

(2006) 08 CAL CK 0058

In the Calcutta High Court

Case No : APO No. 427 of 2002, WP No's. 2049 of 1999 and 4809W of 2002
and FMA No. 1773 of 2003

Turner Morrison and Co. Ltd. and Another

APPELLANT

Vs

State of West Bengal and Others
 Calcutta Municipal
Corporation and Others Vs Anomoni Narayan and Others

RESPONDENT

Date of Decision : 23-08-2006

Acts Referred:

Calcutta Municipal Corporation Act, 1980 — Section 188, 188(3), 188(4), 188(5), 189

Citation : (2007) 1 CALLT 505 : (2006) 4 CHN 905

Hon'ble Judges : Tapan Mukherjee, J; Ashim Kumar Banerjee, J

Bench : Division Bench

Advocate : A.K. Das Adhikari and Fazrul Haque and Arindam Banerjee and Ashis Kumar Mukherjee, in APO No. 427 of 2002, for the Appellant; Ashim Chatterjee and Biswarupa Mitra and Alok Kumar Ghosh in FMA 1773/2003, for the Respondent

Judgement

1. Since both these appeals involve identical question of law these are disposed of by this common judgment.

2. In terms of Section 188 of the Kolkata Municipal Corporation Act, 1980 (hereinafter referred to the said Act of 1980) objections with regard to enhancement of valuation is to be disposed of by the Hearing Officer in the manner prescribed in the said section. Section 189 provides for appeal to be preferred against the decision of the Hearing Officer within 45 days from the date of service of a copy of the order passed by the Hearing Officer u/s 188. Under Rule 9 of the Taxation Rules framed under the said Act of 1980 the order was to be communicated to the objector in Form H. Form H prescribes communication of the said order in the said format. The words "copy of order" are also stipulated in Form H. However, the communication under Rule 9(2) which is commonly known as red card only specifies the enhanced or reduced valuation which is communicated to the objector and the objector, if aggrieved by such valuation, is to file an appeal before the Tribunal within 45 days from the date of receipt of

the red card. In both these matters the writ petitioners challenged the relevant provisions of the rules by contending that since the Act mandated service of a copy of the order unless copy of the order was served upon the objector was precluded from availing his right under the statute to prefer an appeal from the said order and, as such, the Corporation was precluded from raising any supplementary bill on the basis of such order of the Hearing Officer.

3. The issue was gone into by two learned Judges of this Court.

4. In the first case being WP No. 2049 of 1999 (Turner Morrison & Co. Ltd. and Anr.) (2002 Volume 3 Calcutta High Notes 448) the learned Single Judge observed that since the Statute mandated service of copy of the order it was incumbent upon the Corporation to supply copy of the order to the objector. His Lordship, however, observed that the relevant rules framed under the said Act of 1980 did stipulate a column to enter the objection in the records of the Municipal Corporation. It was the legislative intent that the Hearing Officer must record his order determining the objection in a register to be maintained therefor. It was also observed by His Lordship that the legislative mandate was also to supply a copy of the order of the Hearing Officer to the objector. Hence, the communication of the enhanced or reduced valuation without supplying a copy of the order was contrary to the legislative mandate. His Lordship directed the delegated legislature to forthwith but not later than three months from the date of service of the copy of the order to suitably amend Rule 9 of the Taxation Rules, 1987 in the light of the legislative mandate contained in Section 188 of the said Act of 1980. His Lordship further observed that so long the said amendment was not done the Corporation would continue to supply copy of the order to the objectors along with communication made through the red card in Form H.

5. In the second case being WP No. 4809W of 2002 (Narendra Dev Narayan v. Kolkata Municipal Corporation and Ors.) (2002 3 CHC 65) another learned Single Judge decided the identical question and came to a conclusion that the objector was entitled to a copy of the order and in terms of provisions of Section 188(3) read with Rule 9(2) of the Taxation Rules. His Lordship further observed that unless and until the copy of the order was served upon the objector, the Corporation was not entitled to raise supplementary bill as the right to prefer appeal by the objector would accrue only when a copy of the order was served upon the objector as contemplated u/s 188(3) of the said Act of 1980. His Lordship quashed the supplementary bills as well as the communication to the said writ petitioner and directed the Corporation to supply true copy of the order so passed by the Hearing Officer.

6. We have heard Mr. Arindam Banerjee appearing for the appellant in the case of Turner Morrison Co. Ltd. and Anr. We have also heard Mr. Alok Ghosh appearing for the writ petitioner in the case of Narendra Dev Narayan (now dead). We have also heard Mr. Ashok Kumar Das Adhikari appearing for the Corporation in both the matters.

7. On behalf of the objectors both Mr. Banerjee as well as Mr. Ghosh contend before us that it is a clear mandate of the legislature u/s 188 to supply copy of the order to the objectors and so long the said order is not communicated to the objectors, the Corporation would not be not entitled to raise any supplementary bill on the basis of the said order passed by the hearing authority. It is also contended by the objectors that the communication so to be made in Form H must contain the reproduced version of the order passed by the hearing authority so as to enable the objectors to prefer appeal from the order of the Hearing Officer, if they so feel aggrieved. So long it is not done the Corporation would not be entitled to claim any benefit out of the said order of the hearing authority.

8. Mr. Das Adhikari, on the other hand, contends that Section 188(3) stipulates communication of the order. Rule 9(2) prescribes the mode of communication whereas Form H prescribes the format in which the order is to be communicated. As and when the order is communicated to the objector, the objector is made known the decision of the hearing authority which empowers the Corporation to raise supplementary bill on the basis of the said order. Mr. Das Adhikari has also drawn our attention to Sub-section (4) of Section 188 wherein it obligates the Hearing Officer to read out to the objector his order after the same is passed and to obtain signature of the objector on the sheet in proof of his presence and knowledge of the order passed. Hence, the objector is first made known the fate of his objection by the Hearing Officer as and when the order is passed and read out in his presence and then through a written communication in the form of red card and the objector is free to prefer appeal, if he so chooses. Mr. Das Adhikari also contends that there is a provision for obtaining certified copy of the said order. If the objector wants to have true copy of the said order, he can apply for certified copy and on such application being made the Corporation would be bound to deliver the same to him. That would, however, not in any way create any impediment on the objector to prefer appeal as contemplated u/s 189.

9. We have considered the rival contentions of the parties. We have also benefited ourselves by the views of two learned Judges of this Court. We are of the view that the approach made by the learned Judges in interpreting the particular provisions of the statute is accurate and we do not find any scope of interference on that score. We are in full agreement with Their Lordships to the extent that it is the mandate of the legislature upon the Corporation to provide for a copy of the order passed by the Hearing Officer to the objector. So long such communication is not made it would not be proper for the Corporation to raise supplementary bill and compel the objector to pay the same without exercising his right under the statute to have an appeal preferred before the Tribunal.

10. Next question comes as to the mode of communication. Mr. Das Adhikari submits that under Rule 9(2) the format has been prescribed and order is communicated through Form H. We have perused Form H. As we have recorded

hereinbefore, Form H does stipulate the words "copy of order". We are unable to accept Mr. Das Adhikari's contention to the extent that mere communication of the enhanced valuation is sufficient compliance of the statutory mandate as contemplated u/s 188(3). We are in total agreement with Their Lordships to the extent that the Corporation with the red card.

11. We are, however, unable to accept the view of His Lordship in the case of *Turner Morrison (supra)* wherein His Lordship directed the legislature to amend the rules. We can only express our views in our judgment. We can interpret the law so enacted by the legislature. Such direction, in our view, perhaps is without jurisdiction. We only expect that the legislature would rise to the occasion to remove the anomaly as pointed out by His Lordship in His Lordship's judgment, if they so chose. We only direct the Corporation to continue to furnish copy of the reasoned order passed by the Hearing Officer along with the red card to all the objectors and such furnishing of copy along with the red card would be treated as compliance of provisions of Section 188(3) read with Rule 9(2) of the Taxation Rules.

12. Mr. Das Adhikari contends that the decision of His Lordship in the case of *Narendra Dev Narayan (supra)* the learned Single Judge overlooked the provisions of Sections 188(5) and 189(6) of the said Act of 1980 which give unfettered right to the Corporation to give effect to the revised valuation so to be fixed by the Hearing Officer. Such apprehension of Mr. Das Adhikari, in our view, is totally misconceived. The Corporation would be free to raise supplementary bill simultaneously with the communication of the order of the Hearing Officer. Section 188(3) obligates the Corporation to communicate the decision of the Hearing Officer whereas the Section 188(5) empowers the Corporation to give effect to the revised valuation. We do not find any impediment on the Corporation to comply with both the provisions of the statute being Sections 188(5) and 189(6) as there is no conflict between these two provisions.

13. Mr. Das Adhikari further submits that if the Corporation is compelled to serve copy of the order to each of the objectors there would be substantial loss of revenue as the parties would not be applying for certified copy. Such submission of Mr. Das Adhikari is totally untenable. The legislature obligates the Corporation to serve a copy of the order u/s 188(3). Hence, on the plea of loss of revenue the Corporation cannot compel the objectors to apply for certified copy in each case.

14. With regard to the merits of the matter, we wish to deal with the cases in hand separately.

Turner Morrison & Co. Ltd. and Ors.

15. In this case the learned Judge was invited by the objector to go into the merits of the matter. The records were called for. Altogether six writ petitions were filed by the same objector for different assessment years. All the six writ petitions were disposed of by the common judgment and order as referred to

above. However, the instant appeal was preferred by the objector in respect of the writ petition No. 2049 of 1999 referred to by His Lordship in His Lordship's judgment as the "third writ petition". In this "third writ petition" intermediary valuation was challenged by the writ petitioner. His Lordship found that the challenge was without any basis. There had been a reduction in the annual valuation while general revision was made prior to such intermediary valuation. However, there had been change in circumstance as the landlord was benefited by enhanced rent payable by the tenants which gave rise to the revision of annual valuation. The writ petitioner contended before His Lordship that such changed scenario could only be considered by the Corporation after expiry of the statutory period of six years. Such contention was negated by His Lordship. While doing so, His Lordship examined the controversy on merits and ultimately came to a finding that the objection had no basis whatsoever. Mr. Banerjee appearing for the writ petitioner/appellant contends before us that since the learned Judge found that there had been legal infirmity in communicating the order of the Hearing Officer, His Lordship should not have foreclosed the right of the objector to prefer an appeal provided u/s 189. Mr. Banerjee further submits that despite His Lordship's observations, the appellant is still entitled to prefer an appeal as and when the copy of the order is furnished upon them in terms of the direction of His Lordship. Mr. Banerjee lastly contends that we should give him an opportunity to prefer an appeal before the Tribunal.

16. The submissions of Mr. Banerjee on this factual score are wholly untenable. The writ petitioner invited the Court to go into that controversy. The Court was invited to call for the records. The records were called for and examined by the Court. Arguments were advanced on merits before His Lordship and a decision was had on the factual controversy.

17. The writ petitioner could have reserved their right to challenge the order on merits before the appropriate authority. They did not do so. After inviting the Court to go into the controversy when the decision went against the objector, the objector, in our view, is no more entitled to prefer any appeal.

18. The problem may be viewed from another angle. Despite His Lordship's decision, if we allow the objector to file an appeal before the Tribunal the Tribunal would be influenced by the observation of His Lordship which we do not want to quash as we do not find any reason for disagreement. Hence, such appeal would be of no consequence as the decision of the learned Single Judge as well as this judgment would be binding upon the Tribunal.

19. Hence, the appeal being APO No. 427 of 2002 fails and is hereby dismissed without, however, any order as to costs.

20. We only modify the direction of His Lordship wherein His Lordship directed the legislature to amend the rules. Such direction of His Lordship is set aside. We expect that the legislature will consider the lacunae in the rules so pointed out by His Lordship and us in this judgment. The legislature in their wisdom may amend

the rules, if they feel it necessary.

Narendra Dev Naravan (now dead).

21. In this case the writ petition obtained a certified copy of the order by applying to the Corporation. It was sought to be placed before His Lordship in course of hearing as recorded by His Lordship in His Lordship's judgment. His Lordship refused to see the order as according to His Lordship so long the copy of the order was not communicated time to prefer appeal would not start. His Lordship refused to go into the controversy on merits and quashed the communication as well as the supplementary bills holding those as bad in law after pronouncing the law as discussed hereinbefore. The issue is pending for a long time. When the appeal was admitted by the Division Bench, the Division Bench stayed the order of His Lordship. We modify the order of His Lordship to the extent wherein His Lordship quashed the communication and supplementary bills. We grant liberty to the heirs of the objector to file appeal within a period of six weeks from date on the basis of the certified copies so received by him as recorded by His Lordship in His Lordship's judgment. The heirs of the objector would, however, be at liberty to pay the supplementary bills so raised by the Corporation without prejudice to the rights and contentions in the appeal so to be filed by them. In case such appeal is filed, the Tribunal would entertain the same on merits and dispose of the same in accordance with law.

22. The order of the learned Single Judge is modified accordingly. FMA No. 1773 of 2003 is disposed of accordingly without any order as to costs.

23. Urgent xerox certified copy of this judgment shall be made available to the parties, if applied for, upon compliance of all formalities.