

(2001) 04 CAL CK 0009
In the Calcutta High Court

Case No : Civil Order No. 2067 with 2688, 3185, 3186 of 1993

Sree Gopal Banerjee

APPELLANT

Vs

Calcutta Municipal Corporation

RESPONDENT

Date of Decision : 18-04-2001

Acts Referred:

Calcutta Municipal Act, 1951 — Section 183
Constitution of India, 1950 — Article 227

Citation : (2001) 04 CAL CK 0009

Hon'ble Judges : Subhro Kamal Mukherjee, J

Bench : Single Bench

Advocate : Siva Prasad Ghosh, for the Appellant; Alak Kumar Ghosh and Arindam Banerjee, for the Respondent

Final Decision : Allowed

Judgement

Subhro Kamal Mukherjee, J.—The petitioner is the owner of premises No. 30 A, Shibkrishna Daw Lane. Calcutta. Appropriate authority of the corporation assessed the annual valuation of the said premises at Rs. 5,240/- (Rupees five thousand two hundred forty) only with effect from fourth quarter of 1966-67; Rs. 6,210/- (Rupees six thousand two hundred ten) only with effect from third quarter of 1968-69; Rs. 10,746/- (Rupees ten thousand seven hundred forty six) only with effect from first quarter of 1975-76 and Rs. 7,020/- (Rupees seven thousand twenty) only with effect from third quarter of 1980-81.

2. Assessee being aggrieved preferred Municipal Appeal Nos. 50-53 of 1992 in the Court of Small Causes at Sealdah. The learned Judge. Court of Small Causes at Sealdah by the orders impugned directed return of the memorandum of appeal for presentation of the same before proper forum following the rules. The learned Judge held that the Calcutta Municipal Act, 1951 has been repealed with effect from January 4, 1984 and as the order has been passed after the commencement of the said Act, the Court has no jurisdiction to entertain the appeals.

Being agrieved the petitioner has come up with these applications under Article 227 of the Constitution of India.

3. Section 183 of the Calcutta Municipal Act, 1951 contained the provision for appeal to Small Cause Court. The provision runs as under:

183. Appeal to Small Cause Court.? (1) Any person dissatisfied with any order u/s 182 may appeal to the Court of Small Causes having jurisdiction in the place where the land or building, to the valuation of which the objection was made, is situated.

(2) Such appeal shall be presented to such Court of Small Causes within forty five days from the date of the order passed u/s 182, and shall be accompanied by a copy of the order.

(3) An appeal from a decision made by the Court of Small Causes shall lie to the High Court.

(3A) No appeal under this section shall be entertained unless the consolidated rate payable up to the date of presentation of the appeal on the valuation determined?

(a) by an order u/s 182, in the case of an appeal to the Court of Small Causes,

(b) by the decision of the Court of Small Causes, in the case of an appeal to the High Court, has been deposited in the municipal office and such consolidated rate is continued to be deposited until the appeal is finally decided.

(4) The provisions of Parts II and III of the Indian Limitation Act, 1908, (IX of 1908), relating to appeals, shall apply to every appeal preferred under this section.

4. It appears from the perusal of the said provisions that any person being dissatisfied with any order may prefer an appeal to the Court of Small Causes within 45 (forty five) days from the date of the order passed and the appeal should accompany a copy of the order u/s 183 (3). There is a provision of an appeal from a decision made by the Court of Small Causes to the High Court.

5. Mr. Siva Prasad Ghosh, learned Advocate, for the petitioner, argued that in view of the admitted position that the assessments relates to periods prior to coming into operation of the Calcutta Municipal Corporation Act, 1980, the appeals are maintainable before the Court of the Small Causes.

6. On the contrary, Mr. Alak Kumar Ghosh, learned Advocate for the Calcutta Municipal Corporation, refers to Section 179 (1) of the Calcutta Municipal Corporation Act, 1980 and argued that the learned Judge in the lower appellate Court was justified in holding that the appeal was not maintainable before him and the remedy of the petitioner is to approach the Municipal Assessment Tribunal.

7. The said Section 179 (1) of the Calcutta Municipal Corporation Act, 1980 runs

as under:

(1) The annual value of any land or building situated in any ward of the Corporation, which has been determined before and is in force on the date of commencement of this Act, shall remain in force, and shall be deemed to be the annual value for the purpose of assessment of consolidated rate on such land or building under this Act, until a fresh annual valuation is enforced under this Act.

Provided that the annual value of any such land or building, which has been made before but not finally determined on the date of commencement of this Act, shall be determined under the provisions of the Calcutta Municipal Act, 1951 (West Ben. Act XXXIII of 1951) and shall be deemed to be the annual value in force on the date of commencement of this Act.

8. It appears from the perusal of the said provisions that the annual value of any land or building, which has been determined before and is in force on the date of commencement of the Calcutta Municipal Corporation Act, 1980, shall remain in force and shall be deemed to be the annual value for the purpose of assessment of consolidated rate on such land or building under the present Calcutta Municipal Corporation Act, 1980, until a fresh annual valuation is enforced under the present Act. The proviso to Section 179 (1) of the said Calcutta Municipal Corporation Act, 1980 was added by the Calcutta Municipal Corporation (Second Amendment) Act, 1984 and it is provided that the annual value of any such land or building which has been made before, but not finally determined on the date of commencement of the Calcutta Municipal Corporation Act, 1980, shall be determined under the provisions of the Calcutta Municipal Act, 1951 and shall be deemed to be the annual value in force on the date of the commencement of the said new Act.

9. A learned single Judge of this Court in the case of Smt. Shukuntala Gupta and others Vs. State of West Bengal and others, held that "In that view of the matter even if the assessment of the premises in question was made under the provision of Calcutta Municipal Act of 1951, such assessment is deemed to be assessment under the present Act and entries made in the Assessment book on the basis thereof are entries of the Assessment Book made under the present Act. Therefore, amendment of such assessment book on any of the grounds mentioned in S. 192 of the present Act is quite permissible and there is no necessity for taking recourse to fresh annual valuation as provided in Ss. 174 to 190 of the present Act."

10. The admitted position in the cases in hand is that the periods in respect which the assessments have been made are prior to commencement of the Calcutta Municipal Corporation Act, 1980, but the assessments have been made after the commencement of the Act. The reason for the delay in initiating the proceedings are not available on record.

11. In my view, as soon as the valuation was re-determined, a right of appeal of the petitioner to the Small Causes Court arose in accordance with Section 183 of

the Calcutta Municipal Act, 1951. Under the 1951 Act there was a right of appeal against the order of the learned judge of the Small Causes Court before this Court, which cannot be curtailed as sought to be contended on behalf of the Calcutta Municipal Corporation. The test is, in my view, that when the assessment was due; the delay in initiating the steps by the corporation for periodic assessments cannot take away the right of appeal as provided under the Calcutta Municipal Act, 1951. The right of appeal is a substantive right and the said right under the old Act is saved even after repeal by the new Act as under the repealing Act such right was never taken away. The contention that has been raised before this Court by the Municipal Corporation is that as the assessments have been completed after coming into operation of the Calcutta Municipal Corporation Act, 1980, the appeal, if any, should be filed before the Municipal Assessment Tribunal is, thus, cannot be accepted as that will amount to curtailment of right of appeal before this Court u/s 183 of the Calcutta Municipal Act, 1951.

12. Accordingly, the applications are allowed. Orders impugned are set aside. The learned Judge, Small Causes Court at Sealdah is directed to dispose of the Municipal Appeal Nos. 50-53 of 1992 in accordance with law and as expeditiously as possible. In view of the long pendency of the appeals I direct the learned trial Judge to dispose of the appeal within three months from the date of communication of this order to him.

13. I make it clear that I have not gone into the merits of the case touching valuation point and I have only decided the question of jurisdiction.

14. There will be no order as to costs. Applications allowed.