

(2002) 08 CAL CK 0014
In the Calcutta High Court
Case No : Writ Petition No. 1334 of 2002

Surendra Kumar Jalan and Others

APPELLANT

Vs

Calcutta Municipal Corporation and Others

RESPONDENT

Date of Decision : 08-08-2002

Acts Referred:

Calcutta Municipal Corporation Act, 1980 — Section 189, 190, 191, 192

Citation : AIR 2002 Cal 237

Hon'ble Judges : Bhaskar Bhattacharya, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Bhaskar Bhattacharya, J.—By this writ application the writ petitioners, some of the owners of Bardan Market, have prayed for direction upon the Calcutta Municipal Corporation to dispose of the application for review filed u/s 192 of the Calcutta Municipal Corporation Act, 1980 ("Act").

2. The following facts are not in dispute.

A notice u/s 184(3) of the Act was served upon the petitioners proposing enhancement of annual valuation of their respective shops. Pursuant to such notice, the petitioners filed written objection disputing the proposed annual valuation and ultimately the Hearing Officer-III passed an order determining fresh annual valuation.

3. Being dissatisfied, the petitioners preferred appeal before the Municipal Assessment Tribunal but for non-compliance with the necessity of law of depositing current amount at the enhanced rate as provided in Section 189(6) of the Act, the appeal was not disposed of on merit and the same abated. Subsequently, the petitioners preferred a writ application before this court being W. P. No. 2107 of 2001 complaining that some other shops of the same market have been assessed at a lower rate by Assessment Tribunal on an appeal preferred by those owners and thus the Municipal authorities have discriminated

the petitioners by claiming taxes at a higher rate.

4. The said writ application was ultimately dismissed by Barm Ghosh J., thereby holding that in case of a judicial or quasi judicial pronouncement the question of discrimination did not arise and until the order passed by Hearing Officer was set aside by appropriate forum the same was binding. Ultimately, His Lordship granted liberty to the petitioners to discharge their obligations under law and to make the appeal prefect. If at all any such appeal had been filed, and three months time was given for disposal of the appeal if the petitioners deposited the current amount as required u/s 189(6) of the Act. His Lordship further held that the said order of dismissal of the writ application would not prevent the petitioners from approaching the adjudicator in accordance with law to have a review of his adjudication, if that is permissible under law. Further liberty was given to the petitioners to approach superior authority seeking revision of the adjudication, if permissible.

5. The petitioners complain that pursuant to such liberty given by Barin Ghosh. J., they filed an application before the Municipal Corporation for review of the order of the Hearing Officer on the ground that the appellate tribunal has assessed some of the shops of the same building at the flat rate Rs. 1.50 paise per sq. ft. whereas the shops of the petitioners have been valued at a higher rate.

6. Since the Municipal Commissioner has not passed any order on such application of the petitioner, they have come up with the instant writ application.

7. The learned counsel appearing on behalf of the Corporation has opposed the application contending that no application for review is permissible under law for reconsideration of order passed by the Hearing Officer and as such the Municipal authority is under no obligation to dispose of the application filed by the petitioners.

8. The learned counsel appearing on behalf of the petitioners on the other hand strongly relies upon the provisions contained in Section 192 of the Act and submits that his clients are entitled to maintain an application for review before Municipal Commissioner notwithstanding the fact that their appeal has been dismissed for non-compliance of the provision contained in Section 189 (6) of the Act.

9. Therefore, the sole question that arises for determination in this writ application is whether Municipal Commissioner has power to review an order passed by Hearing Officer enhancing valuation of a property in exercise of powers conferred u/s 192 of the Act.

10. In order to appreciate the aforesaid question involved in this writ application, it will be necessary to examine the provisions contained In Section 192 of the Act which are quoted below :

"192. Amendment of Municipal Assessment Book. (1) Notwithstanding anything contained in Section 190 the Municipal Commissioner may, at any time, amend

the Municipal Assessment Book-

- (i) by inserting therein the name of any person whose name ought to be inserted; or
- (ii) by inserting therein any land or building previously omitted together with valuation thereof; or
- (iii) by striking out the name of any person or any land or building not liable for the payment of consolidated rate thereupon; or
- (iv) by increasing or decreasing for adequate reasons the amount of any annual value and of the consolidated rate thereupon; or
- (v) by making or cancelling any entry exempting any land or building from liability to consolidated rate; or
- (vi) by altering the assessment on the land or building which has been erroneously valued or assessed through fraud, mistake or accident, in which case such alteration shall take effect from the date such erroneous valuation or assessment took effect; or
- (vii) by inserting or altering an entry in respect of any building, erected, re-erected, altered or added to. after the preparation of the assessment book, in which case such insertion or alteration shall take effect from the date such erection, re-erection, alteration or addition was made.

(2) (1) a notice of not less than fifteen days shall be given to the owner or to the lessee, sub-lessee or occupier of the land or building of the place, time and date on which any amendment of the Assessment Book is intended to be made under this Section.

(ii) Any person on whom a notice of amendment is served under this sub-section may file an objection in writing to the Municipal Commissioner at least three days before the date fixed in the notice and the provisions of Section 186 to 190 shall apply, mutatis mutandis, to such objection."

11. After going through the provisions contained in the act, I find that after a revaluation has been made by the Hearing Officer there is a provision of appeal before Tribunal only at the instance of owner or person liable to payment of consolidated rate. The order passed by the Tribunal shall be final as provided in Section 190. Section 191 of the Act provides that annual valuation of land and buildings as determined u/s 190 shall be entered into the Municipal Assessment Book which shall be maintained in such form and manner as may be prescribed. The said Section gives power to the Municipal Commissioner to make such corrections in the Municipal Assessment Book as may be necessary to incorporate changes required to be made in accordance with the provisions of this Act and for removal of patent error or defect on the face of records. Section 192(1) says that notwithstanding anything contained in Section 190, the Municipal Commissioner may at any time amend the Municipal Assessment Book

under the circumstances mentioned in various sub-clauses of the said sub-section. Sub-clause (iv) of Section 192(1) authorises the Commissioner to amend the Municipal Assessment Book by increasing and decreasing the amount of any annual value and of the consolidated rate payable thereupon for adequate reason. The question is whether such amendment decreasing the value assessed by the hearing Officer can be made by the Municipal Commissioner at the instance of an assessee who has either preferred appeal against the order of Hearing Officer and lost or failed to prefer any such appeal.

12. In this connection the learned counsel by the petitioner has referred to an unreported decision of a Division Bench of this Court in the case of Sashi Prova Agarwalla v. C. M. C. in A.P.O.T. No. 315 of 1996. It appears from the certified copy of the order dated July 4, 1996 that the said Division Bench declined to interfere with the order passed by the learned trial Judge refusing to entertain a writ application on the ground that the petitioner had an alternative remedy either by way of an appeal or by an application before the Municipal Commissioner in terms of Section 192 of the Act.

13. In my view, the said decision cannot be cited as a precedent in support of a proposition of law that a review application u/s 192 of the Act is maintainable against an order passed by Hearing Officer enhancing annual valuation because such point was not specifically argued before the Division Bench and the aforesaid observation was merely a casual observation. In this connection it will be worthwhile to refer to the following passage from Salmond on Jurisprudence, Twelfth Edition by P.J. Fitzgerald at pages 153-54 ;

"A decision passes sub silentio, in the technical sense that has come to be attached to that phrase : when the particular point of law involved in the decision is not perceived by the Court or present to its mind. The court may consciously decide in favour of one party because of Point A, which it considers and pronounces upon. It may be shown, however, that logically the Court should not have decided in favour of a particular party unless it also decided Point B in his favour; but Point B was not argued or considered by the Court. In such circumstances, although Point B was logically involved in the facts and although the case had a specific outcome, the decision is not an authority on Point B. Point B is said to pass sub silentio."

14. The learned advocate for the petitioners has also relied upon the decision of a Division Bench in the case of Thermofrize Insulation Ltd. v. State of West Bengal reported in 1997 (1) CHN 209 : (1997 AIHC 1614). While allowing an appeal preferred against an order dismissing a writ application challenging an assessment of valuation, the Division Bench in paragraph 17 of the judgment made an observation that a party dissatisfied with the assessment of hearing Officer can prefer either an appeal in terms of Section 189 and also in certain cases file an application for review u/s 192 thereof. In my view, the aforesaid observation of the Division Bench was obiter dictum. In the fact of the said case such observation was not necessary for disposal of the said appeal. Therefore,

the said observation cannot be cited as an authority for the purpose of showing that an application for review is permissible u/s 192 at the instance of assessee. Moreover, the said point was neither argued nor considered by the Court in detail and as such passes sub silentio as mentioned earlier.

15. After hearing the learned counsel for the parties and after going through the scheme of assessment of valuation as provided in the Act. I find that being dissatisfied with an adjudication made by a Hearing Officer, only remedy available to an assessee is that of an appeal u/s 189 of the Act before Tribunal on compliance of the formalities mentioned therein. The decision of the Tribunal shall be final and annual valuation so determined shall be entered into the Municipal Assessment Book. Once such valuation has been entered into the Municipal Assessment Book as provided u/s 191, the Municipal Commissioner alone can come up with a proposal to amend the said Municipal Assessment Book as provided in Section 192. Such power has been conferred upon the Municipal Commissioner for doing complete justice in case of any mistake, error, fraud or subsequent events and such amendment can be made only after giving notice to the owner/lessee/sub-lessee or occupier of the building. But once objection is raised by such owner/lessee/ sublessee/occupier to the proposed amendment, the Municipal Commissioner loses his authority to amend and in such a case he is required to send the objection to the proposed amendment to the Hearing Officer for adjudication and thereafter the provisions contained in Section 186 to 189 will apply mutatis mutandis as enjoined by Section 192(2)(ii) of the Act. But if no objection is raised, the Municipal Commissioner can himself amend the Municipal Assessment book.

16. Therefore, it is apparent that power of amendment as provided in Section 192 has been given to the Municipal Commissioner because against an order of Hearing Officer assessing revaluation there is no provision of appeal at the instance of Corporation and if for any reason a wrong order is passed by Hearing Officer due to some mistake, fraud or accident or there is a mistake in the assessment list prepared, in such a case, the Municipal Commissioner can take step for rectification of such mistake by initiating proceeding u/s 192 of the Act and once Section 192 is resorted to, the assessee is given a fresh right to oppose of such amendment and even against final adjudication, a right of appeal before Tribunal is conferred. Thus, it is clear that the legislature never intended that an assessee will have right of review before Municipal Commissioner against an order of Hearing Officer by not taking recourse to Section 189 of the Act. Section 192 can be invoked even after Tribunal has disposed of an appeal in favour of assessee but in all cases the Municipal Commissioner is required to show adequate reason for increasing or decreasing the value in the proposal of amendment as required u/s 192(3)(iv) of the Act. The law having laid down a specific time limit for preferring appeal but not having specified any time limit for invoking Section 192 and at the the same time no right having given to the Corporation to prefer appeal against order of Hearing Officer u/s 189, it necessarily follows that Section 192 can be invoked only by the Municipal

Commissioner of its own motion and not at the instance of assessee. it is now settled law that right of review is a creature of statute and such right must be bestowed specifically by statute. Here, the statute has not given any right of review of an assessee against the order of Hearing Officer, but only a right of appeal as mentioned in Section 189 of the Act; the Corporation on the other hand is not favoured with such right but once the Assessment Book is prepared in accordance with the adjudication in terms of Section 186 to 189 or on the basis of unopposed assessment list, the Municipal Commissioner has been invested with the power to propose amendment of such assessment book and to convey such proposal to the owner/lessee/sub-lessee/occupier before proceeding further and such proposal can be moved only under the Circumstances mentioned in Section 192. Thus, this is not a provision of review of the order of Hearing Officer by the Municipal Commissioner himself on merit. The learned counsel for the petitioner strenuously tried to convince me that Sub-clause (iv) of Section 192(1) gives ample power to the Municipal Commissioner to decrease the valuation for adequate reason. In my view, once there has been an adjudication before Hearing Officer on the objection of the assessee, such assessee cannot pray for review of such order by taking recourse to Section 192(1)(iv). The proposal for decreasing the valuation can be given by the Municipal Commissioner under other circumstances not covered by one where there has already been an adjudication at the instance of assessee before Hearing Officer or Tribunal.

17. The learned counsel appearing on behalf of the petitioners In this connection has relied upon several decisions in support of his contention that when a statute enables an authority to rectify any error of its own motion, any interested party may draw attention of such authority to such mistake and in such a case, such party can also compel the authority to exercise such power.

18. In the case of State of Uttar Pradesh Vs. Jogendra Singh, , the question was whether the word "may" appearing in Rule 4(2) of the U.P. Disciplinary Proceedings (Administrative Tribunal) Rules, 1947 should be interpreted as "shall". The Supreme Court after considering the said provision held that the word "may" in the context of the rule should be read as "shall" and was obligatory in nature. I fail to understand how the said decision can have any application in the fact of the present case.

19. In the case of Commissioner of Police, Bombay Vs. Gordhandas Bhanji, , the question was whether rule 250 framed u/s 22 of the City of Bombay Police Act can be enforced at the instance of a party, Rule 250 says that the Commissioner shall have power in his absolute discretion at any time to cancel or suspend any licence which had been granted under those Rules. The Supreme Court held that the discretion vested under rule 250 has been conferred upon him for public reason involving convenience, safety, morality and welfare of the public at large and enabling power of this kind conferred for public reasons and for public benefit is coupled with a duty to exercise it when the circumstances so demand.

20. In the case of Tara Prasad Singh and Others Vs. Union of India (UOI) and Others, , the aforesaid principle has been quoted with approval.

21. In the case of L. Hirday Narain Vs. Income Tax Officer, Bareilly, , the Supreme Court was considering the scope of Section 35 of the Income Tax Act, 1922 authorising Income Tax Officer to rectify mistake. In such a context, it was held that if a statute invests a public officer with authority to do na act in a specific set of circumstances, it is imperative upon him to exercise his authority in a manner appropriate to the case when a party interested and having a right to apply moves in that behalf and circumstances for exercise of authority which shown to exist.

22. In the case of State v. I.K. Nangia reported in 1979 SC 1977, the principle laid down by the House of Lordes in the case of Julius v. Bishop of Oxford in (1880) 5 AC 214 referred to by Supreme Court in the case of The State of Orissa Vs. Madan Gopal Rungta, was quoted with approval.

23. In all the aforesaid decisions the authority concerned had suo motu power of review its own decision and in such circumstance it was held that a party to such decision could ask the authority to review by drawing attention of the authority concern to the mistakes. Those decisions could apply to the present case only if the Municipal Commissioner had the authority to review the decision of the Hearing Officer or the Tribunal. Here, I have already pointed out that the Act does not authorize Municipal Commissioner to adjudicate the objection raised by an assessee against a proposed valuation by him but such objection is decided by the Hearing Officer and thereafter by Tribunal in appeal. Thus, It is preposterous to contend that the order passed by the Hearing Officer or Tribunal can be reviewed by the Municipal Commissioner at the instance of the assessee. The provision contained in Section 192 is merely a remedial one available to the Municipal commissioner alone. Therefore, the Municipal Commissioner rightly ignored the application for review of the order of Hearing Officer determining objection against proposed valuation.

24. Moreover, the fact that subsequently in a different case involving some other shops of the same market the Tribunal on the basis of materials on record has assessed the valuation at a lower rate, cannot afford a ground of review of the order of Hearing Officer. It is now settled law that even In a case where a decision on a question of law on which the judgment of a court is based has been reversed or modified by the subsequent decision of a superior court in any other case, such fact does not constitute a ground of review. (See explanation added to Order 47 Rule 1 of the Code of Civil Procedure).

25. Thus, if the plea taken by the petitioners is accepted there will no end of litigation.

26. The writ application is therefore devoid of any substance and is dismissed accordingly.

27. No costs.