

In Re: Avinash Jain

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Court : Kolkata

Decided On : Mar-11-1991

Reported in : (1992)1CALLT9(HC)

Judge : Susanta Chatterji, J.

Acts : [Constitution of India](#) - Article 226; ;Calcutta Municipal Corporation Act, 1980 - Section 178(2)

Appellant : In Re: Avinash Jain

Advocate for Def. : L.C. Bihani and ;Suchanda Mukherjee, Advs.

Advocate for Pet/Ap. : Pran Kumar Bhattacharyya, ;Nilava Mitra and ;Ratna Bhattacharyya, Advs.

Judgement :

Susanta Chatterji, J.

1. The present writ petition has been filed for issuance of a Writ of Mandamus commanding the respondent No. 5, the Municipal Assessment Tribunal to admit and decide the Municipal Assessment Appeal No. 213 of 1990 filed by the petitioner before Municipal Assessment Tribunal at Calcutta in compliance of Section 178(2)(iv) of the Calcutta Municipal Corporation Act, 1980, and Section 14 of the West Bengal Apartment Ownersh Act, 1972, and for cancellation of the

order dated the 4th February, 1989, passed by the Hearing Office-1, the respondent No. 3 and the purported red card dated the 30th July, 1989, passed by the Assistant Assessor XXII, Calcutta Municipal Corporation communicating an order that the assessment of annual valuation has been fixed at Rs. 80,350/- in respect of the premises No. 190C, Alipore Road, Calcutta, effective with period commencing from the 3rd Quarter of 1984-85 and for other consequential reliefs.

2. It is stated in detail that the respondent authorities in utter violation of Section 174 of the Act of 1951 and Section 14 of the Act of 1972 had clubbed all the apartments/flats into one single unit and had determined the annual valuation of the said premises effective from the second quarter of 1977-78 and the petitioner being aggrieved has taken effective steps. In the meantime the respondent authorities have again clubbed together the flat of the petitioner and the flat of the other apartment owners of the said premises into one single unit and proposed to enhance the annual valuation from Rs. 31,197/- to Rs. 51,248/-. The said objections having been overruled and the petitioner has proceeded according to law and an appeal has been preferred being Misc. Appeal No. 213 of 1990 relating to assessment period from 3rd Quarter 1984-85 to 2nd quarter 1989-90 before the Municipal Assessment Tribunal and against the arbitrary increase of the annual valuation the petitioner has come to this writ Court seeking reliefs as indicated above without having the pre-deposit as required under the law.

3. The contesting respondent authorities have appeared before this Court and has agreed that since the facts are not disputed there is no necessity of filing affidavits and on the points of law the matter can be disposed of, as suggested by learned Counsels appearing on both sides.

4. As agreed the matter is taken up for final disposal.

4a. Attention of this Court has been drawn to several grounds of objection raised by the petitioner inasmuch as the respondent assessment authority in passing the combined impugned order has failed to disclose any evidence or record whatsoever. It is highlighted before this Court that the respondents being statutory authority failed to exercise the jurisdiction and power vested upon it in overlooking the facts of the case of the flat/apartment owners of the said premises and they

cannot be clubbed together in one single unit for the purpose of determination of valuation and the assessment thereof in violation of the provision of the aforesaid Act. It is placed on record that the respondent authorities failed to appreciate the correct legal scope and effect of Section 174 of the Act of 1951 and Section 178(3)(iv) of the Act of 1980 and Section 14 of the Act of 1972 in the proper perspective for effective adjudication of the matter in dispute.

5. Attention of this Court has been drawn to a number of reported decisions, viz., : [1965]2SCR653 (Khurai Municipality v. Kamal Kumar). In paragraph 7 it has been observed that it is true that the High Court would not ordinarily entertain a petition under Article 226 of the Constitution where an alternative remedy is open to the aggrieved party. Though that is so, the High Court has jurisdiction to grant relief to such a party if it thinks proper to do so in the circumstances of the case. In the present case the High Court has chosen to exercise discretion in favour of the respondents and it would not be right for us to interfere with the exercise of that jurisdiction unless Their Lordships are satisfied that the action of the High Court was arbitrary or unreasonable. Nothing has been brought to Their Lordships notice from which it could be inferred that the High Court acted arbitrarily in granting the writ prayed for to the respondents.

6. It further appears from 78 CWN 590 (H. N. Ghosh v. Commissioner of Corporation, Calcutta and Ors.) that ownership flats in multi-storeyed buildings are an usual and common feature in big cities in modern times. There is no legal impediment for apportionment of valuation Under Section 174 of the Act on the existing valuation, since final determination of objection was pending. Such apportionment of valuation must necessarily be subject to alteration in case on final determination the valuation of the entire premises is altered. Further attention of the Court has been drawn to the case reported in 88 CWN 89 (Chatter Singh Baid and Ors. v. Corporation of Calcutta and Ors.). Chittatosh Mookerjee J. (As His Lordship then was) was pleased to observe that the provision for deposit of consolidated rate contained in Sub-section (3A) of Section 183 of the said Act is subject to obtaining refund or adjustment in the manner and to the extent specified in Section 207(2) of the said Act. Therefore, the said Sub-section (3A) could not be pronounced as a device or cloak to confiscate the amount required to be

deposited under the said Section 183(3A) of the said Act. The said Sub-section 3A of Section 183 of the Calcutta Municipal Corporation Act neither gives uncanalised discretionary power to the authorities nor the Act seeks to make any differentiation or classification. While delivering the judgment His Lordship also considered the case reported in 87 CWN 391. In paragraph 15 of the aforesaid judgment it was considered that Sub-section 3A of Section 183 of the Act does not make the appellate provision Under Section 183(1) nugatory or illusory but by his own default to comply with the condition for deposit the appellant himself may fail to avail of the remedy by way of appeal Under Section 183(1) of the Act. A law cannot be declared unconstitutional because an alleged possibility which may occur in future. Therefore, His Lordship found no substance in the petitioner's apprehension that in a given case that the consolidated rate determined according to the new valuation may be so high that it might be impossible for the appellant Under Section 183(1) to deposit the consolidated rate according to the said new valuation. The same is not a relevant point for deciding the validity of the statute. It is presumed that the power to determine valuation and to assess consolidated rates would be reasonably exercised and in case the said power be arbitrarily or capriciously exercised, the person aggrieved without availing of the remedy Under Section 183(1) of the Act may seek redress in other appropriate forum.

7. Taking the cue from the aforesaid observations it is submitted that regard being had to the materials on record the petitioner has a grievance that the condition precedent for sustaining the appeal by asking him to deposit the entire amount relating to the entire premises is wholly unwarranted and uncalled for.

8. Having heard Mr. Bhattacharyya for the petitioner and Mr. Bihani for the other side this Court considered such a limited scope for the purpose of disposing of the present case inasmuch as the grievance as to the annual valuation for the purpose of tax has to be considered in detail by the appellate forum and since the petitioner has preferred an appeal, this Court does not deem it fit and proper to consider the merit of the order since challenged before the appellate forum. This Court only considered as to whether the valuation is so high that for the purpose of maintaining the appeal, the grievance can be entertained by the writ court and any remedy can be given thereto.

9. While deciding the case reported in 88 CWN 89 this Court found scope to raise objection in a bona fide case against the alleged arbitrary and high valuation and for the purpose of deposit of the amount to sustain appeal. Considering this limited scope this Court found that since the apartment owners can ask for apportionment and since law permit the assessment of valuation of one flat in a multi-storeyed building and not to make one unit clubbing together all the flats within the said premises to make any one flat owner to comply with the deposit of the entire amount for the entire premises and it becomes an impossibility to prefer an appeal by complying with such conditions. In a just and proper case the appellate authority ought to consider the grievance of the petitioner and in proper and lit case would permit the appellant to deposit such amount that would be just and convenient and bona fide to sustain the appeal.

10. This Court found that in excise matters where appeals are being permitted in law, there is scope for consideration of hardship and the appellate authority has the discretion to permit the petitioner to deposit such amount which would be just and convenient in order to sustain the appeal, although in the instant statute there is no such specific condition for consideration of hardship and for any discretion to permit the petitioner to pay in part or to be exonerated from depositing the entirety.

11. This Court having considered all the aspects and on the scope of equity permits the petitioner to make an appropriate application before the Appellate Authority and the appellate authority would permit the deposit of such apportioned amount keeping in parity of the flat in occupation of the petitioner and allow the petitioner to deposit such amount which would be in substantial compliance of the provisions to sustain the appeal. Leave is granted to the petitioner to make an application with the appellate authority to permit him to deposit such amount as indicated above and the appellate authority would allow the petitioner to deposit the amount so determined as indicated above and thereafter will decide the appeal on merit, holding inter alia that the petitioner has complied with the provision to make the pre-deposit as required under the law. The application would be filed by the petitioner within four weeks from today and the appellate authority would dispose of the same within two months from the date of filing the application by giving an opportunity of hearing to both sides. If any date has already been fixed

for hearing of the appeal, the same would be adjourned and would be disposed of after complying with the directions as above and upon compliance of necessary formalities by the parties hereto.

12. The writ petition is thus disposed of. There will be no order as to costs.

13. Let xerox copies of this order be handed over to the learned Advocate for the parties on their undertaking and application to apply for and obtain certified copies of the same.

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