
(2008) 12 CAL CK 0040
In the Calcutta High Court
Case No : Writ Petition No. 4278 (W) of 1998

Trilochan Mukherjee	Vs	APPELLANT
Asansol Municipal Corporation and Others		RESPONDENT

Date of Decision : 16-12-2008

Acts Referred:

Constitution of India, 1950 — Article 226
Evidence Act, 1872 — Section 114

Citation : (2009) 2 CALLT 566

Hon'ble Judges : Debasish Kar Gupta, J

Bench : Single Bench

Advocate : Mr. Bidyut Banerjee and Ms. Shila Sarkar, for the Appellant; Sudhisih Das Gupta and Mr. Hiranmoy Bhattacharjee for Corporation, for the Respondent

Final Decision : Dismissed

Judgement

Debasish Kar Gupta, J.

The Judgment of the Court was as follows:

1. This writ application is filed assailing the annual valuation of residential premises of the petitioner, which was not assessed by the respondent Asansol Municipal Corporation for a long time.
2. The petitioner filed an application under Article 226 of the Constitution of India in the matter of Trilochan Mukherjee v. Asansol Municipal Corporation and Anr. The above writ application was disposed of by a judgment dated April 19, 1994 giving liberty to the petitioner to apply before the respondent Corporation in prescribed form for assessment of annual valuation of the premises under reference and the respondent Corporation was directed to pass an order assessing the valuation of the premises under reference after inspection of the premises in question as also after giving opportunity of hearing to the petitioner within the time limit prescribed therein.
3. Thereafter, the petitioner received a communication issued by the respondent

No. 2 under his Memo No. 311-G dated May 18, 1994 assessing the annual valuation of the premises under reference as also calculating the quarterly tax at the rate of Rs. 600.02 with effect from July 1, 1994. On receipt 01 the above order of assessment from the respondent No.2, the petitioner submitted a representation to the Municipal Corporation dated June 3, 1994 asking the respondent Corporation to enlighten him with regard to the provisions for review as also to supply a prescribed form for such review. The above representation was followed by number of representations. Since, the writ petitioner received no reply to his aforesaid representations this writ application is filed.

4. According to the petitioner, the impugned order of assessment of the annual valuation of the premises under reference as communicated by the respondent No.2 under his Memo No. 311-G dated April 18, 1994 cannot be sustained in law. According to him, the address of the residence of the petitioner under reference was not correctly taken into consideration. Therefore, the proper location of the premises under reference was not taken into consideration at the time of assessment of the annual valuation of that premise. According to him, the correct address of the premises under reference was referred to in the return dated April 25, 1994 of the petitioner (annexure "b" at page 17 to the affidavit-in-reply) and the correct address was Lower Cheli Danga and not G.T. Road, Asansol. That apart by way of statements made in paragraph 7 and 10 of the affidavit-in-reply, it was stated in no uncertain terms by the petitioner, the correct address and/or location of the premises under reference was not taken into consideration properly.

5. Secondly, according to the petitioner, his signature on the inspection book of assessment (annexure "a" at page 12 to affidavit-in-opposition) was disputed.

6. Thirdly, according to the petitioner, the valuation of the contiguous premises lying and situated on the north side of the premises under reference was valued at a much lesser amount.

7. In reply, it is submitted on behalf of the respondent Corporation that the impugned order of assessment was passed on May 10, 1994 (annexure "a" at page 16 to this writ application). The communication of such order was made on May 18, 1994. Drawing attention of this Court towards the date of affirmation of this writ application i.e. on January 2, 1998, it is submitted on behalf of the respondent Corporation that this writ application is liable to be dismissed on the ground of inordinate delay in filing the same.

8. With regard to the correctness of the number and location of the premises under reference it is submitted that the inspection book of assessment of the respondent Corporation bears the signature dated April 26, 1994 of the petitioner. It is also submitted that the petitioner filed this writ application challenging the communication dated May 18, 1994 of the respondent No. 2 with regard to the assessment of the annual valuation of the premises under reference. Therefore, once the receipt of the above communication of the

address therein, the petitioner cannot raise any objection with regard to the correctness of such address.

9. Regarding the question of arbitrariness of valuation of contiguous residential premises it is submitted on behalf of the respondent Corporation that such allegations are vague in nature. No specific instance is given furnishing the address and the valuation of such premises to bring at least the minimum evidence in support of the averments made in the writ application and the affidavit-in-reply. Drawing attention of this Court towards the provisions of section 114 of the Indian Evidence Act, 1872 as also illustration (e), it is submitted on behalf of the respondent Corporation that the assumption of the action of judicial and official acts is in favour of regular performance of such fact. The onus to prove the arbitrariness and or incorrectness lies upon the person challenging such action.

10. With regard to validity of any statutory form for review or appeal, it is submitted on behalf of the respondent Corporation that the unamended provision of section 110 of the Asansol Municipal Corporation Act, 1990 prescribed for a review before the Tribunal. But the learned Senior Counsel appearing on behalf of the respondent Corporation, in his usual fairness submitted that he is not aware of the existence of such Tribunal at the material point of time.

11. I have heard the submissions made by the learned Senior Counsels of the respective parties and I have given my anxious consideration to the facts and circumstances of this case, in my opinion, the point of inordinate delay in filing this writ application has to be gone into at the very outset. It is an admitted fact that the impugned order of annual valuation with effect from July 1, 1994 was communicated to the petitioner on May 18, 1994.

12. It is also not in dispute that the petitioner submitted a number of representation to the respondent authorities raising some points, including asking the respondent Corporation to furnish the prescribed form to file an application for review before the appropriate authority as also with regard to the existence of any review or appellate authority in this regard.

13. It is also not in dispute that the respondent authority did not give a single reply to the same to any of those representations. To adjudicate this point the provisions of section 110 of the Asansol Municipal Corporation Act, 1990 are quoted below:

110. Municipal assessment Tribunal-(1) Any person who is dissatisfied with a decision as entered in the final assessment list may prefer an application for review before the Municipal Assessment Tribunal with a period of one month from the date of publication of such final assessment list.

(2) No such application for review shall be entertained unless the existing amount of rate together with one-half of the amount of increase as entered in the final assessment list for one quarter has been deposited and such application

shall stand rejected unless such amount is continued to be deposited.

(3) The Municipal Assessment Tribunal for the purpose of review may consist of such persons as may be appointed by the State Government in this behalf.

(4) The order of the Tribunal shall be final and conclusive and shall not be questioned in any Court.

14. Considering the submissions made on behalf of the respondent Corporation as also considering the above provision. I find that the above Act prescribed for a review application to be filed before the Municipal Assessment Tribunal. But such Tribunal was not in existence at the material point of time. Considering the time limit of one month from the date of publication of final assessment to file such review application, I find that no alternative was left to the petitioner but to file an application under Article 226 of the Constitution of India. Considering the number of representations as also the inaction on the part of the respondent Corporation to give reply to any of those representations, I am of the opinion that the delay in filing this writ application cannot be said to be inordinate in the facts and circumstances of this case. Therefore, this writ application is maintainable.

15. With regard to the first ground for challenge I find that it is not in dispute that the annual valuation of the premises under reference was communicated to the petitioner by the respondent No. 2 by a communication issued under Memo No. 311-G dated May 18, 1994. It is an admitted position that on receipt of the same at the premises referred thereto the petitioner filed this writ application. It appears from the above communication dated May 18, 1994 (annexure "B" at page 18 to the writ application), I find that the address was G.T. Road, Asansol. In that view of the matter it does not lie on mouth of the petitioner that the address was described incorrectly by the respondent Corporation or the location of the area under reference was not correctly considered by the respondent Corporation.

16. Since, the signature of the petitioner on the inspection book of assessment of the Respondent Corporation is disputed by the petitioner, I am not taking into consideration due to availability of the other document on the basis of which this Court can arrive at the conclusion.

17. With regard to the question of giving no inspection to the relevant records/ documents to the petitioner I find that though the learned Counsel appearing for the respondent Corporation relies upon the signature of the petitioner on the inspection book of the assessment of the respondent Corporation as also the contents of the order dated May 10, 1994, correctness of those materials on record are disputed by the writ petitioner. I do not find any preponderating materials on record in support of the statements made by the petitioner either in the writ application or in the affidavit-in-reply in support thereof. In this regard the settled principles of law as decided by the Hon'ble Supreme Court in the matter of Indian Aluminium Cables Ltd. Vs. Union of India and Others, are

quoted below:

The affidavits to which we have referred assert, particularly those of the two dealers, that in commercial parlance Properzi Rods are not called wire rods and the two are treated as distinct species of goods. Shri Venugopal places strong reliance upon these affidavits and argues that whether a particular item falls under a particular entry must be determined with reference to its description in commercial parlance. This Court has consistently taken the view that, in determining expressions describing an article in a tariff schedule, one principle which is fairly well settled is that those words and expressions should be construed in the sense in which they are understood in the trade, by the dealer and the consumer. The reason is that it is they who are concerned with it and it is the sense in which they understand it which constitutes the definitive index of the legislative intention. See *Commissioner of Sales Tax, Madhya Pradesh Vs. Jaswant Singh Charan Singh*, ; *Minerals and Metals Trading Corporation of India, Ltd. Vs. Union of India (UOI) and Others*, ; *Dunlop India Ltd. v. Union of India* (1976) 2 SCR 98, 113 : (AIR 1977 SC 597 at p. 607); *State of Uttar Pradesh and Another Vs. Kores (India) Ltd.*, and, *Delhi Cloth and General Mills Co. Ltd. Vs. State of Rajasthan and Others*, . The difficulty in applying the principle of these decisions to the instant case is that the contention of the Appellant itself in the earlier revision application which was filed by it before the Government of India, was that Properzi Rods had no commercial market as such. That is clear from the Remand Order No. 764 of 1972 dated May 16, 1972 passed by the Joint Secretary to the Government of India. After the remand, the Appellant contended once again before the Appellate Collector of Central Excise and Customs, New Delhi, that Properzi Rods are not "goods" within the meaning of the Central Excise Act since they are neither marketed as such nor are marketable. Commercial parlance assumes importance when goods are marketable. It is therefore not possible to hold that the goods in question are not wire rods. There is preponderating evidence on record to show that they are nothing but a species of wire rods despite the special method of their manufacture and the use to which they are put. We may also add that the statements contained in the affidavits of Jashwantrai Gangadas Mehta and Shamseer Singh Parmar cannot be accepted at their face value. Both of them appear to be dealers in sales and distribution of wire rods. Their affidavits do not show any familiarity with dealings in Properzi Rods. The knowledge claimed by them does not stem from their personal experience but is in the nature of hearsay.

Emphasis supplied

18. In view of the ratio laid down in the above judgment on the point of law I have no hesitation to hold that in absence of any evidence of preponderating materials on record, the petitioner fails to substantiate his stand with regard to denial of opportunity of inspection of the materials.

19. Now the only question, which is left for examination by this Court, is the

alleged arbitrariness in the action on the respondent authority in passing the order of annual valuation of the premises under reference.

20. It is an admitted position that in paragraph 7 at page 6 to this writ application as also in annexure "c" at page 19 to this writ application, the writ petitioner alleged that the contiguous residential premises lying and situated at the north of the premises under reference had been assessed at a large lesser amount, I find the address of that premises, the name/names and owner/owners of the premises and annual valuation of that premises at the material point of time were not mentioned in the above paragraph or in the annexure.

21. I find substance in the submissions made on behalf of the respondent Corporation that in view of the provisions of section 114 of the Indian Evidence Act, 1872 read with illustration (e) thereof are relevant for adjudicating this issue. So, the relevant portions of the above provisions are quoted below:

"S. 114. The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

ILLUSTRATIONS

The Court may presume-

- (a)
- (b)
- (c)
- (d)
- (e) that judicial and official acts have been regularly performed;
- (f)
- (g)
- (h)
- (i)"

22. In view of the above provision the Court may presume the judicial and official acts have been regularly performed. Therefore, in absence of any specific statement in this regard and particularly with regard to the assessment of the contiguous premises referred to in paragraph and annexure mentioned hereinabove at the material point of time. This Court is not inclined to accept the submissions made on behalf of the learned Counsel appearing for the petitioner that there was arbitrariness in assessing the annual valuation of the premises under reference with effect from July 1, 1994 by passing the impugned order.

23. In view of the discussions and observations made hereinabove this writ application fails.

There will be no order as to costs.

Urgent xerox certified copy of this order, if applied for, be given to the parties, on priority basis.