
(2014) 02 CAL CK 0128
In the Calcutta High Court
Case No : W.P. No. 658 of 2004

Ranjana Dutta

APPELLANT

Vs

The Kolkata Municipal Corporation

RESPONDENT

Date of Decision : 11-02-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 3 CALLT 258 : (2014) 5 CHN 502

Hon'ble Judges : Soumitra Pal, J

Bench : Single Bench

Advocate : Mainak Bose and S. Chatterjee, Advocate for the Appellant; Biswajit Mukherjee and S.K. Debnath, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Soumitra Pal, J.—In this writ petition, the petitioner has challenged the assessment of annual valuation of the property for the 3rd quarter 1987-88, 3rd quarter 1993-94 and 3rd quarter 1999-2000 by the Kolkata Municipal Corporation. The matter was taken up for hearing on 27th April, 2004 when directions were issued for filing of affidavits. Affidavits have since been exchanged and are on record.

2. The grievance of the petitioner is that as the property is a residential building and there was transfer inter vivos, the orders passed enhancing the valuation cannot be sustained. Moreover, in view of the judgement in Turner Morrison & Co. Ltd. & Ors. v. State of West Bengal & Ors 2002(3) CHN 448, as it is mandatory to furnish copy of the order passed by the Hearing Officer and as no copy of the assessment order was furnished, the petitioner is unable to file appeal. Referring to the judgement in Victor Apartment Pvt. Ltd. Vs. Calcutta Municipal Corporation, submission is as the petitioners is yet to receive a copy of the order, an assessment cannot be treated to be final u/s 190 of the Kolkata Municipal Corporation Act, 1980 (for short the "Act"). On the point of delay in moving the writ petition, relying on the law laid down in Ramchandra Shankar

Deodhar and Others Vs. The State of Maharashtra and Others, submission is as therein a delay of 12 years was condoned, as the petitioner in the case in hand has explained the delay in paragraph-14 of the writ petition, appropriate order may be passed.

3. Learned advocate appearing on behalf of the Kolkata Municipal Corporation, relying on the petition, the affidavit in opposition and the affidavit in reply, has submitted that as the writ petition has been moved after an inordinate delay of more than five years and there is no allegation about non-supply of a copy of the assessment order, no order may be passed. Moreover, as it is evident from annexure-R/2 to the writ petition, that admittedly the petitioner had inspected the inspection book with regard to the assessment year 1999-2000 and had put his signature on the order dated 4th May, 2001 and as orders passed have become final u/s 190 of the Act and as fiscal laws are to be construed strictly, at this stage proceedings cannot be reopened.

4. Heard learned advocates for the parties. There is no dispute that the petitioner had moved the writ petition challenging the assessment of valuation for the 3rd quarters of 1987-88 and 1993-94 which were dealt with and decided in the year 1996. The assessment for 3rd quarter 1999-2000, decided on 4th May, 2001, challenged in this writ petition filed in 2004, is very much dependent on the assessment order for the 3rd quarter 1987-88. I find that in paragraph 9 of the affidavit-in-opposition the Corporation has contested the writ petition on the ground of delay. However, the petitioner has casually dealt with it in paragraph -8 of the affidavit in reply by stating that "there is no delay from my part to challenge the said annual valuation or in other words, the delay if any into the matter be condoned by this Hon"ble Court on the ground of natural justice." Since admittedly there was delay in challenging the assessment orders passed by the Hearing Officer and as no cogent ground has been made out in paragraph-14 of the writ petition for condoning the delay, in my view, if such assessments, which have become "final" u/s 190 of the Act, are reopened at this stage it would open a floodgate of litigations. Since fiscal statutes are to be construed strictly and as the petitioner was not prompt enough to assert her rights guaranteed under the Act, no order can be passed. The judgement in the case of R.S. Deodhar (supra) relied on behalf of the petitioner for condoning the delay is not applicable to the facts of the case in hand as therein the petitioners, as evident from paragraph 9 of the said judgement, lost no time in filing the petition. The argument of the petitioner that the point of maintainability of the writ petition on the ground of delay should have been taken by the respondents at the threshold and at this stage cannot be a ground for rejection, cannot be accepted in view of the law laid down in the judgment of the Apex Court in the State of U.P. and Another Vs. U.P. Rajya Khanij Vikas Nigam S.S. and Others, relied on behalf of the respondent, wherein it has been held ".....It has been so held even by this Court in several cases that even if alternative remedy is available, it cannot be held that a writ petition is not maintainable. In our judgment, however, it cannot be laid down as a proposition of law that once a

petition is admitted, it could never be dismissed on the ground of alternative remedy. If such bald contention is upheld, even this Court cannot order dismissal of a writ petition which ought not to have been entertained by the High Court under Article 226 of the Constitution in view of availability of alternative and equally efficacious remedy to the aggrieved party, once the High Court has entertained a writ petition albeit wrongly and granted the relief to the petitioner" (paragraph 38). Therefore, as the orders of assessments were passed under the "Taxation" provisions in Part-IV of the Act and as interference with the assessment orders which have become "final" would defeat the statutory provisions, the writ petition cannot be sustained and is, thus, dismissed. No order as to costs.

Urgent computerized certified copy of this order, if applied for, be furnished to the appearing parties on priority basis.