(2012) 01 AHC CK 0101

In the Allahabad High Court

Case No : Civil Miscellaneous Writ (Tax) Petition No. 1770 of 2011

U.P. State Road Transposrt Corporation — APPELLANT

Vs

State of U.P. and Others — RESPONDENT

Date of Decision : 18-01-2012

Acts Referred:
Uttar Pradesh Municipal Corporation Act, 1959 — Section 179(1), 179(2), 472(2)

Citation : (2012) 4 ADJ 516

Hon'ble Judges : R.K. Agrawal, J;B. Amit Sthalekar, J

Bench : Division Bench

Advocate : Anubhav Chandra and Rohit Kumar Pandey, for the Appellant; M.C. Tripathi, Sudha Pandey, Vivek Varma and Pratic Kumar, for the Respondent

Judgement

1. The present petition has been filed challenging the order dated 6th September, 2011 passed by the Competent Authority, Nagar Nigam Kanpur Nagar whereby representation preferred by the petitioner has been rejected. By the said order the authority had held that the annual letting value of the property House No. 123/895, Fazalganj, Depot Kanpur fixed at Rs. 7315406/- and house tax at the rate of 15% i.e. Rs. 1097311/- per year payable from 1.4.2005 is justified. We have heard Sri Rohit Kumar Pandey, advocate holding brief of Sri Anubhav Chandra, learned counsel for the petitioner, learned standing counsel representing respondent No. 1, Sri M.C. Tripathi, learned counsel for respondent Nos. 2 and 3, Sri Pratik Kumar, advocate holding brief of Ms. Sudha Pandey, who represents respondent Nos. 5 and 6 and Sri Vivek Verma, advocate representing respondent No. 4 and perused the averments made in the writ petition and also the order dated 6.9.2011 impugned in the writ petition.

2. It appears that the petitioner is an occupant of property No. 123/895, Naya Fazal, Depot Kanpur Nagar. This property was given by the Nagar Palika, Parishad, Kanpur to the petitioner to conduct City Bus Service. The petitioner-corporation used to pay a sum of Rs. 1=00 at per annum as lease money, which was enhanced to Rs. 3000/- per month with effect from 1.1.1976. The Kanpur

Development Authority started realizing the lease money from the petitioner. The lease has expired. It is in the process of renewal. The Nagar Nigam, Kanpur Nagar, respondent No. 2 had issued notice to the petitioner-corporation for payment of house tax on the ground that it is an occupier of the premises in question. Recourse to Section 179(1) of the U.P. Municipal Corporation Act, 1959 hereinafter referred to as the Act, has been taken by the Nagar Nigam.

3. The petitioner had earlier approached this Court by means of Writ Petition No. 366 of 2011 challenging the order dated 28.2.2011, the demand notices dated 3.11.2010 and 6.2.2010 and also the notice dated 5.3.2008 whereby the petitioner was called upon to pay the house tax and also the arrears, vide order dated 16.3.2011 this Court disposed of the writ petition with a direction to the petitioner to file its representation before the Nagar Nigam, Kanpur, who shall decide the same after giving an opportunity of hearing within six weeks. The petitioner was also directed to deposit a sum of Rs. 10 lacs. The petitioner deposited Rs. 10 lacs and also filed representation. It has been decided by the competent authority vide order dated 6th September, 2011. The competent authority had fixed five dates for giving opportunity of personal hearing but officers of the petitioner corporation for one reason or the other did not chose to appear. Consequently, the competent authority decided the same on the basis of pleas raised in the representation. The authority has held that the petitioner is liable to pay house tax as assessed, which is based on a survey.

4. Sri Rohit Kumar Pandey, learned counsel submitted that as the petitioner is not the owner of the premises in question and is only a tenant, whose lease has expired, the liability for payment of house tax rests on the owner and, therefore, the corporation cannot be made to pay. He further challenged the arbitrary assessment of Rs. 7315406/-, which is in respect of the premises in question on the ground that neither any notice regarding the proposed assessment was issued nor the petitioner was given any opportunity to file its objection.

5. Sri Tripathi, learned counsel for the Nagar Nigam, Kanpur, however, submitted that u/s 179(1) of the Act, primary liability to pay the house tax is of the occupier, if the occupier is a tenant and is a corporation or a State Government Undertaking and the premises is owned by the State of U.P.. He further submitted that the petitioner cannot escape its liability to pay the house tax. This submission has force. The proviso of Section 179(1) of the Act is clearly applicable in the facts and circumstances of the present case as the petitioner is a tenant of the premises and its ownership vests in the State or its authorities.

6. The learned counsel for the petitioner submitted that sub- Section (2) of Section 179 of the Act is applicable and as the corporation is a tenant, liability is that of the landlord. The submission is not correct as the provision of sub-section (2) would apply where the provision of sub-section (1) of Section 179 of the Act is not applicable. As in the present case the provision of sub-section (1) is applicable, the liability of the petitioner corporation is there for payment of house tax.

7. So far as the question of arbitrary assessment of house tax in respect of premises in question is concerned, we find that in the writ petition the petitioner has not given the details of the area of premises, which is in its occupation nor its locality nor the market value nor the circle rates has been given. In the absence of any details having been given, the Court is not in a position to go into this question as to whether the assessment is arbitrary or is based on relevant consideration. This can very well be gone into by the appellate authority in appeal provided u/s 472 (2) of the Act. The petitioner is, therefore, relegated to file an appeal before the competent authority. We may make it clear that if the petitioner deposits a further sum of Rs. 11 lacs within fifteen days from today and also files the appeal within the same period, the appeal be decided on merits expeditiously within six months thereafter in accordance with law after giving an opportunity of hearing to all the parties concerned without raising the plea of limitation.

8. For a period of six months the recovery of the balance amount shall be kept in abeyance and shall abide by the orders, which may be passed by the appellate authority. The attachment of the bank account of the petitioner effected before filing of the writ petition shall be lifted to enable the petitioner to deposit a sum of Rs. 11 lakhs as directed above. The writ petition stands disposed of.

