
(1994) 05 CAL CK 0014

In the Calcutta High Court

Case No : Appeal No. Nil of 1993, Matter No. 4844 of 1991

Md. Farooque

APPELLANT

Vs

State of West Bengal and others

RESPONDENT

Date of Decision : 16-05-1994

Acts Referred:

Calcutta Municipal Act, 1951 — Section 174(4), 183(3A)
Calcutta Municipal Corporation (Taxation) Rules, 1987 — Rule 12, 16
Calcutta Municipal Corporation Act, 1980 — Section 188, 189(6), 197(2)
Constitution of India, 1950 — Article 14, 19(1), 21, 22

Citation : AIR 1995 Cal 98 : 99 CWN 31

Hon'ble Judges : Prabir Kumar Majumdar, J; Jagdish Kumar Mathur, J

Bench : Division Bench

Advocate : P.K. Das and Sanjib Misra, for the Appellant; A.P. Sarkar and A.K. Majumdar, Barin Banerjee, for the Respondent

Judgement

Jagdish Kumar Mathur, J.—Md. Farooque the appellant before us claims that he owns a property No. T-44A, Rabindra Sarani, Calcutta and runs a guest house, in it. It yielded a gross amount of Rs.4,13,144/-during the year 1986-87. His earnings from this came to Rs. 5000/- per month approximately. In 1986, the valuation of the building was enhanced. The petitioner filed an objection. He received a notice from the assessor of the Calcutta Municipal Corporation requiring him to appear before Hearing Officer with evidence in support of his objection, u/s 188 of the Calcutta Municipal Corporation Act, 1980. He was required to appear on 5-6-1986. As he received the letter after the aforesaid date, he would not appear but wrote a letter on 7-6-1986, requesting the assessor to fix another date. The petitioner did not get any reply but received a bill in the month of July 1987. In that bill the valuation was fixed at Rupees 4,12,365/-. The petitioner was required to pay a net amount of Rs. 39,850/- as tax. The petitioner approached this Court. An order was passed in the writ petition moved by him staying the enforcement of the bill and permitting Calcutta Municipal Corporation to afford an opportunity to the petitioner to be

heard. He was thereupon informed that he would be heard on 6th Nov. 1986. The petitioner appeared before the Hearing Officer and submitted that the provisions of Section 174(4) of the Calcutta Municipal Act would be applicable and that the tax could not be determined under any other provision. The Hearing Officer, however, rejected this objection and assessed valuation of the premises at Rs. 3,03,210/-. He again filed a writ petition against this order which petition was disposed of by Ld. Single Judge, directing the petitioner to file an appeal before the assessment Tribunal. The petitioner came to know that the appeal would abate without, hearing in case he did not deposit the enhanced tax due till the date of filing of appeal. This amount comes to Rs. 6,00,000/-. In this petition, the petitioner challenged the vires of provisions of Section 189(6) of the Calcutta Municipal Corporation Act and Rule 16 of the Calcutta Municipal Corporation (Taxation) Rules of 1987 as being viola-live of Articles 14 and 19(1) (g) and Article 21 of the Constitution and asked for a writ in the nature of mandamus requiring the authority not to give effect to these provisions.

2. The writ petitioner was heard and decided by the Ld. Single Judge who finding that the entire set of contentions raised on behalf of the petitioner had been considered by the Supreme Court in the case of Shyam Kishore and others Vs. Municipal Corporation of Delhi and another, , and similar provisions were found to be valid, dismissed the writ petition.

3. Against this decision the petitioner has filed this appeal.

4. We have heard the Ld. Counsel for the petitioner. The main contention raised on behalf of the petitioner/appellant is that the provisions impugned in this case have the, effect of depriving the petitioner of his right of livelihood and are, therefore, violative of Article 21 of the Constitution.

5. The provision vires of which has been challenged are Section 189(6) of the Calcutta Municipal Corporation Act and Rule 12 of the Taxation Rules framed under the afore- said Act.

There provisions run as follows:

Section 189(6) "No appeal under this section shall be entertained unless the consolidated rate in respect of any land or building for the period ending on the date of presentation of the appeal, on the valuation determined under S. 188 has been deposited rules, to within deposited amount person be (in the office of the Corporation) and the appeal shall abate unless such consolidated rate is continued to be deposited till the appeal is finally disposed of."

Rule 12 -- "Summary dismissal or rejection of appeal and application -- The appeal or any application made thereunder shall be liable to forthwith dismissed or rejected if (a) the person presenting the appeal fails to prove to the satisfaction of the Chairman that the entire amount of the consolidation rate, required to be deposited under Sub-section (6) of Section 189, has been deposited in the officer of the Corporation or,

(b) the person presenting the appeal fails, within such time as may be allowed by the Chairman to pay the fees, required to be paid under these rules or to furnish all such requisites as the Chairman considers necessary or

(c) any party to an application fails, within such time as may be allowed by the Chairman, to make necessary verification, or to pay fees or costs as ordered, or to furnish all such requisites as the Chairman considers necessary."

6. It has been urged that these provisions forbid entertainment of an appeal against the assessment of tax unless the tax due till the date of filing of the appeal has been deposited. The appeal filed without deposit of such tax would be liable to be dismissed forthwith.

7. It was urged that the petitioner receives only about Rs. 5000/- per month from this property, while he has been required to pay almost Rs. 10,000/- per month as tax for it. This payment extracted at the time of the filing of the appeal, denies him the right of livelihood from this property and is, therefore, an infraction of his right guaranteed under Art. 21 of the Constitution.

8. Before we enter into discussion of these submissions, it may be set out at this stage that the liability of the petitioner to pay the tax, and the manner in which the tax has to be calculated, are not the subject matter of either the writ petition or the appeal before us. He has merely challenged the requirement of law which forces him to pay the tax assessed at the threshold of an appeal at the risk of getting the appeal dismissed unheard, if he is not able to deposit the amount.

9. It may also be pointed out that similar provisions as they existed in the Calcutta Municipal Act of 1951, contained Section 183(3A) were considered by a Division Bench of this Court, in the matter of *Gillander Arbourthnot & Co. v. Corporation of Calcutta*, (1986) 1 Cal HN 262 and it was held that these provisions did not violate Art. 14 or Art. 19 of the Constitution.

10. Ld. Counsel for the appellants did not challenge the correctness of this decision which in any case is binding on us. It was, However, urged on behalf of the appellant that the challenge to aforesaid provisions on the anvil of Art. 21 of the Constitution was not considered in the aforesaid case and therefore, this case cannot foreclose consideration of the assertion by the appellants, that the aforesaid provisions are bad as they offend the provisions of Art. 21 of the Constitution.

11. Thus the limited question that we are called upon to consider in this appeal is whether the requirement of the aforesaid provisions of the Calcutta Municipal Corporation Act by which the petitioner has to deposit the tax assessed, due till the date of filing an appeal is a violation of his right of livelihood and if so, it infringes his rights guaranteed under Art. 21 of the Constitution.

12. For seeking protection of provisions of Art. 21 of the Constitution, the petitioner has firstly to show that it is the right to life of which he is sought to be deprived and secondly, that this deprivation is otherwise than according to

procedure established by law.

13. The extraction compelled at the cost of dismissal of appeal is stated to be violation of right of livelihood which is a component of the right to life.

14. Livelihood is "means of living, sustenance" as given in the Concise Oxford Dictionary (7th Edition). It would, therefore, be something necessary for a man to provide for his living or sustenance. It is only such activity or means which is essential to earn one's living for subsistence that would constitute the right to livelihood.

15. It was right to livelihood in this sense, that was stated to be a constituent of the right to life as guaranteed by Art. 21, by the Supreme Court in *Olga Tellis and Others Vs. Bombay Municipal Corporation and Others*, In this case, this aspect of the matter was considered and it was held that right to livelihood is a component of right to live guaranteed by the Constitution (at pp. 193- 194 of AIR).

"As we have stated while summing up the petitioners' case, the main plank of their argument is that the right to life which is guaranteed by Art. 21 includes the right to livelihood and since, they will be deprived of their livelihood if they are evicted from their slum and pavement dwellings, their eviction is tantamount to deprivation of their life and is hence unconstitutional. For purpose of argument, we will assume the factual correctness of this premise that if the petitioners are evicted from their dwellings, they will be deprived of their livelihood. Upon that assumption, the question which we have to consider is whether the right to life includes the right to livelihood. We see only one answer to that question, namely, that it does. The sweep of the right to life conferred by Art. 21 is wide and far reaching. It does not mean merely that life cannot be extinguished or taken away as, for example, by the imposition and execution of the death sentence, except according to procedure established by law. That is but one aspect of the right to life. An equally important facet of that right is the right to livelihood because, no person can live without the means of living, that is, the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life of its effective content and meaningfulness but it would make life impossible to live. And yet, such deprivation would not have to be in accordance with the procedure established by law, if the right to livelihood is not regarded as a part of the right to life. That, which alone makes it possible to live, leave aside what makes life livable must be deemed to be an integral component of the right to life."

16. A perusal of the aforesaid will show that in considering the right of livelihood as a right inhering in the right to life, it was assumed by the Supreme Court that eviction from their dwellings would deprive the petitioners of their livelihood. The Supreme Court was persuaded to consider the right of livelihood

to be a part of right to life on consideration that the deprivation of the means of livelihood to the point of abrogation would necessarily deprive a person of his right to live.

17. It is, therefore, the right to earn livelihood at the marginal level that would be a component of the right to life.

18. Reliance was also placed on the case of Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others, in which case also it was held that right to life includes the right to livelihood. In this case the Supreme Court was considering the case of the employees of the Delhi Transport Corporation who were being deprived of the employment. Such employment was taken to be right to livelihood of those persons. In this case also deprivation of their employment would have resulted in threat to their very existence.

19. Thus the right to livelihood as protected by Art. 21 of the Constitution is only right to earn such livelihood as is necessary for the sustenance of persons and the deprivation of which would threaten their existence. This right cannot be equated with the right to earn to the extent of augmenting one's opulence. If a person having sufficient means to live is being deprived of some of his earning capacity that would not be an interference (with) a right to livelihood as may attract the application of Art. 21 of the Constitution, as it is not likely to have any impact on his right to live.

20. In this context, if we see the facts of the present case the writ petition begins with the statement that the petitioner carries on business, inter alia, or running, managing, owning and controlling a guest house known as Star Guest House. It necessarily implies that this is one amongst other businesses run by the petitioner. This guest house has fifty-three rooms which are let out by the petitioner. There is no allegation at all that in case the petitioner is required to pay the amount demanded from him, he would not be left with any other source of income to sustain himself.

21. In these circumstances, the impugned provisions do not affect the right of the livelihood of the petitioner and, therefore, this does not deprive the petitioner of his right to life as guaranteed by Art. 21.

22. It is not every deprivation of life or liberty which infringes the mandate of Art. 21. Such a deprivation should also be otherwise than according to the procedure established by law. In the present case, the realisation of tax is preceded by an assessment which is made after hearing the assessee. In this case, admittedly the petitioner was heard. He also has a right to challenge the assessment in appeal, which right has been given subject to his depositing the dues. After the appeal has been heard, in case, the amount realised from him is found not to be due, he would be entitled to its refund in terms of the provisions of Section 197(2) of the Calcutta Municipal Corporation Act.

23. The tax is, therefore, assessed and recovered in accordance with the

procedure provided by law.

24. On behalf of the petitioner it was also urged that the procedure should also be fair, just and reasonable to qualify to be procedure established by law as may justify an interference with the rights conferred by Art. 21 of the Constitution.

25. It was held in *A.K. Gopalan Vs. The State of Madras*, that an order of detention which satisfies requirements of Art. 22, was not required to meet the challenge of Art. 19, placing Arts. 21 and 22 in a separate category. This question was considered in *Rustom Cavasjee Cooper Vs. Union of India (UOI)*, and it was held that even a law authorising preventive detention has to satisfy the requirements of other fundamental rights. This ratio was followed in a number of other cases. Finally in *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, it was held that the procedure which was not reasonable just and fair was discriminatory and offended against the provisions of Arts. 14 & 19 of the Constitution (See *Maneka Gandhi Supra*, page 623). The provisions impugned in this case have already been tested at the anvil of Articles 14 & 19 and found to be reasonable and valid in the case of *Gillander Arbourthnot & Co. (1986 (1) Cal HN 262)* (*supra*) and because the correctness of that decision has not been challenged, the reasonableness and fairness of these provisions stands tested and need not be examined again.

26. The provisions have been enforced in accordance with the law, duly enacted and which law has been found to be reasonable and fair, they do not violate the provisions of Article 21.

27. In view of the above, we find that the right claimed by the petitioner is not the right to livelihood, and is not a constituent of the right to life, and also that the alleged interference by the Corporation is in accordance with the procedure prescribed by law duly enacted, and which law has been found to be valid when tested on the anvil of Articles 14 and 19 of the Constitution.

28. Thus, the provisions requiring the petitioner to pay the assessed dues before maintaining appeal do not offend against the provision of Article 21.

29. Lastly, it was urged on behalf of the appellant that the impugned provisions amount to unreasonable restrictions rendering the right of appeal almost illusory and have to be struck down on this score. For this purpose, reliance was placed on the case of *Shyam Kishore and others Vs. Municipal Corporation of Delhi and another*,

30. In *Shyam Kishore*, the Supreme Court was considering provisions of the Delhi Municipal Corporation Act, which u/s 170(b) require that appeal against the assessment of any tax under the Act cannot be heard or determined unless the amount due has been deposited by the appellant in the Office of the Corporation. This provision was read to mean that till such time as an appeal was heard, in appropriate cases the Court may grant time to deposit the amount and, therefore, this provision was not unduly harsh and was valid. It, however, quoted

Seth Nand Lal and Another Vs. State of Haryana and Others, , "that the right of appeal is a creature of statute and there is no reason why the legislature while granting the right cannot impose conditions for the exercise of such right so long as the conditions are not so onerous as to amount to unreasonable restrictions rendering the right almost illusory."

which was relied upon by appellants.

31. A condition which is unreasonable and onerous is not tolerated because anything which is unreasonable and arbitrary is discriminatory and thus violates the mandate of Art. 14.

32. The provision of the Calcutta Municipal Act of 1951, (which were identical with the impugned provisions of 1980 Act, were considered for their being onerous unreasonable and harsh, in Gillanders Arbourn & Co. (1986 (1) Cal 262) (supra) and were found not to be suffering from any of these (page 277). This question was also considered in Chatter Singh Baid and Others Vs. Corporation of Calcutta and Others, In Gillanders case the Bench was hearing an appeal against Chhatter Singh decision also and affirmed the decision.

33. In Shyam Kishore and others Vs. Municipal Corporation of Delhi and another, the decision in Chatter Singh Baid and Others Vs. Corporation of Calcutta and Others, was noticed but the Supreme Court did not comment on its correctness, nor has any proposition been laid down as may affect the ratio in Chhatter Singh or Gillander Arbuthnot (186 (1) Cal HN 262).

34. These cases are, therefore, not denuded of their value as valid precedents.

35. These cases also considered and rejected the submission that the condition renders the right to appeal illusory. In Gillander case the aforesaid observation of Supreme Court in Seth Nand Lal and Another Vs. State of Haryana and Others, has also considered while finding the provisions to be valid. Thus this argument is also no longer open having been concluded by the aforesaid decision.

36. Considering the entire submissions made on behalf of the learned counsel for the appellant, we are of the opinion that the provisions contained in Section 189(6) of the "Calcutta Municipal Corporation Act and in Rule 16 of the Calcutta Municipal (Taxation) Rules of 1987 are valid and do not violate the provisions of Article 21 of the Constitution.

37. In view of this, the petitioner is not entitled to any relief claimed by him and his writ petition was rightly dismissed by the learned single Judge.

38. The appeal, therefore, fails and is hereby dismissed.

Prabir Kumar Majumdar, J.

39. I agree.

40 Appeal dismissed.