

(1995) 10 AHC CK 0049

In the Allahabad High Court

Case No : Civil Miscellaneous W. P. No. 22747 of 1988

Ravi Krishna Dutta and Others

APPELLANT

Vs

State of U.P.and Others

RESPONDENT

Date of Decision : 31-10-1995

Acts Referred:

Uttar Pradesh Municipalities Act, 1916 — Section 147, 147(1)(c), 147(1)(e)

Citation : (1995) 10 AHC CK 0049

Hon'ble Judges : R.A.Sharma, J and O.P.Jain, J

Final Decision : Dismissed

Judgement

O. P. Jain, J.—This writ petition has been tiled with a prayer to quash the notice, Annexure "6" dated 18th November, 1988 issued by respondent No. 3 to the petitioners under Section 147(1)(c) of the U. P. Municipalities Act, 1916.

2. The brief facts of the case, according to the petitioner, are that they are the owners of a property known as "Shubhra Motel" which has some shops adjacent to it. The property is owned by a partnership firm of which petitioner Nos. 2, 3 and 4 are the partners. Adjacent to Shubhra Motel there is a Cinema, known as "Shubhra Theatre" which houses on the ground floor, the Central Bank of India as a tenant. According to the petitioner, the above buildings were constructed in three instalments. The first construction was made in the year 1980 and the assessment of Housetax and Watertax was finalised on 871981, vide Annexure T. The second phase of the construction was completed in 198485. Its assessment was finalised on 1921985. The third phase of construction was also completed in 198485 and the assessment was also completed in 1986.

3. It is further alleged that one Satendra Prasad, Advocate, who was the petitioner's Incometax lawyer, turned against the petitioner and made a false complaint before the Municipal authorities in respect of the assessment of the aforesaid building. The complaint was forwarded to the TaxInspector, who gave report in favour of the petitioner which is Annexure "4". After obtaining the opinion of the District Government Counsel (Civil) Ghazipur, Annexure "5" dated

1131988 the matter was dropped. In July, 1988 Shri Ram Lakhan was posted as Dy. Collector and in that capacity he was designated as Frabhari Adhikari, Nagar Pahka. Ghazipur. Shri Ram Lakhan had close and intimate relations with Satendra Prasad, Advocate and at his instance a complaint was got made through one Krishna Gupai Dwivedi. The impugned notice, Annexure "6" dated 18111988 was issued on the basis of the complaint lodged by Krishna Gopal Dwivedi.

4. An impleadment application has been filed by Satendra Prasad Advocate and the same has been allowed. Another impleadment application has been filed on behalf of Krishna Gopal Dwivedi. A counteraffidavit has been filed by Ram Lakhan Singh, Dy. Collector and Prabhari Adhikari, Nagar Palika, Ghazipur in which he has controverted all the allegations made by the petitioner in the petition.

5. We have heard the learned counsel for the parties and have gone through the record.

6. In para 19 of the petition, it has been stated that the notice under Section 147(2) of the Act can only be issued by the Executive Officer and not by the Prabhari Adhikari. This contention is to be rejected because the Executive Officer is only to carry out the orders of the Board. At the time when the elected Board is not in existence the functions of the Board are discharged by an Administrator or Prabhari Adhikari. Therefore, the Prabhari Adhikari has the power to issue a notice.

7. The next ground urged on behalf of the petitioner is the alleged malice on the part of Satendra Prasad, Advocate, Krishna Gopal Dwivedi, Advocate and Ram Lakban Singh, Dy. Collector. The motives of Satendra Prasad, Advocate and Krishna Gopal Dwivedi are irrelevant. The only nexus between Satendra Prasad, Advocate and Ram Lakban Singh, Dy. Collector is said to be the fact that both these persons belonged to the same community. This is stated in paragraph 13 of the petition. In our opinion, the mere fact that two persons belonged to the same caste or community is not sufficient to infer that one was acting at the behest of the other. It is true that Krishna Gopal, who appears to be an office bearer of a political organisation, has filed the complaint to the Dy. Collector who has replied to him vide Annexure "7". Therefore, it does appear that Krishna Gopal was interested in the matter. However, this fact is not sufficient to vitiate the initiation of proceedings against the petitioner. In the case of evasion of tax some one has to inform the concerned authorities that the tax is being evaded by the person concerned. Normally, a person who is having good relations with the assessee is not likely to make a complaint to the authorities. Therefore, only those persons will come forward to give information to the authorities who are displeased with the assessee for one reason or the other. Unless it can be said that the officer to whom information has been given by interested person has acted upon the same without applying his own mind, the action taken cannot be said to be illegal merely because it is upon the information given by a third party.

8. Apart from the allegation of casterism only allegation which has been made

against Ram Lakhan Singh, Dy. Collector is that he was in the habit of going to Shubhra Theatre from time to time and he insisted on entry in the theatre without making any payment for the tickets. These allegations have been refuted by Ram Lakhan Singh in his counteraffidavit. Similar allegations have been levelled by the petitioner against Satendra Prasad, Advocate and Krishna Gopal that they, along with their friends, wanted to enjoy the movies free of charge. In view of the facts and circumstances of the case, we are not inclined to accept the allegations as true.

9. The most important contention, on behalf of the petitioner, is that the Prabhari Adhikari could not have issued notice, Annexure "6" because no case of fraud, misrepresentation or mistake has been made out. In support of this contention, learned counsel for the petitioner has cited 1983 UPLBEC 262 Smt. Prakashwati v. State of U. P.

10. We, however, find that the ruling relied upon by the learned counsel is based on the unamended provisions of Section 147(I)(c). The unamended provisions were as under ;

"147. Amendment and alteration of List.(I) The board 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 to 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 been incorrectly valued or assessed by reason of fraud, misrepresentation or mistakes ; 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 percentage on the annual value at which any tax is to be levied has been altered by the board under the provisions of Section 136, 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)."

11. This provision was amended by U. P. Act 3 of 1987 w.e.f. 21.11.1987. After amendment the subsection (c) of Section 147(1) reads as under :

"147. Amendment and alteration of List.(I) The municipality 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 transferor 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 percentage on the annual value at which any tax is to be levied has been altered by the municipality under the provisions of Section 136, by making a corresponding alteration in the amount of the tax payable in each case ;

(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."

(Emphasis ours)

12. The notice, Annexure"6", has been issued on 10111988 i.e. long after the amendment came into force. It is, therefore, the amended provision which has to be looked into. The use of the expression "has become incorrectly valued or assessed" clearly shows that due to the change in the circumstances the assessment which has been originally correct may become incorrect. In view of the amendment it is not necessary to allege in the notice that the previous incorrect valuation was the result of the fraud, misrepresentation or alteration to the building.

13. It ha* been argued by the learned counsel for the petitioner that notice Annexure "6" does not fulfil the condition precedent for issuing of notice. It is also contended that one of the reasons given in notice Annexure "6" is that the assessment has been done in the name of M/s. Shubhra Motel. According to this notice the assessment cannot be done in the firm"s name "because the partnership is at Will and after its dissolution there is no successor. According to notice Annexure "6", the assessment should be in the name of an individual so that the liability to pay the taxes can be fastened on a particular person. This notice goes on to State that this is in the interest of tho assessee because after the death of the assessee the property can be entered in the name of successor.

14. The learned counsel for the respondent was unable to bring to our notice any provision in the Municipal Act or the Rules which requires the tax to be assessed only in the name of the individual. A partnership firm is nothing but a collective name of all the partners. Therefore, prima facie the first reason given in notice Annexure "6" does not appear to be tenable.

15. The second reason given in notice Annexure "6" is that the assesseees are paying Rs. 18,490 to the Municipal Board on account of water tax and house tax in respect of all the buildings, shops, cinema hall etc. The owners are realising much more from the tenants who happen to be some Nationalised Banks. It appears that the quantum of rent realised by the owners of the building from the tenants came to the notice of the Municipal Board at a later stage and therefore, the assessment already made appears to have become "incorrectly valued or assessed". The second ground mentioned in notice Annexure "6" therefore prima facie appears to be a good ground for issuing the notice.

16. The third reason mentioned in notice Annexure "6" is that the petitioners concealed some facts and gave some wrong information to the Municipal Board with the result that building was incorrectly assessed. This reason if found correct, is &\\&o prima facie a valid reason for reopening the assessment.

17. The next reason mentioned in the notice is that one of the buildings was treated as a Hotel and was assessed at the rate applicable for a Hotel but later on it was let out for residential or office purposes and therefore, it is no more entitled for exemption available to a Hotel. This ground also prima facie appears sufficient for reopening the assessment. It cannot therefore be said that the notice is vague or that it does not fulfil the condition precedent for issuing the notice.

18. Some authorities cited by the learned counsel for the petitioner may now be discussed. AIR 1976 SC 316 *Shri Krishan v. The Kurukshetra University* is a case in which a candidate was allowed to take examination and it was held that he cannot be refused admission subsequently for any infirmity which should have been looked into before giving the candidate permission to appear. This ruling is based on University statute and is, therefore, not applicable. The next case is AIR 1970 All 251 *Swami Prasad Pradhan v. Hargovind Sahai Mathur* to which it was held that where the SubDivisional Officer suspended a Pradhan under the orders of the Collector the suspension is wrong. On this basis it is argued that the notice issued by the Prabhari Adhikari on the direction of the Collector is invalid. This contention has no force because the power to suspend the Pradhan was delegated to the S. D. O. In the instant case, the power vests in the Collector and the Prabhari Adhikari exercises delegated power. The Collector could have, therefore, directed the Prabhari Adhikari to issue notice. There are numerous sections in the Collectorate and an Officer in charge of a particular section is known as "Prabhari Adhikari" of that section. The Prabhari Adhikari, therefore, exercises the power on behalf of the Collector and the direction can be issued to him by the Collector.

19. The learned counsel has also cited 1981 ALJ 897 (FB) *Ramji Pandey v. State of U. P.*, in which a notice issued under Section 3(1) of U. P. Control of Goondas Act was quashed on the ground that it did not contain the material allegations. In the case before us, the notice Annexure "6" is a detailed notice in which all the material particulars are given. The next case relied upon by the learned counsel is AIR 1962 SC 370 *Immani Appa Rao v. Gallapalli Ramalingamurthi*. It was a case under Section 53 of the Transfer of Property Act and it was held that where both the parties are in equal fraud, there is no question of estoppel. This ruling is also not applicable to the facts of the present case. Another authority cited by the learned counsel is 1979 (2) SCO 491 *Smt. S. R. Venkataraman v. Union of India* in which difference between malice in fact and malice in law has been explained. The last case cited by the learned counsel is AIR 1976 SC 1766 *The Regional Manager v. Pawan Kumar Dubey*, which also deals with the question of malice. The observations have been kept in view while discussing the allegations of malice.

20. It is, therefore, wrong to say that an assessment cannot be reopened except on the ground of fraud, misrepresentation or mistake. It is not for this Court to say as to whether there are circumstances under which the original assessment has become incorrect or not. These are the matters to be decided by the authority which has issued the notice. If some wrong assessment is made or the assessment made earlier is wrongly reopened, the petitioner can avail the remedy of appeal, for the disposal of the present writ petition, it is sufficient to say that the issue of notice, Annexure "6", is not vitiated either on account of lack of power on the part of an officer issuing it or on the ground of malice or on the ground of vagueness or want of condition precedent.

21. As a result of the above discussion, this writ petition has no force and is hereby dismissed. No order as to costs.