(1998) 09 AHC CK 0053

In the Allahabad High Court

Case No : C.M.W.P. No. 843 of 1990

Pramod Kumar — APPELLANT

Vs

Nagar Palika, Aligarh and others — RESPONDENT

Date of Decision : 17-09-1998

Acts Referred:

Municipal Act, 1940 — Section 140
Uttar Pradesh Municipal Corporation Act, 1959 — Section 174, 174(1)
Uttar Pradesh Municipalities Act, 1916 — Section 140(1)

Citation : (1998) 4 AWC 45 : (1998) AWC 45

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

Bench : Single Bench

Advocate : R.C. Shukla, for the Appellant;

Judgement

S.L. Saraf, J.—By this writ petition the petitioner has challenged the orders dated 28.9.1986. 12.4.1989 and 6.4.1990, passed by the Nagarpalika authorities, Aligarh.

2. The short point involved in this writ petition is whether the petitioner is liable to be assessed for payment of tax on the annual letting value of the building under clause (a) or (b) of sub-section (1) of Section 140 of the U. P. Municipalities Act, 1916.

3. Admittedly the petitioner had let out the building to the State Bank of India for purposes other than residence. The submission of Mr. V. K. Barman, learned counsel appearing for the petitioner is that the building had been let out for commercial purposes, as such, the annual valuation be made on the basis of Section 140 (1) (a) of the aforesaid Act of 1916. The submission of the petitioner is that since tenancy of the State Bank of India, which is a public body, is for public purpose, the valuation should be on the basis of Section 140 (1) (a) of the Act. Mr. Barman referred to a decision in. Nagar Nigam, Kanpur v. v. VIIIth Additional District Judge, Kanpur and another 1998 (32) ALR 640. and submits that the provisions of Sections 140 and 174 of the U. P. Municipal Corporation

Adhiniyam, 1959 are part materia and should be construed in the same way. He argued that ''other such buildings'' used in Section 140 (1) (a) of the Act brings in a building which has been let out to a Bank for a commercial and public purpose. He submits that Section 174 of the Act has only clarified the position which was prevailing u/s 140 (1) (a) of the Act where'' the expression was ''other such building''. According to him, other such building would include the building let out to a public institution which is not let out normally.

4. Mr. Manish Goel, holding brief of Mr. R. P. Goel argued that a building let out to a Bank or to any other tenant of similar nature, will fall u/s 140 (1) (b) of the Act. According to Sri Goel, reference to ''other such building'' means a building not normally let out and used for public purposes. In such cases valuation would be on the basis of Section 140 (1) (a) of the Act of 1916.

5. I have carefully considered the submissions of the counsel for the petitioner and the counsel appearing for the respondents and hold that it is not the character of the tenant which will determine the valuation of a building. On the contrary, the character and use of the building is the determining factor. If a building is let out to a tenant who is either a public body or private person, the same will be valued under the provisions of Section 140 (1) (a) of the Act of 1916. The reference to ''other such building'' should be read on the principle of ejusdem generis and that will not include the buildings let out on rental basis for personal benefits of an individual. In that view of the matter. I hold that definition of Section 174 (a) of the U. P. Municipal Corporation Adhiniyam. 1959 is different from clause (a) of Section 140 of the Municipal Act. 1940. Obviously, a departure was made by passing a fresh legislation wherein a commercial building and other non-residential building has been introduced by the provisions of Section 174 (a) in the 1959 Act. The provisions relating to commercial building and non-residential building were lacking in Section 140 (1) (a) of the 1916 Act. By no stretch of imagination, a building let out to State Bank of India on rental basis can be included in ''other such building'' in Section 140 (1) (a) of the Act of 1916. In that view of the matter. 1 hold that the building let out to the Bank will fall under clause (b) of sub-section (1) of Section 140 of the Act and not u/s 140 (1) (a) of the Act. In this connection, I may refer to a decision of this Court in Nagarpalika, Aligati v. Prescribed Authority, Altgarh and another 1997 (1) AWC 22. In the aforesaid judgment, a building was let out to Syndicate Bank and the Court while construing the provisions of Section 140 (1) (a) had held as follows :

"The building in question was also not one of the category enumerated in Section 140 (1) (a) of the Act which applies to railway station, hotels, colleges, schools, hospitals, factories and such buildings. A Bank does not come under any of these categories. Moreover, sub-section (b) of Section 140 (1) of the Act is the provision relevant to the building in question which was fetching rent, and not sub-section (a) which applies to buildings other than those let on rent."

6. In another Division Bench decision in Godraj Dhanji Shah Gandhi v. Municipal Board and another 1973 ALJ 476, it has been held that provisions of Section 140

(1) (a) Is meant for buildings which are not let out or not normally let out whereas Section 140 (1) (b) is applicable to a building which is let out. It has been said that the assessing authority had the jurisdiction to decide whether a particular type of building is let out or not. In the instant case, the finding is also there that the building of the petitioner is normally let out. Another decision of this Court is in Nagar Nigam, Kanpur v. VIIIth Additional District Judge, Kanpur and another 1998(32) ALR 640, wherein this Court was pleased to hold that the definition given in Section 174 (1) (a) is wider and the concept of commercial building and other non-residential building has been introduced for the first time in the provisions of 1959 Act which was lacking in 1916 Act. Against the aforesaid judgment a SLP No. (C) CC 4977 of 1998 was filed before the Supreme Court which was dismissed on 23rd July. 1998.

7. In view of the above discussion, there is no merit in this petition and the same is hereby dismissed.

