(1998) 01 AHC CK 0027

In the Allahabad High Court

Case No : C.M.W.P. No. 735 of 1997

Nagar Nigam, Kanpur APPELLANT

Vs

VIIIth Addl. District Judge, Kanpur and another RESPONDENT

Date of Decision : 07-01-1998

Acts Referred:

Uttar Pradesh Municipal Corporation Act, 1959 — Section 174
Uttar Pradesh Municipalities Act, 1916 — Section 140

Citation : AIR 1998 All 190 : (1998) 2 AWC 1061

Hon'ble Judges : S.L. Saraf, J

Bench : Single Bench

Advocate : Man Mohan Das Agrawal, for the Appellant;

Judgement

S.L. Saraf, J.—By this writ petition, the Kanpur Nagar Nigam has challenged the order dated 27.11.1996 passed by the Vlllth Additional District Judge. Kanpur. The short point involved in this petition is whether the respondent No. 2 is liable to be assessed for payment of tax on the annual letting value of the building under clauses (a) or (b) of Section 174 of the U. P. Municipal Corporation Adhiniyam, 1959 (hereinafter referred to as the Adhiniyam).

2. The sole contention raised by the counsel appearing for the Nagar Nigam is that the building which has been let out for commercial purposes by the respondent No. 2 to the State Bank of India is taxable under the definition of clause (b) of Section 174 of the Adhiniyam and not under clause (a) of Section 174. According to the counsel, clause (b) is applicable to a case where a building is normally let out and (a) is applicable to a case where the building is seldom let out.

3. In support of this contention, learned counsel appearing for the Nagar Nigam refers to a decision of this Court in the case of Godraj Dhanji Shah Gandhi v. Municipal Board and another 1973 ALJ 476. The said decision was based on the meaning of the word annual value as appearing in Section 140 of the U. P. Municipalities Act and in deciding the said issue, the Court held that clause (a)

applies to such buildings which are seldom let out and clause (b) applies to a building which is generally let out. On the above interpretation of Section 140 of the Act, the said decision was given. Mr. Agarwal strongly replies on the said decision and stressed that the same principle should apply in the instant case. For understanding the argument of Mr. Agarwal. Section 140 of the Municipalities Act as well as Section 174 of the Adhiniyam of 1959 are set out hereunder :

"140. (1) ''Annual value'' means :

(a) in the case of Railway stations, hotels, colleges, schools, hospitals. factories and other such buildings, a proportion not exceeding five percentum to be fixed by rule made in this behalf of the sum obtained by adding the estimated present cost of erecting the building to the estimated value of the land appurtenant thereto ; and

(b) in the case of a building or land not falling within the provisions of clause (a) the gross annual rent for which such building, exclusive of furniture or machinery therein, or such land is actually let or where the building or land is not let or in the opinion of the Board is let for a sum less than Its fair letting value might reasonably be expected to let from year to year."

"174. Definition of "annual value"--"Annual value" means :

(a) in the case of Railway stations, colleges, schools, hostels, factories, commercial buildings and other non-residential buildings, a proportion not below 5 per cent to be fixed by rule made in this behalf of the sum obtained by adding the estimated present cost of erecting the building less depreciation at a rate to be fixed by rules to be estimated value of the land appurtenant thereof ; and

(b) in the case of a building or land not falling within the provisions of clause (a) the gross annual rent for which such building, exclusive of furniture or machinery therein, such land is actually let, or where the building or land is not let or in the opinion of the assessing authority is let For a sum less then its fair letting value, might reasonably be expected to be let from year to year :

Provided that where the annual value of any building would, by reason of exceptional circumstances, in the opinion of the Corporation, be excessive if calculated in the aforesaid manner, the Corporation may fix the annual value at any less amount which appears to it equitable :

Provided further that where the Corporation so resolves, the annual value in the case of owner occupied building and land shall for the purposes of assessment of property taxes be deemed to be 25 per cent less than the annual value otherwise determined under this section."

4. Looking at the definition of Section 174 of the Adhiniyam, it is obvious that certain additional words have been added to the definition of clause (a). The words ''commercial building'' and ''other non-residential building'' have been added to the definition of annual value of clause (a). According to me the

addition of the words ''commercial building'' and ''other non-residential building'' in clause (a) widens the definition of annual value. The said judgment in 1973 ALJ 66 is not applicable to the wider meaning and correct definition of clause (a) of the 1959 Adhiniyam. The concept of commercial building and other non-residential building meant building for normally letting out. Admittedly, in the instant case, the building was let out to the State Bank of India for commercial purpose. The definition of clause (b) shows that where the building falls within the definition of clause (a), clause (b) will not apply in such case. In that view of matter, I find no reason to interfere with the judgment of the Additional District Judge, who has valued the property on the basis of clause (a). The Legislature in its wisdom has brought about the definition of clause (a) in Section 174 which is different from clause (a) of Section 140 of the Municipalities Act, 1940. Obviously, a departure was called for and the Legislature indicated as such by passing a fresh legislation. If, however, there is any shortcoming as was submitted by the counsel for the petitioner it is for the Legislature to decide the same. In that view of the matter, the present writ petition falls and is accordingly dismissed. However, the aforesaid judgment will not affect the Nagar Nigam from realising the tax amount on account of water tax, sewage tax, drainage tax in accordance with law by properly following the procedure laid down under the various provisions of the Act.

