

**(1994) 04 AHC CK 0043**

**In the Allahabad High Court**

**Case No : Civil Misc. Writ Petition No. 3750 of 1992**

M/s. Modi Rubber Limited Modipuram, Meerut

APPELLANT

Vs

Nagar Mahapalika, Meerut and another

RESPONDENT

**Date of Decision : 21-04-1994**

**Acts Referred:**

Constitution of India, 1950 — Article 226

Uttar Pradesh Nagar Mahapalika Act, 1959 — Section 2(2), 2(3), 203(1), 204, 207

**Citation : AIR 1995 All 153 : (1994) AWC 1254**

**Hon'ble Judges : R.R.K. Trivedi, J;B.L. Yadav, J**

**Bench : Division Bench**

**Advocate : V.B. Singh, for the Appellant; S.C. and M.D. Singh, for the Respondent**

**Final Decision : Allowed**

## **Judgement**

R.R.K. Trivedi, J.—In this petition counter and rejoinder affidavits have been exchanged and learned counsel for parties have agreed that this petition may be decided finally at this stage.

2. By means of this petition petitioner has questioned the legality of the order dated 24-10-1991, Annexure III to the writ petition, by which it has been communicated that the valuation of the property of the petitioner for purposes of tax has been fixed as Rupees 1,32,49,561/- on the basis of the report of the enquiry committee dated 24-10-1991 and the order of the Nagar Pramukh of the same date. Though Annexure III to the writ petition is a communication of the order dated 24-10-1991, however, a copy of the detailed order has been filed as Annexure HI to the counter affidavit. At this place, certain facts which are not in dispute between the parties may be mentioned Assessment and valuation of the property of the petitioner for realising tax was made earlier by a Sub-Committee of respondent No. 1 by order dated 26-9-1991 which is Annexure I to the writ petition. By this order the total valuation of the property was Rupees 76,30,000/-. The order was duly authenticated as Chairman of the Sub-

Committee appointed for five years" assessment of the house tax, as well as, Chairman of Sub-Committee quarterly house tax, put their signatures u/s 210 of U.P. Nagar Mahapalika Aniniyam, 1959 (hereinafter referred to as the Act). In pursuance of the aforesaid order the amount of the (sic) payable was Rs. 9,53,750/-. After deducting rebate at the rate of 21A% the net tax of Rs. 7,63,000/- was paid by the petitioner. It appears that with regard to the valuation and tax paid in respect of the property of the petitioner, a report was submitted by Chief Tax Assessment Officer of respondent No. 1 on 5-10-1991. The report is Annexure V to the counter affidavit. The points mentioned in this report are very material for deciding the present case which shall be referred to a little later at appropriate place. This report suggested an action u/s 213 of the Act. On the basis of this report a Sub-Committee appears to have been appointed by the Nagar Pramukh vide his order dated 16-10-1991 which is Annexure IV to the counter affidavit. The Sub-Committee held its meeting on 24-10-1991 and same day petitioner's management was informed on telephone about the proceedings and in response to the telephonic message Shri O. P. Sharma, Liaison Officer of the petitioner attended the meeting. Same day the Sub-Committee concluded the proceedings and enhanced the, annual valuation from Rs. 76,30,000/- to Rs. 1,32,49,561/-. The tax payable on this valuation would be Rupees 16,56,195/-. The petitioner by order dated 17-12-1991, Annexure VI to the writ petition, was required to pay Rs. 13,24,956/- after deducting the amount of rebate admissible and as petitioner had already paid Rs. 7,63,000/-, he was required to pay remaining amount of Rs. 5,61,956/-. Aggrieved by the aforesaid enhancement of the annual valuation of the property, and resultant increase in the demand of the tax petitioner has approached this Court under Article 226 of the Constitution. The challenge by Shri Vijai Bahadur Singh, advocate appearing on behalf of petitioner, is particularly based on Section 213 of the Act as a 30 days notice required under the aforesaid provision and opportunity of filing objection was not given. It has also been submitted that the proceedings were wholly void and illegal as no opportunity of hearing was given and the order is liable to be quashed on this ground alone. It has also been submitted that the message by telephone could not be a substitute of the notice under the Act.

3. Shri M. D. Singh, learned counsel appearing for respondent, on the other hand, has resisted the claim of the petitioner mainly on three grounds. The first submission is that the order impugned was by way of correcting the clerical and arithmetical error contemplated under clause (g) of Section 213(1) of the Act and for such correction no notice was required. The second submission is that in response to the telephonic message representative of the petitioner actually appeared and participated in the hearing and hence there is no violation of the principles of natural justice. The last submission is that before approaching this Court petitioner filed appeal in the court of learned Judge Small Causes, u/s 472 of the Act which was registered as case No. 97 of 1991 and hence as the petitioner had already availed alternative remedy, the present writ petition is not

legally maintainable.

4. Learned counsel for petitioner, in rejoinder submitted that as the order impugned is illegal, void and without jurisdiction and has been passed in clear violation of the provisions of the Act and the principles of natural justice, alternative remedy cannot be pleaded as a bar. It has also been submitted that the appeal was filed under wrong legal advice and it was not legally maintainable and it has been withdrawn. Both the counsel have relied on certain authorities which may be referred to at appropriate places.

5. We have heard learned counsel for parties considered the rival submissions made with regard to respective cases. Chapter IX of the Act contains provisions with regard to Mahapalika taxation. Sections 207 to 218 quoted under the heading "Assessment and Levy of Property Taxes" under the aforesaid Chapter are very relevant for resolving the controversy involved in the present writ petition. Under the scheme provided an assessment list of all buildings or land or both in the city is prepared by the Mukhya Nagar Adhikari, u/s 207 of the Act which is published u/s 208 for being inspected by persons claiming to be owner or occupier of the property and to file objections. Section 209 deals with the objections filed against the entries in the list so prepared. After decision of the objection, the list is finalised and authenticated u/s 210 of the Act. The amendment and alteration in the list so finalised and authenticated may be made at any time by the executive committee or sub-committee u/s 213 of the Act in accordance with the procedure provided therein. It would be appropriate to reproduce the relevant provisions of Section 213 of the Act for appreciating the correct legal position :

213. Amendment and alteration of list --(1) The Executive Committee or a sub-committee thereof appointed in this behalf 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;

(c) by enhancing the valuation of, or assessment, on any property which has been incorrectly valued possessed by reason of fraud, misrepresentation or mistake; or

(d) by revaluing or re-assessing any property the value of which has been increased by additions to buildings; or

(e) where the percentage on the annual value at which any tax is to be levied has been altered by the Mahapalika under the provisions of Section 204 by making a corresponding alteration in the amount of the tax payable in each case;

or

(f) by reducing upon the application of the owner or on satisfactory evidence that the owner is untraceable and the need for reduction established, upon its own initiative, the valuation of any building which has been wholly or partly demolished or destroyed; or

(g) by correcting any clerical, arithmetical or other apparent error:

Provided that the Executive Committee or the sub-committee, as the case may be, shall give at least one month's notice to any person interested in any alteration (or amendment) which the Executive Committee, or subcommittee proposes to make under clauses (a), (b), (c) or (d) of sub-section (1) and of the date on which the alteration or amendment will be made.

(2) The provisions of sub-sections (2) and (3) of Section 2 applicable to the objection thereunder mentioned shall, so far as may be, apply to any objection made in pursuance of a notice issued under sub-section (2) and to any application made under sub-clause (f) of subsection (1).

(3) Every alteration (or amendment) made under sub-section (1) shall be authenticated by the signature or signatures of the person authorised by Section 210 and, subject to the result of an appeal u/s 472, shall take effect from the date on which the next installment falls due."

6. From a perusal of the proviso to Section 213(1) of the Act it is clear that for alteration or amendment of the list already finalised on the grounds mentioned in Clauses (a), (b), (c) or (d) of sub-section (1), one month notice to the person interested is mandatory. In the present case it is admitted to the respondents that one month notice as required under the aforesaid proviso was not given. The information of the meeting of the sub-committee was given by telephone. The question is whether the information so given by telephone and even responded by the person interested could be an appropriate and legal substitute of the one month notice contemplated under the aforesaid Proviso. Section 554 of the Act provides notices and their service. Sub-section (3) of Section 554 provides procedure for service of notice, bill etc. on the owner or occupier of the building. The provisions of Section 554(3) of the Act are being reproduced below :

"554. Notices and their service, --

(1) .....

(2) .....

(3) When any notice, bill, schedule, summons or other such document is required by this Act, or by any rule, regulation or by-law, to be served upon or issued or presented to the owner or occupier of any building or land, it shall not be necessary to name the owner or occupier therein and the service. Issue or presentation thereof shall be effected, not in accordance with the provisions of the last preceding sub-section, but as follows, namely --

(a) by giving or tendering the said notice, bill, schedule, summons, or other document to the owner or occupier or if there be more than one owner or occupier to any one of the owners or occupiers of such building or land;

(b) if the owner or occupiers or no one of the owners or occupiers is found by giving or tendering the said notice bill, schedule, summons or other documents to some adult member or servant of the family of the owner or occupier of any of the owners or occupiers, or

(c) if none of the means aforesaid be available by, causing the said notice, bill, schedules, summons or other document to be affixed on some conspicuous part of the building or land to which the same relates.

(4) .....

(5) .....

7. From the provision contained in Section 554(3) of the Act, it is clear that the Act contemplates a particular procedure for service of notice and a combined reading of the proviso in Sections 213(1) and 554(3) leaves no doubt that the notice served should be in writing and the message conveyed on telephone could not be substitute of the notice for various reasons. The purpose of the notice contemplated under the aforesaid proviso to Section 213(1) of the Act is to invite objection on the grounds on which basis the alteration or amendment of the list is proposed. In our considered opinion, where the notice has such object it should invariably be in writing as the provisions for notice are mandatory provisions and without which the alteration or amendment cannot be made for the reason that the orders altering or amending are subject to appeal and scrutiny of the appellate authority or higher courts and the notice must be part of the record. It is difficult to keep record about fact conveyed by telephonic message. As it is a fact directly connected with the jurisdiction of the authority altering or amending the list, care should be taken that the notice containing the ground has been properly served. Without such a notice a reply cannot be expected from the person interested. In the circumstances, we are of the confirmed view that the bodies like the respondent No. 1 should not have resorted to such a procedure of giving notice by telephone and that too in the facts and circumstances of the present case where the list already finalised was being amended or altered. The procedure adopted by respondent No. 1 is in clear violation of the procedure provided u/s 213 of the Act and the order dated 24-10-1991 is liable to be quashed.

8. However, it is necessary to examine the remaining two submissions made by the learned counsel for the respondents. The second submission of the learned counsel for the respondents was that the impugned order dated 24-10-1991 was passed u/s 213(1)(g) of the Act by way of correcting clerical or arithmetical error and hence no notice was required. The submission appears to have been made in a desperate attempt to save the impugned order as the respondents realised the mistake that the procedure prescribed has not been followed by them. In the

present case the liability of the petitioner to pay tax has been substantially increased from Rupees 9,53,750/- to Rs. 16, 56, 195/-. This fact alone is sufficient to reject the submission raised that the impugned order was passed by way of correction and not by enhancing the valuation or assessment of the property. However, we have also perused the report, filed as Annexure V to the counter affidavit. In this report five points have been mentioned for initiating the action u/s 213 of the Act for alteration and amendment of the list. None of the five points deal with any clerical or arithmetical error in the list already finalised by order dated 26-9-1991. A perusal of the grounds Nos. 1 to 5 leaves no doubt in our mind that it was case of enhancement of the valuation of the property contemplated under clause (c) and one month notice was legally required. The stand taken by the respondents thus is not correct and deserves outright rejection.

9. The last and the foremost objection raised on behalf of the petitioners was with regard to the availability of alternative remedy to the petitioner and actually availed by the petitioner by filing appeal before Judge, Small Causes. Learned counsel for the respondents has relied on certain authorities which are being mentioned below :

1. Bharat Kala Bhandar Ltd. Vs. Municipal Committee, Dhamangaon, ;
2. Saltanat Rai v. District Inspector of Schools, Azamgarh reported in 1983 UPLBEC 506; --
3. Shri Kari Abdul Jabbar v. Town Area Committee reported in 1984 UPBEC 138 (DB);
4. Titaghur Paper Mills Co. Ltd. and Another Vs. State of Orissa and Others,
5. Chandrama Sin"gh v. Managing Director, U. P. Co-operative Union, Lucknow reported in 1991 (2) UPLBEC 898 (FB).

10. Learned counsel for the petitioner, on the other hand, has submitted that appeal filed by the petitioner against the impugned order was not legally maintainable and it was filed under a mistaken legal advice which had been withdrawn. The order being in clear violation of the principles of natural justice, the alternative remedy is no bar. He has also relied on a number of authorities which are being mentioned below.

1. Municipal Council, Khurai and Another Vs. Kamal Kumar and Another, ;
2. M/s. Shayma Gas Company v. State of U.P. reported in AIR 1991 Allahabad 129 (PB);
3. S.L. Kapoor Vs. Jagmohan and Others, ;
4. K.I. Shephard and Others Vs. Union of India (UOI) and Others, ;
5. H.L. Trehan and Others Vs. Union of India (UOI) and Others, ;

6. Charan Lal Sahu Vs. Union of India, ;

7. Union Carbide Corporation, etc., etc. Vs. Union of India, etc. etc., .

11. We have considered the stand taken by the respective parties and the case law cited. In our opinion, for resolving this question, perusal of Sections 472 and 473 of the Act is very necessary. Sub-section (2) of Section 472 of the Act clearly bars the remedy of appeal unless an objection has previously been made and disposed of u/s 209 of the Act. Similarly Section 473 provides as to how the cause of complaint when to deemed to have accrued for filing appeal. Clause (c) of Section 473 provides that in case of any appeal against any amendment or alteration made in the assessment list for property taxes under sub-section (1) of Section 203, on the day when the objection made in pursuance of a notice issued under the proviso to the said sub-section is disposed of. A combined reading of Sections 472 (2)(d) and 473(1) leaves no doubt that petitioner could not avail the remedy of appeal as no objection was filed by him and this failure in filing objection was for want of one month notice which ought to have been served on the petitioner under law. In our opinion, in such circumstances, it cannot be said that the writ petition is barred by alternative remedy. Further, there is no doubt about the legal position that the bar of alternative remedy in exercise of the power under Article 226 of the Constitution is not absolute but it is by way of convenience and policy of self-restraint that normally Court does not interfere in such matters where the equally efficacious alternative remedy is available to the petitioner. However, the High Court can always interfere in such cases where it is necessary in the ends of justice. Hon''ble Surpeme Court in case of State of U.P. v. Mohd. Nooh reported in AIR 1958 SC 86 observed as under at page 94 :

".....On the authorities referred to above it appears to us that there may conceivably be cases and the instant case is in point -- where the error, irregularity or illegality touching jurisdiction or procedure committed by an inferior court or tribunal of first instance is so patent and loudly obstrusive that it leaves on its decision an indelible stamp of infirmity or vice which cannot be obliterated or cured on appeal or revision. If an inferior Court or tribunal of first instance acts wholly without jurisdiction or patently in excess of jurisdiction or manifestly conducts the proceedings before it in manner which is contrary to the rules of natural justice and all accepted rules of procedure and which offends the superior court's sense of fair play, the superior Court may, we think, quite properly exercise its power to issue the prerogative writ of certiorari to correct the error of the Court or tribunal of first instance, even if an appeal to another inferior Court or tribunal was available and recourse was not had to it or if recourse was had to it, it confirmed what ex facie was a nullity for reasons aforementioned. This would be so all the more if the tribunals holding the original trial and the tribunals hearing the appeal or revision were merely departmental tribunals composed of persons belonging to the departmental hierarchy without adequate legal training and background and whose glaring lapses occasionally come to our notice. The superior Court will ordinarily decline to interfere by

issuing certiorari and all we say is that in a proper case of the kind mentioned above it has the power to do so and may and should exercise it. We say no more than that...."

12. In our opinion, the observations of the Hon"ble Supreme Court are squarely applicable in the present case and the bar of alternative remedy pleaded on behalf of the respondents is not available in the present case. Firstly, the appeal was not legally maintainable and secondly as the respondent passed the impugned order ignoring the relevant provisions of the law without giving any legal notice and without affording opportunity of filing objection and hearing in our opinion, it will not be proper to relegate the petitioner to the alternative remedy. Further even if the remedy of appeal was available, no useful purpose will be served as on examination on merits by us, we are convinced that the order impugned cannot be sustained in any manner.

13. For the reasons stated above, this petition is allowed. The order dated 24-10-1991, Annexure III to the writ petition, and order dated 24-10-1991, Annexure III to the counter affidavit, are quashed, However, it is left upon to the respondents, if so advised, to alter or amend the list in accordance with law after affording opportunity to the petitioner as contemplated under law. There will be no order as to costs.

14. Petition allowed.