(2001) 09 CAL CK 0053

In the Calcutta High Court

Case No : G.A. No''s. 1539 and 1765 of 2001, A.P.O.T. No''s. 210 and 242 of 2001 and W.P. No''s. 2353 and 2354 of 2000

Subrata Basu Mullick APPELLANT

Vs

State of West Bengal and Others RESPONDENT

Date of Decision : 12-09-2001

Acts Referred:

Calcutta Municipal Corporation Act, 1980 — Section 184(3), 184(4), 188, 189, 189(6)
Constitution of India, 1950 — Article 226

Citation : (2001) 3 CALLT 478 : (2002) 1 ILR (Cal) 273

Hon'ble Judges : Altamas Kabir, J;Alok Kumar Basu, J

Bench : Division Bench

Advocate : Jayanta Mitra and Kamal Krishna Manna, for the Appellant; Ashoke Das Adhikary, for the Respondent

Final Decision : Dismissed

Judgement

A. Kabir, J.—These two appeals and the connected stay applications have been taken up together for consideration, since common questions of fact and law are involved.

2. There will be an order in terms of prayer (a) in respect of both the stay applications.

3. The appellant/petitioner in these two appeals acquired by inheritance premises No. 44/3. Mahatma Gandhi Road, Calcutta-700 009, which is the subject matter of A.P.O.T. No. 210 of 2001, G.A. No. 1539 of 2001, as also premises No. 42, Mahatma Gandhi Road, Calcutta-700 009, which is the subject matter of A.P.O.T. No. 242 of 2001 and G.A. No. 1765 of 2001. The two aforesaid premises were acquired by late Santo Chandra Mullick, the father of the appellant/petitioner from one Sri Kali Gopal Ghosh and one Sri Ashes Kumar Mitra by a registered Deed of Transfer executed on 27th September, 1983. According to the appellant/petitioner on the death of Santo Chandra Mullick he inherited the two aforesaid premises. It is the specific case of the appellant/petitioner that premises No.

44/3, Mahatma Gandhi Road, Calcutta-700009, had been let out to the predecessor-in-Interest of the respondent No. 9 more than 70 years ago and that the said respondent No. 9 was in occupation of the entire premises at a monthly rent of Rs. 350/-. payable according to the English calendar. Similarly, premises No. 42, Mahatma Gandhi Road, Calcutta-700 009, had been let out in favour of respondents No. 9 to 14, more than 50 years ago and the said respondents were occupying the entire premises at a monthly rent of Rs. 500/-. payable according to the English calendar. It is also the case of the appellant/petitioner that since the tenants in both the premises had failed to pay the monthly rents, the appellant/petitioner had to institute two separate suits, being Ejectment Suit No. 755 of 2000 and Ejectment Suit No, 295 of 1997, which were pending disposal in the Small Cause Court at Calcutta and the City Civil Court at Calcutta.

4. The appellant/petitioner appears to have been served with two separate sets of notices under Sections 184(3) and 184(4) of the Calcutta Municipal Corporation Act, 1980, by the respondent No. 5 demanding payment of rates and taxes in respect of the two premises for the period commencing from the 4th quarter of 1989-90 and 4th quarter of 1995-96 based on the Annual Valuation of Rs. 28,080/- in respect of premises No. 44/3, Mahatma Gandhi Road, Calcutta-700 009. and on the basis of the annual Valuation of Rs. 30,050/- and 31,050/-. respectively. In respect of premises No. 42, Mahatma Gandhi Road, Calcutta-700 009.

5. According to the appellant/petitioner on receipt of the said notices the appellant/petitioner appeared before the Hearing Officer and explained that the appellant/petitioner was receiving only a sum of Rs. 350/- per month by way of rent from the tenants in respect of premises No. 44/3, Mahatma Gandhi Road, Calcutta-700 009, and a sum of Rs. 500/- by way of monthly rent from the tenants of premises No. 42, Mahatma Gandhi Road, Calcutta-700 009. It was also the case of the appellant/petitioner that the said tenants had sublet the premises and were enjoying large rents from the sub-tenants while not even paying the monthly rents to the appellant/ petitioner. According to the appellant/ petitioner the Hearing Officer adjourned a decision in the matter and referred the matter to his superior authorities. Thereafter, all of a sudden the appellant/ petitioner was served with the said notices demanding payment of rates and taxes on the enhanced valuation in respect of both the premises.

6. Appearing in support of the two appeals and the connected applications for stay, Mr. Jayanta Mitra, learned Advocate, submitted that the Annual Valuation of premises No. 44/3, Mahatma Gandhi Road, Calcutta-700 009, had been arbitrarily enhanced from Rs. 2,165/- to Rs. 28,080/-and the Annual Valuation for premises No. 42, Mahatma Gandhi Road, Calcutta-700 009, was enhanced from Rs. 3642/- to Rs. 30,050/-. with effect from the 4th quarter of 1989-90 and Rs. 31,050/- with effect from the 4th quarter of 1995-96, without taking into consideration the actual rent received by the appellant/petitioner from his tenants.

7. Mr. Mitra also submitted that in the notices Issued to the appellant/ petitioner, no reason had been given for enhancement of the Annual Valuation to such a large extent when there had been no change in the amount of monthly rents received by the appellant/petitioner from his tenants in respect of. both the premises. Mr. Mitra also urged that when the matter was fixed for hearing on 16th August, 2000, a prayer for adjournment had been made on behalf of the appellant/petitioner, who had suffered a bereavement in his family and was not in a position to produce all the relevant documents and rent bills on the said date. Mr. Mitra submitted that despite such prayer for adjournment the Hearing Officer proceeded with the hearing and thereafter passed the two arbitrary orders of assessment of the Annual Valuation of the two premises which were challenged by the appellant/petitioner by way of two separate writ petitions before the learned single Judge. The learned single Judge disposed of the writ petition relating to premises No. 42, Mahatma Gandhi Road, Calcutta-700 009 (W.P. No. 2354 of 2000) by his order dated 8th January, 2001, whereby the learned Judge recorded that as there was a provision for appeal against the order of the Hearing Officer, the appellant/petitioner should prefer an appeal before the appropriate forum in respect of the said order.

8. A similar order was passed on 23rd March, 2001. In respect of matter relating to premises No. 44/3, Mahatma Gandhi Road, Calcutta-700 009 (W.P. No. 2353 of 2000). Mr. Mitra submitted that these two appeals had been preferred against the said two orders of the Hearing Officer in respect of the said two premises. Mr. Mitra submitted that the Hearing Officer ought to have assessed the Annual Valuation of the two premises on the basis of the monthly rents actually received by the appellant/petitioner, and , in any event, he ought not to have decided the matter ex parte in the absence of the appellant/petitioner who had reasonable grounds to pray for adjournment on the date of hearing. Mr. Mitra urged that since the appellant/petitioner had been denied a proper opportunity of representing his case before the Hearing Officer, the Hearing Officer should be directed to re-consider the matter after giving the appellant/petitioner a reasonable opportunity for hearing.

9. In support of his aforesaid submissions Mr. Mitra, firstly referred to a single Bench decision of this Court in Paresh R. Kampani v. State of West Bengal reported in 1997(2) CLJ Page 262, wherein since no reason had been given by the Hearing Officer in fixing the reasonable rent of the premises at Rs. 100/- per month the learned Judge was of the view that the writ application against such order of the Hearing Officer was maintainable even though the writ petitioner had an alternative remedy by way of appeal u/s 189 of the Calcutta Municipal Corporation Act, 1980, against an order of valuation made u/s 188 thereof. Mr. Mitra submitted that even in appeal from the order of the learned single Judge, the Division Bench held that the learned single Judge had rightly held that the order of the Hearing Officer was not a reasoned order and dismissed the appeal preferred by the Calcutta Municipal Corporation on the said ground.

10. Mr. Mitra urged that the same principle would apply to the facts of the present case since no reason had been given by the Hearing Officer in enhancing the Annual Valuation.

11. Mr. Mitra then submitted that as had been held by the Hon''ble Supreme Court in Lt. Col. Lt. Col. P.R. Chaudhary (Retd.) Vs. Municipal Corporation of Delhi, , while fixing the annual Valuation the size, situation, locality condition of the premises and amenities were to be considered as also the annual rent which the owners of the premises could reasonably expect if the premises were let out to a hypothetical tenant. Mr. Mitra also referred to the decision of the Hon''ble Supreme Court in the case of Food Corporation of India Vs. Municipal Committee, Jalalabad and Another, , wherein while considering the fixation of the annual Value under the Punjab Municipal Act. 1911, the Hon''ble Supreme Court was a the view that the agreed rate was the fair rent on the basis of which the Annual Valuation could be assessed. Mr. Mitra submitted that without directing the appellant/petitioner to prefer an appeal against the arbitrary assessment of the Annual Valuation of the two premises done by the Hearing Officer, the learned single Judge ought to have set aside the Impugned orders of assessment and should have directed the Hearing Officer to consider the matter de novo after giving the appellant/petitioner an opportunity of placing his case along with all relevant documents.

12. Opposing the two appeals and the applications for stay filed therein, Mr. Ashoke Das Adhikary, learned Advocate, contended that it is now well-settled by the Hon''ble Supreme Court in the case of Shyam Kishore and others Vs. Municipal Corporation of Delhi and another, . wherein the Hon''ble Supreme Court was considering a provision similar to that in the Calcutta Municipal Corporation Act relating to appeals against orders of assessment passed by the Hearing Officer under the Delhi Municipal Corporation Act, 1957, that while an appeal could be filed and/ or even admitted against the order of assessment of the Hearing Officer, the same could not be heard or disposed of without redeposit of the disputed property tax. Mr. Das Adhikary submitted that the relevant provision of the Delhi Municipal Corporation Act, 1957. namely, Section 170(b) was held to be intra vires and it was also observed that the District Judge had no Jurisdiction to waive the condition of deposit or stay collection of the tax pending disposal of the appeal before him. Mr. Das Adhikary also referred to a Bench decision of this Court in Calcutta Municipal Corporation and Ors Vs. M/s. Bala Bestos India Ltd,, . wherein while considering the provision of Sub-section (6) of Section 189 of the Calcutta Municipal Corporation Act, 1980, the Devision Bench observed that the remedy of the writ petitioner was to avail of the statutory alternative remedy of preferring an appeal before the Municipal Assessment tribunal as contemplated under Sections 189 and 189(6) of the Calcutta Municipal Corporation Act, 1980.

13. Mr. Das Adhikary also referred to a single Bench decision of this Court in Killa Investment Pvt. Ltd. and Anr. v. Calcutta Municipal Corporation, reported in 1998 CHN 333, wherein having regard to the provisions of Section 189 and 189(6) of

the Calcutta Municipal Corporation Act, 1980, the learned single Judge declined to exercise his discretionary powers under Article 226 of the Constitution.

14. Mr. Das Adhikary also urged that u/s 193 of the aforesaid Act, the owner of a premises was primarily liable for payment of the municipal rates and taxes and u/s 194 provision had been made where a premises had been sublet for the person on whom the rates and taxes was leviable to recover from his tenant the difference between any sum recovered under the Act and the amount of consolidated rate on such land or building which would be leviable at the annual valuation of such land or building were calculated on the basis of rent payable to the tenant by his sub-tenant.

15. It was lastly urged by Mr. Das Adhikary that several adjournments had been granted in the proceedings by the Hearing Officer and only after such several adjournments had been granted did the Hearing Officer finally decide to determine the Annual Valuation in the absence of the appellant/ petitioner on the basis of the materials available to him on the basis of the inspections conducted in respect of the two premises.

16. Mr. Das Adhikary urged that the order of the Hearing Officer was a reasoned order based on cogent materials which did not warrant Interference in these writ petitions in view of the remedy available u/s 189 of the Calcutta Municipal Corporation Act, 1980.

17. Having considered the submissions made on behalf of the respective parties we are of the view that no interference is called for with the orders passed by the learned single Judge since the issue Involved in these appeals have been set at rest by the Hon''ble Supreme Court in Shyam Kishore''s case (supra).

18. From the records of the hearing as produced by Mr. Das Adhikary it will appear that the Hearing Officer took into account the Inspection Report of the Inspector XIV dated 9th June, 2000, while determining the Annual Valuation of the premises in question. The submission made on behalf of the appellant/ petitioner that no reason had been given by the Hearing Officer VIII while fixing the Annual Valuation does not appear to be justified. Since the appellant/ petitioner is aggrieved by the order passed by the Hearing Officer, his remedy is by way of a statutory appeal u/s 189 of the Calcutta Municipal Corporation Act, 1980, as has been consistently held by this Court.

19. The appellant/petitioner also has his remedy u/s 194 of the aforesaid Act for recovery of the differences of the rates and taxes paid from his tenants on account of the rents collected by the tenants from the persons said to have been inducted by the tenants in the premises in question.

20. For the reasons aforesaid we are not Inclined in these appeals to go into the question as to what would be the standard for determining the Annual Valuation of the said premises.

21. The appeals and the connected applications for stay are accordingly

dismissed, but the time for preferring appeal in terms of the leave granted by the learned single Judge shall stand extended by a month from date.

There will be no order as to costs.

All parties to act on a signed copy of the operative portion of this judgment on the usual undertakings.

A.K. Basu, J.

22. I agree.

23. Appeal dismissed

