(1987) 02 MP CK 0020

In the Madhya Pradesh High Court

Case No : M.P. No. 218 of 1984

Raghunath APPELLANT

Vs

Indore Municipal Corporation, Indore and Another RESPONDENT

Date of Decision : 04-02-1987

Acts Referred:

Madhya Pradesh Municipal Corporation Act, 1956 — Section 147, 148, 149, 5(11), 69(4)

Citation : AIR 1987 MP 181

Hon'ble Judges : R.K. Verma, J;G.G. Sohani, J

Bench : Division Bench

Advocate : V.M. Rege, for the Appellant; Chaphekar and S.J. Dhanji, for the Respondent

Final Decision : Dismissed

Judgement

Sohani, J.—The order in this case will govern the disposal of Misc. Petitions Nos. 270, 742, 743 and 744, all of 1984.

2, The material facts giving rise to these petitions, under Article 226 of the Constitution briefly, are as follows :

Respondent No. 1 is a Municipal Corporation established under the provisions of the Madhya Pradesh Municipal Corporation Act, 1956 (hereinafter referred to as "the Act") and respondent No. 2 is the Commissioner of the Corporation, Dissatisfied with the valuation of the property made for the purpose of levy of property tax, the petitioners submitted objections u/s 147-of the Act. Those objections were heard and rejected by the Assessment Officer of the respondent Corporation in pursuance of powers conferred upon him by respondent No. 2 by the order dt. 13-1-1982 passed by him in that behalf. The petitioner 8 contend that respondent No. 2, the Commissioner, had no power to delegate the powers conferred upon him by Section 148 of the Act to any other officer of the Corporation and consequently the orders passed by the Assessment Officer overruling the objections submitted by the petitioners being without jurisdiction, are null and void.

3. In the return, it is contended that the Commissioner is empowered under the provision of Section 69(4) of the Act to delegate any of the powers, duties or functions conferred upon him by the Act to any officer of the Municipal Corporation and that in pursuance of that power, the Commissioner has delegated the power conferred upon by Section 148 of the Act It is, therefore, contended that the orders passed by the Assessment Officer overruling the objections of the petitioners, cannot be held to be without jurisdiction or null and void.

4. The short question for consideration in this case is whether the power to determine objections to valuation made under the Act, conferred by Section 148 of the Act, could be delegated by the Commissioner to any officer of the Corporation under the provisions of Section 69(4) of the Act.

5. To appreciate the contentions advanced by the learned counsel for the parties, it is necessary to refer to the relevant provision of the Act, Sub-section (ii) of Section 5 of the Act defines the expression ''Commissioner'' as follows:

" ''Commissioner'' means the Municipal Commissioner for the city appointed u/s 54 and includes an acting Commissioner appointed under Sub-section (2) of Section 57 and any Minicipal Officer empowered under this Act to exercise, perform or discharge any of the powers, duties or functions of the Commissioner to the extent to which such officer is so empowered".

Section 69(4) of the Act empowering the Commissioner to delegate his functions to any officer of the Corporation, reads as follows:

"Municipal Officers may be empowered to exercise the powers of Commissioner. (4) Any of the powers, duties or functions conferred or imposed upon or vested in the Commissioner by this Act may be exercised, performed or discharged under the Commissioner''s control, and subject to his superintendence and to such conditions and limitations, if any, as he may think fit to prescribe, by any Municipal Officer, whom the Commissioner may generally or specially empower in writing in this behalf."

Now, power to determine objections to valuation is conferred on the Commissioner by Section 148 of the Act. That this power, u/s 148 of the Act to decide objections is a quasi-judicial power, was not disputed before us on behalf of the respondents. The contention urged on behalf of the petitioners was that the Commissioner had no power to delegate the quasi-judicial power conferred upon him by Section 148 of the Act.

6. As held by the Supreme Court in Bombay Municipal Corporation Vs. Dhondu Narayan Chowdhary, , it is well settled that judicial power cannot ordinarily be delegated unless the law expressly or by clear implication, permits it. Section 69(4) of the Act, in our opinion, is a provision, which expressly permits the Commissioner to delegate any power conferred upon him by the Act. In absence

of the provisions of Section 69(4) of the Act, the Commissioner could not have delegated the quasi-judicial powers conferred upon him by the Act.

7. It is, however, urged on behalf of the petitioner that Section 69(4) of the Act refers only to the administrative powers under the Act and not to any other power under the Act. There is no warrant for construing the provisions of Section 69(4) of the Act in such a way as to confine it to delegation of administrative powers only. Section 69(4) of the Act enables delegation of all powers conferred upon the Commissioner by the Act, irrespective of the nature of the power. When an officer of the Corporation decides the objections u/s 148 of the Act, in pursuance of the powers conferred upon by the Commissioner, the order passed by that officer is tantamount to an order passed by the Commissioner by virtue of Section 5(11) of the Act and is appealable to the District Court u/s 149 of the Act. While conferring power on the Commissioner to delegate his functions under the Act, the legislature has not chosen to limit that power to administrative functions only. Section 69(41 of the Act expressly confers upon the Commissioner the power to delegate any power conferred upon him by the Act, to any Municipal Officer. That the control and superintendence envisaged in Section 69(4) of the Act cannot bear the meaning, which they in delegation of administrative functions, is clear from the decision of the Supreme Court in Bombay Municipal Corporation Vs. Dhondu Narayan Chowdhary, . In thatcase. while construing a similar provision in the Bombay Municipal Corporation Act. the Supreme Court observed as follows: --

''"What is objected to is the provisions both in the section as well as in the order of delegation that ''Commissioner''s control'' and ''subject to his revision''. These words are really appropriate to delegation of administrative functions where the control may be deeper than in judicial matters. In respect of judicial or quasi-judicial functions, these words cannot, of course, bear the meaning, which they in the delegation of administrative functions. When the Commissioner stated that his functions were delegated subject to his control and revision, it did not mean that he reserved to himself the right to intervene to impose his own decision upon hisdelegate. What those words meant was that the Commissioner could control the exercise administratively as to the kinds of cases, in which the delegate could take action or the period or time, during which the power might be exercised and so on and so forth. In other words, the administrative side of the delegate''s duties was to be the subject of control and revision but not the essential power to decide whether to take action or not in a particular case. This is also the intention of Section 68 as interpreted in the context of the several delegated powers. This is apparent from the fact that the order of the delegate amounts to an order by the Commissioner and is appealable as such."

In view of the aforesaid decision of the Supreme Court, it cannot be held that the fact that the power delegated u/s 69(4) of the Act by the Commissioner is to be exercised subject to the control and superintendence of the Commissioner, rules out delegation of quasi-judicial power conferred upon the Commissioner by

Section 148 of the Act. Such a construction would also not be reasonable because the legislature has chosen to confer power upon the Commissioner by Section 69(4) of the Act, to delegate any of his functions under the Act, without any reservation, presumably because, in a city, where a Corporation is established, the Commissioner cannot possibly exercise each and every power conferred upon him by the Act. Under the circumstances, it cannot be held that the objections to the valuation preferred by the petitioners have been decided by a person, who had no jurisdiction to decide those objections.

8. It was also contended that in any event, the Commissioner could not have delegated the power to decide objections to an officer, who wasa party to the valuation made. There is nothing on record to show that the Assessment Officer had any bias. Moreover, under the scheme of the Act. the duty to make a provisional valuation u/s 148 of the Act and the duty to decide objections to that valuation u/s 148 of the Act, have both been conferred on the Commissioner. Therefore, hearing of objections to valuation made u/s 148 of the Act is not tantamount hearing of an appeal from the order making valuation. That power of appeal is conferred by the Act on the District Court and it was stated at the Bar that the appeals filed by the petitioners in that behalf are pending in the District Court.

9. For all these reasons, these petitions fail and are accordingly dismissed. In the circumstances of the case, parties shall bear their own costs of these petitions. Security amount, if any. be refunded to the petitioners. The interim orders of stay passed in these petitions are vacated.

