(2010) 01 CHH CK 0033

In the Chhattisgarh High Court

Case No : C.R. No. 87 of 2006

Umesh Chand Yadu and Others — APPELLANT

Vs

Shyambati (Smt.) and Others — RESPONDENT

Date of Decision : 20-01-2010

Acts Referred:
Chhattisgarh Municipal Corporation Act, 1956 — Section 132, 135, 136, 137, 138

Citation : (2010) 3 MPJR 83

Hon'ble Judges : N.K. Agarwal, J

Bench : Division Bench

Final Decision : Allowed

Judgement

N.K. Agarwal, J.—Challenge in this revision is to the legality and propriety of the order dated 28-02-2006 passed by IVth Additional District Judge, Raipur in Misc. Civil Appeal No. 5/2005 whereby and where under the appeal preferred by the applicant has been dismissed as not maintainable u/s 149 of the C.G Municipal Corporation Act, 1956 (briefly, ''the Act'')

2. Facts of the case, in brief, are as under :-

3. According to the applicants, house situated at Station Road, Raipur belongs to late Mohanlal Yadu and Muralidhar Yadu i.e. two brothers. Mohanlal Yadu died issueless. His widow Maharajin bai had gifted her undivided share in the aforesaid house to Banshilal Yadu. After death of Muralidhar Yadu, an application for mutation of their name in his place was preferred, public notice inviting objections was issued by the Commissioner, Municipal Corporation, Raipur. In response to that notice, the applicants also filed an application for mutation of their names in places of Mohanlal Yadu. Both the applications were separately registered and were disposed of by common order dated 07-03-2005 by the Municipal Corporation, whereby the application preferred by legal representatives of Muralidhar was allowed. Applicants'' application was disallowed on the ground that as per municipal record, earlier the only name of late Muralidhar Yadu was

recorded. The appeal preferred there- against was dismissed by the appellate Court on the ground that the appeal is not maintainable u/s 149 of the Act. Because the instant appeal has been preferred challenging the mutation order which has been decided by the Municipal Corporation u/s 167 of the Act and mutation order passed u/s 167 of the Act is not made appellable u/s 149 of Act.

4. Shri Vaswani, learned counsel for the applicants would submit that property tax assessment list is prepared and maintained as per requirement of Section 151 of the Act. Powers have been given to amend the said list u/s 153 of the Act to the Commissioner. While exercising such power to amend the assessment list, the Commissioner has also power to amend the name of the owner of the building as the same is also part assessment list. During process of amendment of assessment list in terms of section 153 by the Commissioner, if any person on whom a notice is served raises written objection, then in view of section 153(2) of the Act, the provisions contained under Sections 148 to 149 shall, with all necessary modifications, apply to such objection and any order passed with regard to such objection is appellable u/s 149 of the Act. He would further submit that Section 167 of the Act requires legal representative of the deceased person in whom title to any land or building or in any part or share of any land or building vests, to give notice of his title to Commissioner in writing. Said section does not confer any authority to the Commissioner to pass any order with regard to mutation of their name in the municipal records. The order has to be passed by the Commissioner in terms of Section 153 of the Act. The Assessment list which is required to be prepared and maintained u/s 151 of the Act, also contains the name and place of abode of the owner and the name of occupier, meaning thereby any amendment or correction in the assessment list includes amendment/correction of the entry with regard to owner/occupier and, therefore, learned Court below went wrong in dismissing the appeal as not maintainable. Reliance has been placed upon the judgment of High Court of Madhya Pradesh in the case of Ramdwarikalal Agrawal -v-Krishna Dwarikalal Agarwal reported in 1982 MPLJ 54.

5. Per contra, Shri Sanjay K. Agarwal, learned counsel appearing for respondents No.1 to 6 would submit that the language of Section 149 of the Act is unambiguous and clear and if any dispute arises as to the liability of any land or building to assessment or as to the basis or principle of assessment or as to the basis or principle of assessment or as to amount of tax assessed, then only an appeal shall lie to District Court u/s 149 of the Act-Any person dissatisfied with a valuation made under this chapter may deliver a written notice stating grounds of his objection to such valuation. The same objection is required to be investigated by the Commissioner u/s 148 of the Act and there-against only appeal u/s 149 of the Act is available and not upon the orders passed by the Commissioner on any other objection raised by any persons, therefore, the provision of section 149 of the Act is confined to the decision of the Commissioner u/s 148 of the Act. For this, reliance has been placed upon the judgment of High Court of Madhya Pradesh in the case of The Municipal

Corporation, Jabalpur vs. Shri Radhakrishna Pandey reported in 1969 MPLJ 325 . He further placed reliance upon para 49 and 50 of the Full Bench judgment of High Court of Madhya Pradesh in the case of Sakhi Gopal Agrawal and Others Vs. State of M.P. and Others, .

6. The question arises for decision making in the instant revision is whether the written objection/application for mutation u/s 167 of the Act which was decided by the Commissioner is appellable or not u/s 149 of the Act.

7. I have heard learned counsel for the parties

8. Before entering into the facts of the present case, it is necessary to look into the scheme of the Act and relevant statutory provisions with regard to property tax. Part IV, Chapter XI of the Act deals with taxation which contains Section 132 to Section 172. Sections 135 to 159 deal with Property Tax and Sections 160 to 172 are supplementary provisions. Section 141 of the Act deals with responsibility for payment of property tax. Section 143 deals with assessment of annual value and duration of assessment. Section 147 deals with notice of objection of valuation. Section 148 deals with investigation of objections by Commissioner. Section 149 provides for appeals to District Courts. Section 151 provides for keeping of municipal assessment list. Section 153 empowers the Commissioner to amend assessment list. Section 167 casts a duty upon transferee or legal representative of the deceased on whom land or building vests to give notice of transfer or inheritance so as to enable the Corporation to recover tax from the right person.

9. A conjoint reading of section 151, 153 and 167 of the Act would reveal that to keep the assessment list update, the transferees are required to give written notice and after following procedure as prescribed u/s 153(1) of the Act, Commissioner is required to pass order of amendment in the assessment list which is made appellable u/s 149 of the Act in terms of Section 153 (2) of the Act. In view of the above, any application made u/s 167 would be only for the purpose of keeping assessment list in order and to facilitate recovery of the property tax, responsibility for its payment and for that purpose, if any application/objection has been made u/s 167 of the Act, the same has to be decided u/s 153(2) of the Act, which is appellable u/s 149 of the Act. The purpose of application u/s 167 of the Act is confined to hold the person liable for the purpose of keeping assessment list in order and its recovery from the person. This aspect of the matter has not been considered by the learned Court below while rejecting the appeal as not maintainable. M.P High Court in Ramdwaikalal Agrawal (supra) has held in its judgment as under:-

It is clear from the language of sub-sections(1) and (2) of section 153, M.P. Municipal Corporation Act that persons interested to whom notice is issued, can make their objection not merely when the proposed change relates to valuation but also when it relates to any matter mentioned in the assessment list. The words "such objection" as they occur towards the end in sub-section(2) refer to all objections which can be filed under sub-section (2) and which may relate to any matter in the assessment. It is true that sections 148 and 149 are limited to objections relating to valuation when the assessment list is in preparation, and it is for this reason that when these sections have been made applicable to objections contemplated under sub-section (2) of section 153, it has been stated that they shall apply "with all necessary modifications" The intention is clear that whatever may be the nature of the objections made under sub-sections (2) of Section 153, the procedure laid down under sections 148 and 149 will apply to such objections in the same way as it applies regarding objections to valuation made during the preparation of the same assessment list. It is not possible to limit the applicability of Sections 148 and 149 in the context of section 153(3) only to objections regarding valuation entered in the assessment list. When therefore the objection is regarding the owner''s name in the assessment list, and the Administrator acting u/s 153 passes an order changing the name of the owner in the assessment list, section 149 is attracted and the order is applicable u/s 149 of the Act.

10. I am in respectful agreement with the proposition of law laid down by the M.P High Court in the above referred case. So far as the case cited by learned counsel for the respondents is concerned, the case of Municipal Corporation, Jabalpur (Supra) was a case in which the question posed was whether an appeal lies u/s 149(1) of the Act on the question of assessment of property tax or it also lies against the assessment of conservancy tax. By dealing with the question, it has been held that the Objection does not include objections to assessment of conservancy tax u/s 148 of the Act and, therefore, the same is not appellable u/s 149 of the Act. In the said case, scope and ambit of Sections 151,153,167 and Section 149 of the Act was not under consideration before the Court and the same is not applicable here in the facts and circumstances of the present case. The decision of Full Bench in case of Sakhi Gopal Agrawal cited by Shri Agrawal is also of no help to him as in that case also, the scope and ambit of Sections 151, 153, 167 and 149 of the Act was not under consideration.

11. It is no doubt true that appeal u/s 149 of the Act lies against the order passed u/s 148 of the Act. It is also no doubt true that Sections 148 and 149 are limited to objections relating to valuation when the assessment list is in preparation and it is for this reason that when these sections have been made applicable to objections contemplated under subsection 2 of Section 153 of the Act, it has been stated that they shall apply " with all necessary modifications". The intention is clear that whatever may be the nature of objections made under sub-section (2) of Section 153, the procedure laid down under sections 148 and 149 will apply to such objections in the same way as it applies regarding objections to valuation made during the preparation of the assessment list. When therefore, the objection is regarding the owner''s name in the assessment list, and Commissioner acting u/s 153 passes an order changing the name of owner in the assessment list, Section 149 is attracted and the order is applicable u/s 149 of the Act.

12. In view of the above, in the considered opinion of this Court, the appeal preferred by the applicant is maintainable. Learned Court below has erred in dismissing the same as not maintainable u/s 149 of the Act. The impugned order passed by the Court below is set aside and the matter is remitted back for deciding the said appeal in accordance with law on its own merits.

13. The revision is allowed. No order as to costs.