
(2013) 07 CAL CK 0052

In the Calcutta High Court

Case No : A.P.O. No. 467 of 2012 and W.P. No. 298 of 2012

Narbada Devi Harlalka

APPELLANT

Vs

Kolkata Municipal Corporation

RESPONDENT

Date of Decision : 29-07-2013

Acts Referred:

Citation : AIR 2013 Cal 194 : (2013) 3 CALLT 563 : (2013) 3 CHN 638

Hon'ble Judges : Pranab Kumar Chattopadhyay, J; Murari Prasad Srivastava, J

Bench : Division Bench

Advocate : D.S. Mallick and Dipak Das, for the Appellant; Biswajit Mukherjee and Debangshu Mondal, for the Respondent

Final Decision : Allowed

Judgement

Pranab Kumar Chattopadhyay, J.—The appellants herein are the joint owner: of the premises being No. 1, Pratap Ghosh Lane, Kolkata - 700 007. The said appellants filed a writ petition before this Court, challenging the legality and validity of the orders passed by the Hearing Officer concerned of the Kolkata Municipal Corporation who revised the annual valuation in respect of the premises in question by the orders dated 9th April, 2007 for the periods of Second Quarter 1985-1986, Second Quarter 1991-1992, Second Quarter 1997-1998 and Second Quarter 2003-2004. By the aforesaid orders dated 9th April, 2007 Hearing Officer - XI, Calcutta Municipal Corporation enhanced the annual valuation of the aforesaid premises. The appellants herein also challenged the jurisdiction of the Hearing Officer concerned in the aforesaid writ petition. The said writ petition was however, dismissed by the learned Single Judge upon holding that the order passed by the Hearing Officer had become final u/s 190 of the Calcutta Municipal Corporation Act, 1980 and the same therefore, cannot be unsettled at this stage. There is no dispute that challenging the orders passed by the Hearing Officer on 09/04/2007, the appellants herein filed appeals before the Calcutta Municipal Assessment Tribunal but did not make any deposit of property tax as per revised valuation. The aforesaid appeals were duly registered before

the learned Tribunal and were serially numbered. It has been submitted on behalf of the appellants that the said appellants came to know that Rs. 11,66,704/- with interest and penalty is to be deposited to the Kolkata Municipal Corporation in order to get the appeals entertained.

2. The learned counsel representing the appellants submitted that the said appellants were unable to deposit the aforesaid amount of Rs. 11,66,704/- in order to get the appeals entertained for hearing and therefore, filed the writ petition before this Court challenging the order of the Hearing Officer wherein specific prayer was made for quashing of the annual valuation as determined by the Hearing Officer.

3. The learned Single Judge dismissed the writ petition on merits upon holding that the order passed by the Hearing Officer had become final in terms of section 190 of the K.M.C. Act, section 190 of the K.M.C. Act, 1980 is set out hereunder:-

190. The final valuation--Every valuation in the assessment list prepared u/s 184 shall, subject to the provisions of section 185 or the order u/s 188 or section 189 be final.

4. The learned counsel representing the appellants/writ petitioners further submitted that the annual valuation as determined by the Hearing Officer in respect of the premises in question did not reach finality since appeals were preferred before the Municipal Assessment Tribunal.

5. It is not in dispute that the appellants/writ petitioners filed four appeals challenging the orders dated 9th April, 2007 passed by the Hearing Officer before the Calcutta Municipal Assessment Tribunal upon payment of prescribed fees. The said appeals were duly registered and serially numbered.

6. The learned counsel of the appellants submitted that the aforesaid appeals shall be deemed to be pending until and unless the same are dismissed by the Chairman of the Tribunal in terms of Rule 16(a) of Calcutta Municipal Corporation (Taxation) Rules for non-deposit of arrears of property tax with interest and penalty.

7. The aforesaid Rule 16(a) of the Calcutta Municipal Corporation (Taxation) Rules is set out hereunder:-

16. (a) the person presenting the appeal fails to prove to the satisfaction of the Chairman that the entire amount of the consolidated rate, required to be deposited under sub-section (6) of section 189, has been deposited in the office of the Corporation, or

8. In terms of section 189(6), no appeal could be entertained by the Municipal Assessment Tribunal without deposit of consolidated rate at the enhanced rate as determined in terms of section 188 of the Act. It has also been provided in the aforesaid sub-section (6) of section 189 that the appeal would abate unless the consolidated rate is continued to be deposited till the disposal of the appeal.

Provisions of section 189(5) and 189(6) are set out hereunder:-

189. (5) Any owner or person liable to payment of consolidated rate may, if dissatisfied with the determination of objection u/s 188 appeal to the Tribunal:

Provided that such appeal shall be presented to the Tribunal within forty-five days from the date of service of [a copy of the order] u/s 188 and shall be accompanied by a copy of the said order.

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 u/s 188 has been deposited [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.

9. In the present case, the appellants although presented the appeals but did not comply with the pre-conditions as mentioned in sub-section (6) of section 189, as a result, whereof the said appeals could not be entertained by the learned Tribunal.

10. Furthermore, by operation of law those appeals also stood abated in terms of section 189(6). In the aforesaid circumstances, the valuation made by the Hearing Officer became final.

11. The grievances of the appellants/writ petitioners with regard to the determination of annual valuation by the Hearing Officer in respect of the premises in question should be examined by the Writ Courts specially when the said appellants could not avail the opportunity of alternative remedy as provided in the statute even after presentation of the appeals before the learned Tribunal since the said appellants could not comply with the condition precedent for entertaining the said appeals in terms of sub-section (6) of section 189 of the Calcutta Municipal Corporation Act, 1980.

12. The learned counsel of the appellants herein although submitted that in terms of Rule 16(a) of the Calcutta Municipal Corporation (Taxation) Rules, 1987, formal order dismissing the appeal should be passed by the Chairman of the learned Tribunal but in terms of section 189(6) appeals herein stood abated for non-deposit of the consolidated rate at the enhanced rate.

13. The learned Single Judge by the impugned judgment and order under appeal specifically held that the assessment made by the Hearing Officer had become final in terms of section 190 of the Act and the same cannot be unsettled at this stage. We however, do not agree with the aforesaid finding of the learned Single Judge.

14. When a question has been specifically raised by the appellants herein challenging the validity and/or legality of the determination of the annual valuation in respect of the property in question by the Hearing Officer, the same should be examined by the writ courts unless an adequate alternative legal

remedy is available under the statute.

15. Deposit of entire consolidated rate in respect of the property at the enhanced rate is the pre-condition for entertaining an appeal by the learned Tribunal. The appellants herein, therefore, could not avail the aforesaid alternative remedy prescribed under the statute in spite of presenting the appeals since the said appellants could not fulfill the preconditions for entertaining the appeals by depositing the entire arrear consolidated rate at the enhanced rate.

16. Therefore, alternative remedy prescribed in the statute is no longer available before the appellants since the appeals preferred by the appellants had abated on account of the failure of the appellants to deposit the entire arrear consolidated rate at the enhanced rate. The Writ Court therefore, now is the only forum available in the present case to the appellants herein for deciding the legality and/or validity of the annual valuation as determined by the Hearing Officer in respect of the property in question.

17. In the present case, Hearing Officer did not mention how the annual valuation in respect of premises in question has been determined. The learned counsel representing the appellants submitted that the Hearing Officer arbitrarily enhanced the annual valuation in respect of the premises in question without disclosing any reason for such enhancement. The appellants herein duly filed objections before the Hearing Officer and according to the appellants, said Hearing Officer determined the annual valuation in respect of the premises in question without furnishing any reason for rejecting the objections of the appellants herein.

18. According to the appellants, aforesaid adjudication by the Hearing Officer with regard to the determination of the annual valuation in respect of the premises in question was without any basis and the result of total non-application of mind.

19. Therefore, according to the appellants, aforesaid arbitrary and illegal determination of the annual valuation in respect of the property in question can be examined and adjudicated by the Writ Court.

20. Mr. Mallick, learned counsel of the appellants referred to and relied on a decision of this Court in the case of Pares R. Kampani vs. State of W. Ben., reported in 1997 (2) CLJ 262 wherein Justice Tarun Chatterjee (as His Lordship then was) held:-

4. I am not unmindful of the fact that a provision of appeal has been provided u/s 189 of the CMC Act, 1980 against an order of valuation made u/s 188 of the CMC Act, 1980. A point may be raised that in view of such alternative remedy available to the writ petitioner the writ petition cannot be entertained. It is now well settled by various decisions of the Supreme Court as well as of this Court that when an authority passes any order without application of mind and such order is passed without giving any reasons the Writ Court is entitled to entertain

the writ application without directing the writ petitioner to avail the alternative remedy by way of appeal.

21. Five Judges' Constitution Bench of the Hon'ble Supreme Court in *Thansingh Nathmal and Others Vs. A. Mazid, Superintendent of Taxes*, held:-

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The jurisdiction of the High Court under Art. 226 of the Constitution is couched in wide terms and the exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly provided in the articles. But the exercise of the jurisdiction is discretionary: it is not exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain self imposed limitations. Resort to that jurisdiction is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by statute. Ordinarily the Court will not entertain a petition for a writ under Art. 226, where the petitioner has an alternative remedy, which without being unduly onerous, provides an equally efficacious remedy.....

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22. We have already mentioned hereinbefore that in the present case, appellants herein could not avail the opportunity of alternative remedy as prescribed in the statute being unable to fulfill the pre-condition regarding deposit of entire arrear consolidated rate at the enhanced rate. The aforesaid pre-condition to deposit of entire consolidated rate in respect of the premises in question at the enhanced rate for the purpose of entertaining the appeals of the said appellants should be treated as unduly harsh and onerous and therefore, the appellants herein had no equally efficacious alternative remedy available in the facts of the present case.

23. In another decision, Hon'ble Supreme Court in the case of *Government of Andhra Pradesh and Others Vs. Smt. P. Laxmi Devi*, observed:-

29. In our opinion in this situation it is always open to a party to file a writ petition challenging the exorbitant demand made by the registering officer under the proviso to section 47A alleging that the determination made is arbitrary and/or based on extraneous considerations, and in that case it is always open to the High Court, if it is satisfied that the allegation is correct, to set aside such exorbitant demand under the proviso to section 47A of the Indian Stamp Act by declaring the demand arbitrary. It is well settled that arbitrariness violates Article 14 of the Constitution vide *Mrs. Maneka Gandhi Vs. Union of India (UOI)* and *Another*, Hence, the party is not remediless in this situation.

24. Mr. Mukherjee, learned counsel representing the KMC Authorities submitted that the precondition mentioned in the statute for entertaining an appeal by the learned Tribunal against the assessment order passed by the Hearing Officer cannot be avoided and the said precondition with regard to the deposit of entire

arrear consolidated rate as determined by the Hearing Officer at the enhanced rate should be deposited as a precondition for hearing of the appeal. Mr. Mukherjee referred to and relied on a decision of the Supreme Court in the case of St. Mary's School and others etc. Vs. Cantonment Board, Meerut and others,

25. Mr. Mukherjee further submitted that the preconditions regarding deposit of entire consolidated rate at the enhanced rate in terms of section 189(6) of the Calcutta Municipal Corporation Act, 1980 read with Rule 16 Calcutta Municipal Corporation (Taxation) Rules, 1987 cannot be held to be onerous in the eye of law. Mr. Mukherjee referred to and relied on the following decisions of this Court:-

1. Gillanders Arbuthnot & Co. Ltd. vs. Corporation of Calcutta & Ors., reported in 1986 (1) CHN 262.

2. The Calcutta Municipal Corporation & Ors. vs. Sitaram Charity Trust & Ors., reported in 1998 (2) CLJ 246.

26. Five Judges' Constitution Bench of the Supreme Court in the case of Himmatlal Harilal Mehta Vs. The State of Madhya Pradesh and Others, followed the earlier decision of the Supreme Court reported in The State of Bombay and Another Vs. The United Motors (India) Ltd. and Others, in rejecting the contention that remedy available under the Act disentitles a litigant to claim relief under Article 226 of the Constitution of India. The relevant extracts from the aforesaid decision are set out hereunder:-

.....The contention that because a remedy under the impugned Act was available to the appellant it was disentitled to relief under Art. 226 stands negated by the decision of this Court in The State of Bombay and Another Vs. The United Motors (India) Ltd. and Others,), above referred to.

There it was held that the principle that a Court will not issue a prerogative writ when an adequate alternative remedy was available could not apply where a party came to the Court with an allegation that his fundamental right had been infringed and sought relief under Art. 226. Moreover, the remedy provided by the Act is of an onerous and burdensome character. Before the appellant can avail of it he has to deposit the whole amount of the tax such a provision can hardly be described as an adequate alternative remedy.....

27. For the reasons discussed hereinabove, we are of the opinion that the Writ Court is entitled to decide the writ petition filed by the appellants herein on merits in order to adjudicate the issues raised by the appellants with regard to the validity and/or legality of the determination of the annual valuation by the Hearing Officer. We have already observed hereinbefore that adequate equally efficacious alternative remedy was not available to the appellants herein specially when filing of appeals before the learned Tribunal u/s 189(5) cannot be held to be equally efficacious alternative remedy in the facts of the present case due to

the preconditions imposed by sub-section (6) of section 189 of the Calcutta Municipal Corporation Act, 1980.

28. This Court cannot issue a direction for deciding the appeals preferred before the learned Tribunal without making any payment as provided in section 189(6) of the Calcutta Municipal Corporation Act, 1980 in view of the earlier Division Bench judgment of this Court in the case of Calcutta Municipal Corporation & Ors. vs. Sitaram Charity Trust & Ors., reported in 1998 (2) CLJ 246.

29. Therefore, the appellants herein cannot be remediless when the said appellants had challenged the determination made by the Hearing Officer with regard to the annual valuation in respect of the premises in question on the ground that the said Hearing Officer did not furnish any reason for determining the annual valuation ignoring the objections raised by the appellants herein. The challenge thrown to the determination of the Hearing Officer by the appellants herein should be adjudicated by the Writ Court upon considering the fact that the appellants herein never accepted the enhanced annual valuation as determined by the Hearing Officer in respect of the property in question and preferred appeals before the learned Tribunal challenging the determination made by the Hearing Officer which however, stood abated by operation of law due to the failure of the appellants herein to satisfy the preconditions with regard to the deposit of entire consolidated rate in respect of the property in question.

30. For the aforementioned reasons, we are of the opinion that the challenge thrown by the appellants herein with regard to the validity and/or legality of the determination of the annual valuation by the Hearing Officer in respect of the property in question should be adjudicated by the Writ Court on merits. Therefore, we remand the matter back to the learned Single Judge for adjudicating the validity and/or legality of the determination of the annual valuation by the Hearing Officer in respect of the premises in question for the period mentioned in the orders dated 9th April, 2007 on merits upon taking note of the objections of the appellants herein filed before the said Hearing Officer without any further delay and preferably within a period of 2 (two) months from the date of communication of this order. The appellants herein are also directed to deposit the entire outstanding dues towards the consolidated rates and taxes in respect of the property in question at the old rate with the Respondent No. 3 within a period of three weeks from date failing which the Respondent Authorities will be at liberty to take all necessary steps for recovery of the said amount in accordance with the provisions of the Calcutta Municipal Corporation Act, 1980.

31. With the aforesaid directions, we set aside the impugned order under appeal passed by the learned Single Judge and allow this appeal without any order as to costs. Let urgent xerox certified copy of this judgment and order, if applied for, be given to the learned Advocates of the parties on usual undertaking.

Murari Prasad Srivastava, J.

I agree.