

(2008) 04 CHH CK 0021
In the Chhattisgarh High Court
Case No : C.R. No. 193 of 2004

Maresh Soni

APPELLANT

Vs

Premji Rao and Another

RESPONDENT

Date of Decision : 23-04-2008

Acts Referred:

Chhattisgarh Municipal Corporation Act, 1956 — Section 149, 149(1), 153(2)

Citation : (2008) 4 MPJR 15

Hon'ble Judges : Dilip Raosaheb Deshmukh, J

Bench : Division Bench

Advocate : Malay Kumar Bhaduri, for the Appellant; M.D. Dhote, Advocate For non-applicant No. 1 None For non-applicant No. 2, for the Respondent

Final Decision : Dismissed

Judgement

Dilip Raosaheb Deshmukh, J.

In this civil revision, the order passed by the Ist Additional District Judge, Raipur in Miscellaneous Civil Appeal No. 3/03 on 27.10.2004 is under challenge.

Brief facts are that the applicant Maresh Soni filed an application before the revenue officer in charge of Zone No. 5, Raipur for mutation of his name over houses No. 623 and 623/1 situated in Shahid Brigadier Usman, Ward No. 41, Tikrapara, Raipur. On issuance of publication, non-applicant No. 1, Premji Rao preferred an objection and prayed that houses No. 623 and 623/1 were owned by late Shankar Rao, brother of his grand father and being the sole heir of late Shankar Rao, his name ought to be mutated over the suit property.

The competent officer of the Municipal Corporation, Raipur (henceforth "the competent officer") by order dated 20.06.2003 directed non-applicant No. 1. Premji Rao to seek a declaration of the title from a competent civil court while rejecting the application of the applicant Maresh Soni. Being aggrieved, Premji Rao preferred Miscellaneous Civil Appeal No. 3/03 before the Ist Additional District Judge, Raipur in which the order passed by the competent officer of the

municipal corporation was set aside and a direction was issued to mutate the name of Premji Rao over houses No. 623 and 623/1 situated in Shahid Brigadier Usman, Ward No. 41, Tikrapara, Raipur. The learned Ist Additional District Judge, Raipur recorded the following reasons in paragraph 11 to 14 for passing the impugned order, which read as under:

Being aggrieved by the impugned order, Mahesh Soni has preferred this civil revision.

Shri Malay Kumar Bhaduri, learned Counsel appearing for the applicant urged that the appeal did not lie as u/s 149 of the Chhattigarh Municipal Corporation Act, 1956 (henceforth "the Act") an appeal shall lie from the decision of the Municipal Commissioner to the District Court if any dispute arises as to the liability of any land or building to assessment or as to the basis or principle of assessment or as to the amount of tax assessed. The order passed by the competent officer directing Premji Rao to seek a declaration of title from a competent civil Court did not fall within the purview of Section 149(1) of the Act. In this manner, the lower appellate Court had acted without jurisdiction. Reliance was placed on *The Municipal Corporation Jabalpur v. Shri Radhakrishna Pandey*, 1969 MPLJ 325. It was also urged that the question relating to the title of the disputed houses was one within the competence of the civil Court and, therefore, the competent officer had rightly directed Premji Rao to seek a declaration of title from a competent civil Court.

On the other hand, Shri M.D. Dhote, learned Counsel appearing for non-applicant No. 1 referred to Sub-section (2) of Section 153 of the Act while arguing in support of the impugned order contended that the words "any amendment be made in respect of any matter other than the correction of an arithmetical total" include the question of mutation upon a written objection made before the competent officer. Reliance was placed on *Ramdwarikalal Agrawal v. Krishna Dwarikalal Agrawal*, 1982 MPLJ 54.

Having heard the rival contentions, I have perused the impugned order as also the order passed by the competent officer. Section 153 of the Act contains the power of Commissioner of Municipal Corporation to amend assessment list by inclusion, omission or substitution of any matter other than the correction of an arithmetical total. It reads thus -

Power of Commissioner to amend assessment list - (1) The Commissioner may at any time amend the assessment list by the inclusion, omission or substitution of any matter. Provided that whenever he proposes to make any amendment in respect of any matter other than the correction of an arithmetical total, he shall before making the amendment, send notice thereof to persons interested and shall allow thirty days to elapse for the making of any objection to the proposed amendment: Provided further that nothing in this Sub-section shall empower the Commissioner to vary the valuation of any premise determined on appeal to the District Court.

(2) If any amendment be made in respect of any matter other than the correction of arithmetical total, any person on whom a notice is served may object by written application addressed to the Commissioner and delivered at the Corporation Office before the date fixed in the said notice, and the provision of Sections 148 and 149 shall with all necessary modifications apply to such objection.

(3) When the erection of a new building is completed after the completion of the assessment list, the Commissioner may add the particulars of the building to the list, and in each the provisions of Section 145, 147, 148, 149 and 152 shall apply, except that no public notice shall be required. In such a case the assessment shall take effect from the beginning of the quarter following the date on which the building is added to the assessment list or from the date when it is occupied or let, if that is earlier.

The words "any amendment be made in respect any matter other than the correction of an arithmetical total" appearing in Sub-section (2) of Section 153 of the Act would include an amendment in the name of the owner of the property in the assessment list and, therefore, when an objection is decided by the amendment either way, it shall be open to appeal u/s 149 of the Act. In the present case also, upon a publication being made on the application filed by the applicant Mahesh Soni, non-applicant No. 1, Premji Rao had preferred an objection. The competent officer decided the objection by holding that Premji Rao should seek a declaration of title over the disputed houses from a competent civil Court. Therefore, such an order passed by the competent officer under Sub-section (2) of Section 153 of the Act is appealable u/s 149 of the Act. In *Ramdwarikalal Agrawal v. Krishna Dwarikalal Agrawal* (supra), it was held as under:

It is clear from the language of Sub-section (1) and (2) of Section 153, M.P. Municipal Corporation Act that persons interested, to whom notice is issued, can make their objections not merely when the proposed change relates to valuation but also when it relates to any matter mentioned in the assessment list. The words "such objection" as they occur towards the end in Sub-section (2) refer to all objections which can be filed under Sub-section (2) and which may relate to any matter in the assessment list. It is true that Section 148 and 149 are limited to objections relating to valuation when the assessment list is in preparation, and it is for this reason that when these sections have been made applicable to objections contemplated under Sub-section (2) of Section 153, it has been stated that they shall apply "with all necessary modifications". The intention is clear that whatever may be the nature of the objections made under Sub-section (2) of Section 153, the procedure laid down u/s 148 and 149 will apply to such objections in the same way as it applies regarding objections to valuation made during the preparation of the assessment list. It is not possible to limit the applicability of Sections 148 and 149 in the context of Section 153(3) only to objections regarding valuation entered in the assessment list. When therefore

the objection is regarding the owner's name in the assessment list, and the Administrator acting u/s 153 passes an order changing the name of the owner in the assessment list, Section 149 is attracted and the order is appealable u/s 149 of the Act.

In view of the above, the objection raised by Shri Malay Kumar Bhaduri, learned Counsel for the applicant regarding maintainability of the miscellaneous civil appeal before the Ist Additional District Judge, Raipur falls to the ground. The case of The Municipal Corporation, Jabalpur v. Shri Radhakrishna Pandey (supra), relied on by Shri Malay Kumar Bhaduri, learned Counsel for the applicant is distinguishable as it does not relate to an order passed by the Commissioner of the Municipal Corporation u/s 153 of the Act.

I have perused the detailed and well-reasoned impugned order passed by the Ist Additional District Judge, Raipur. No jurisdictional error is noticed in the impugned order, whereby the lower Appellant Court has ordered mutation of the name of Premji Rao over houses No. 623 and 623/1 situated in Shahid Brigadier Usman, Ward No. 41, Tikrapara, Raipur.

In this view of the matter, this revision being devoid of any merit is dismissed.