
(2011) 08 CAL CK 0035
In the Calcutta High Court
Case No : Writ Petition No. 752 (W) of 2009

Victor Apartment Pvt. Ltd.

APPELLANT

Vs

Calcutta Municipal Corporation

RESPONDENT

Date of Decision : 30-08-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Municipal Corporation Act, 1980 — Section 184(2), 184(3), 186, 188, 189(3)

Citation : (2011) 5 CHN 661

Hon'ble Judges : Soumitra Pal, J

Bench : Single Bench

Advocate : Bikash Ranjan Bhattacharya, Supradip Roy, Saptarshee Roy, for the Appellant; Biswajit Mukherjee, Raghunath Chakraborty, for the Respondent

Final Decision : Dismissed

Judgement

Soumitra Pal, J.—In this writ petition, M/s. Victor Apartments Private Limited, and its Directors, have challenged the order dated 2nd July, 2003 passed by the Hearing Officer-XI of the Kolkata Municipal Corporation enhancing the annual valuation from Rs. 26,680/- to Rs. 1,99,800/- on the ground that it was passed without giving an opportunity of hearing and without assigning any valid reason. Challenge has also been made to the Letter of Intimation dated 5th November, 2008 intimating the petitioners to pay the municipal tax dues amounting to Rs. 15,16,412/- including penalty accruing from 22nd March, 2003. The writ petition, which was affirmed on 14th January, 2009, was moved on 19th January, 2009 when directions were issued for filing of affidavits. Order was also passed directing the parties to maintain status quo and the authorities were also directed not to resort to any coercive measures against the petitioners. Pursuant to the directions, parties have filed their affidavits and are on record.

2. Mr. B.R. Bhattacharya, learned Senior Advocate and Mr. Supradip Roy, learned Advocate for the petitioners, reiterating the statements in the writ petition submitted that while passing the impugned order dated 2nd July, 2003, no

proper hearing was granted. Though section 184(3) of the Kolkata Municipal Corporation Act, 1980 (for short "the Act") postulates that notice has to be given to the occupier, no such notice was given to Krishna Agencies, an occupier on the said premises and the impugned order was passed on the basis of the rent derived from the said occupier. Moreover, though the impugned order refers to a report, however, the report has not been disclosed as evident from the order itself. Therefore, the impugned order and the consequent Letter of Intimation dated 5th November, 2008 intimating that there are dues to the tune of Rs. 15,16,412/- are illegal. On a query it was submitted that till date no dues have been paid. So far as the undertaking given by the petitioners as evident from annexure P6 to the writ petition, it was submitted that it was withdrawn by letter dated 10th December, 2008 issued on behalf of the petitioner.

3. Mr. Biswajit Mukherjee, learned Advocate appearing for the Kolkata Municipal Corporation, has submitted that the challenge to the order dated 2nd July, 2003 by filing a writ petition is not warranted under the law as the petitioners should have preferred appeal before the Kolkata Municipal Assessment Tribunal as stipulated under the proviso to section 189(5) of the Act within forty five days from the date of receipt of the certified copy of the impugned order which they had received on 8th January, 2004. Since no appeal was preferred, the impugned order passed by the Hearing Officer had become final u/s 190 of the Act and therefore, challenge to the same is belated. Moreover, though an order can be challenged in a writ jurisdiction on the ground that either it was in violation of the principles of natural justice or the authority lacked jurisdiction, however, since it is evident from the impugned order that hearing was granted and as in the petition there is no averment that the Hearing Officer lacked jurisdiction, the petition is misconceived. So far as the Letter of Intimation dated 5th November, 2008 is concerned it has been submitted that challenge to the same is without basis as it is the outcome of the impugned order dated 2nd July, 2003. That apart though the petitioner was granted an opportunity to file objection to the Letter of Intimation, no objection was filed. Submission was though the petitioner on 26th November, 2008 by a written undertaking undertook to pay the municipal dues in installments, no payment has been made. The allegation of coercing the petitioners to file such undertaking is baseless as no complaint was lodged with the law enforcing authorities. The argument, as evident from paragraph 6 of the affidavit in reply, that appeal could not be preferred as the petitioners were unable to deposit the taxes is contrary to the provisions contained in section 189(6) of the Act and the settled principles of law.

4. Learned Advocates for the parties have relied on several judgments in support of their contentions which shall be dealt with appropriately.

5. The questions which require consideration are - i) Whether in view of the provisions contained in section 190 of the Act, the impugned order dated 2nd July, 2003 passed by the Hearing Officer had attained finality; ii) Whether the said impugned order was passed in violation of the principles of natural justice;

iii) Whether the Letter of Intimation dated 5th November, 2008 directing the petitioner to pay a sum of Rs. 15,16,-112/-, being the tax due by the Corporation, was in consequence to the impugned order dated 2nd July, 2003 and (iv) Whether pre deposit u/s 189(6) of the Act for preferring appeal is confiscatory in nature.

6. So far as the first question is concerned u/s 186 an owner or the person liable to pay property tax has the right to file objection in writing against the annual valuation which u/s 188 shall be heard by a Hearing Officer and order shall be passed and a copy of the same shall be supplied to the person filing the objection within thirty days. In the instant case it is evident that the Hearing Officer had passed the order on 2nd July, 2003 and on 8th January, 2004 the petitioners had obtained the certified copy of the same. Under the Act, if aggrieved, the petitioners should have preferred an appeal u/s 189(5) within forty five days from the date of service of the copy of the order. Though in the instant case the petitioners had obtained the certified copy of the order, they did not prefer appeal within the statutory period. Not having preferred appeal before the Tribunal against the impugned order, the valuation arrived at by the Hearing Officer u/s 188 had become "final" u/s 190 of the Act and thus, challenge to the same is belated.

7. So far as the second question regarding the alleged violation of the principles of natural justice is concerned, as I find from the notice dated 9th January. 2003 that the petitioner was notified about the date, time and place of hearing and the petitioner was given an opportunity to file written objection and as from the impugned order it is evident that the petitioner was given an opportunity of hearing, the allegation is without any basis. The submission that Krishna Properties, an occupier in the said premises, should have been notified is without foundation as it is not at all evident from the writ petition whether Krishna Properties had responded to the public notice after the preparation of the assessment list u/s 184(2). It is to be noted that if one does not respond to the public notice it is not possible for the Municipal Commissioner u/s 184(3) to issue notice to any owner or lessee, sub lessee or occupier.

8. With regard to the third question, since the impugned order dated 2nd July, 2003 passed by the Hearing Officer had become ""final" u/s 190 and as the petitioners did not file objection to the Letter of Intimation dated 5th November, 2008, which was sought for and as the said letter was in consequence of the impugned order, the challenge to the same is not tenable.

9. So far as the fourth question is concerned, the argument of the petitioners, as evident from the affidavit-in-reply, that appeal before the Assessment Tribunal could not be preferred since deposit of such taxes u/s 189(6) is confiscatory in nature is not tenable as the issue is covered by the law laid down in C.M.C. vs. Sitaram Charity Trust, 1998(2) CLJ 247 wherein it was held "Right to prefer an appeal is the creation of statute and, thus, such a right can be hedged with conditions. As in terms of section 189(6) of the Calcutta Municipal Corporation

Act certain conditions have been imposed before an appeal can be entertained and disposed of, unless the appellant fulfils such condition, the appeal cannot be entertained or disposed of.

10. These apart as the petitioners by letter, being annexure P6 to the writ petition, undertook to pay the dues in installments, the allegation that the petitioners were coerced to give the undertaking is without basis as no complaint was lodged before the law enforcing authorities and, is in my opinion, an attempt to stall recovery of municipal dues. The submission of the petitioners that the undertaking given, as evident from annexure P6 of the writ petition, was withdrawn by letter dated 10th December, 2008, issued on behalf of the petitioner by the learned advocate, is not tenable as in my view an undertaking given by a person has to be withdrawn by the person himself.

11. So far as the law laid down in the judgment in DLF Hilton Hotels vs. The Kolkata Municipal Corporation, 2009(2) CLJ (Cal) 63 relied on by the petitioners is concerned, it is not applicable to facts of this case as the Hearing Officer had proceeded fairly by following the established procedure, that is by issuing notice intimating the date, time and place of hearing as evident from the writ petition itself and granting hearing. Assuming fair procedure was not adopted by the respondents, then also the petitioner is estopped from challenging the impugned order dated 2nd July, 2003, since, as already noted, u/s 190 of the Act, the order passed by the Hearing Officer u/s 188 had attained finality as no appeal was preferred from the same within forty five days after obtaining the certified copy of the same which the petitioners had obtained on 8th January, 2004. The argument of the petitioners that since the respondents did not raise the question of maintainability of the writ petition at the threshold and since affidavits have been exchanged, the matter has to be heard on merits is not tenable in view of the law laid down by the Apex Court in State of U.P. and Another Vs. U.P. Rajya Khanij Vikas Nigam S.S. and Others, wherein it has been held as "Even otherwise, the learned Judge was not right in law. True it is that issuance of rule nisi or passing of interim orders is a relevant consideration for not dismissing a petition if it appears to the High Court that the matter could be decided by a writ Court. It has been so held even by this Court in several cases that even if alternative remedy is available, it cannot be held that a writ petition is not maintainable. In our judgment, however, it cannot be laid down as a proposition of law that once a petition is admitted, it could never be dismissed on the ground of alternative remedy. If such bald contention is upheld, even this Court cannot order dismissal of a writ petition which ought not to have been entertained by the High Court under Article 226 of the Constitution in view of availability of alternative and equally efficacious remedy to the aggrieved party, once the High Court has entertained a writ petition albeit wrongly and granted the relief to the petitioner", (paragraph 38)

12. Therefore, as the petitioners did not prefer appeal before the Municipal Assessment Tribunal from the impugned order dated 2nd July, 2003 though

certified copy of the same was obtained on 8th January, 2004 and as the said order had become "final" u/s 190 of the Act and as the petitioners did not file objection to the Letter of Intimation dated 5th November, 2008 which was issued consequent to the impugned order and as the petitioners undertook to deposit the municipal dues in installments, there is no merit in the writ petition. Therefore, the writ petition is dismissed. Interim order is vacated. Hence, the petitioners are directed to deposit the municipal dues within a week from the date of the communication of this order failing which the authorities of the Kolkata Municipal Corporation are at liberty to initiate measures to recover the dues in accordance with law.

No order as to costs.

Later:

13. After the judgment and order is delivered, Mr. Roy, learned Advocate for the petitioner, prays for stay of operation of the judgment and order. Prayer is considered and rejected. Urgent Photostat certified copy of this judgment and order, if applied for, be given to the appearing parties on priority basis.