

(1972) 01 CAL CK 0008
In the Calcutta High Court
Case No : S.C.A. No. 44 of 1970

Sambhu Das Pyne

APPELLANT

Vs

Corporation of Calcutta

RESPONDENT

Date of Decision : 20-01-1972

Acts Referred:

Constitution of India, 1950 — Article 133(1)

Citation : AIR 1972 Cal 273 : 76 CWN 373

Hon'ble Judges : Salil Kumar Datta, J;Anil Kumar Sinha, J

Bench : Division Bench

Advocate : Noni Kumar Chakravarti and Manas Nath Roy, for the Appellant;Subodh Kumar Bhattacharjee, for the Respondent

Final Decision : Dismissed

Judgement

Alil Kumar Datta, J.—This is an application for a certificate of fitness for appeal to the Supreme Court against a decision of a Division Bench of this Court in F. M. A. No. 238 of 1969. The appeal arose out of an annual valuation made by the Corporation of Calcutta in respect of a basti situated in premises No. 105/3, Ultadanga Main Road within the Corporation of Calcutta, for assessment of consolidated rates with effect from 3rd quarter of 1951-52. The annual valuation was made departmentally by the Corporation at Rs. 20240/-. An objection was preferred by the owner, the petitioner before us, contending inter alia that the assessment was illegal, exorbitant and without jurisdiction, while the previous annual valuation was Rs. 7420/- from third quarter of 1950-51 as ultimately determined by the Court of Small Causes, Sealdah on May 21, 1954-On objection filed by the petitioner, the Deputy Commissioner (II) reduced the valuation from Rs. 20240/- to Rs. 15304/-. An appeal was preferred by the petitioners to the said Court and the valuation was further reduced to Rs. 7544. On an appeal to this Court by the Corporation this valuation was set aside and the case was sent back on remand for rehearing. After remand the Court of Small Causes, Sealdah affirmed the valuation made by the Deputy Commissioner (II) and dismissed the

appeal. Against that decision the present appeal was taken by the petitioner which also was dismissed by the Division Bench of this Court as already stated. Against this decision, the present application has been preferred by the appellant owner.

2. In the present case, the question in dispute is whether the excess valuation made by the Deputy Commissioner (II) and affirmed by the Court of Small Causes, Sealdah as also by this Court has been in accordance with law and within the powers of the Corporation. On the valuation test, Mr. Noni Kumar Chakravarty learned Advocate appearing for the petitioner, has contended that the value or the subject-matter of the dispute in the Court of the first instance and in appeal was and is much above Rs. 20,000/- inasmuch as the property in dispute namely premises No. 105/3, Ultadanga Main Road could be valued at not less than Rs. 1,48,400/- being the capitalised value of the annual valuation of Rs. 7420/- at twenty times of the annual valuation which according to him is the accepted normal standard. Mr. Chakravarty accordingly submitted that Clause (a) of Article 133(1) of the Constitution is satisfied in so far as the valuation is concerned. These contentions have been disputed by Mr. Subodh Kumar Bhattacharjee, learned advocate appearing for the Corporation who has contended that the basis of valuation made out by the petitioner is wrong and untenable. According to Mr. Bhattacharjee, the question with which the appeal is concerned was the excess annual valuation of Rs. 15,304/- over the then existing valuation of Rs. 7420/-. The subject-matter of the dispute in all these proceedings is therefore the difference in valuation only and this cannot be stated to be to satisfy the requirement of the said Clause (a) of Article 133(1).

3. As was pointed out in *Ramric Lal Saha Vs. Sachindra Narayan Roy and Others*, that the value of the property concerned in appeal is something different from the value of the subject-matter in dispute. Though we are concerned with the increased annual valuation of the municipal premises in question the appeal is really not concerned with the property itself but only with the legality and validity of the excess annual valuation. In that view, it could not be proper, in our opinion, to assess the capitalised value of the annual valuation as the value of the subject-matter in this proceeding. Accordingly we are of opinion that the requirement of Clause (a) of Article 133(1) has not been satisfied in the instant case.

4. Even though the Clause (a) if not applicable there can be no dispute that the excess valuation as assessed by the impugned judgment will involve and increase the valuation of the entire premises, which even on the existing valuation exceeds the limit of Rs. 20,000/-, thereby attracting Clause (b). The Supreme Court in *Chhitarmal Vs. Shah Pannalal Chandulal*, considered the ambit of the two Clauses (a) and (b) of Article 133(1) and observed in paragraph 5 as follows:

"To attract the application of Article 133(1)(b) it is essential that there must be -- omitting from consideration other conditions not material--a judgment involving

directly or indirectly some claim or question respecting property of an amount or value not less than Rs. 20,000/-. The variation in the language used in Clauses (a) and (b) of Article 133 pointedly highlights the conditions which attract the application of the two clauses. Under Clause (a) what is decisive is the amount or value, of the subject-matter in the Court of first instance and "still in dispute" in appeal to the Supreme Court; under Clause (b) it is the amount or value of the property respecting which a claim or question is involved in the judgment sought to be appealed from..... But the property respecting which the claim or question arises must be property in addition to or other than the subject-matter of the dispute. If in a proposed appeal there is no claim or question raised respecting property other than the object-matter, Clause (a) will apply; if there is involved in the appeal a claim or question respecting property of an amount Or value not less than Rs. 20,000/- in addition to or other than the subject-matter of the dispute, Clause (b) will apply."

In the present appeal, undoubtedly the subject-matter of the dispute is the excess valuation of Rs. 15,304/- over the existing valuation of Rs. 7420/- and it could be urged that the subject-matter of the dispute is less than Rs. 20,000/-. This enhanced valuation impugned in the appeal however does not stand by itself and on the contrary this valuation impugned in this application involves and affects the premises No. 105/3, Ultadanga Main Road which are not the subject-matter of the dispute, in that it touches and enhances the valuation respecting said premises the value whereof undisputedly is over Rs. 20,000/-even without such enhancement. If there is a reduction of the valuation as claimed by the petitioners, it would involve the said property reducing its valuation. It would thus appear that Clause (b) is attracted as the appeal ultimately involves the valuation of the said premises which in turn, as we have seen, is valued much over Rs. 20,000/- apart from the impugned enhancement.

5. The judgment under appeal being one of affirmance, the petitioners must Further establish that the appeal involves some substantial questions of law notwithstanding that the requirement of value under Clause (b) is satisfied. A question of law either of general public importance or directly and substantially affecting the rights of parties has been held to be a substantial question of law. But where the law is practically settled or covered by a decision of the highest court and it is a question of application of general principles, it would not be a substantial question of Law, as was held in *Sir Chunilal V. Mehta and Sons, Ltd. Vs. The Century Spinning and Manufacturing Co., Ltd.*, . It will not be a substantial question of law if a plea raised is palpably absurd though a decision on the merits of the case would be directly affected by it as was held in the decision in *Rimmalapudi Subba Rao Vs. Noony Veeraju and Others*, . It was further observed that when a question of law is fairly arguable, when there is room for difference of opinion on the point, it would be a substantial point of law. These principles have been approved by the Supreme Court in the case cited above.

6. Mr. Chakravarti has contended firstly that the delegation of authority to revalue "bustees" under Section 12 (1) of the Calcutta Municipal Act, 1923 made by the Executive Officer then in office, came to an end with the cessation of his office and at the time of assessment in question there was no valid delegation. The judgment under appeal, following the decision in *Gayadinram v. A. D. Khan* (1951) 55 Cal WN 667 repelled the above contention quoting with approval, the observations in the above case that the delegation was made not in personal capacity but in official capacity and that individuals may go and come but the statutory office remains unless the Corporation itself ceases to exist, and, further, in absence of revocation which could be done, the successor-in-office must be deemed to have accepted and approved of the delegation made by his predecessor. The contention now raised by Mr. Chakravarti is that the question or delegation in the said circumstances raises a substantial question of law calling for a decision by the Supreme Court. The delegation in the present case is by the executive officer in his official capacity (vide the delegation dated 8-4-1924 as follows: "The following powers, functions and duties are delegated by me as the executive officer of the Corporation of Calcutta u/s 12 (1) of Bengal Act, III of 1923 to the officers noted below: Section 131 (2) (a) To Value annually bustees -- to Assessor, Dy. Assessor, Sub-assessors"). This proposition about delegation, if accepted, would lead to an intolerable situation as observed by Bose, J. in *Gayadinram's* case cited above. We are also of the opinion for the same reasons that such contention is not a fair arguable proposition and is palpably untenable. Accordingly there is no substantial question of law on this question for which a certificate of fitness for appeal to the Supreme Court can be given.

7. The other question of law of substantial importance involved in this appeal is, as Mr. Chakravarti contended, that the delegation was about the power to value the bustee but there could be no delegation of the discretion vested in the Executive Officer to assess the bustee which was a pre-requisite of assessment of bus-tee by the Executive Officer or his delegated authority. This Court in dealing with this point, on a construction of the relevant provisions of the statute came to the conclusion that discretion vested in the Executive Officer under Clause (a) of Section 131 (2) could not operate as a distinct or separate element from the power to be exercised by him so that when the power is delegated to any municipal officer, it carries with it also the discretion to be exercised by such officer. In support of the proposition, reference was made to the decision in *Mungoni v. Attorney General of North Rhodesia*, 1960 AC 336, approved by the Supreme Court in *Hazrat Syed Shah Mastershid Ali Al Quadari Vs. The Commissioner of Wakfs, West Bengal*, wherein it was observed that while powers and duties are inter-connected, it is not possible to separate them and the delegation of power takes with it the duties attached to the exercise of the power delegated. Extending the principle, this Court held that discretion under the present case is really an expansion or limitation of his power but always a condition for exercise of such power, so that with delegation of power, the discretion also passes. The Court also relied on the decision in *Daluram Pannalal*

Modi Vs. The Assistant Commissioner of Sales Tax etc., wherein again it was observed that the duty of being satisfied that sales escaped assessment was inseparably connected with power to re-assess and passed to the delegatee along with it and it was not a duty that could be independently delegated.

8. It is thus obvious that the principles involved about delegation as in the present case are well settled. This Court applied the said principles of law in the circumstances of the present case. That being the position, this point of law urged by Mr. Chakravarti in support of his case for a certificate is also not a substantial question of law as contemplated in Article 133(1) of the Constitution.

9. The application accordingly fails and is dismissed with costs: hearing fees assessed at 5 Cms.

Anil Kumar Sinha, J.

10. I agree.