(1998) 01 AHC CK 0057

In the Allahabad High Court

Case No : Writ Petition No. 90 (M/S) of 1998

Taj Mahal Hotel, Lucknow APPELLANT

Vs

Lucknow Nagar Nigam and others RESPONDENT

Date of Decision : 13-01-1998

Acts Referred:

Constitution of India, 1950 — Article 226
Limitation Act, 1963 — Section 5
Uttar Pradesh Municipal Corporation Act, 1959 — Section 210, 213, 213(3), 472, 472(2)

Citation : (1998) 2 AWC 879

Hon'ble Judges : R.H. Zaidi, J

Bench : Single Bench

Advocate : H.S. Jain, for the Appellant; R.K. Singh, for the Respondent

Final Decision : Dismissed

Judgement

R.H. Zaidi, J.—By means of this petition under Article 226 of the Constitution of India, petitioner prays for Issuance of a writ, order or direction in the nature of certiorari quashing the order dated 16.12.1997 passed by XVth Addl. District Judge, Lucknow dismissing the application for grant/extension of interim order in Misc. Appeal No. 246/97. and for quashing the notices of demand dated 13.12.1996. 23.12.1997, and 27.12.1997. contained in Annexure Nos. 2. 14 and 15, to the writ petition.

2. It appears that on 19.10.1996 annual value of the building of M/s, Taj Mahal Hotel. Gomti Nagar, Lucknow was assessed by respondent No. 2 at Rs. 38.35,620, i.e., 7% of 5,45.947.20 p., in exercise of powers under U. P. Municipal Corporation Adhiniyam. 1959 (for short, the Adhiniyam), thereafter a notice of demand dated 13.12.1996 was served upon the petitioner. Petitioner challenging validity of the order dated 19.10.1996 and notice dated 13.12.1996. filed an appeal u/s 472 of the Adhiniyam before District Judge, which was sent for disposal to respondent No. 3 on 2.1.1997. Since appeal was filed beyond period

of limitation prescribed for the same, an application u/s 5 of the Limitation Act. was also filed with the memo of appeal for condonation of delay in filing the appeal. The appeal filed by the petitioner was Incompetent, inasmuch as. It was beyond time, as well as requisite tax was not deposited by the petitioner before filing the appeal. Before removal of the said defect, no interim relief should have been granted to the applicant. However, learned District Judge, on 22.1.1997 passed the following order :

"Issue notice. Realisation of tax prior to the date of assessment order-dated 19.10.96 is stayed till next date. Amount deposited shall, however, be subject to the decision of appeal."

3. Aforesaid order was passed ex-parte, behind the back of contesting respondents. It was on 20.11.1997. that application u/s 5 of the Limitation Act, for condonation of delay to filing appeal was allowed by respondent No. 3 and the appeal was directed to put up on 12.12.1997, and on 12.12.1997 appeal was admitted. Thereafter, petitioner applied for extension/grant of the interim stay order, which was objected to by contesting respondent No. 1. Learned Additional District Judge by its Judgment and order, dated 16.12.1997 rejected application filed by the petitioner for grant of Interim relief. In view of clause (e) of sub-section (2) of Section 472. Thereafter, demand bills/notices dated 23.12.1997 and 27.12.1997 were served upon the petitioner. Petitioner, as stated above, filed present petition, challenging validity of the said orders and the demand bills.

4. Learned counsel appearing for the petitioner vehemently urged that in view of the provisions of sub-section (3) of Section 213 of the Adhiniyam, assessment takes effect from the date, next installment falls due. According to him. assessment in the present case, became effective from 1.4.1997. Therefore, he cannot be compelled to pay any tax prior to said date. It was, therefore, urged that the Court below has failed to exercise jurisdiction vested in it, in rejecting the application filed by the petitioner for grant of interim relief.

5. On the other hand, learned counsel appearing for respondent No. J urged that appeal by the petitioner before District Judge was incompetent, as same was filed beyond period of limitation prescribed for the same and the tax demanded from the petitioner by means of the impugned notice was not deposited by him with Mukhya Nagar Adhikari. Therefore, appellate court had no jurisdiction to hear the appeal. According to him. even interim order dated 22.1.1997 was Illegal and since same was for a limited time. i.e., on the next date fixed in the case, same automatically lapsed and stood vacated. Petitioner having failed to deposit requisite amount of tax, was not entitled to any interim relief. It was also urged that for the purposes of present case provisions of sub-section (3) of Section 213 of the Adhiniyam were wholly irrelevant, as it was not a case of amendment or alteration of the list, but of a fresh assessment of annual value of the building.

6. I have considered rival submissions made by the parties and carefully perused

record of the case.

7. Appeal against order of assessment dated 19.10,96 was filed by the petitioner u/s 472 of the Adhiniyam. Said section provides as under :

"472. Appeals when and to whom to file.--(1) Subject to the provisions herein contained, appeals against any annual value or tax fixed, or charged under this Act, shall be heard and determined by Judge, provided that any such appeal pending at any stage before Judge, may be transferred by District Judge, for hearing and disposal to any Additional Judge of the Court, Judge S.C.C. or Civil Judge, or Additional Civil Judge, having jurisdiction in the city ;

(2) No such appeal shall be heard unless :

(a) .....

(b) .....

(c) .....

(d) .....

(e) in case of appeal against tax, or in case of appeal made against annual value after a bill for any property tax assessed upon such value, has been presented to the appellant, amount claimed from the appellant, has been deposited by him with Mukhya Nagar Adhikari.

8. Aforesaid provisions provide for appeal against assessment of annual value or tax, fixed or charged under the Act. It has, however, been provided that such appeals shall not be heard by the appellate authority, unless in cases of appeal against assessment, or against annual value, if a demand bill has been presented to the appellant, unless appellant has deposited the amount claimed from him. with Mukhya Nagar Adhikari.

9. In the present case, admittedly amount of tax demanded from the petitioner has not been paid till date inspite of the fact demand bill was presented to him. Appeal filed by the petitioner, therefore, could not be heard by appellate authority. Therefore, there was no question of grant of any Interim relief in favour of the petitioner, inasmuch as, without hearing of the appeal. District Judge has no jurisdiction to pass any interim order. In view of the said facts, even interim order granted by District Judge, dated 27.1,1997 was Illegal and inoperative. It may, however, be pointed out that on the said date the appeal was otherwise also not competent, inasmuch as, by that time delay in filing appeal was also not condoned. Therefore, District Judge had no Jurisdiction to grant interim relief on an appeal Incompetently filed. So far as submissions of learned counsel for the petitioner with regard to the effect of assessment order is concerned. Section 213 deals with and provides for amendment and alteration of list prepared u/s 210 of the Adhiniyam. Learned counsel for the petitioner failed to demonstrate to the Court that present case was a case of amendment or alteration of the list, in any manner. Therefore, provisions of Section 213 of the

Adhiniyam have got no application to the facts of present case. Submission made by the petitioner that order of assessment dated 19.10.96 took effect from 1.4.97 is thus, not correct and is not acceptable to me. No illegality or infirmity has been pointed out in the bills/notices of demand dated 13.12.96, 23.12.96 and 27.12.97 by the learned counsel for the petitioner. In my opinion, Additional District Judge committed no error in rejecting the application of the petitioner for grant/extension of interim relief.

10. In view of the aforesaid discussions writ petition falls and is dismissed in limine..

