

(2002) 12 GUJ CK 0034
In the Gujarat High Court

Case No : Special Civil Application No. 7553 of 1996 with Civil Application No. 5306 of 2002

P.T. Dilip

APPELLANT

Vs

Surat Municipal Corporation

RESPONDENT

Date of Decision : 18-12-2002

Acts Referred:

Bombay Provincial Municipal Corporations Act, 1949 — Section 406, 406(2)
Bombay Provincial Municipal Corporations Rules, 1949 — Rule 20
Constitution of India, 1950 — Article 226

Citation : (2003) 23 GLH 648

Hon'ble Judges : Jayant M. Patel, J

Bench : Single Bench

Advocate : Arun H. Mehta in Special Civil application No. 7553 of 1996, for the Appellant; Prashant G. Desai, in Special Civil Application No. 7553 of 1996, Arun H. Mehta, for Petitioner No. 1 and Prashant G. Desai, in Civil Application No. 5306 of 2002, for the Appearing Parties

Final Decision : Partly Allowed

Judgement

Jayant Patel, J.—The present petition is preferred by the petitioners for quashing and setting aside the original and revised bills for the official year 1995-96 and to restrain the officers of the respondent-Corporation from recovering any amount, whatsoever, on the basis of the original or revised assessment bills.

2. The short facts of the case are that the second petitioner who is a public trust is the owner of the land situated within the limits of Surat Municipal Corporation. It is the case of the first petitioner that it has entered into an agreement with the second petitioner to take the aforesaid open land belonging to the second petitioner on hire for setting up the fair. As per the agreement, the liability to pay municipal taxes in respect of the said open land is upon the first petitioner. It is the case of the petitioner that after the NOCs were granted by the respondent-Corporation as well as by the Commissioner of Police, Surat, the first petitioner had organised and set up the fair over the land in question and 310 stalls were

set up over the said land and they were let to various merchants and manufacturers of Handloom and Handicraft items from various parts of the country to market their products. It is also the case of the first petitioner that at the said fair certain provisions for entertainment, such as, amusement park, various rides etc. were made.

3. The assessment was made at Rs.22,802.71ps on the property in question belonging to second petitioner prior to the aforesaid agreement, i.e. for the year 1994-95. It is also the case of the petitioner that a notice dated 11.8.95(copy whereof is at annexure "B" to the petition) was served upon the second petitioner calling upon the details of the rental income, donation, premium etc on account of the open land given to the first petitioner and it is also the case of the petitioner that a special notice dated 15.9.95 (copy whereof is at annexure "C" to the petition) was served upon the second petitioner wherein the rateable value of the property was assessed as of Rs.1,88,80,000/-. It is also the case of the petitioner that thereafter on 18.9.95 the second petitioner submitted objections against the special notice (copy whereof is at Annexure "D" to the petition) and thereafter the second petitioner has received bill dated 22.9.95 (copy whereof is at Annexure "E" to the petition) for recovery of municipal tax amounting to Rs.16,52,646.58ps. It appears that thereafter the corporation insisted for recovery of amount as per the bill dated 22.9.95 and the petitioner No.1 also addressed correspondence dated 5.12.1995 with the Recovery Officer of the Corporation contending that the assessment made is very harsh and they shall pay the tax on the basis of earlier assessment which is of Rs.30,000/-. It appears that thereafter for the purpose of enforcement of recovery of municipal tax, the corporation had detained the goods of the first petitioner and the petitioner had to serve the notice dated 31.1.1996 to the Commissioner of the Municipal Corporation against detention of the said goods. It is the case of the petitioner that the appellate officer, as per the communication, dated 5.7.96(copy whereof is at Annexure "I") modified the assessment and as a consequence thereof the tax was reduced from Rs.16,52,646.58ps to Rs.1,68,542.52ps. It is the further case of the petitioner that on 29.9.96 a special notice is issued by the respondent corporation for reducing the rateable value for the year 1996-97. However, in the mean time, when the corporation insisted for recovery of bill for the year 1995-96, on 4.10.1996 the petitioner had to file this petition against the original and revised bills for the official year 1995-96 and its recovery amounting to Rs.16,52,646.58ps.

4. The learned counsel Mr.Mehta appearing for the petitioners submitted that once the assessment having been reduced by the appellate officer from Rs.16,52,646.58ps to Rs.1,68,542.52ps, it is not open to the corporation to insist for recovery of amount as per the original bill dated 22.9.95 amounting to Rs.16,52,646.58ps. Mr.Mehta submitted that in the affidavit in reply filed by Mr.S.N.Naik it has been contended by the respondent corporation that the order of the appellate officer is cancelled by the Commissioner. However, no such order of cancellation is produced on record. He submitted that in any event the fact

remains that after the objections were submitted by the petitioners to the special notice dated 15.9.95 no hearing has been given to the petitioners and the objections are submitted on 19.9.95 and immediately thereafter on 22.9.95 the bill has been sent without giving opportunity of hearing and without inquiring into the matter at all. Mr.Mehta relied upon the provisions of Rule 15(2) read with Rules 9 & 20 of Appendix IV to contend that if the special notice is issued and objections are filed hearing is required to take place and the decision is to be rendered by the Commissioner. He further submitted that in any event not only the hearing has not taken place but the Commissioner has also not taken any decision and as per the decision of the Apex Court in the matter of Shyam Kishore and others Vs. Municipal Corporation of Delhi and another, the proceedings for assessment have got to be completed before 31.3.196 and the same is not completed in as much as neither the decision of the Commissioner for finalising the assessment is produced on record nor the cancellation order after the order of the appellate officer is produced on record. He also submitted that in view of the decision of the Supreme Court in the matter of Shyam Kishore (supra) which has been followed by another single judge (Coram: N.N.Mathur,J) in Spl.C.A.No.131/89 decided on 18.6.96 since the assessment is not completed prior to the expiry of official year there is no authority with the corporation demand any tax whatsoever. However, he fairly submitted that in view of the subsequent judgment of the Apex Court reported in the matter of Municipal Corporation of Delhi Vs. M/s. Trigon Investment and Trading Private Limited and another, even if it is considered that the decision can be taken subsequently then also the appellate officer has taken decision of reducing the assessment and the corporation can not insist for recovery of amount exceeding Rs.1,68,544.52ps. He submitted that since no hearing is given after the objections were filed and since no decision finalising revised assessment is produced nor subsequent order cancelling the order of the appellate officer is produced the insistence of the corporation for recovery of amount of Rs.16,52,646.58ps on the basis of bill dated 22.9.95 is without any authority and hence said action of the corporation deserves to be quashed. Mr.Mehta also relied on the judgment of the Apex Court in the matter of M. Chockalingam and Another Vs. Commissioner of Income Tax, Madras and Another, to contend that after the objections were filed against the special notice opportunity of hearing was required to be given and since the same is not given even if the decision is produced same is in breach of principles of natural justice and without following mandatory procedure and hence ab initio void.

5. On behalf of respondent corporation Mr.Desai has contended, inter alia, that the petitioners have alternative efficacious statutory remedy available u/s 406 of Bombay Provincial Municipal Corporations Act, 1949 (hereinafter referred to as "the Act"). It has also been contended that the corporation has given opportunity of hearing to the second petitioner who is the original owner of the land, but, nobody remained present and therefore the objections are deemed as decided and the bill, dated 22.9.95 is a decision rejecting the objections. Mr.Desai

submitted that after the receipt of bill, dated 22.9.95 no steps resorting to alternative remedy available under the statute were taken by the petitioners within statutory time limit and the corporation has to take distress steps including detaining the goods etc. He submitted that so far as the order of the appellate officer is concerned (copy whereof is at page 37 of the petition) same is relating to assessment of 1996-97 and is not pertaining to assessment of 1995-96, which is the subject matter of this petition. He submitted that, in any event, since the appeal is also not preferred within statutory time limit, the present petition after expiry of period of very assessment year 1995-96 is also barred and the things which could not have been done by way of preferring appeal may not be permitted in a petition under Article 226. Mr.Desai therefore submitted that once the assessment as per bill dated 22.9.95 is finalised such bill can not be quashed by this court and further whether the assessment is proper or not would require thorough examination of various aspects of the case which can not be conveniently examined in a petition under Article 226 of the Constitution and more particularly when the petitioners have not chosen to prefer appeal which is a regular statutory remedy and the court having power of appeal may be in a position to examine the said aspect and since the same is not examined this court may not be in a position to grant the relief as prayed for by the petitioners, and therefore, he submitted this petition deserves to be rejected.

6. Mr.Desai also submitted that in the decision of the Apex Court in the matter of Shyam Kishore (*supra*) the scheme of Delhi Municipal Corporation Act and Rules are different because in the said Act the assessment was to be completed which is not in the present case and therefore the said judgment of the Apex Court would not apply to the facts of the present case.

7. Mr.Desai also submitted that pending the petition, payment of tax as per the bill amount is already made by the petitioners and petitioners have also paid some amount towards interest and therefore he submitted that when the payment is already made and while making the payment it is not made clear that that the payment is under protest but even if it is treated as under protest, the amount is already used by the corporation towards its statutory obligations as per the Act. He also submitted that prayer for refund of amount or for bringing on record that the payment is made under protest no material is produced by the petitioners by carrying out the proper amendment, therefore, in the absence of prayer or relief, the amount of tax which is already paid and used by the corporation may not be ordered to be refunded in view of the peculiar facts and circumstances of the case.

8. Before I proceed to examine various contentions raised on behalf of both sides, it is required to be noted that in view of statement made by Mr.Desai that the amount of tax is already paid during the course of hearing CA No.5306/02 in Spl.C.A.NO.7553/96 is preferred by the petitioner to bring on record the amendment regarding payment of tax under protest and for the amendment of prayer to direct the respondent corporation to refund the amount paid by the

petitioner for the official year 1995-96 with interest as it may be deemed fit by this court. So far as the said application is concerned, the same is for amendment and is not seriously objected and therefore I am of the view that if such amendment is allowed as prayed for in CA No.5306/02 it would not change the nature of the petition, in any case, when the petition was pending, payment of tax is made since the corporation had detained the goods, and hence, prayer for refund can be said to be a consequential relief and therefore I find that the application for amendment deserves to be allowed and hence is allowed accordingly.

9. Another factor which is required to be taken note is that since it was the contention of the petitioners that as no decision was communicated, possibly, the petitioners could not have preferred appeal which is a statutory remedy. Against the same, the contention of the corporation is was that if the appeal is preferred before the Smallcauses court, proper evidence can be led for supporting the revised assessment which can not be done in the proceedings of this petition. Therefore, during the course of hearing, it is suggested by the court to the petitioners as well as the respondent corporation to have joint arbitration of Advocate General or retired Judge of High Court who can examine the matter and before whom the parties can lead proper evidence and the assessment can be put to an end finally. In response to the suggestion of the court, the corporation had initially agreed for arbitration of learned Advocate General. However, the learned Advocate General is unable to accept the offer to work as an arbitrator and therefore the corporation also agreed for arbitration of a retired judge of High Court. The affidavit for such purpose is also filed by one Deepak Chandrakant Gandhi, Zonal Officer, Surat Municipal Corporation. So far as the petitioners are concerned, ultimately Mr.Mehta has conveyed to the court that the petitioners are not agreeable for such arbitration. He further submitted that the reason being that after the decision of the arbitrator the petitioners will have to undergo the proceedings and he submitted that those proceedings may result into endless proceedings and therefore also the petitioners are not willing to accept even the arbitration of a retired Judge of High Court. Therefore, it appears that since there is no consent by the petitioners for accepting the arbitration as suggested during the course of hearing, the matter is examined on merits.

10. The first contention on the principles of natural justice deserves consideration. There is no dispute on the point that earlier the assessment of the property in question was made for tax of Rs.22,802.71ps for the period 1994-95, i.e. upto 31.3.1995 and thereafter it is sought to be revised by the impugned assessment of the property in question for Rs.16,52,646/- possibly on account of agreement and use by petitioner No.1. The petitioners themselves have also admitted that the special notice dated 15.9.95 was served upon the second petitioner for assessment of rateable value of the property at Rs.1,88,80,000/-. It appears that the petitioners have submitted objections dated 18.9.95 in response to the aforesaid special notice. However, thereafter, the case of the petitioners is that no decision is communicated to them whereas the case of the

respondents is that the objections are deemed as rejected and the bill dated 22.9.95 was issued for assessment of tax at Rs.16,52,646.58ps on the basis of rateable value of Rs.1,88,80,000/-. The respondents have not produced any decision for rejecting the objections and confirming the amendment made in the assessment. Therefore, in the absence of any documentary proof produced on behalf of the respondents it can not finally concluded that the decision is taken by the Commissioner. Further, the respondents have not produced any material on record to show that opportunity of hearing was given to the petitioners and inspite of the same they have not availed the opportunity or the order has been passed after giving opportunity of hearing. In view of the provisions of Rule 20 of the Rules provided under Chapter VIII of the Bombay Provincial Municipal Corporation Act, 1949, it appears that for the amendment in the assessment book, a special notice in the manner as provided under Sub-Rule (2) of Rule 15 is required to be given which was given in the present case. However, the procedure as laid down under Rules 16, 17 & 18 is also required to be followed while making any amendment in the assessment book as provided under sub-Rule (2) of Rule 20 of the aforesaid Rules. Rule 16 provides for time and manner of filing complaints against valuation which in the present case was submitted by way of objections by the petitioners. Rule 17 provides for notice to complainants of day fixed for investigating their complaints. Rule 18 provides for hearing of complaints and disposal of complaints. It appears that in the present case there is no authenticated material produced on behalf of respondent corporation for compliance of Rule 17 or, in any case, Rule 18. It is true that the bill dated 22.9.95 has been issued for recovery of a sum of Rs.16,56,646.58ps. However, merely because the bill is issued I can not accept the contention raised by Mr.Desai for the respondent-Corporation that it is deemed that the objections are heard and decided and deemed as rejected. Normally, there may be a presumption, but when a challenge has been made, it is obligatory on the part of the corporation to prove by authenticated material for compliance of Rules 17 & 18 of the aforesaid Rules and in the absence of the material produced on record I can not accept the contention of Mr.Desai that there is due compliance and objections are deemed as rejected. In that view of the matter, it appears that there is breach of principles of natural justice and also noncompliance of mandatory procedure as required under Rule 18 of the Rules of hearing complaints and disposal of complaints. Mr.Mehta is right in contending that the decision or action of assessment of bill is in breach of principles of natural justice.

11. Normally, when the decision is taken by the authorities either by not following the mandatory procedure or in breach of principles of natural justice, the court while quashing the decision of the authority either decide of its own if sufficient material is available on record or will leave the matter to the authority to follow the procedure of observance of principles of natural justice or mandatory procedure required under law and will further leave the authority to pass appropriate orders thereafter. In the present case there is no material produced on record either by the petitioner to support that the property tax

could be only Rs.22,802.71ps nor the respondents have produced sufficient material to show that the property tax could be of Rs.16,52,646.58ps. What could be the rateable value of the property is the essentially question of fact for which various relevant circumstances including the situation and location of property, use of the property, the value of nearby property etc are required to be taken into consideration. Mr.Desai is right in contending that this court while exercising the power under Article 226 of the Constitution would normally not undertake the exercise of fact-finding inquiry but even if this court has to undertake the exercise of fact-finding inquiry in the present case, then also, in my view, neither the petitioner nor the respondents have produced sufficient material to arrive at a final conclusion on the same.

12. In normal circumstances, when the complaint is disposed of there is a statutory alternative remedy available u/s 406 of the Act of preferring appeal before the judge authorised for such purpose. In the proceedings of appeal, there can be full-fledged inquiry and thereafter the final decision can be arrive at for confirming or modifying the rateable value assessed by the Commissioner. It is true that the appeal is not preferred as required u/s 406 of the Act before the appropriate forum. However, Mr.Mehta is right in contending that in view of section 406(2) appeal shall not be entertained unless his complaint (which is known as objections) has been disposed of by the authority concerned. As observed earlier, since no authenticated material is produced on behalf of Corporation regarding the disposal of complaint and, in any case, since the mandatory procedure as required of hearing is not followed, in my view, the petition can not be thrown away on the ground that there was alternative statutory remedy available and the same is not exhausted. At the same time, on account of nonavailability of sufficient material on record, it is not possible for this court to undertake the exercise of fact-finding inquiry either confirming, or upsetting or modifying the value of the property made by the Corporation.

13. The question as to whether it is mandatory for the corporation to complete the process of assessment within an outer limit or not, in my view, is not required to decided at this stage since Mr.Mehta has fairly submitted that in view of the later judgment in the matter of Municipal Corporation of Delhi (supra) decision can be taken subsequently. The petitioner has not produced sufficient material on record to show that the appellate officer has modified the assessment for the year 1995-96 from Rs.16,52,646.58ps to Rs.1,68,542.52ps. The aforesaid stand appears to be self-contradictory in as much as on one hand it is contended before this court that no decision for disposal of complaint is communicated and therefore appeal could not have been preferred whereas on the other hand the contention is that the appellate officer has reduced the assessment. Further, had the appellate officer reduced the assessment even pending the objections, the petitioner would not have deposited the amount of Rs.16,58,646.58 ps. with interest in the corporation and, therefore, it can not be said that the appellate officer has reduced the assessment from 16,52,646.58ps to Rs.1,68,542.52ps. As observed earlier, the payment was made pending the

petition to avoid further coercive action, hence, it would hardly be a valid defence of the Corporation that the amount is utilised and therefore the same can not be refunded.

14. In view of the above discussion, I am of the view that the following directions would meet with the ends of justice:

(i) The Commissioner shall give opportunity of hearing to the petitioners on the basis of objections filed by them on 18.9.95(copy at annexure "D" to the petition) and the petitioners will be at liberty to produce necessary material to object the assessment made of the property in question by the Corporation for the year 1995-96.

(ii) The aforesaid exercise shall be completed within a period of 2 months from the date of receipt of writ of this court.

(iii) The Commissioner shall render the decision of finalising the complaint after taking into consideration the objections and submissions made by the petitioners within a period of one month thereafter.

(iv) The Commissioner shall also issue a fresh bill on the basis of such decision and if the Commissioner takes the view to reduce the amount of tax, then the refund shall be permitted by the Commissioner of balance amount from the amount which is already deposited by the petitioner pending the objections and the refund shall be disbursed to the petitioner within a period of one month thereafter.

15. The petition is allowed to the aforesaid extent and rule is partly made absolute accordingly. There shall be no order as to costs. Civil Application No.5306/02 also stands allowed as observed above.