(2011) 12 PAT CK 0058

In the Patna High Court

Case No : CWJC No. 4108 of 2008

Patna Municipal Corporation APPELLANT

Vs

Rai Vimal Krishna and Others RESPONDENT

Date of Decision : 23-12-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 22, Order 41 Rule 5(1)
Limitation Act, 1908 — Section 5
Patna Municipal Corporation Act, 1951 — Section 137, 139, 139(1C), 139(2), 149(1)

Citation : (2012) 1 PLJR 724

Hon'ble Judges : Sheema Ali Khan, J

Bench : Single Bench

Advocate : B.B. Kumar Singh, for the Appellant; Jashawir Singh Arora, Ajay Kumar, Ravi Bhalia and Amit Bhushan For the Respondents 1 to 7, for the Respondent

Final Decision : Dismissed

Judgement

Sheema Ali Khan, J.—Heard learned counsel for the petitioner and respondents 1 to 7.Respondents 1 to 7 are the assesses of the Patna Municipal Corporation (hereinafter referred to as ''the Corporation''). An assessment was made by the Municipal Corporation. Respondents 1 to 7 filed their objections. The objections remained pending for several years and, therefore the petitioner moved this court for expediting the matter. This court by order, dated 24.7.2007 gave certain directions for expediting the matter. Thereafter vide Annexure-2, an order of assessment was passed. Respondents 1 to 7 being aggrieved with the order of assessment contained in Annexure-2 filed an appeal. The Corporation through its Commissioner filed a cross-objection in Misc. Appeal No. 98/2006.

2. The only question before this court is, whether cross-objection on behalf of the Corporation would be maintainable in view of the provisions of the Municipal Corporation Act amending Section 137 of the Patna Municipal Corporation Act which deals with the assessment to be made. Section 137 of the Act envisages

that the Chief Executive Officer shall prepare assessment list which would contain particulars as mentioned in Section 137. Section 139 of the Act gives power to the Chief Executive Officer to alter or amend assessment in the manner provided under the section. Specifically reference to subsection (1) (C), (d) and (2) of Section 139 of the Act are made for the purpose of this case which provide as follows:-

(c) by revaluing or re-assessing any holding which has been incorrectly valued or assessed by reason of fraud, misrepresentation or mistake;

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

(e) by revaluing and re-assessing any holding or class of holdings on the ground of general improvement in the locality where such holding or class of holdings are situated."

3. After the assessment is made, a right to file review has been provided u/s 150 of the Act which reads as follows:-

150. Application for review.-(1) Any person who is dissatisfied with the amount assessed upon him or the valuation or assessment of any holding, or who disputes his occupation of any holding, or his liability to be assessed, may apply to the Chief Executive Officer or an officer empowered in this behalf by the State Government to review the amount of assessment, or valuation, or to exempt him from the assessment or tax.

(2) All such applications containing objections shall be made in writing within thirty days after the publication of the notice referred to in sub-section (1) of Section 149, or after receipt of the notice referred to in sub-section (2) of that section, if such notice is received after the publication of the notice referred to in sub-section (1) of the said section:

Provided that the Chief Executive Officer may, if he thinks fit extend the said period of thirty days to a period not exceeding sixty days.

4. As per the provisions of Section 150, respondents 1 to 7 applied before the Chief Executive Officer as they disputed the assessment made under Sections 137 and 139 of the Act. As stated earlier vide Annexure-2, objections filed by the respondents were partly dismissed. Being aggrieved by the part of the order of the Chief Executive Officer of the Corporation, the petitioner filed an appeal u/s 152 of the Act. Section 152 of the Act reads as follows:-

152. Appeal to District Judge.-

(1) Any person dissatisfied with the order passed on his objection may appeal to the District Judge whose decision shall be final.

(2) Such appeal shall be presented to the District Judge within thirty days from the date of the order passed u/s 151 and shall be accompanied by an extract

from the register of objections containing the order objected to and shall be disposed of according to such procedure as may be prescribed by the State Government.

(3) The provisions of Part-II and III of the Indian Limitation Act, 1908 relating to appeals shall apply to every appeal preferred under this Section.

(4) No appeal shall be admitted under this section unless an objection has first been determined u/s 151.

(5) Effect shall be given by the Chief Executive Officer to the decision of the District Judge.

(6) The pendency of an appeal under this section shall not operate to delay or prevent the levy and realization of any tax or installment thereof payable in respect of any holding according to the order of assessment under appeal but if by the final decision in the appeal it is determined that such tax or installment ought not to have been levied or realized in whose or in part, the Chief Executive Officer shall refund to the person from whom the same has been levied or realized, the amount of such tax or installment, or the excess thereof over the amount properly leviable in accordance with such final decision, as the case may be, or adjust such excess amount against any future demand.

5. The Corporation being also aggrieved by the order of the Chief Executive Officer of the Municipality filed cross objection with an application u/s 5 of the Limitation Act.

6. Submission on behalf of the petitioner is that once an appeal has been filed u/s 152 of the Act, the procedure for disposal of the appeal would be in accordance with the CPC and as such the right to file cross-objection would accrue to the Municipality under Order 41 Rule 22 of the C.P.C. Reference has been made to a decision in the case of Nityanand Karan Vs. Bhagalpur Municipal Corporation, . In this case the petitioner had filed a civil revision on the ground that the District Judge had refused to stay the imposition of tax levied against the petitioner as he held that it was barred by Section 152(6) of the Act. Further reference was made to Section 503 of the Act which provides as follows:-

503. Procedure in inquiries before Civil Courts.-(1) For the purpose of any appeal, inquiry or proceeding under this Act, the High Court and the District Judge, Patna, may exercise all the powers conferred on them by the Code of Civil Procedure, 1908, and shall observe the procedure prescribed in the said enactments as far as it is not inconsistent with the provisions of this Act.

(2) The cost of every appeal, inquiry or proceeding under this Act shall be payable by such parties and in such proportion as the Court may direct and the amount thereof shall, if necessary, be recoverable as if it were due under a decree of the Court."

7. The court while dealing with these aspects referred to the provisions of Order

41 Rule 5(1) of the C.P.C. held that an appeal shall not operate after considering the provisions aforesaid. This court referred to a decision of the Supreme Court in the case of Income Tax Officer vs. M.K. Mohammad Kunhi, AIR 1969 SC 430, held as follows:-

When an Act confers a jurisdiction, it impliedly also grants the power of doing all such acts, or employing such means as are essentially necessary to its execution.

8. The matter was ultimately remanded back to the District Judge to consider as to whether proper grounds were made out for staying the imposition of the tax in the facts of the case holding that the provisions of the CPC would apply in this matter as the District Judge while sitting in appeal exercise all the power as provided in the CPC for proceeding in the appeal.

9. The distinction according to the counsel for the respondents in the present case is that whereas when an appeal is provided under different Acts before the District Judge, the Act itself provide that the CPC would apply, whereas, in the present case the appeal is provided only to the person who has filed an objection. In other words, counsel for the petitioner seeks to emphasize the fact, that the Municipal Corporation would not have the right to appeal against the order of the Chief Executive Officer (who incidentally is part of the Municipal Board). The submission is that where there is an appeal provided only to the objector, who is aggrieved by the assessment order made by the Chief Executive Officer, it implies that there is a bar too on the appeal on behalf of any other person, except the person interested in the property which is subject matter of the assessment.

10. The court below has, thus, dismissed the cross-objection of the Municipality on the ground that the Municipality had no right to appeal and, therefore, it cannot be said that the Municipality would have the right to file a cross-objection. While dealing with this aspect, the court below has relied on a judgment in the case of Superintending Engineer and Others Vs. B. Subba Reddy, . The facts of the case relied upon is a little bit different. The Apex Court held that procedure of the C.P.C. would be applicable to the appeal u/s 39 of the Act. Filing of cross-objection is not procedural in nature. If there is no right to appeal given u/s 39 of the Act, it cannot be read into by applying Order 41 of the Code of Civil Procedure.

11. In the result I find that the Additional District Judge, FTC-5, Patna has rightly decided this issue.

12. While dealing with this order, I would like to refer to the objections of the Municipality with respect to the order passed by the Chief Executive Officer as it has been vehemently emphasized that the Chief Executive Officer had erred in law in exempting the assessee from paying latrine tax. The argument is based on the fact that assessment of annual rental value and holding in 1993 was challenged in the Supreme Court. The Supreme Court has upheld the rules of 1993 as intra vires holding that no concession ought to be granted by the

Municipal Commissioner-cum-Chief Executive Officer of the Patna Municipal Corporation in the matter of latrine tax. It is also argued that as the drains are maintained by the Municipal Corporation the imposition of the tax under this head making it applicable which is in total 9% of annual value is legal, valid and justified. The Chief Executive Officer has wrongly exempted this tax in favour of the assessee.

13. These aspects of the matter could have been challenged or can be challenged by the Municipality by coming to this court in a writ petition. However, where the provisions of law do not envisage a right to appeal, this court cannot hold that there is a right to file a cross-objection.In the result, this writ petition is dismissed.

