
(2005) 01 AHC CK 0187
In the Allahabad High Court
Case No : C.M.W.P. No. 2293 of 2002

Smt. Sushila Devi

APPELLANT

Vs

Nagar Palika Parishad and Another

RESPONDENT

Date of Decision : 31-01-2005

Acts Referred:

Uttar Pradesh Municipalities Act, 1916 — Section 143, 144, 147, 147(1), 147(4)

Citation : (2005) 3 AWC 2140 : (2005) 2 AWC 2140

Hon'ble Judges : R.K. Agrawal, J;Prakash Krishna, J

Bench : Division Bench

Advocate : Prakash Gupta, for the Appellant;

Final Decision : Dismissed

Judgement

Prakash Krishna, J.—The petitioner is owner of the property bearing Municipal No. 1186A Sasani Ward, Circular Road Bagla Marg, Hathras. The said property is subject to payment of house tax and water tax as levied by Nagar Palika Parishad, Hathras, respondent No. 1. Its earlier annual valuation was Rs. 960 for the purposes of house tax and water tax. These taxes were payable at the rate of 10% of the annual value. The petitioner admittedly made certain additions and alterations in the aforesaid property. There is no averments in the writ petition about the nature of the additions and alterations made in the said property, nor the petitioner has disclosed the date or dates of such additions and alterations. The Nagar Palika Parishad on coming to know of the additions and alterations gave notice u/s 147 of the U.P. Municipalities Act, 1916 (hereinafter referred to as the Act) for the purpose of revising the annual valuation of the property and it. invited objections from the petitioner. In paragraph 7 of the writ petition it is mentioned that although the relevant section was not mentioned in the notice but it was u/s 147(1)(d) of the Act. In paragraph 5 of the writ petition it has been stated that in the notice it was mentioned that the assessments would be enhanced from 1.4.1995. The Nagar Palika Parishad by order dated 2nd October, 2001, rejected all the objections of the petitioner. A true copy of the order dated

22.10.2001, has been filed and marked as Annexure-5 to the writ petition. Consequently the petitioner became liable to pay the enhanced House Tax and Water Tax, which was proposed through the notice issued u/s 147(1)(d) of the Act. The grievance of the petitioner is that she is liable to pay the enhanced house tax and water tax in view of the enhancement of the annual letting value w.e.f. 22nd October, 2001 and not for the period prior to it. The annual assessment list, according to the petitioner was authenticated u/s 147(4) of the Act on 22.10.2001. However, respondent No. 1 has issued notice of demand on the basis of the amended annual list retrospectively w.e.f. 1.4.1995. Being aggrieved by the action of the Nagar Palika Parishad demanding the enhanced tax on the basis of the amended list, w.e.f. 1.4.1995, the present writ petition has been filed. In paragraph 14 of the writ petition the petitioner has clarified her case by stating that she has only challenged the recovery on the basis of the illegal demand from retrospective effect. She has further stated that she is not filing the appeal u/s 160 of the Act as it is not adequate remedy available to her.

2. The contesting respondent has filed counter-affidavit on the allegations that the petitioner has alternative remedy by way of appeal u/s 160 of the Act and, therefore, this Court should not hear this petition and the petitioner be relegated to the statutory remedy. On merits, it has been stated that the petitioner has failed to discharge her statutory obligation as she has not informed the Nagar Palika Parishad regarding alterations and constructions made by her. The contesting respondents initiated the proceedings u/s 147 of the Act as soon as they came to know about the alterations/constructions made by the petitioner. The Tax Inspector was deputed for spot inspection who submitted a detailed report dated 11th August, 2000. From the said report it is clear that the petitioner has made new constructions/alterations and has been realizing the rent from the newly constructed shops from a period much earlier than 1995 itself, vide paragraph 9 of the counter-affidavit. In paragraph 11 of the counter-affidavit it has been stated that the petitioner cannot be allowed to take advantage of her own default in not informing the answering respondent about the new constructions, specially in view of the fact that the rent receipts issued by the petitioner clearly demonstrate that she is charging house tax as well as water tax from the tenants in addition to monthly rent and even for a period prior to 1995 itself. Therefore, the respondents are justified in demanding the tax as per enhanced annual value of the building from the year 1995.

3. Heard Sri Prakash Gupta, learned counsel for the petitioner. He submitted that since a limited legal controversy is involved in the present case, therefore, the petitioner should not be relegated to the statutory remedy. The writ petition was admitted by this Court by the order dated 16th August, 2002 and some interim relief was granted. Elaborating the argument it was submitted by the petitioner that in view of sub-clause (4) to Section 147(1) of the Act, the liability to pay the tax on the basis of the enhanced annual value is from the date when the annual list is authenticated under the aforesaid provision.

4. Section 147 of the Act deals with the procedure for the amendment or alteration of the assessment list. The relevant clause (d) is quoted below :

"147. Amendment and alteration of list.-(1) The board may at any time alter or amend the assessment list :

(a)...

(b)...

(c) ...

(d) by revaluing or reassessing any property the value of which has been increased by additions or alteration to buildings; or

(e) ...

(f)...

(g)...

(2) ...

(3) ...

(4) Every alteration made under Sub-section (1) shall be authenticated by the signature or signatures of the person or persons authorised by Section 144, and subject to the result of an appeal u/s 160, shall take effect from the date on which the next instalment falls due."

5. In the present case the petitioner has not disputed the allegations of the alterations and additions made by her to the building. She has also not disputed the fact that such additions or alterations were not made by her prior to the year 1995. u/s 148 of the Act an obligation has been cast upon an owner of the building to give notice to the Board within 15 days from the date of the completion of such building, rebuilding or enlargement or from the date of the occupation of such building whichever date happens first. Under Sub-section (2) of Section 148 a penalty for not giving the notice as required under subsection (1) of Section 148 has been provided. The date of additions and constructions has not been disclosed in the writ petition. It was within the special knowledge of the petitioner. The petitioner is best person to establish the various dates on which additions and alterations were made by her. In the absence of any dispute by her, it is reasonable to draw an inference that the allegations in the notice with regard to date of constructions is correct. She was under the statutory obligation to give the notice of completion of such building within 15 days. The notice dated 5th May, 1995 u/s 143/147 of the Act for enhancement has been annexed as Annexure-3 to the writ petition. In the said notice the water tax and house tax has been proposed at 10%. The said notice was received by the petitioner on 10th May, 1995. The objections have been rejected by the Tax Committee and the said proposal in the notice having become final, in the absence of any challenge, the order rejecting the objections shall relate back to

the date of the notice u/s 143/147 of the Act. We have also perused the objections filed as Annexure-4 to the writ petition to the proposed enhancement. The petitioner had taken only two objections that the tax assessment committee has not been properly constituted and there is no provision to make the assessment w.e.f. 1.10.1994. The committee by its order dated 22nd October, 2001, has approved the proposed annual value of the house at Rs. 65,160. On the facts of the present case as there is no dispute that the additions or alterations etc. were made by the petitioner before the year 1995 and in the notice itself it is mentioned that the proposed assessment will be effective from 1st of April, 1995 (vide paragraph 5 of the writ petition), we find no merit in the aforesaid argument of the learned counsel for the petitioner that the enhanced house tax and water tax cannot be recovered w.e.f. 1.4.1995. A close reading of Sub-section (4) of Section 147 shows that the amendment and alteration of the annual list is final and subject to the result of an appeal u/s 160 of the Act. Admittedly, the petitioner has not preferred an appeal u/s 160 of the Act, therefore, the order passed by the Tax Committee has attained finality and it will relate back to the date of the notice. It is a matter of common knowledge that the Tax Committee will take some time to decide the objections, if any, preferred by the owner. We find no reason to hold that the order of the Tax Committee shall not relate back to the date of the notice. In the present case it was specifically mentioned in the show cause notice itself that the assessments would be enhanced w.e.f. 1st April, 1995. Otherwise it would give chance of dishonesty to the building owners. An owner by manipulating the things may not allow the passing of the final order for a considerable period of time by adopting dilatory tactics or unfair means. We see no logic in the aforesaid argument of the learned counsel for the petitioner otherwise it would give a handle to tax evaders and will cause loss of public exchequer. The tax is on the building. The building in the present case has come into existence prior to 1.4.1995. There is no reason why the petitioner should not pay the tax w.e.f. 1.4.1995. the delay in quantification of tax or assessment of tax will not exonerate or wipe off the tax liability till its determination.

6. Apart from the above, there is no equity in favour of the petitioner. The petitioner could not dare to deny or contest the report of the Tax Inspector that she has charged house tax and water tax from the tenants of the newly constructed building in addition to the rent. The writ court is not made for the tax evaders and for such persons who by legal engineering wants to take undue advantage. The petitioner realized the house tax and water tax from the tenants and she wants to pocket them with the help of Court, such a course is not permissible specifically in the exercise of writ jurisdiction, otherwise it would amount unjust enrichment. The Apex Court in *S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others*, , has held that the courts of law are meant for imparting justice between the parties and the pies should approach the Court with clean hands. The property grabbers, tax evaders, bank loan dodgers and unscrupulous persons from all walks of life find the Court

process a convenient lever to retain the illegal gains indefinitely. The relevant passage is quoted below : -

"The courts of law are meant for imparting justice between the parties. One who comes to the Court, must come with clean hands. We are constrained to say that more often than not, process of the Court is being abused. Property grabbers, tax-evaders, bank loan dodgers and other unscrupulous persons from all walks of life find the Court process a convenient lever to retain the illegal gains indefinitely. We have no hesitation to say that a person whose case is based on falsehood, has no right to approach the Court. He can be summarily thrown out at any stage of the litigation."

7. In the result, we find no merit in the writ petition and the same is liable to be dismissed.

8. The writ petition/is dismissed with costs, accordingly.