(1969) 09 CAL CK 0003

In the Calcutta High Court

Case No : Appeal from Original Order No. 238 of 1959

Sambhu Das Pyne APPELLANT

Vs

Corporation of Calcutta RESPONDENT

Date of Decision : 30-09-1969

Acts Referred:
Calcutta Municipal Act, 1923 — Section 12, 12(3), 127, 131, 131(2)

Citation : 74 CWN 346 : (1970) 2 ILR (Cal) 166

Hon'ble Judges : A.K. Sinha, J;A.C. Sen, J

Bench : Division Bench

Advocate : Noni Coomer Chakraborty and Manash Nath Roy, for the Appellant; Subodh Kumar Bhattacharyya, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Sinha, J.—This is an appeal from a decision made by the Court of Small Causes, Sealdah, u/s 141 of the Calcutta Municipal Act, 1923 (referred to herein as ''the Act'').

2. The appeal arises out of an annual valuation made in respect of a bustee at premises No. 105/3 Ultadanga Main Road for assessment of consolidated rates with effect from 3rd quarter 1951-52. This annual valuation was made departmentally at the cost set at Rs. 20,240 on valuing the huts at Rs. 9,179 and the lands at Rs. 11,061 separately. Upon objection by the owner, the present Appellant, the Deputy Commissioner II of the Respondent Corporation of Calcutta by his order dated March 2, 1954, fixed the annual valuation at Rs. 15,304 on reduction of the value both of huts and lands to Rs. 6,007 and Rs. 9,267 respectively. As against this reduced valuation an appeal was taken by the owner, the present Appellant, to the Court of Small Causes which on a further reduction by its order dated April 2, 1955, fixed the valuation at Rs. 7,544 on the basis of the previous annual valuation of Rs. 7,420 relating to the same premises fixed by the same Court in appeal No. M.A. 101 of 1952 against the annual valuation of Rs. 11,222. On a further appeal by the Respondent Corporation of Calcutta to

this Court the decision of the Small Cause Court fixing the valuation to Rs. 7,544 was set aside and the case was sent back on remand for rehearing on the view that even in case of annual revaluation the entire bustee with huts upon it had to be revalued and not merely by adding the value of the additional huts erected with the existing valuation. Liberty was given also to the present Appellant to agitate the question as to whether valuation was made without jurisdiction or without authority under the Act.

3. On the question as to assessment being ultra vires or without jurisdiction the Small Cause Court took the view that there was valid delegation of the power of the Executive Officer in favour of the assessor who properly exercised his discretion in making the annual valuation with a further finding that the notice u/s 138 of the Act was valid. On merits it held that the annual valuation as made by the Respondent Corporation must stand in absence of any evidence given by the present Appellant showing the valuation as prima facie wrong or excessive.

4. In the appeal before us Mr. Chakraborty, learned Advocate for the Appellant, disputed the correctness of this decision of the Small Cause Court on both the points. In the first place, the same argument was repeated, namely, that the delegation made u/s 12(3) of the Act by Dr. Dutta, the then Executive Officer, of powers contemplated u/s 131 to revalue bustees annually, came to an end with the cessation of his office on and from May 16, 1954. At the material time in 1954 R.S. Trivedi, who was the Executive Officer, made no such delegation and, therefore, the entire valuation made by the assessor departmentally as a delegated authority on the basis of previous delegation made by Dr. Dutta was entirely illegal and without jurisdiction. This point is covered by a decision of this Court reported in Gavadinram v. A. D. Khan, Bose J. (as he then was) who delivered the judgment while considering the identical question on the effect of delegation by the same Dr. Dutta, the then Executive Officer, observed inter alia:

The delegation is not by the holder of the office in his individual capacity but in his official capacity. The individuals may come and go but the statutory office remains and along with it the duties and powers of the office remain. The persons to whom the powers or duties are delegated are officers of the Corporation. By virtue of the delegation they become clothed with these additional powers. So long as the Corporation remains the offices remain. It is only when the Corporation ceases to exist that the offices also will cease. To hold that with every case of death or removal or retirement of an Executive Officer the delegation made by him cease to be operative would lead to an intolerable situation. It is no doubt open to the successor of the office to revoke any part of the delegation made by his predecessor if he so chooses, but in the absence of any such revocation it must be deemed that the successor-in-office has accepted and approved of the delegation made by his predecessor. The present Executive Officer must be deemed to have accepted and acquiesced in the delegation made by Mr. H. D. Dutt unless there is anything to show to the contrary. We respectfully agree with the above opinion thus expressed. In the instant case also there is nothing to show that the Executive Officer at the material time revoked any part of the delegation so made by his predecessors and, therefore, "he must be deemed to have accepted an acquiescence in the delegation made by Mr. H. D. Dutt" in favour of the assessor. In our opinion, therefore, the delegation though made by Dr. Dutta continued to remain valid at the material time when the annual valuation of the disputed holding was made.

5. Mr. Chakraborty then sought to impress us with a further point which according to him was more formidable. He submitted that in the present case what was delegated was the power to value bustee annually but ''not the discretion of the Executive Officer'' as contemplated under Sub-section (1), read with Sub-section (2) of Section 131 of the Act. This point, as appears, was not raised in the Court below in the form as now pressed before us. All that can be followed from the complicated argument and discussion made in the judgment by the Court below seems to be that the power to make annual? valuation of bustee at the discretion of the Executive Officer was beyond the scope of Sub-section (3) of Section 12 of the Act by which any of the powers, duties or functions of the Executive Officer may be delegated to any municipal officer by him except those conferred or imposed upon or vested in him u/s 140 of the Act, but this argument was rejected. Now it is argued that since there was no delegation of the ''discretion of the Executive Officer'' along with the power of the Executive Officer to annually value the bustees the'' officers vested with powers under the delegation were not competent to make annual valuation by using the discretion of the Executive Officer. To appreciate the correctness of this contention it is necessary to look into some of the material provisions of the Act. Sub-section (1) of Section 131 of the Act, inter alia, confers powers upon the Executive Officer to make a fresh valuation of lands and buildings in each ward which shall remain in force after such assessment for a period of six years with a further power to revise such valuation at the termination of period of six years. Sub-section (2) of Section 131 of the Act provides certain exceptions where the Executive Officer is empowered to make fresh valuation of the same land or building even during the currency of the general valuation within the period of six years. The material provisions for the purpose of the present case is contained in Clause (a) of Sub-section (2) of Section 131 of the Act which is:

(2) Notwithstanding anything contained in Sub-section (1) the following conditions shall apply in the several cases hereinafter specified, namely, (a) Bustees with the huts upon them may be valued annually at the discretion of the Executive Officer, and shall be so valued on the application of the owner; and when such bustees are not revalued, the former valuation shall remain in force from year to year until a revaluation is made.

From the above provision it seems clear that where the annual valuation of a bustee is, to be made without an application of the owner the discretion to be exercised by the Executive Officer is inherent in the power itself to value annually such bustees. This discretion cannot operate as a distinct or a separate element from the power to be exercised by the Executive Officer so that whenever such a power is delegated to any municipal officer it carries with it also the discretion to be exercised by such officer. In cases where duties and powers "are so interwoven'', Judicial Committee held in Mungoni v. Attorney-General of Northern Rhodesia (1960) A.C. 336, that one cannot ''delegate the power to another- and keep the duty to himself. The Supreme Court adopted the same view in Hazrat Syed Shah Mastershid Ali Al Quadari Vs. The Commissioner of Wakfs, West Bengal, , Hidaytullah J. (as he then was) while considering this aspect of the matter observed, inter alia, ...where powers and duties are inter-connected and it is not possible to separate one from the other in such wise that powers may be delegated while duties are retained and vice versa, the proposition hardly needs authority ; but if one were necessary, reference may be made to Mungoni v. Attorney-General of Northern Rhodesia (1960) A.C. 336.

Such being the law, the case under consideration before us stands on a far stronger ground. This discretion as embodied in the section cannot be equated with duty. It really means, in the present context, the Executive Officer may or may not exercise his power to value annually the bustees by using his discretion. So, this discretion may be in substance an expansion or limitation of his power, but in either case it is a condition upon the exercise of such power by the Executive Officer; even if it is considered as a duty, it must be so considered as a necessary appendage to exercise such power. It is, therefore, clear that with the delegation of power such discretion also passes. This really is the view taken by the Supreme Court in Dularam Panna lal v. Asst. Commissioner, Sales Tax AIR I960 S.C. 1581 (1582, paras. 4 and 5), Sarkar J. (as he then was) while considering somewhat similar question in the background of M.P. General Sales Tax Act where u/s 19(1) the Commissioner has to be satisfied that sales escaped assessment before he could proceed to exercise his power to re-assess following the same principles indicated in the above decision of the Judicial Committee (3) observed inter alia, ...The duty of being satisfied--.if at all it was one--being in separately connected with the power to re-assess and passing to a delegate along with it, was not a duty which could be independently delegated and was not, therefore, a duty the delegation of which would be made u/s 30. We, therefore, think that the Assistant Commissioner, as the delegate of the power to re-assess, duly exercised the power on his own satisfaction that sales had escaped assessment. c That being so, in our opinion, the delegation of powers in either view of the matter to the concerned municipal officers by the Executive Officer also carries with it the discretion of the Executive Officer. We, therefore, do not think there is any substance in the contention raised by Mr. Chakraborty.

6. Coming now to the merits of the assessment it appears that the annual valuation of the bustee was made on rental basis and in the manner laid down u/s 127 of the Act. The details of such rents from the tenants in respect of each of the huts as also of ground rents are entered in the inspection book, certified copy of which was marked as Ex. B in this case in the Court below and printed in pt. 2 of the paper-book of the previous appeal No. 221 of 1955. It was submitted on

behalf of the Respondent Corporation that copy of the particulars of valuation in respect of each of the huts was also annexed to the notice served upon the Appellant u/s 138 of the Act marked as Ex. 1(a) in this case, but this is not admitted on behalf of the Appellant although it appears from this notice that a detailed statement showing the valuation of each of the holdings was annexed. In any case, the Appellant does not appear to have taken any objection on this account in the Court below nor anything was said about the entries in the inspection book regarding this bustee marked as Ex. B in this case. Even so, Mr. Chakraborty contended that the entire onus lay on the Corporation to prove that the annual valuation was correctly made. Reliance was placed in aid of such contention on several decisions reported in Samarendra Nath Bose Vs. Corporation of Calcutta, and Lalchand and Sons Vs. Corporation of Calcutta, . The argument was that in case of increase of valuation by the Corporation the burden was clearly on the Corporation to show that there had been increase in rental since the last valuation. We do not think that these decisions are of any assistance to the Appellant in the present case for the Corporation led evidence by producing the certified copy of the inspection book to justify the increase of annual valuation on the basis evidently of the total increase of rent since the last valuation. There is nothing on record to show that such increase of the rental value of both the lands and huts as shown in the inspection book was incorrect. In fact, no evidence was adduced by the Assessee to dispute the correctness of any of the particulars including the rates of rents recorded in respect of each of the huts or the lands entered in the inspection book. Then again, the original valuation was reduced by the Deputy Commissioner II of the Respondent Corporation on a scrutiny of the notes of this inspection book to Rs. 15,034. Here also the Assessee failed to dispute the correctness of the basis on which such reduced valuation was made. It is not a case where the annual valuation was increased without any respect or regard to the provisions of Section 127 of the Act. Such increased valuation has definitely been made on the basis of gross annual rent at which the lands and huts were reasonably expected to be let from year to year on the basis o? rents as entered in the inspection book. Unless these rates are challenged as being totally arbitrary or having no relation at all to the actual rents by the Assessee the annual valuation by the Respondent so made must be accepted as valid. The question of onus might have assumed importance only if the basis of these rates of rents, both of land and huts, were disputed as incorrect by adducing proper evidence. In this case, therefore, the question of discharging the onus by the Corporation is clearly beside the point. Mr. Bhattacharyya on behalf of the Respondent Corporation referred to a Bench decision of this Court in Corporation of Calcutta Vs. Union Jute Co. Ltd., that in a municipal appeal filed by the Assessee the onus was upon the Assessee to show that the order of the Special Officer and his annual valuation was wrong. In this case, however, it appears that no question of increased annual valuation was involved. Be that as it may, in the facts and circumstances of the present case, the burden of proof is of little value since the Assessee failed to dispute the correctness of the rental basis on which the annual valuation was made or reduced by the Deputy Commissioner II of the Respondent Corporation. We, therefore, find no substance even on merits. Accordingly, we hold that the Court below rightly decided that the annual valuation made by the Respondent Corporation must stand.

7. The other contention that the notice u/s 138 of the Act did not mention any ground is equally without any substance for it appears from the notice, Ex. 1(a), that it did contain at least one ground, namely, ''improvement of huts'', but even if it did not, it is unnecessary to decide in this case whether such omission would lead to mere irregularity or affect the merits of the case. The Appellant does not appear to have raised this point at any stage excepting for the first time in the appeal before us which is clearly not permissible.

8. The result is, the appeal fails. We dismiss the appeal, but in the facts and circumstances of this case we do not make any order as to costs.

9. Mr. Roy, learned Advocate for the Appellant, prays for stay of the operation of this order.

10. Let the operation of the order passed today be stayed till one month after the long vacation.

A.C. Sen, J.

11. I agree.

