(1982) 12 AHC CK 0045

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 499 of 1982

Smt. Mahadevi APPELLANT

Vs

The Chief Judicial Magistrate (Prescribed Authority) and Another RESPONDENT

Date of Decision : 20-12-1982

Acts Referred:
Uttar Pradesh Municipalities Act, 1916 — Section 128(1), 144, 147(1), 147(2), 147(3)

Citation : (1982) 12 AHC CK 0045

Hon'ble Judges : B.N. Sapru, J

Bench : Single Bench

Advocate : A.K. Banerji, for the Appellant;

Final Decision : Dismissed

Judgement

B.N. Sapru, J.—The Petitioner is the owner of premises No. 8/95, Mitra Nagar, Aligarh. The premises was assessed to the house and water tax on an annual value of 480/- on which the tax was Rs. 30/- per annum. The Municipal Board found that the Petitioner had made substantial additions to the building. It accordingly sent a provisional notice to the Petitioner stating that after 1975 there bad been no quinquennial assessment of house tax. That sometimes in August, 1980, the House Tax Collector of the Municipal Board visited the premises in dispute and discovered that in the name of Smt. Mahadevi a double storied building had been constructed of which the ground floor had been completely constructed and the first floor had reached the roof level. On the report of the Tax Collector, the House Tax Inspector visited the premises on 5-8-1980 and affirmed the making of the constructions According to the counter affidavit, on 8-8-1980 the assessing authority made a proposal for the assessment of the newly constructed premises on an annual value of Rs. 2400/- and fixed house tax at Rs. 300/- per annum.

2. In pursuance of the aforesaid proposal a notice u/s 147(2) of the U.P.

Municipalities Act (hereinafter called the ''Act'') was sent to the Petitioner. The notice was initially sent through a peon who submitted a report that the Petitioner had refused to accept the notice. Thereafter a registered AD notice was sent to the Petitioner which could not be served on her because the Petitioner could not be met at the house. It may be taken that the notice was served by refusal on the part of the Petitioner.

3. The Petitioner did not appear in response to the notice that was sent to her and the proposal became final as no objection was filed. The Municipal Board then sent a bill dated 19-3-1981 which was received by the husband of the Petitioner on 24-4-1981, asking for the enhanced amount of house and water tax.

4. An appeal was filed before the Appellate authority by the Petitioner on 31-7-1981.

5. According to the counter affidavit, the Petitioner had not deposited the amount of tax demanded as required by Section 161(b); of the Act. This statement in the counter affidavit is not specifically denied in the rejoinder affidavit, and so it may be taken that the Petitioner had not deposited the amount house and water tax claimed by the Municipal Board from the Petitioner as required u/s 161(b) of the Act.

6. The Appellate authority has rejected the appeal being barred by time on the ground that the Petitioner had presented the appeal on 31-7-1981 about three months after the presentation of the bill to the Petitioner.

7. The first question in this petition is whether the appeal filed by the Petitioner was within time as prescribed u/s 161 of the Act.

8. Various taxes that Municipal Board is entitled to impose, are to be found in Section 128(1) of the Act, a tax on the annual value of buildings or land or of both is imposed u/s 128(1)(i). The Municipal Board, in the present case, had authority to amend the assessment list under the provisions of Section 147(1)(d) of the Act. It was a case of re-valuing or re-assessing the property as the Municipal Board found that substantial addition to the building had been made since the last assessment.

9. The Municipal Board had complied with the provisions of Section 147(2) of the Act by giving the requisite notice to the Petitioner.

10 The learned Counsel for the Municipal Board has emphasized that the notice which was given to the Petitioner, was a notice of provisional assessment which automatically became final when no objection was filed.

11. Sub-section (3) of Section 147 was also complied with by the Municipal Board as the Petitioner had been given an opportunity to file an objection which the Petitioner did not avail of.

12. Thus it is clear that the Municipal Board acted in accordance with law when it altered the assessment list and enhanced the annual value of the premises.

13. The Petitioner cannot successfully object to the procedure adopted by the Municipal Board in altering the assessment list and enhancing the annual value of the premises.

14. The question however, remains as to whether after the list has been altered, the Municipal Board was required to communicate its order to the Petitioner or it was sufficient for the Board to have served on the Petitioner the provisional assessment list.

15. The matter will be governed by the provisions of Section 161 of the Act which is reproduced below:

161. Limitation and preliminary deposit of tax claimed: No such appeal shall be heard and determined unless-

(a) the appeal is in the case of a tax assessed on the annual value of buildings or lands or both, brought within thirty days next after the date of communication of the order (exclusive of the time requisite for obtaining a copy thereof) and, in the case of any other tax, within thirty days next after the date of the receipt of the notice of assessment or of alteration of assessment or, if no notice has been given within thirty days next after the date of the first demand under the assessment or alteration of assessment; and

(b) the amount claimed from the Appellant has been deposited by him in the Municipal Office.

16. Section 161(a) requires that in case of a tax assessed on the annual value of the building or laud or both, the appeal has to be filed ''within thirty days next after the date of communication of the order'' exclusive of the time requisite for obtaining a copy thereof. The Clause provides a limitation of 30 days and the limitation runs from the date of the communication of the order. The order referred to here is obviously the order made u/s 147(l)(d) by which the re-valuing or re-assessing of the annual value of the property has been done. The section, therefore, requires the communication of this order u/s 147(1)(d) to be made on the Petitioner.

17. The learned Counsel for the Municipal Board has urged that in this case as the Petitioner has not filed any objection to the provisional assessment, the Municipal Board has not made any order u/s 147(1)(d) and the provisional assessment automatically became final. Section 147(4) provides that every alteration made under Sub-section (1) shall be authenticated by the signature or signatures of the person or persons authorised by Section 144.

18. It may be the practice in the Municipal Board that if no objections are filed to the provisional assessment, the Municipal Board takes it as a case where the provisional assessment automatically became final. The service of a bill on the Petitioner cannot be equated with the communication of the order referred to In Sub-section (a) of Section 161. In this case no order was communicated to the Petitioner as required by Section 161(a) and as such the limitation for filing of an

appeal did not start to run. The Appellate authority, therefore, was wrong in law in rejecting the appeal as being barred by time.

19. The learned Counsel for the Board has drawn my attention to the requirement of Sub-section (b) of Section 161 which required the Appellant to deposit the amount claimed by the Board in the Municipal Office. He submits that the appeal filed by the Petitioner was liable to be rejected on the ground of non-compliance with the terms of Section 161(b).

20. The Petitioners appeal was not dismissed by the Appellate authority on the ground of non-compliance with the provisions of Section 161(b) of the Act.

21. The learned Counsel for the Respondent has urged that what Section 161(b) ban is the hearing and determination of the appeal unless the amount claimed by the Appellant has been deposited by him in the Municipal office. His contention is that the section does not bar the entertainment of the appeal. It only prevents the final decision of the appeal unless the amount claimed had been deposited by the Appellant in the Municipal office. No time is fixed for the deposit of the amount claimed under Sub-section (b) of Section 161. However, no appeal will be heard unless the deposit is made and when the appeal is taken up for hearing the Appellate authority will be fully justified in rejecting the appeal on the ground of non-compliance of Section 161(b). It appears that at any time before the appeal is taken up for hearing, it will be open to the Appellant to deposit the amount in the office of the Municipal Board.

22. In the result, the writ petition succeeds in part, the order dated 16-4-1982 is quashed and the Appellate authority is directed to dispose of the appeal filed by the Petitioner in accordance with law. In the circumstances of the case, there will be no order as to costs.

23. The matter relates to Municipal taxes. It is desireable that it should be heard at an early date. The parties are agreed that the appeal of the Petitioner should be listed before the Appellate authority on 24-1-1983 on which date either the Appellate authority will dispose of the appeal or fix another date. If by the date fixed the Petitioner has not complied with the provisions of Section 161(b) of the Act, it will be open to the Appellate authority to reject the appeal on that ground.

