(2000) 07 KAR CK 0050

In the Karnataka High Court

Case No : Writ Appeal No. 623 of 2000

Sri Durga Enterprises	APPELLANT
Vs	
The Commissioner, Bangalore Mahanagar Palika, N.C. Circle and Another	RESPONDENT

Date of Decision : 10-07-2000

Acts Referred:
Karnataka Municipal Corporations Act, 1976 — Section 147

Citation : AIR 2000 Kar 399 : (2001) 2 KarLJ 174 : (2000) 3 KCCR 2122

Hon'ble Judges : Ashok Bhan, Acting C.J.;R. Gururajan, J

Bench : Division Bench

Advocate : Sri P.A. Bhat, for the Appellant; Sri Ashok Haranahally, for the Respondent

Judgement

Ashok Bhan, Actg. C.J.

1. The short point for consideration in this appeal is as to whether the Special Notice enhancing the annual value of the appellant''s property issued by the Corporation of the City of Bangalore (for short, ''Corporation'') is in violation of the statutory provisions and violation of the principles of natural justice and, if so, to what effect.

2. Writ petitioner-appellant (for short, ''the appellant'') is a partnership concern carrying on the business of Boarding and Lodging at Nos. 40 and 41, M.G. Road, Bangalore, for the last 25 years. The appellant was assessed to property tax by the Corporation for the above premises under the Karnataka Municipal Corporations Act, 1976 (for short, ''the Act'') from time to time on the annual letting value. Taxes were paid in terms of the demand. The revised annual value for the premises was Rs. 3,51,000/-. For the assessment year 1999-2000, the appellant had paid property tax on the annual letting value of Rs. 3,51,000/- on 18-7-1999 and the respondents issued acknowledgement in the month of September 1999, which have been placed on records as Annexure-A and A-1 respectively to the writ petition.

3. As per the averments made, the appellant had neither made any addition to the built-up area nor had he constructed anything which could result in addition to the built-up area. For the purpose of business expediency, the appellant had renovated the rooms by changing the linens, pillows, beds, bathroom tiles etc. Appellant had increased the tariff by 20% over and above what was being charged earlier.

4. Corporation issued notice u/s 147 of the Act read with Rules 8 and 9 of Schedule III, Part II of the Act, proposing to enhance the annual value from Rs. 3,51,000/- to Rs. 36,16,560/- with effect from 1-4-1999. The built-up area and the rate per sq. ft. has been indicated in the notice, but it is silent with regard to the reasons for enhancement. Appellant being aggrieved against the issuance of the notice, filed writ petition inter alia stating that as the appellant had not made any addition to the built-up area, the Corporation could not enhance the annual value; that the notice fails to give reasons for enhancement and therefore the same was liable to be quashed being in violation of the specific provisions of the Act and the principles of natural justice; that in the absence of the reasons, it was not possible for the appellant to file objections to the notice. For this, reliance was placed on a Single Judge judgment of this Court in the case of Seshagiri Rao C.N. v Commissioner, Bangalore City Corporation. Another ground taken is that the enhancement could not be made retrospectively i.e., with effect from 1-4-1999.

5. Writ petition was rejected by the Single Judge holding that the appellant had the opportunity to file objections and the objection regarding absence of reasons could also be raised as an objection to the proposition notice issued u/s 147 of the Act. Single Judge declined to interfere with the impugned order and the writ petition was rejected. Aggrieved against the same, present appeal has been filed.

6. In the appeal, notice was issued. Counsel appearing for the Corporation has placed on record the Note and Order relating to the revision of tax in respect of property Nos. 40 and 41, M.G. Road, Bangalore, Ward No. 76. The Note simply says that as the appellant had enhanced the rent for the rooms ranging from Rs. 45/- to Rs. 300/- to Rs. 75/- to Rs. 380/- and the market value of the property could be revised to Rs. 5/- per sq. ft. After recording the built-up area of the property in question and after the discussion, it was resolved to propose revision of the annual value from Rs. 3,51,000/- to Rs. 36,16,560/-.

7. Arguments which were advanced before the Single Judge have been taken up before us as well.

8. The annual letting value of the building in dispute for the earlier assessment year had been fixed at Rs. 3,51,000/- per annum, whereas the annual value in the proposed assessment has been enhanced to Rs. 36,16,560/-. No reasons have been assigned, though there is a claim set out in the notice with the following words:

"Reasons for variations".

9. Section 147 of the Act provides that the Rules and Tables embodied in Schedule III shall be read as part of this Chapter. This Chapter means, Chapter X of the Act. Rule 9 reads as under:

"9. In every case in which between one general revision and another, Commissioner assesses any property for the first time or increases the assessment on any property otherwise than in consequence of a general enhancement of the rate at which the property tax is leviable, the Commissioner shall intimate by a special notice to the owner or occupier of such property that a petition for revising the assessment will be considered if it reaches the Corporation office within thirty days from the date of service of such notice".

A reading of this rule makes it clear that in the case of a special notice proposing to enhance the annual value otherwise than in consequence of a general revision of the rate at which the property tax is leviable, the Commissioner has to intimate the owner or occupier of such property that a petition for revising the assessment will be considered if it reaches the Corporation office within 30 days from the date of service of such notice. It is clear from the reading of Rule 9 that the authority shall afford an opportunity to the owner or occupier of the premises concerned to offer objections to any proposed enhancement of property tax. The column "Reasons for variations" is intended to afford a guidance to the person likely to be affected in regard to the reasons on the basis of which enhancement has been proposed. In the absence of any reason, it would become difficult for any assessee to raise objections to the proposed enhancement. Special notice was not a general revision contemplated under the Act, but a revision for cogent reasons. In the tax laws, if the proposed action is adversely affecting the tax-payer, the revenue should give the reason for the adverse action. Statute provides that in a special notice, the authority has to indicate the reasons for variation. The purpose of providing this column in the notice is to afford an opportunity to the party concerned to reply to the reasons stated in the notice. If the reasons are not reflected in the notice itself, it would result in denial of proper opportunity and the administrative action would be in violation of the principles of natural justice. In Seshagiri Rao''s ''case, supra, in similar circumstances, this Court had accepted the writ petition and quashed the impugned notice leaving it open to the Competent Authority of the Corporation to issue a fresh notice giving reasons in support of the proposed enhancement of property tax. The notice issued to the appellant is liable to be quashed on this short ground. We do not propose to go into the other points raised in the writ petition and leave them open to be raised in any subsequent proceedings, if the situation so demands.

10. For the reasons stated above, we accept this appeal, set aside the order of the Single Judge and quash the notice at Annexure-B on the ground that the authorities had failed to indicate the reasons in the notice for variation of the annual letting value thereby denying the appellant proper opportunity to take objections to the proposed enhancement. It is made clear that it would be open

to the Competent Authority of the Corporation to issue a fresh notice giving reasons in support of the proposed enhancement of the annual rental value. In case, such a notice is issued, the appellant would be at liberty to raise objections including the objections which were raised in writ petition and left open by us.

