
(1954) 02 AHC CK 0003

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Case No. 126 of 1952

Lal Mohan Banerji

APPELLANT

Vs

The Municipal Board

RESPONDENT

Date of Decision : 12-02-1954

Acts Referred:

Uttar Pradesh Municipalities Act, 1916 — Section 143(3)

Citation : (1955) 25 AWR 483

Hon'ble Judges : V. Bhargava, J

Bench : Single Bench

Advocate : A.P. Pandey, for the Appellant; S.C. Khare, for the Respondent

Judgement

V. Bhargava, J.—This is a petition Under Article 226 of the Constitution presented by one Lal Mohan Banerji, owner of two houses Nos. 38 Park Road and 39 Thornhill Road, within the Municipality of Allahabad directed against the Municipal Board of Allahabad.

2. It appears that these two houses were assessed to house tax and water tax and according to the quinquennial assessment made in 1945 the total amount of tax payable in respect of these two houses on account of the house tax and water tax was an annual sum of Rs. 161/12/- . A fresh quinquennial assessment took place in 1950 and during these proceedings the board gave a notice to the Petitioner u/s 143(1) of the U.P. Municipalities Act of enhancement of tax on these two houses to a total sum of Rs. 221/5/- . Thereupon the Petitioner filed two separate objections u/s 143(2) of the U.P. Municipalities Act against the enhancement on the 11th February, 1950. For a decision of these objections, the officer empowered to decide the objections fixed the 30th of March, 1950 and sent a notice of that date to the Petitioner. The notice was admittedly dated 27th March, 1950 and was posted under a certificate of posting on the 29th March, 1950. The Petitioner's case is that it was received by him for the first time on the 3rd April, 1950 when the date fixed giving him an opportunity to appear in person or through an agent to be heard in connection with the objections had

already expired. The Petitioner, therefore, refused to accept the notice as the notice had been sent without any postage stamp and the Petitioner was required to pay to the postal authorities the amount due for the stamp and the penalty. On the 4th April, 1950, the Petitioner wrote to the Executive Officer of the Municipal Board mentioning that the notice fixing the date 30th March, 1950 was presented to him by the postal peon on the 3rd April, 1950 and thus he had been deprived of being heard. This letter was completely ignored by the Municipal Board and its Executive Officer. According to the various counter-affidavits filed on behalf of the Municipal Board, Mukund Behari, Tax Inspector and Ram Deo Singh, Additional Tax Inspector went to the Petitioner several times between January and March, 1951 and explained the bills and demanded tax at the enhanced rate. The Petitioner has denied that these persons visited him as alleged. It, however, appears that some time about the 30th March, 1951 the Petitioner was approached by an Inspector of the Municipal Board and asked to pay the Municipal taxes in respect of his houses in accordance with the previous assessment of 1945 and thereupon the Petitioner paid the sum of Rs. (sic)/12/- through a cheque. This allegation made by the Petitioner has been admitted on behalf of the Municipal Board with a rider which reads.

3. "excepting that the Inspector agreed to Shri L.M. Banerji to make the payment according to the assessment of 1945". It is difficult to construe this as meaning that the Inspector had not demanded the sum in accordance with the assessment of 1945 as alleged in the affidavit filed by the Petitioner, as there is no denial with regard to that assertion of the Petitioner. The Petitioner has further stated that, after he had given the cheque, he received a receipt dated the 31st March, 1951 for the sum of Rs. 161/12/ with the words "in full/ part payment of bill...dated...." This is also admitted on behalf of the Municipal Board. There is a further allegation that the Petitioner was induced to believe that the matter had been settled once for all and this fact is also admitted on behalf of the Municipal Board. Thereafter the Municipal Board took steps to realise the tax due for the subsequent year, April 1, 1951 to March 31st 1952 and again demand was made at the enhanced rate. The Petitioner first paid at the old rate by means of a cheque which was returned. Subsequently he sent the same amount in cash at the rate of Rs. 161/12/- per annum and that was accepted by the Board in part-payment of the demand made. Later, the Municipal Board cut off the water connection of the house No. 38, Park Road in the absence of the Petitioner on the 31st March, 1952 and thereupon this petition was moved on behalf of the Petitioner on the 9th April, 1952. An interim order was passed by a Bench of this Court directing the Municipal Board to restore the water connection, and, presumably the connection was restored. It is in these circumstances that the Petitioner seeks for the issue of a writ of (sic) quashing the proceedings for the enhancement of the assessment of his houses and a writ of mandamus directing the Municipal Board to restore the water connection.

4. It would appear from the facts given above by me that in this case there is very little dispute about the facts, and, in any case, the matter is to be decided

on the basis of admitted or uncontroverted facts. The most important fact that has been alleged on behalf of the Petitioner is that the notice on the post-card dated the 27th March, 1950 informing him that the 30th March, 1950 was fixed for hearing his objections was received by him on the 3rd of April, 1950. On behalf of the Board it is admitted that the postcard was posted on the 29th March, 1950 and the allegation of the Petitioner that it was not received by him until the 3rd April, 1950 is neither admitted nor denied. On behalf of the Board ignorance is pleaded on that subject. Normally, a "bearing" postcard which is refused by the addressee is returned to the sender and the postage due and penalty are realised from him. In this case, the postcard should have been returned to the Municipal Board, Allahabad. But there is an averment in the affidavit filed on behalf of the Board that it was not received back. That postcard, therefore, is not now available and in the absence of the postcard as well as in the absence of any assertion on behalf of the Board that the postcard was tendered by the postal authorities to the Petitioner on or before the 30th March, 1950. I have to accept, for the purpose of this case, that the notice contained in the postcard was not received by the Petitioner upto the 30th March, 1950 and was only received later. u/s 143(3) of the Municipalities Act, when an objection against a proposed enhancement of assessment has been filed that objection is to be decided after giving the objector an opportunity of being heard in person or by an agent. In this case it is obvious that the Petitioner was given no such opportunity. The postcard giving notice of the date for hearing of the objections was no doubt written out on the 27th March, 1950. There is no explanation why it was not posted until the 29th March, 1950 when the date fixed was the 30th March, 1950. On the face of it, even if it had been carried by the postal authorities with all expedition, it could not be expected to reach the Petitioner before the 30th March, 1950 when already it may have been too late for him to be heard in support of his objection. By posting the postcard so late, the Municipal Board authorities dealing with the objections clearly deprived the Petitioner of his right to be heard. In fact, it would appear that the delay was caused in order that he should have no such opportunity. It is also surprising that when the Petitioner wrote to the Board on the 4th April, drawing the attention to this circumstance no notice of it at all was taken by the Municipal Board. On the face of it the order rejecting the objections had been wrongly passed without complying with the law and since the Petitioner drew the attention of the authorities to it he should have been given an opportunity to be heard by vacating the ex parte order.

5. Learned Counsel for the Municipal Board has urged that the appropriate remedy for the Petitioner was to file an appeal before the District Magistrate. But in view of the fact that the Petitioner had drawn the attention of the Municipal Board authorities themselves by his letter dated the 4th April, 1950 he could reasonably expect that the wrong done would be righted and the opportunity which had been denied would be granted to him in future. He could very well remain under that impression when no reply was sent to the letter dated the 4th

April, 1950. It has been alleged on behalf of the Municipal Board that copies of the order passed by the revising authority were sent to the Petitioner on the 27th June, 1950. The Petitioner has stated in the affidavit filed originally in support of his petition that after his letter of the 4th April, 1950 the Municipal Board authorities remained silent and that nothing at all happened until March 1951, implying that the copies of the decisions of the revising authorities were not received by the Petitioner. In his rejoinder affidavit the Petitioner merely wrote that he did not admit the allegations made on behalf of the Municipal Board that the copies of the decision had been sent to him on the 27th June, 1950. It would of course had been better if he had clarified his position by stating specifically that the copies of the decisions were not received by him at all. There is no doubt the presumption that a letter posted would reach the addressee. But such presumption is very weak in a case where the letter is not registered. In this case, the Municipal Board does not allege that the copies of the decisions were sent by registered post. In these circumstances, I am not prepared to reject the allegation of the Petitioner that the copies of those decisions never reached him. If the copies of those decisions did reach him and the letter of the 4th April, 1950 was still lying unanswered, it was not unnatural for him not to think of filing an appeal to the District Magistrate. The demands for the amount of tax were made from him, even according to the Municipal Board only in February and March 1951 and on or about the 30th March, 1951 the Petitioner paid the tax at the old rate. That amount was accepted and when the receipt was sent on behalf of the Board it did not make it clear whether the amount was being accepted in full payment or in part payment. Of course there was gross negligence in not striking off one of the words "full" or "part". There is, however, the significant fact that the Petitioner alleged that he was induced to believe that the matter had been settled once for all and that this receipt was sent to him. This allegation of the Petitioner has been admitted in the counter-affidavit filed on behalf of the Municipal Board. Learned Counsel for the Municipal Board urged that in this averment made on behalf of the Petitioner it was not clearly stated that the Petitioner had been induced to believe that the matter had been settled once for all by the Municipal Board. But it is clear from the trend of the whole affidavit that the Petitioner could have meant nothing else except that this belief was induced in him on behalf of the Municipal Board. The case of the Municipal Board was that this belief was induced by some person who had no authority on behalf of the Board to do so. If so this should have been stated in the counter-affidavit. The result of this belief of the Petitioner was that he naturally did not thereafter move in appeal or take any other action. It is also significant that even in the counter-affidavit it is nowhere alleged that any proceedings were taken by the Municipal Board after the 31st March 1951 to realise the balance of the tax which, according to the Municipal Board would have been due if Rs. 161/12/- had been accepted only in part payment and not in full payment. What the Municipal Board did was to ignore that balance altogether and to take proceedings only for the subsequent year from the 1st April, 1951 to the 31st March, 1952. This being so it is all the more clear, that the Petitioner was given some sort of an

understanding that the amount of Rs. 161/12/ paid by him on or about the 30th of March, 1951 having been accepted in full payment the matter had been settled between the parties. Once the Petitioner was given a belief that the Municipal Board was willing to accept tax at the old rate for the year 1950-51 it was natural for the Petitioner further to assume that in future years, until there was a fresh assessment he would be required to pay tax at the same rate and not at the enhanced rate. It was only when proceedings were taken and the water connection was actually cut off that it became necessary for him to move this Court to stop the illegal realisation by the Municipal Board.

6. The above discussion of the fact of the case would show that the enhancement by the Municipal Board of the tax on the Assessee was illegal inasmuch as his objections were decided without giving him an opportunity of being heard in person or by an agent as was necessary u/s 143(3) of the Municipalities Act. On this account, the proceedings that are being taken by the Municipal Board for realising the enhanced tax even for the subsequent year are against the provisions of law and must be stopped. The only ground which could be urged by Learned Counsel for the opposite party to oppose the petition was that the Petitioner had not sought this proper remedy by filing an appeal to the District Magistrate. But the circumstances found by me above show that the Petitioner had adequate reason for not approaching the District Magistrate. This failure to approach the District Magistrate was principally due to the incorrect action that was taken by the opposite party itself. In these circumstances I do not consider that the petition should be thrown out on the ground that the Petitioner did not move the District Magistrate in appeal.

7. As a result, I quash the orders rejecting the objections filed by the Petitioner u/s 143(2) of the Municipalities Act and also quash the enhancement of the assessment made as a result of those orders. So far as the restoration of the water connection is concerned no writ now appears to be necessary as the water connection has already been restored under the interim order passed by this Court. It need only be noted that the opposite party is not entitled to cut off the water connection on the ground on which it was disconnected on the last occasion. The Petitioner will be entitled to his costs from the opposite party for this petition.