(2011) 11 AHC CK 0250

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 50292 of 2011

Rajesh Dogra @ Rajesh Puri, Pupil Mahant Krishna Chandra Dqgra @ Krishna Chandra Puri — APPELLANT

Vs

State of U.P.Through Its Secretary, Local Bodies, U.P.At Lucknow and Others — RESPONDENT

Date of Decision : 29-11-2011

Acts Referred:

Uttar Pradesh Municipal Corporation Act, 1959 — Section 213, 472

Citation : (2011) 11 AHC CK 0250

Hon'ble Judges : S.P.Mehrotra, J and V.K.Mathur, J

Final Decision : Dismissed

Judgement

S. P. Mehrotra and V. K. Mathur, JJ.—The present writ petition has been field under Article 226 of the Constitution of India making the following prayers :

(i) issue a writ order or direction in the nature of certiorari quashing the impugned order dated 12. 5. 2011 (Annexure No. 1 to the writ petition) passed by respondent No. 3, approving the recommendation/report dated 11. 5. 2011 submitted by the respondent No. 4, whereby the names of respondent Nos. 5 to 8 have been mutated as owner in respect of House No. DI /62 and DI/63, Mohalla Lalita Ghat, Lahauri Tola, Varanasi.

(ii) issue a writ order or direction in the nature of mandamus directing the respondents not to interfere in the peaceful possession of the petitioner over the disputed land.

(iii) issue any other writ order or direction in the like nature which this Hon''ble may deem fit and proper in the circumstances of the case, (iv) Award t he costs of the writ petition to the petitioner.

2. The dispute relates to House No. DI/62 and DI/63, situated at Mohalla Lalita Ghat, Lahouri Tola, Varanasi (hereinafter also referred to as "the property in question") .

3. It appears that the petitioner filed a suit for permanent injunction to restrain the defendants in the said suit from interfering in the possession of the petitioner in respect of the property in question, the said suit was registered as Original Suit No. 744 of 2003. By the judgment and decree dated 12. 5. 2005 passed by the Civil Judge (Junior Division), City, Varanasi, the said suit was decreed exparte restraining the defendants in the said suit from interfering in the property in question.

4. On the basis of the said ex parte judgment and decree dated 12. 5. 2005, the petitioner made an application before the respondent No. 4 for mutation of his name in the record of Nagar Nigam, Varanasi in respect of the property in question. By the order dated 24. 3. 2008 passed by the Sahayak Nagar Ayukt/ Zonal Officer, Dashaswamedh Ward, Varanasi, the application of the petitioner for mutation in respect of the property in question was allowed. Pursuant to the said order dated 24. 3. 2008, the name of the petitioner was mutated in the record of Nagar Nigam, Varanasi in respect of the property in question.

5. The respondent Nos. 5 to 8 herein filed an appeal under section 472 of the U. P. Municipal Corporations Adhiniyam, 1959 (in short "the 1959 Adhiniyam") before the Court of Judge, Small Causes, Varanasi, challenging the said order dated 24. 3. 2008.

6. The said appeal was numbered as Mutation Appeal No. 33 of 2008.

7. It further appears that in the meantime, t}ie respondent Nos. 5 to 8 moved an application under "Order IX, Rule 13 of the Code of civil Procedure for recalling and settingaside the said ex parte judgment and decree dated 12. 5. 2005. The application under Order IX, Rule 13 of the Code of Civil Procedure moved by the respondent Nos. 5 to 8 was allowed by the order dated 26. 2. 2010, and the ex parte judgment and decree dated 12. 5. 2005 was setaside, and the suit was restored to its original number. Copy of the said order dated 26. 2. 2010 has been filed as Annexure12 to the writ petition.

8. Pursuant to the said order dated 26. 2. 2010, an application dated 9. 7. 2010 was moved on behalf of the respondent Nos. 5 to 8 for mutation of their names in respect of the property in question. Copy of the application affidavit dated 9. 7. 2010 has been filed as Annexure14 o the writ petition.

9. The petitioner thereupon filed objections dated 11. 10. 2010, inter alia, praying for rejection of the said application for mutation filed on behalf of the respondent Nos. 5 to 8. Copy of the said objections dated 11. 10. 2010 has been filed as Annexure15 to the writ petition.

10. By the order dated 12. 5. 2011 passed by the respondent No. 3, the recommendation/report dated 11. 5. 2011 submitted by the respondent No. 4 for mutation of the names of the respondent Nos. 5 to 8 in respect of the property in question was approved.

11. The petitioner has, thereupon, filed the present writ petition seeking the

reliefs, as mentioned above.

12. We have heard Shri Anoop Trivedi holding brief for Shri Amit Kumar Srivastava, learned Counsel for the petitioner, the learned Standing Counsel appearing for the respondent No 1 and Shri A. K. Singh, learned Counsel for the respondent Nos. 2,3 and 4, and perused the record.

13. Shri A. K. Singh, learned Counsel for the respondent Nos. 2, 3 and 4 has raised a preliminary objection that the petitioner has got an alternative remedy of filing appeal against the impugned order dated 12. 5. 2011, and, therefore, the writ petition be dismissed on the said gfpund.

14. Shri Anoop Trivedi holding brief for Shri Amit Kumar Srivastava, learned Counsel for the petitioner submits that the existence of alternative remedy is not an absolute bar, and the writ petition filed by the petitioner be entertained, and decided on merits.

15. We have considered the submissions made by the learned Counsel for the parties.

16. Section 213 of the 1959 Adhiniyam provides as under :

"213. Amendment and alteration of list. (1) The Executive Committee or a subcommittee thereof appointed in this behalf may at any time alter or amend the assessment list

(a) by entering therein the name of any person or any property which ought to have been entered or any property which has become liable to taxation after the authentication of the assessment list; or

(b) by substituting therein for the name of the owner or occupier of any property the name of any other person who has succeeded by transfer or otherwise to the ownership or occupation of the property; or

(c) by enhancing the valuation of, or assessment on, any property which [has become incorrectly valued or assessed or which, by reason of fraud, misrepresentation or mistake, has been incorrectly valued or assessed]; Or

(d) by revaluing or reassessing any property the value of which has been increased by additions or alterations to buildings; or

(e) where the parentage on the annual value at which any tax is to be levied has been altered by the corporation under the provisions [of this Act] by making a corresponding alteration in the amount of the tax payable in each case; or

(f) by reducing upon the application of the owner or on satisfactory evidence that the owner is untraceable and the need for reduction established, upon its own initiative, the valuation of any building which has been wholly or partly demolished or destroyed; or

(g) by correcting any clerical, arithmetical or other apparent error; Provided that the Executive Committee or the subcommittee, as the

case may be, shall give at least one month''s notice to any person interested in any alteration [or amendment] which the Executive Committee or subcommittee proposes to make under Clauses (a), (b), (c) or (d) of subsection (1) and of the date on which the alteration [or amendment] will be made.

[(1A) For the removal of doubts it is hereby declared that it shall not be necessary to follow the procedure laid down in sections 199 to 203 or in sections 207 to 210 in respect of any alteration made under Clause (e) of subsection (1) as a result of a determination of the rate of tax under section 148.]

(2) The provisions of subsections (2) and (3) of section 209 applicable to the objections thereunder mentioned shall, so far as may be, apply to any objection made in pursuance of a notice issued under subsection (2) and to any application made under Clause (f) of subsection (1) .

(3) Every alteration [for amendment] made under subsection (1) shall be authenticated by the signature or signatures of the person authorized by section 210 and, subject to the result of an appeal under section 472, shall take effect from the date on which the next instalment falls due. "

Clause (b) of subsection (1) of section 213 of the 1959 Adhiniyam gives power to the Executive Committee or a SubCommittee thereof appointed in this behalf to alter or amend the assessment list by substituting therein for the name of the owner or occupier of any property the name of any other person who has succeeded by transfer or otherwise to the ownership or occupation of the property.

Proviso to subsection (1) of section 213 of the 1959 Adhiniyam lays down that before making alteration or amendment under Clause (b) of subsection (1) of section 213, notice will be given by the Executive Committee or the subcommittee, as the case may be, to any person interested in the alteration or amendment which is proposed to be made by the Executive Committee or subcommittee.

Subsection (3) of section 213 of the 1959 Adhiniyam provides that every alteration or amendment made under subsection (1) shall be authenticated by the signature or signatures of the person authorized by section 210 and, "subject to the result of an appeal under section 472" of the 1959 Adhiniyam, shall take effect from the date on which the next instalment falls due.

17. Section 472 of the 1959 Adhiniyam provides as under :

"472. Appeal when and to whom to lie. (1) Subject to the provisions hereinafter contained, appeals against any annual value or tax fixed or charged under this Act shall be heard and determined by the Judge :

[Provided that any such appeal pending at any stage before the Judge may be transferred by the District Judge for hearing and disposal, to any Additional

Judge of the Court of Small Causes or Civil Judge or Additional Civil Judge having jurisdiction in the city.]

(2) No such appeal shall be heard unless

(a) it is brought within fifteen days after the accrual of the cause of complaint;

(b) in the case of an appeal against an annual value an objection has previously been made [and has been disposed of under section 209];

(c) in the case of an appeal against any tax in respect of which provision exists under this Act for an objection to be made to the Mukhya Nagar Adhikari against the demand, such objection has previously been made and disposed of;

[(d) in the case of an appeal against any amendment or alteration made in the assessment list for property taxes under subsection (1) of section 213, an objection has been made in pursuance of a notice issued under the proviso to the said subsection and such objection has been disposed of;]

(e) in the case of an appeal against a tax, or in the case of an appeal made against an annual value after a bill for any property tax assessed upon such value has been presented to the appellant, the amount claimed from the appellant has been deposited by him with the Mukhya Nagar Adhikari. "

Subsection (1) of section 472 makes provision for appeal before the Judge, i. e., the Judge of the Court of Small Causes [see section 2 (32) of the 1959 Adhiniyam].

Clause (d) of subsection(2) of section 472 provides that no appeal shall be heard unless in the case of an appeal against any amendment or alteration made in the assessment list for property taxes under subsection (1) of section 213, an objection has been made in pursuance of a notice issued under the proviso to the said subsection and such objection has been disposed of. "

18. It will, thus, be noticed that an appeal under section 472 of the 1959 Adhiniyam lies against the order passed under Clause (b) of subsection (1) of section 213 of the 1959 Adhiniyam, provided an objection has been made in pursuance of a notice issued under the proviso to subsection (1) of section 213 of the said Adhiniyam.

19. In the present case, as is evident from the averments made. in the writ petition itself, objections were field by the petitioner against the application for mutation filed on behalf of the respondent Nos. 5 to 8, and the said objections were considered while passing the impugned order dated 12. 5. 2011, and the same stood disposed of by the said order.

20. In view of the above, it is evident that the petitioner has an alternative remedy of filing appeal against the impugned order dated 12. 5. 2011.

21. In view of the availability of alternative remedy of filing appeal under section 472 of the 1959 Adhiniyam against the order dated 12. 5. 2011, and keeping in

view the controversy involved in the present case, we are not inclined to exercise our writ jurisdiction under Article 226 of the Constitution of India, and the writ petition is liable to be dismissed on the said ground.

22. The writ petition is accordingly dismissed on the ground of availability of alternative remedy to the petitioner of filing appeal under section 472 of the 1959 Adhiniyam against the impugned order dated 12. 5. 2011.

23. However, on the facts and in the circumstances of the case, there will be no order as to costs.

