

Mohammad Farooque Vs. State of West Bengal and Others

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Court : Kolkata

Decided On : May-05-1993

Reported in : AIR1994Cal109

Judge : Susanta Chatterji, J.

Acts : Calcutta Municipal Corporation Act, 1980 - Sections 174(4), (6), 189 and 189(6);; Calcutta Municipal Corporation (Taxation) Rules, 1987 - Rule 16;

Appeal No. : Writ Petn. No. 4844 of 1991

Appellant : Mohammad Farooque

Respondent : State of West Bengal and Others

Advocate for Def. : Barin Banerjee and ;D. Chakaraborty, Advs.

Advocate for Pet/Ap. : P.K. Das and ;S. Misra, Advs.

Judgement :

ORDER

1. The writ petitioner has prayed, inter alia:--

'(a) Declaration that S. 189(6) of the Calcutta Municipal Corporation Act, 1980 and Rule 16 of the Calcutta Municipal Corporation (Taxation) Rules, 1987 are illegal and void, unconstitutional, inoperative and not binding on the petitioner and as such the said provisions are liable to be and should be struck down or quashed or

declared to be invalid and inoperative;

(b) Writ of and/or in the nature of mandamus be issued commanding the State Government and/or the statutory authorities/respondents to forbear from giving any effect or further effect to the aforesaid provisions contained in the said Statute and in the said Rules and the condition for pre-deposit of the consolidated rate be not insisted upon by the respondents.

(c) Writ of and/or in the nature of certiorari and/or direction of like nature calling upon the respondents to certify and transmit the records relating to the instant case to this Hon'ble Court so that the said provisions of law may be quashed or set aside or that conscientious justice may be done and the impugned provisions be directed to have no binding force on the petitioner;

(d) Writ of and/or in the nature of prohibition restraining the respondents, their servants and agents from acting upon or giving effect to the said provisions of law and they be restrained from demanding the pre-deposit of the entire consolidated rate;

(e) Rule Nisi in terms of prayers (b), (c) and (d) above;

(f) Stay of all further proceedings in the petitioner's said pending appeal relating to assessment of annual value of the said premises before the Municipal Assessment Tribunal until the final disposal of the instant writ petition;

(g) Ad interim order in terms of prayer (f) above;

(h) Interim order restraining the respondents from demanding the consolidated rate from the petitioner as a pre-condition to prosecute the pending appeal before the Municipal Assessment Tribunal and/or insisting that the petitioner do strictly comply with the said provisions of the said Statute and/or the said Rules;

(i) Alternatively interim order permitting your petitioner to make a deposit of a reasonable amount of the consolidated rate by furnishing bank guarantee with regard thereto for such sum as to the Hon'ble Court may seem fit and proper and also a direction on the petitioner to deposit each quarter of reasonable

proportionate amount of the consolidated rate till the disposal of the said appeal before the Municipal Assessment Tribunal;

(j) Ad interim order in terms of prayers (h) and (i) above;

(k) Provision be made for the costs of and incidental to this application;

(1) Such other or further order or orders, direction or directions be made as to the Hon'ble Court may deem fit and proper.'

2. It is stated in details that the petitioner is the owner of the building situated at premises No. T-44A, Rabindra Sarani, Calcutta, formerly known as 44, Rabindra Sarani and the said building is used as guest house and the audit report also speaks of the nature of the premises. It is contended that the petitioner realise Rs. 45/- for single bed and Rs.90/- for double bed per day from the guests of the said guest house. Gross annual receipt from the said guest house is Rupees 4,13,144/- . According to the petitioner the annual valuation of the said premises should be 7 1/2% of the said amount under S. 174(4) of the Calcutta Municipal Corporation Act. It is stated that the petitioner has 53 rooms in the said guest house and each room is provided with a bed for sleeping accommodation and the rooms are furnished. It is placed on record that the petitioner received a notice dt. 24-5-86, issued by the Assessor, Calcutta Municipal Corporation wherein the petitioner was informed that pursuant to the petitioner's objection to the assessment of the above premises the Assessor, Calcutta Municipal Corporation by notice under S. 182 of the West Bengal Act, XXXII of 1951 vide proviso to Section 179(1) of the West Bengal Act, LIX of 1980 requested the petitioner to appear before the Hearing Officer on 5-6-86 with evidence, oral and documentary. Upon assessment in July, 1987 the Corporation issued a rate bill which shows annual valuation at Rs. 4,12,365 / - and the gross amount of tax or rate less the rebate has been shown as Rupees 41,236.50. Being aggrieved the petitioner has come to this Court on the ground that the said provisions have been rendered completely nugatory and/or made infructuous the statutory right of appeal which has been granted to the petitioner under Sec. 189 of the Act. It is contended that it would be impossible to legislate that the appeal shall abate unless the consolidated rate is continued to be deposited until the appeal is finally disposed of and such provision is

unconstitutional and void being beyond the scope of the legislative authority of the State.

3. The writ petition is opposed by the respondents. It is disclosed, inter alia, that the petitioner has alternative remedy of preferring appeal against the assessment of annual valuation of the building and to assess tax.

4. Attention of the court has been drawn to various case laws reported in AIR 1982 Cal 8, AIR 1980 SC 2080. All these decisions have been considered in a recent case reported in : AIR 1992 SC2279 (Shyam Kishore v. Delhi Municipal Corporation). It has been found that where there are conditions to deposit the assessed amount at the time of preferring appeal, they are not ultra vires. It has been made clear that the appeal may be entertained but hearing may be kept in abeyance and time may be granted to deposit the amount as per discretion of the court. Much emphasis has been laid before this Court on the scope of interpretation of Ss. 174(4) and 174(6) of the Calcutta Municipal Corporation Act. It is contended that the appeal as envisaged under Sec. 189 would be absolutely nugatory where there is specific observation for deposit of the said amount. Since this aspect has been considered in the case of Delhi Municipal Corporation and this Court has scrutinised the provisions as envisaged under Ss. 174(4) and 174(6) along with S. 189 of the C.M.C. Act this Court finds here the scope of entertaining the appeal without deposit has been ruled out. In view of the observation of the Hon'ble Supreme Court in a similar legislation filing of the appeal cannot be ruled out but hearing of the appeal cannot be made unless the pre-conditions as to deposit are fulfilled. Argument as advanced on behalf of the writ petitioner has been considered in various other decisions of this Court as indicated above. Decisions of this Court and also of Bombay High Court have been considered by the apex Court in various paragraphs of : AIR 1992 SC2279 (supra). Nothing is left out to be considered again that the provisions of S. 174(4) and 174(6) of the C.M.C. Act are ultra vires and/or the provisions as laid down in S. 189 is nugatory. Needless to observe that where assessment has not been made according to law and where question of illegality and perversity is raised the writ courts are always open but where there is an alternative remedy to an act lawfully done according to the Statute, the same must be carried out strictly in

terms of the Statute and there cannot be any reservation.

5. Considering this aspect this court does not appreciate the points raised in the writ petition and does not find any merit to sustain the same, hence the petition fails and is rejected. No order as to costs.

6. There will be stay of operation of the order till one week after the holidays.

7. Parties to act on a signed copy of the operative part of this judgment on the usual undertaking.

8. Petition dismissed.

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