Navsarjan Trust Vs. Ahmedabad Municipal Corporation and anr.

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Court : Gujarat

Decided On : Sep-05-2001

Reported in : AIR2002Guj243; (2002)1GLR482

Judge : B.C. Patel and; Sharad D. Dave, JJ.

Acts : Bombay Provincial Municipal Corporations Act, 1949 - Sections 130, 131 and 132

Appeal No. : Special Civil Application No. 10006 of 1999

Appellant : Navsarjan Trust

Respondent : Ahmedabad Municipal Corporation and anr.

Advocate for Def. : M.G. Nagarkar, Adv.

Advocate for Pet/Ap. : G.M. Joshi, Adv.

Disposition : Petition allowed

Judgement :

B. C. Patel, J.

1. Rule. Mr. M. G. Nagarkar waives service of rule. At the request of the learned Advocates, this matter is taken for final hearing.

2. This is a glaring example where Public Corporation despite the service is affected much before has not bothered to file reply. In this session, we have come across several cases where the Government/the Corporation on account of delay, in almost all matters is required to file applications for condonation of delay. The same requires issuance of rule in delay applications. We are constrained to say that in number of cases where there is nothing on the merits yet the appeals have been preferred. Even the learned G.P./A.G.P. arguing the appeals in many cases, could not satisfactorily point out to the Court that the trial Court has committed any error, and therefore, without issuance of notice to the land losers, the matters have been rejected. After taking into consideration merits, in some cases where it was pointed out that interference is called for, the Court has issued notice in applications for condonation of delay. As said earlier that in several cases even after the service, reply is not filed, matters are required to be rotated. Before filing the appeals, grounds are taken that the delay is likely to take place. After issuance of process, for a long time reply is not filed and prayer for time is usually made on several occasions in each matter. These are the reasons causing delay in the disposal.

3. In the instant ease, the notice was issued on 15-12-1999 which was made returnable on 11-1-2000. Ad-interim stay of operation and implementation of the demand notice at Annexure 'E' to the petition was granted. It seems that thereafter on 11-1-2000, the matter was adjourned as the request was made. On 21-2-2000 the learned Advocate for the respondent requested for time and the time was granted. Again on 28-2-2000, as the petitioner's Advocate consented for time, by consent, Court adjourned the matter. Again on 8-3-2000, Mr. Nagarkar requested for time and the matter was adjourned to 15-3-2000. When the matter was called out on 19-4-2000, the learned Advocate could not remain present and hence the matter was dismissed for non-prosecution. It is under these circumstances, the petitioner was required to file an application and the Court granted the same on 20-7-2001. That is how the matter is restored. Even thereafter, the Corporation

respondent herein has not bothered to file any reply.

4. The petitioner is a Public Trust registered under the provisions of the Bombay Public Trusts Act, 1950 having its Registration No. E-3909-Kheda which is reflected in Annexure 'A' Certificate of Registration issued by the Assistant Registrar, Co-operative Societies. Along with the said Annexure, Certificate of Registration issued by the Asst. Charity Commissioner, Nadiad dated 18-3-1989 is produced on record. Reading the same, it appears that Registration Certificate No. 1990 was issued indicating that the Trust has been registered in accordance with the provisions. It is given Registration No. E-3909-Kheda.

5. The petitioner has averred in the petition that the Charitable Trust is receiving income which is utilized for promotion of public purpose. The petitioner has come with the case that the Trust is engaged in the activity of awakening people and making them aware about their legal rights. It is stated that it operates at grass-root level in small villages. The petitioner has referred about the Talukas in several Districts wherein the services are being rendered by the Trust.

6. It is stated on oath that the Trust is the owner and occupier of Flat No. 101 on the first floor of Ruchi flats which is situated opposite Suraj Party Plot, B/h Dhamidhar Derasar, Vasna, Ahmedabad being Tenement No. 7541-4903-00-0001-0. It is further averred that as per the municipal tax bill, the said flats are known as 'Abhikalp' flats of Abhikalp Flats Owners Association, a Non-Trading Corporation. The Certificate dated 12-5-1994, issued by the said Corporation is produced at Annexure 'B' indicating that Navsarjan Trust is a member of Abhikalp Flat Owners Association. The grievance made by the petitioner is that the respondent-Corporation discharging its duties under the Bombay Provincial Municipal Corporations Act, 1949 (hereinafter referred to as 'the Act') is entitled to levy and recover the property tax. However, the learned Advocate submitted that for this purpose, Section 132(1) will have to be taken into consideration. The said Section reads as under :

'132. (1) The general tax shall be levied in respect of all buildings and lands in the City the rateable value of which exceeds Six hundred rupees except. (a) buildings and lands solely used for purposes connected with the disposal of the dead; (b) building and lands or portions thereof solely occupied and used for public worship or for a public charitable purposes; (c) buildings and lands vesting in the Government used solely for public purposes and not used or intended to be used for purposes of trade or profit or vesting in the Corporation, in respect of which the said tax, if levied, would under the provisions hereinafter contained by primarily leviable from the Government or the Corporation, respectively.'

Relying on Sub-section (b) of Sub-section (1), it is submitted that it is not open to levy any general tax on buildings and lands solely used for the purposes connected with or occupied and used for a public charitable purpose.

7. It is required to be noted that the respondent-Corporation is entitled to levy the taxes amongst other taxes such as water tax, conservancy tax and general tax. The Court is at present concerned with water tax, conservancy tax and general tax. Reading Section 130 for water tax and Section 131 for conservancy tax, it is very clear that there is no exemption to any premises. Section 130 reads as under :

'130. Subject to the provisions of Section 134, the water tax shall be levied only in respect of premises :-- (a) to which private water supply is furnished from, or which are connected by means of communication pipes with, any municipal water works; or (b) which are situated in a portion of the City in which the Commissioner has given public notice that the Corporation has arranged to supply water from municipal water works by means of private water connections or of public standposts, or by any other means.'

Thus, the premises which are connected by means of communication pipes with, any municipal water works then there is no question of exemption. Clause (b) of Section 130 would not be applicable in the instant case. So far as Section 131 is concerned, it refers to conservancy tax on premises. Mr. Joshi could not point out from the Section that as the exemption is given under Section 132, an exemption should be given under Section 131 from payment of conservancy tax. Reading these provisions, it is clear that exemption can be claimed from payment of tax of a building and lands as mentioned in Section 132 of the B.P.M.C. Act. In the instant case, the building, so far as premises is solely occupied and used for public charitable purposes, benefit can be granted. In the instant case, in absence of affidavit-in-reply and the documents produced on record by the petitioner, it can be said that for the year in question, the building was used and occupied for a public charitable purpose, and therefore, for that year it goes without saying that the general tax cannot be levied by the Corporation. In view of what we have stated hereinabove, general tax levied as per bill Annexure 'C' stands quashed as the property is used by a charitable trust for charitable purpose. We are required to consider the bill for the year 1996-1997.

8. In view of the aforesaid discussion, the petition is required to be allowed by quashing the general tax levied vide Annexure 'C' to the petition. The petition stands allowed accordingly to the aforesaid extent only. Rule is made absolute. No order as to cost.