

**(2002) 05 CAL CK 0032**  
**In the Calcutta High Court**  
**Case No : Writ Petition No. 4809 (W) of 2002**

Narendra Dev Narayan

APPELLANT

Vs

Calcutta Municipal Corporation and Others

RESPONDENT

**Date of Decision : 23-05-2002**

**Acts Referred:**

Calcutta Corporation (Taxation) Rules, 1987 — Rule 9, 9(2), 9(3)  
Calcutta Municipal Corporation Act, 1980 — Section 188, 188(3), 189

**Citation : AIR 2003 Cal 31**

**Hon'ble Judges : Bhaskar Bhattacharya, J**

**Bench : Single Bench**

**Advocate : Alope Ghosh, A.K. Ghosh and Shilpi Sengupta, for the Appellant;  
A.K. Das Adhikary and F. Haque, for the Respondent**

**Final Decision : Allowed**

## **Judgement**

Bhaskar Bhattacharya, J.—By this writ application an assessee has challenged an enhanced assessment order being Annexure P-3 and the consequent fresh consolidated bill being Annexure P-4 and has prayed for reassessment of petitioner's flat.

2. Mr. Das Adhikary, the learned advocate appearing on behalf of the Calcutta Municipal Corporation has taken a preliminary objection as regards maintainability of the instant writ application. Mr. Das Adhikary contends that the order of assessment being appealable before the Tribunal constituted u/s 189 of the Calcutta Municipal Corporation Act, 1980 ("Act"), this Court should not entertain this writ application. Mr. Das Adhikary further submits that Annexure P-4, the fresh consolidated bill was issued in the month of July 2001 whereas the instant writ application has been filed on April 9, 2002 long after the expiry of the period of limitation prescribed in the Act for preferring appeal against the order of assessment.

2. Mr. Ghosh, the learned counsel appearing on behalf of the petitioner has seriously disputed the aforesaid contention of Mr. Das Adhikary and has

contended that right to prefer appeal against order of assessment accrues only after the service of copy of the order of assessment passed by the Hearing Officer after deciding objections given by the petitioner. According to Mr. Ghosh, by Annexure P-3, only the figure arrived at after determination u/s 188(2) of the Act has been communicated but the copy of the order in reaching the decision has not yet been served. Mr. Ghosh contends that before the service of copy of order as enjoined u/s 188(3) of the Act, the Corporation cannot demand payment of the tax at the enhanced rate. Mr. Ghosh thus contends that so long the copy of the actual order passed by the Hearing Officer in coming to the conclusion as regards fresh valuation is not supplied, the petitioner does not get any right to prefer appeal and as such the subsequent demand through the Annexure P-4 on the basis of Annexure P-3 should also be quashed.

3. To appreciate the dispute involved in this writ application the following Sections of the Act and the Rules of the Calcutta Municipal Corporation (Taxation) Rules, 1987 ("Rules") are relevant and those are quoted below :--

"Section 188. Hearing of objections. - (1) Objections filed u/s 186 shall be entered in a register maintained for the purpose in such manner as may be prescribed.

(2) On that date, time and place specified under Sub-section (3) or Sub-section (4) of Section 184 and after giving the person filing the objections an opportunity of being heard, either in person or through an authorised agent, the officer appointed u/s 187 shall determine the objections.

(3) When an objection has been determined, the order in this behalf shall be recorded in the register maintained under Sub-section (1) with the date, and a copy of the order shall be supplied within thirty days thereof to the person filing the objection in such form and manner as may be prescribed.

(4) The procedure for hearing and disposal of objections shall be such as may be prescribed.

(5) The valuation fixed after determination of objection under this section shall take effect from the quarter in which such valuation would have taken effect and shall continue to remain in force during the period such valuation would have remained in force, had no objections been filed.

Section 189. Appeal before the Municipal Assessment Tribunal.  
(1).....

(2), (2A), (3) to (4) .....

(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.

(6) & (7) .....

(8) The procedure for hearing and disposal of appeals as well as realisation of fees in connection with appeals shall be such as may be prescribed.

(9) to (11) .....

Rule 9. Objections. - (1) Objections filed u/s 186 or under Sub-section (2) of Section 192 shall be entered in register maintained in Form G.

(2) When an objection is determined and order is passed, the Municipal Commissioner shall cause to be given or tendered or sent by hand or under registered post a copy of such order to the person tiling the objection in Form H.

(3) The procedure for hearing and disposal of an objection filed u/s 186 shall be as follows :--

(a) to (d) .....

(e) While determining the objection, the officer hearing the objection shall specifically note the reasonable rent determined by him in respect of every individual occupier who uses his portion for commercial or non-residential purpose.

(f) The order passed shall be read out to the person appearing at the hearing who shall put his signature with date on the sheet in proof of his presence and knowledge of the order passed.

Rule 10. Form presentation and registration of appeal.--(1) Every appeal u/s 189 shall be preferred in the form of a memorandum signed by the appellant or a person duly authorised by him in writing on a separate paper accompanying the memorandum, together with a slip of paper (hereinafter referred to as the filing slip) containing the names of the parties to the appeal and the name of the person presenting the memorandum.

(2) The memorandum shall briefly mention the grounds of objection to the order appealed against, without any argument, and such ground shall be separately and consecutively numbered.

(3) Every memorandum of appeal shall, unless the Chairman allows time for furnishing these requisites, be accompanied by--

(a) a copy of the order appealed against,

(b) to (g) .....

(4) to (7).....

Rule 28. Certified copies. - (1) Any person may obtain a certified copy of any order made or judgment passed in an appeal or extract from the Register of Appeals.

(2) Subject to the provisions of Sub-rule (4), a party to an appeal may also obtain certified copies of such other parts of the record of an appeal as the Chairman may allow.

(3) An application for a copy shall be made in such form and shall be dealt with by such officer as the Chairman may direct.

(4) The copy shall be compared with the original and shall be certified by such officer or officers as the Chairman may direct under Sub-rule (3).

(5) The fee chargeable for each copy shall be Rs. 7 for every 100 words or part thereof.

(6) As soon as may be after an application for a copy is received, the amount of fees chargeable and the number of foolscap size conquest panels required shall be assessed and such assessment shall be intimated to the applicant who shall forthwith deposit the amount into the Municipal Fund and supply the challan or receipt showing such deposit and the required number of papers to the officer dealing with the application for copies.

(7) Whenever necessary in the course of making the copy, the assessment made as aforesaid shall be revised and any deficiency in the amount deposited or the number of papers supplied shall be recovered from the applicant.

(8) No copy shall be delivered unless the full amount has been paid or the required number of papers has been supplied.

(9) All sheets of paper supplied and remaining unused shall be returned to the applicant at the time of delivery of the copy.

(10) The following particulars shall be recorded on the first page of the copy by the officer dealing with copies :--

(a) date of application for the copy;

(b) date of notifying the amount of fees and quantity of papers;

(c) date of deposit of fees and supply of papers;

(d) date on which the copy is ready for delivery;

(e) date of delivery of copy."

4. There is no dispute that after the coming into operation of the Act, the Rules came into force subsequently in the year 1987. On a conjoint reading of the aforesaid provisions of the Act and the Rules there is no scope of dispute that once an objection by an assessee has been adjudicated by hearing Officer he will pass reasoned order deciding the objection raised by the assessee. Section 188(3) of the Act demands that after determination of the objection, a copy of the order shall be supplied within 30 days from the date of passing of order to the person filing objection in such form and manner as may be prescribed.

Section 189 (5) of the Act enables a dissatisfied assessee to prefer appeal before the tribunal within 45 days from the date of service of a copy of the order and such copy shall be accompanied by the memorandum of appeal at the time of preferring appeal. Rule 9(2) directs that after an objection by the assessee is determined and order is passed, the Municipal Commissioner shall cause to be given or tendered or sent by hand or under registered post, a copy of such order to the person filing objection in Form "H". The Form "H" annexed to the Rule is also quoted below-

"FORM H

Form in which copy of order passed by the officer appointed u/s 187 or by the Municipal Commissioner u/s 192(2) to be supplied

(See Rule 9(2)) THE CALCUTTA MUNICIPAL CORPORATION Assessment Department

The .....

Re.....

Dear Sir/Madam,

The following order has been passed by the Municipal Commissioner/the officer hearing the objection..... on.....

Under Section 188(2)/192(2) of the Calcutta Municipal Corporation Act, 1980 on the objection preferred in respect of the assessment of the above premises with effect from.....quarter of 19.....

Copy of the order :

Valuation confirmed at Rs.

Reduced to.....

Yours faithfully,

Assistant Assessor.

Quarterly rate including H.B.Tax, but excluding non-residential/commercial surcharge on the decided valuation as noted overleaf is Rs.

By Regd. Post To ..... ..

Please note that no appeal u/s 189(6) shall be entertained unless the consolidated rate as noted above including arrear in the case of increase in the quarterly rates is deposited and the appeal shall abate unless such consolidated rate is continued to be deposited till the appeal is finally disposed of."

5. Mr. Das Adhikary however vehemently contended that Annexure P-3 has been issued strictly in accordance with Form "H" and thus the petitioner has already received the copy of the order and there was no impediment to prefer an appeal.

Mr. Das Adhikary further contends that a memorandum of appeal before Tribunal could be presented along with Annexure P-3. In this connection, by strongly relying upon the provisions contained in Rule 9(3) (f) of the Rules. Mr. Das Adhikary asserts that since the petitioner or his representative has already put signature on the sheet in proof of his presence and knowledge of the order, there is no further necessity of sending the "exact copy of the order". The communication of the valuation of the premises arrived at by the Hearing Officer after determination of the objection. Mr. Das Adhikary proceeds, is sufficient for the purpose of the Act and Rules.

6. After hearing the learned counsel for the parties and after going through the aforesaid provisions including Form "H". I am unable to subscribe to the submissions advanced by Mr. Das Adhikary. In Form "H", as quoted above, it is specifically mentioned that after indicating the fact that Municipal Commissioner/ Officer hearing the objection on a particular date u/s 188(2)/192(2) of the Act in respect of assessment of the premises with effect from a particular quarter has passed the order, the copy of the order should be quoted.

7. Even after reproducing the copy of the order, the Form "H" requires, the valuation either confirmed or reduced must be specified. In the instant case, I have already pointed out that only the valuation reduced to a particular amount has been indicated but the copy of the order deciding the objection has not been given. In my view. Mr. Ghosh is right in his contention that the phrase "copy of the order" mentioned in Form "H" does not imply only the mentioning of the valuation or amount of tax assessed at after determination of the objection. In this connection Mr. Ghosh placed strong reliance upon the decision of the Supreme Court in the case of Hindustan Construction Company Ltd. Vs. Union of India (UOI)., where the Supreme Court while interpreting the expression "signed copy of award" made the following observations in paragraph 5 of the judgment:--

"Now the word "copy" as such is not defined in the Indian Evidence Act, 1 of 1872. But we get an idea of what a copy is from the provisions of Section 63 of the Evidence Act. That section inter alia defines what secondary evidence means and includes, namely - (i) certified copies as provided in Section 76 of Evidence Act, (ii) copies made from the original by mechanical processes which in themselves insure the accuracy of the copy, and copies compared with such copies, and (iii) copies made from or compared with the original. Obviously, therefore, a copy means a document prepared from the original which is an accurate or true copy of the original. In Webster's New World Dictionary, the word "copy" means "a thing made just like another; full reproduction or transcription". What the word "copy" in Section 14(2), therefore, requires is that it must be a full reproduction of the original and that it should be accurate or true. When a document is an accurate or true and full reproduction of the original it would be a copy. In the present case it is not in dispute that what was produced by Sri Dildar Hussain was a true or accurate and full reproduction of the original. It

was, therefore, a copy of the original, and the only question that remains is whether it was signed, for if it was signed, it would be a signed copy".

8. In this connection reference may also be made to the definition of "copy" appearing in Black's Law Dictionary, Seventh Edition according to which copy is "an imitation or reproduction of an original."

9. I thus agree with submission of Mr. Ghosh that exact copy of the order passed by the Hearing Officer must be supplied to the petitioner and Form "H" of the rules also ordains that true copy of the order should be quoted and thereafter it should be further pointed out what is the valuation arrived at by the Hearing Officer. Annexure P-3 to the instant writ application does not conform to the aforesaid form prescribed by the Rules.

10. Mr. Das Adhikary in this connection submitted that it is the long standing practice of the Calcutta Municipal Corporation never to supply the exact copy of the order but to give only the figure which has been evaluated after determination of objection and appeals are also entertained before Tribunal, if the memorandum of appeal is accompanied by such communication given by the Commissioner. Under such circumstances. Mr. Das Adhikary submits that this Court should not upset such a long standing practice of the Calcutta Municipal Corporation and should hold that by Annexure P-3 the copy of the order of the Hearing Officer has been supplied by necessary implication. In this connection Mr. Das Adhikary placed before this Court the following decisions :--

1. National and Grindlays Bank Ltd. Vs. The Municipal Corporation of Greater, Bombay, ,

2. Saurashtra Cement & Chemical Industries Ltd. v. Union of India; (2001) 1 SCC 91; (AIR 2001 SC 8)

3. Karnataka State Road Transport Corpn. Vs. Smt. Lakshmiddevamma and Another,

11. In the case of National and Grindlays Bank Ltd. Vs. The Municipal Corporation of Greater, Bombay, it has been held that in a case where the meaning of an enactment is obscure, the Court may resort to contemporary construction, that is the construction which the authorities have put upon it by their usage and conduct of a long period of time. In my view, the aforesaid principle is not applicable to the fact of the present case. I have already indicated that the rules have come into force from the year 1987 and both in the Act and in the rules it is specifically stated that copy of the order should be supplied free of costs to the person filing objection and cause of action of filing appeal before Tribunal against determination accrues from the date of supply of copy of such order and the limitation is 45 days from the date of supply of the copy of the order. Therefore, the language employed both in the Act and in the Rules is clear and there is no ambiguity in the language. Simply because the Calcutta Municipal Corporation Authority for the reason best known to them is deviating from the mandate

imposed by the Act and the rules that fact will not confer a right upon them to continue with such flagrant violation of law. Unless the reason in support of conclusion is communicated to the person filing written objection against proposed determination, such person cannot formulate grounds against the decision taken by the Hearing Officer and consequently is unable to prefer any effective appeal. Although Mr. Das Adhikary tried to impress upon this Court that a party is entitled to apply for certified copy of the order passed by the Hearing Officer and after getting such order he can get the reason, I am not at all convinced by such submission. In the Rules, there is no provision for supply of certified copy of the order passed by Hearing Officer as the Act itself says that such copy must be supplied free of costs. The Rules on the other hand provide for grant of certified copy of only the orders passed by the Appellate Tribunal. Therefore, even if the Municipal Authority is supplying certified copy of the order passed by Hearing Officer it is not obligatory upon an assessee to apply for such certified copy.

12. In the cases of Karnataka State Road Transport Corpn. Vs. Smt. Lakshmiddevamma and Another, , the Supreme Court reiterated the well settled principle that a long standing decision given by a competent Court interpreting a particular provision of a statute in a particular way should not be unsettled without a strong cause. In the present case, Mr. Das Adhikary could not place before this Court any decision where this court has ever held that the Municipal Commissioner is not required to give a copy of the order to the assessee as enjoined by the Act or Rules and only communication of the figure determined by the Hearing Officer is sufficient. Thus, the aforesaid principle of the doctrine of stare decisis is not applicable to the instant case. In this connection Mr. Das Adhikary of course relied upon a decision of a learned single Judge of this court in the case of Joginder Singh v. Calcutta Municipal Corporation reported in (1997) 2 CHN 403. In the said case, being dissatisfied with an order of enhancement of quarterly rate of taxes the petitioner challenged the notice and the order of the Hearing Officer on the ground that order of Hearing Officer was not a speaking order and was absolutely without reason and as such was liable to be set aside. It appears from paragraph 10 of the said judgment that Hearing Officer passed a reasoned order but while communicating the decision the entire order, as in the present case, was not communicated. Under such circumstances, a learned Judge of this court held that there was no dispute that the writ petitioners were entitled to obtain a certified copy of the said order and it was also not disputed before his Lordship that in filing appeal, certified copy of the said order should be filed. In the said case the appeal was then pending and for the aforesaid reason his Lordship inferred that the writ petitioner must have obtained a certified copy of the order, otherwise, the appeal ought to have been dismissed. Under such circumstances his Lordship refused to entertain the writ application. In my view, the said decision does not lay down any proposition of law that Form "H" does not require that the copy of the order should be given to the person filing objection. His Lordship, it appears, proceeded as if for the purpose of preferring

appeal before tribunal certified copy of the order of the hearing Officer is required to be given. I have already indicated that under the rules there is no provision for giving certified copy and Section 189 itself says that only the copy of the order served upon the assessee is required to be filed along with the memorandum of appeal. Thus, I am unable to follow the aforesaid decision as a precedent in support of the proposition that the Municipal Commissioner is not required to supply copy of the order of the Hearing Officer to the petitioner after determining his objection.

13. Mr. Das Adhikary also relied upon another decision of learned single Judge of this Court in the case of Tarapada Ghorai v. State of West Bengal and Ors. reported in (2000) 1 CHN 318, where a learned single Judge of this court refused to entertain a writ application against order passed u/s 188 on the ground of existence of an efficacious alternative remedy. In the said case it appears that a reasoned order quoted in paragraph 4 of the judgment was given. In the instant case, I have already indicated that no reason has been communicated in support of the determination although, some reasons were in fact assigned. Under such circumstances, in my view, right to prefer appeal has practically not yet accrued. The right to prefer appeal in reality will accrue only on service of copy of the order when the period of limitation for preferring appeal will start running and thus before service of the copy of the order, no demand can be made on the basis of the determination. I am not at all impressed by the submission of Mr. Das Adhikary that Rule 9(3)(f) dispenses with the requirement of serving a copy of the order. The said Rule merely casts a duty upon the Hearing Officer to pronounce his verdicts openly and at the same time impels the assessee or his representative to put his signature on the order sheet so that he may not plead absence of hearing or ignorance of the order in future. But simple knowledge of the order by the assessee cannot do away with the compliance of the mandatory requirement of law provided in Section 188(3) of the Act or Rule 9(2) of the Rules. The Calcutta Municipal Corporation, it appears, has been adopting a Draconian procedure, contrary to law, compelling the citizens to pay tax at the enhanced rate without knowing the reason by which the Hearing Officer has turned down the objection against enhancement. The Corporation is forcing the owners to apply for certified copy of the order of the Hearing Officer on payment of fees notwithstanding the fact that law directs the Corporation to supply the same free of costs. Thus, in the instant case, Annexure P-4, the demand of tax on the basis of determination communicated by Annexure P-3 should be quashed.

14. I therefore direct the Calcutta Municipal Corporation to supply a true copy of the order to the petitioner as provided in Section 188 (3) read with Rule 9(2) of the rules. The petitioner will be entitled to challenge the decision by preferring appeal before the Tribunal. Although before this court a certified copy of the reasoned order was placed, I have decided not to scrutinize the reason as the petitioner has right to prefer appeal against such decision in accordance with law after service of copy of the order by the Corporation authority. The writ application thus succeeds. Annexures P-3 and P-4 are quashed. The corporation

authority is directed to supply the true copy of the order while arriving at the figure mentioned in Annexure P-3. The petitioner will be free to prefer appeal before Tribunal within 45 days after the formal service of copy of the said order. Before expiry of the period of limitation, the Corporation can demand the enhanced tax but such demand must not be enforced before the expiry of the period of limitation for preferring appeal u/s 189 of the Act which sufficiently protects the Interest of the Corporation as regards recovery at the enhanced rate during the pendency of such appeal.

No costs.