

(2006) 01 CAL CK 0032
In the Calcutta High Court
Case No : Writ Petition No. 1907 of 2005

Vikram Murarka and Another

APPELLANT

Vs

Assessor-Collector (North-South) Division XXVII, The Kolkata
Municipal Corporation and Others

RESPONDENT

Date of Decision : 12-01-2006

Acts Referred:

Calcutta Municipal Corporation Act, 1980 — Section 174, 179, 179(2), 180, 180(1)

Citation : (2006) 2 CALLT 30

Hon'ble Judges : Jyotirmay Bhattacharya, J

Bench : Single Bench

Advocate : R.N. Datta, for the Appellant; Ashok Das Adhikary, for the Respondent

Final Decision : Dismissed

Judgement

Jyotirmay Bhattacharya, J.—The Court : In this writ petition, the petitioners have prayed for quashing of the impugned notices of hearing issued by the Municipal authority u/s 184(3)/Section 184(4) of the West Bengal Act LIX of 1980 being annexures "P-1" and "P-4" to this writ petition on the ground of vagueness and/or lack of material particulars.

2. The petitioners are the occupiers of Flat No. 6C on the 6th Floor, Tower-C at premises No. 96 Garden Reach Road. Kolkata-700023, the possession of which was given to the petitioners by the owners thereof pursuant to an agreement for sale entered into between the petitioners on the one hand and the owners of the said flat, viz., M/s. Steel Products Ltd. and M/s. Rishab Exports Ltd. on the other hand.

2.1. The-assessment of the said flat was made for the first time by the Municipal authority with effect from the 2nd quarter 2003-04. Hearing notices u/s 184(3)/section 184(4) of the West Bengal Act LIX of 1980 (hereinafter referred to as the said notice) were served upon the petitioners. It appears from the said notices

being annexures T-1" and T-4" to this writ petition that the annual valuation of the said premises with effect from 2nd quarter 2003-04 was assessed by the Municipal authority at Rs. 42,360/- by applying the mode of assessment as specified in the Ground being Item No. 3 overleaf.

3. Ground No. 3 consists of two clauses which are as follows: -

(a) Valuation in estimated annual rent less statutory allowance for repairs, the valuation, having been made on estimated cost of construction and market value of land.

(b) Valuation having been made on the basis of cost of acquisition.

4. On receipt of the said notice, the petitioners were perplexed, as the notice did not specify any particular clause under which the said flat was assessed. Accordingly, the petitioners wrote letters repeatedly to the Municipal authority for ascertaining precisely the particular mode which was adopted by the Municipal authority for assessment of the said flat.

5. In spite of receipt of the said letters, the Municipal authority did not reply to the petitioners and as a result thereof the petitioners are still in the dark as to which particular clause has been applied by the Municipal authority for assessing the annual valuation of the said flat.

6. Under such circumstances, the petitioners could not submit objection to the said assessment.

7. Mr. Dutta, learned Advocate, appearing for the petitioners, submitted that unless the Municipal authority specifies the particular clause under which the said flat was assessed, the petitioners neither can submit their objection to the said valuation nor call participate in the hearing effectively. According to Mr. Dutta, these two clauses deal with two different situations and as such both the said clauses cannot be clubbed together.

8. Mr. Dutta relied upon the following decisions of the Hon"ble Supreme Court to show that such 9. notice which suffers from vagueness and lacks material particulars, cannot be sustained in law:

(i) Lt. Col. P.R. Chaudhary (Retd.) Vs. Municipal Corporation of Delhi,

(ii) (2001) 1 SCC 291 (Food Corporation of India v. State of Punjab) and

(iii) Commissioner of Gift Tax, Bombay Vs. Smt. Kusumben D. Mahadevia,

9. Relying upon the aforesaid decisions, Mr. Dutta submitted that unless the notice specifies the material particulars giving full details of the mode of assessment of valuation of the said flat, the notice cannot be sustained in law for its vagueness as the principles of natural justice demands discloser of the material particulars regarding assessment of the impugned valuation.

10. Under such circumstances, the petitioners have challenged the legality and/

or validity of the said notice and prayed for quashing of the same in this writ petition.

11. Mr. Dutta ultimately, however, submitted that instead of quashing the said notice, the respondents may alternatively be directed to furnish the necessary particulars including the basis of assessment and/or the particular mode which was adopted by the Municipal authority for such assessment to the petitioners, so that the petitioners can participate in the assessment proceeding effectively. ,

12. Mr. Das Adhikary, learned senior advocate, appearing for the Kolkata Municipal Corporation, refuted the said submission of Mr. Dutta very strongly by relying upon a decision of the Hon''ble Supreme Court in the case of The Special Director and Another Vs. Mohd. Ghulam Ghouse and Another, . By relying upon the said decision, Mr. Das Adhikary submitted that unless the High Court is satisfied of the nullity of the show cause notice for want of jurisdiction of the authority concerned to even investigate the facts, the writ petition challenging the said show cause notice cannot be entertained as a matter of routine.

13. Mr. Das Adhikary further contended that since it is not the case of the petitioners that the authority which issued the said notice is not authorized under the Act to issue such notice, the notice cannot be quashed. Rather the petitioners should be directed to respond to the said notice.

14. By relying upon another decision of the Hon''ble Supreme Court in the case of Asstt. General Manager, Central Bank of India and Others Vs. Commissioner, Municipal Corporation for the City of Ahmedabad and Others, , Mr. Das Adhikary submitted that once the assessee is informed about the assessed valuation of the premises, the notice cannot be challenged on the ground of absence of further particulars as the Municipal authority is not obliged to give any further particulars in the said notice. Thus, by relying upon the said decision; Mr. Das Adhikary prayed for rejection of the said writ petition.

15. Heard the learned Advocates of the parties. Considered the materials on record.

16. In order to assess the legality and/or validity of the said notice, the scheme for assessment of the annual valuation of a premises as provided in the Kolkata Municipal Corporation Act, 1980, is required to be considered.

17. The determination of the annual valuation of a premises is made u/s 174 of the said Act. The mode of periodic assessment and revision of assessment have also been provided in Section 179 and Section 180 of the said Act respectively.

18. Once the annual valuation of any premises under Sub-section (2) of Section 179 or a general revaluation under Sub-section (1) of Section 180 in any ward of the Corporation or part thereof, as the case may be, has been completed, the Municipal Commissioner under Sub-section (1) of Section 184 of the said Act, shall cause the respective valuation to be entered in the assessment list in the prescribed form containing such particulars with respect to each land or building.

19. Sub-section (2) of Section 184 of the said Act provides that when the assessment list has been prepared, the Municipal Commissioner shall give public notice thereof and of the place where the list or a copy thereof may be inspected, and every person claiming to be the owner, lessee, sub-lessee or occupier of any land or building included in the list and any authorised agent of such person shall be at liberty to inspect the list and to take extracts therefrom free of charges.

20. Sub-section (3) of Section 184 of the said Act provides that the Municipal Commissioner shall give public notice of the place, time and date, not less than one month after preparation of the assessment list as aforesaid, when he will proceed to consider the annual valuation of lands and buildings entered in the assessment list and in all cases in which any land or building is for the first time assessed, or the annual value of any land or building is increased, he shall also give written notice thereof to the owner or to any lessee, sublessee or occupier of such land or building and shall specify in the notice the place, time and date not less than one month thereafter, when he will proceed to consider such valuation.

21. Sub-section (4) of Section 184 of the said Act provides that when a revision in the annual valuation of any land or building has been made under Sub-section (2) of Section 180, the Municipal Commissioner shall cause the respective valuation to be entered in the assessment list and shall give a written notice thereof to the owner or to any lessee, sub-lessee or occupier of such land or building, and shall also specify in the notice the place, time and date not less than one month thereafter, when he will proceed to consider such valuation.

22. Thus, it appears that Sub-section (3) of Section 184 and Sub-section (4) of Section 184 of the said Act contemplate service of notice of hearing of the assessment proceeding. Notice under Sub-section (3) of Section 184 of the said Act is required to be served in case assessment is made either under Sub-section (2) of Section 179 or under Sub-section (1) of Section 180 of the said Act. Notice under Sub-section (4) of Section 184 of the said Act is required to be served in case of revision of the annual valuation of the land and building as per the provisions as contained in Sub-section (2) of Section 180 of the said Act.

23. Notice either under Sub-section (3) of Section 184 of the said Act or under Sub-section (4) of Section 184 of the said Act, is nothing but a notice of hearing simpliciter. In the said notice, the Municipal authority is required to specify the place, time and date when the valuation of the premises in question will be considered and/or finalised by the Municipal authority.

24. On perusal of the impugned notice, this Court does not find lack of any such requisite particulars. The place, time and date when the valuation of the said premises will be considered and/or finalised by the Municipal authority have been specifically mentioned in the said notice.

25. Neither Sub-section (3) of Section 184 of the said Act nor Sub-section (4) of Section 184 of the said Act provide for, giving any further particulars in the said

notice. As such, this Court is unable to find out any vagueness and/or lack of particulars in the said notice.

26. The decisions which were cited by Mr. Dutta have no application in the facts of the instant case, inasmuch as, the set of facts and the point at issue before the Hon''ble Supreme Court in all those decisions were completely different from that of the facts of the present case.

27. This Court is unable to find any substance in the submission of Mr. Dutta to the effect that the petitioners are unable to submit objection to the impugned assessment proceeding effectively unless the basis of assessment with all necessary particulars as asked for by the petitioners in their notices being annexures "P-2" and T-3" series to this writ petition, are given to the petitioners by the Municipal authorities.

28. Such submission of Mr. Dutta is absolutely contrary to the Scheme as provided in Section 184 of the said Act under which the Municipal authorities are not required to supply those material particulars to any individual assessee separately along with the notice of hearing either u/s 184(3) or u/s 184(4) of the said Act.

29. I have already indicated above the scheme of assessment of the annual valuation of a premises under the said Act. Under the said Scheme, it is provided that when assessment of the annual valuation of a premises has been completed, the Municipal authority is required to cause the valuation to be entered in the assessment list in such form and containing such particulars with respect to such building as per prescription. The said list contains the particulars regarding the mode and/or the basis of assessment of a premises. Sub-section (2) of Section 184 of the said Act also provides for giving public notice for inspection of the assessment list after its preparation by the Municipal authority.

30. It is not the case of the petitioners that the Municipal authority had neither prepared such assessment list nor issued any public notice for inspection thereof before issuance of the impugned hearing notice.

31. Thus, in the absence of making out such a case regarding non-publication of the assessment list and/or non-issuance of the public notice for inspection, this Court cannot accept the contention of Mr. Dutta that his clients are unable to submit objection to the impugned assessment proceeding effectively in the absence of disclosure of such material particulars by the Municipal authorities. As a matter of fact that under the Scheme of the said Act it is the duty of the assessee to inspect the assessment list for ascertaining the correctness of the valuation of the premises of the assessee. The petitioners, thus, could have very well ascertained the particulars which they sought for from the Municipal authorities in their notices being annexures "P-2" and T-3" series to this writ petition, by taking inspection of the assessment list and could have objected to such assessment.

32. In the facts and circumstances, as stated above, this Court does not find any illegality and/or irregularity either in the assessment proceeding, or in the impugned notices. No jurisdictional infirmity in issuance of the said notices by the concerned authority can be traced out.

Accordingly, the writ petition stands rejected. There will be, however, no order as to costs.

Urgent xerox certified copy of this order, if applied for, be given to the parties, as expeditiously as possible.