

(1959) 09 P&H CK 0030
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 1240 of 1958

Ram Parkash Rakhra

APPELLANT

Vs

The State of Punjab and Others

RESPONDENT

Date of Decision : 04-09-1959

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Urban Immovable Property Tax Act, 1932 — Section 10, 15, 24, 8, 9

Citation : AIR 1960 P&H 278

Hon'ble Judges : I.D. Dua, J

Bench : Single Bench

Judgement

(1) This petition under Arts. 226 and 227 of the Constitution of India has been filed on the following allegations. The petitioner's father, on his death, is said to have left an ancestral house situated in village Kainthan, Tehsil Dasuya, District Hoshiarpur. The petitioner and his three real brothers succeeded to the property. this property was divided amongst these four brothers by means of a family arrangement which was reduced to writing and the Municipal Committee, Dasuya, was also informed of the division. In 1957 this property was included within the municipal limits of Dasuya and was assessed to property tax for the year 1957-58.

It is alleged that this assessment was made without any notice for information either to the petitioner or to any of his other brothers. A notice of demand of payment of the tax was received by the petitioner on 14-6-1957 whereupon objections were duly preferred by him. his principal objection was that the property in question should be treated as consisting of four units having been divided by the four brothers as intimated to the Municipal Committee. The petitioner was asked to appear before the Excise and Taxation Officer, Hoshiarpur, on 6th November 1957.

He did appear on that date but his objections were rejected. With the object of filing an appeal the petitioner applied on 20-11-1957 for a certified copy of the

order of the Excise and Taxation Officer dated 6-11-1957; the copying department was requested to supply the copy per V. P. P. The petitioner thereafter sent several reminders, but on 15-2-58 when the petitioner personally appeared in the office of the Excise & Taxation officer Hoshiarpur, he was informed by Shri Sardari Lal, Head Cleark, and Jagtar Singh Inspector that there existed no regular order of the Excise and Taxation Officer dated 6th November 1957.

The petitioner was informed that there was only a note on the file and the petitioner could have a copy of that note. The petitioner's original application for the grant of a certified copy of the order was thus got amended & the petitioner preferred an appeal by attaching a copy of the note as supplied to him. The Deputy Excise and Taxation Commissioner, Jullundur Division, however, refused to entertain the appeal without a copy of the regular order of the Excise and Taxation Officer, Hoshiarpur. The petitioner there upon again approached the Excise and Taxation Officer requesting him to grant a copy of the order dated 6th of November, 1957. The Excise and Taxation Officer again refused to supply him the copy of the order on the ground that no such order existed on the record. The petitioner then resubmitted his appeal but the same was again ordered to be returned, on the ground that no appeal could be entertained without a copy of the impugned order.

The petitioner alleges that several demand notices have been issued to him and the tax is being demanded from him for the subsequent years also on the basis of the assessment made for the year 1957-58. The petitioner, by means of the present petition, assails the order of assessment on various grounds. He also complains that he has statutory right to file an appeal against the order of the Excise and Taxation Officer of which he is being illegally deprived on account of the non-supply of the copy of the order. It is alleged in para 17 of the petition that his appeal is not being heard as no copy of the order has been supplied to him. The respondents have, in the written statement dated 2nd of June 1959, stated that the records of the case are not traceable, with the result that the allegations made by the petitioner can neither be accepted nor denied.

It is admitted that a copy of the order of the Excise and Taxation Officer has not been supplied to the petitioner, but this failure is being sought to be justified on the ground that the whole record is untraceable. The contents of para 17 of the petition are expressly admitted. When the case came up before me on 30-7-1959 I asked the learned counsel for the respondents to let me know as to what is the real position with respect to the appeal which the petitioner alleges to have preferred and how does with the petitioner's appeal. The counsel wanted time to get the necessary information and on his request the case was adjourned.

On 13th of August Mr. Anand Mohan Suri informed me that the appeal had since been disposed of and rejected. The counsel for the petitioner expressed complete ignorance about the alleged hearing of the appeal. On my enquiry Mr. Anand Mohan Suri has very properly and fairly informed me that no notice for the

hearing of the appeal was in fact served on the petitioner. He has produced for perusal by this Court the entire file and I find that this appeal was actually heard ex parte on 8th of August 1959 and disallowed. At page 103 of the office file produced by Mr. Suri is a copy of the notice dated 6th of August 1959 addressed to Shri Ram Parkash Rakhra informing him that his appeal would be heard on 8th of August 1959 at 8 a.m. sharp and that he was required to appear before the Deputy Excise and Taxation Commissioner in person or through authorised agent along with the documentary proof in support thereof.

There is a report by one Thakur Singh, of the same date, which says that he went to the house of Ram Parkash Rakhra for service of the notice, but he was told that the address had gone out on tour and was likely to return by the 20th, with the result that the service could not be effected. Notwithstanding this clear report the appeal was disposed of on 8th of August 1959 ex parte. In my view, the order disposing of the appeal in these circumstances cannot be sustained and it must be quashed.

(2) Section 10 of the Urban Immovable Property Tax Act gives right of appeal to every person aggrieved by an order of the appropriate authority upon an objection made before that authority under sections 8, 9 and 15 of the said Act. The State Government has framed rules u/s 24 of the Act and rule 7 prescribes the procedure for preferring such appeals and for the hearings thereof. Sub-rule (2) lays down that the appeal shall be decided inter alia after giving an opportunity to the appellant, and such other persons, as in the opinion of the appellate authority may directly be interested in the result of the appeal, of being heard in person or by a duly authorised agent. The appellate authority is also empowered before deciding the appeal itself to hold such further enquiry or to direct the same to be held by the authority against whose decision the appeal has been preferred, as may appear necessary to the said appellate authority. Rule 20 prescribes the mode of service etc. It lays down that notice etc. may be sent or served either:-

- (a) by delivering it to the person to, or on, whom, it is to be sent or served; or
- (b) by leaving it at the usual or last known place of abode of that person, or in the case of a company at its registered officer; or
- (c) by forwarding it by post addressed to that person at his usual or last known place of abode, or in the case of a company at its registered office; or
- (d) by delivering it to some person on the premises to which it relates or (except in the case of a document being a summons) if there is no person on the premises to whom it can be delivered, then by fixing it on some conspicuous part of the premises; or
- (e) without prejudice to the foregoing provisions of this sub-rule, where the hereditament to which the document relates is a place of business of the person to or on whom it is to be sent or served, by leaving it at, or forwarding it by post

addressed to that person at, the said place of business.

It is clear from the facts narrated above that the notice for the hearing of the appeal in the present case cannot be considered to have been served in accordance with the provisions of rule 20. It is thus not possible for me to hold that the appeal in the present case was heard after giving to the present petitioner an opportunity of being heard in person or by a duly authorised agent as is enjoined by the statutory rules. The report of Thakur Singh dated 6th of August 1959 at the back of leaf 101 of the record expressly states that service could not be effected because Shri Ram Parkash Rakhra had gone out on tour and was likely to return on the 20th.

I am also inclined to consider that it was hardly reasonable or proper to issue a notice on the 6th of August for the hearing which was to be held on the 8th of August 1959; particularly so in the circumstances of the present case. It is not disputed that the record of the case was untraceable and non-supply of a copy of the impugned order to the petitioner was being justified even in the present proceedings on the ground of the record being untraceable; if the record has been traced, normally speaking, parties would like to inspect it before representing their case before the appellate authority and if the record has not yet been traced, it is difficult to see how the appeal could satisfactorily and in accordance with the rules of natural justice be heard and disposed of.

The fact that the hearing of the appeal has been rushed through with such abnormal haste during the pendency of the present writ petition is a circumstance which has created in my mind an impression which is far from happy; nor does this procedure give any credit to the department concerned. More so, when in the written statement the respondent has admitted that the appeal was not being heard on account of non-supply of copy of the order. This attitude on the part of the departmental authorities is by no means in conformity with the Indian sense of justice and it, in my view, offends the basic principle of Indian jurisprudence, according to which, parties must be heard before orders to their prejudice are passed.

It must be borne in mind that when a duty of deciding an appeal, like the one in question, is imposed, those, whose duty it is to decide it, must act judicially. They must deal with the question referred to them without bias, and they must give to each of the parties an opportunity of adequately presenting the case made. The decision must be come to in the spirit and with the sense of responsibility of a tribunal whose duty it is to meet out justice. The case must be heard in a judicial spirit and in accordance with the principles of substantial justice: See *New Prakash Transport Co. Ltd. Vs. New Suwarna Transport Co. Ltd.*, approving the observations of Viscount Haldane L. C. and of Lord Shaw in *Local Government Board v. Arlidge* 1915 A. C. 120. This would, in my opinion, equally apply to quasi-judicial tribunals. Justice, as it has repeatedly been observed by high authority, must not only be done but it must manifestly and indubitably be seen to be done.

It is only then that the citizens can maintain their faith in the democratic form of Government. It is true that sometimes even quasi-judicial tribunals are tempted to adopt a convenient procedure but "convenience and justice", as has been observed by an eminent jurist, "are often not on speaking terms". Where a citizen is to be taxed it is highly desirable that his liability is fixed after affording him an adequate opportunity of representing his case. To deprive him of such an opportunity, which in the instant case has been expressly provided by statutory rules, in my opinion, cannot but result in failure of justice. Indeed the learned counsel for the respondents found it difficult to justify the disposal of the appeal in the circumstances disclosed by the record.

I have, therefore, no hesitation in holding that the disposal of the appeal in the aforesaid circumstances cannot have the effect of making this writ petition infructuous and the decision of the appellate authority must be quashed.

(3) I asked the learned counsel for the respondents if he had anything to submit in support or in justification of the appellate order, but he could hardly find useful material from the record which he had with him, to enable him to urge anything in justification of the order. It must be emphasised that according to our Constitution Courts are the ultimate authority to restrain all exercise of absolute or arbitrary power by subordinate tribunal and as observed by me in another case, on thing truly Indian, after 26th of January, 1950, which distinguishes us from totalitarian or fascist world and military dictatorship in particular, is that no department of Government can interfere with the life, liberty or property of a citizen of this Republic except when it can support the legality of its Act before a Court of justice.

It is indeed the duty of this Court to protect the citizens of the Democratic Republic from having their personal rights and property taken away by any means which are not strictly legal. This brings me to the question as to what relief is to be granted to the petitioner. He has inter alia prayed for a suitable writ, order or direction in the nature of mandamus to be issued to respondent No. 2 to hear and dispose of the petitioner's appeal pending before him and also to direct respondent No. 3 to grant to the petitioner a copy of his regular order. I think the petitioner is entitled to both these reliefs.

In case, however, the original record is not traceable then it is for the department to consider as to what steps should be taken to see that the present petitioner does not suffer on account of the loss of the record by the department, and no injustice is done to him on this account. If the record has been reconstructed, well and good; if, however, it has not been reconstructed so far, but it is possible, properly, to so reconstruct it then I have no doubt that the department would try to do so and supply the required copy to the petitioner and dispose of his appeal according to law. Failing this, it may well be that the entire assessment proceedings are to be held de novo, but a citizen of the Indian Republic is entitled to have adequate and full hearing before the original as well as the appellate tribunals as provided by the statute; and this Court would be

failing in its duty if it were to refuse relief to a citizen in the present circumstances.

(4) For the reasons given above, I allow this petition and issue the directions in the terms stated above. The petitioner is entitled to his costs which I fix at Rs. 100/-.

(5) Petition allowed.