in accordance with law as early as possible preferably within three months from the date of production of a copy of this order before the appellate authority. If no appeal is pending or filed, in that event, it will be open to the respondent No. 4 to prefer such an appeal within four weeks from today. If such an appeal is filed, in that event, the appellate authority should not dismiss the same on the ground of delay and shall enter into it on merits of the case and shall decide and dispose of the same, as early as possible, preferably within three months from the date of production of a copy of this order before it, after giving proper opportunity to both the parties in accordance with law and without being influenced by any observation made in this order.

8. Before parting with the case, it may be observed that the entry made in the assessment list does neither confer any title nor take away any title of as owner which is always open to challenge in an appropriate civil litigation. In that view of the matter, the order dated 19th October, 1993 is quashed. A writ of certiorari is accordingly issued. With the above observations, the writ petition stands finally disposed of. There shall be no order as to costs.