

Chhaganlal

Vs

Municipal Corporation.

Civil Appeal No. 1888 of 1968

(CJI A.N. Ray, M.H. Beg, P.S. Kailasam JJ)

28.01.1977

JUDGMENT

P. S. Kailasam, J. -

1. This appeal is by special leave against the judgment and order of the High Court of Madhya Pradesh, Bench at Indore, revising the order of the Additional District Judge and holding that the appellant is liable to pay tax from April 1, 1954 and not from April, 1, 1965 only as held by the District Judge.

2. The appellant is the owner of a factory at No. 1, Shivaji Nagar, Indore. On January 8, 1954 the rental of the factory was assessed at Rs. 564 per month and the house-tax payable at Rs. 475/14/- with effect from April 1, 1951.

3. The dispute is whether tax is payable from April 1, 1954. By an order dated March 20, 1956 the house-tax was determined at Rs. 891/1/- per annum by the Municipal Corporation with effect from April 1, 1954. Against the said assessment the appellant preferred an appeal before the Municipal Appeal Committee, Indore. The Appeal Committee allowed the appeal and remanded the case for deciding it on merits after giving a hearing to the appellant. After remand the Municipal Corporation again inquired into the matter and determined the rental value at Rs. 940/- per month and reduced the tax to Rs. 793/2/- per year by an order dated 11th February, 1957 as payable from April 1, 1954. The appellant objected to the assessment and gave notice of objection under S. 147(1) of the Madhya Pradesh Municipal Corporation Act, 1956, but the objection was summarily rejected by the Municipal Commissioner. The appellant preferred an appeal being Miscellaneous Appeal No. 41 of 1957 to the 1st Additional District Judge, Indore. By

4. Aggrieved by the order of the Commissioner the appellant filed Civil Miscellaneous Appeal No. 70 of 1966 before the 2nd Additional District Judge, Indore. The learned Judge by his order dated December 21, 1966 partly allowed the appeal and held that the appellant would be liable to pay the property tax of Rs. 764.18 with effect from April 1, 1965 only and not from April 1, 1954. The respondent Municipality then filed a Revision Petition before the High Court and the High Court by its order dated January 10, 1968 in Civil Revision No. 76 of 1967 allowed the Revision Petition and held that levy of the house-tax at Rs. 764.18 would be payable from April 1, 1954 itself.

5. Against the order of the High Court the appellant filed a petition under Article 136 of the Constitution and on the grant of a special leave by this Court on August 23, 1968 this appeal has come up before us for final hearing.

6. The learned counsel for the appellant raised two contentions. He submitted that as a fresh notice was issued under S. 144 of the amended Act on October 12, 1965 no tax could be imposed with retrospective effect and the order of the High Court directing payment of tax from April 1, 1954 is against law. It was next contended that the decision of the 2nd District Judge is final and the High Court had no jurisdiction to interfere with it. In any event it had exceeded its powers under S. 115 of the Civil Procedure Code.

7. From the facts set out it will be apparent that the order fixing the tax at Rs. 891/1/- per annum with effect from April 1, 1954 was made on March 20, 1956. That order was challenged before various forums. The Municipal Appeal Committee had first allowed an appeal preferred by the appellant and remanded the case to the Municipal Corporation. After remand, the Municipal Corporation reduced the tax to Rs. 793/2/- by its order dated February 11, 1957. But again the assessment was objected to under S. 147(1) of the Madhya Pradesh Municipal Corporation Act. The Municipal Commissioner dismissed the objections and thereupon there was an appeal to the Additional District Judge who allowed the appeal and remanded the matter for fresh disposal on March 10, 1960. After remand, the Corporation reduced the tax further and fixed it at Rs. 764.18 with effect from April 1, 1954 by its order dated October 12, 1965. The appellant filed objections and the objections were rejected by the Commissioner by its order dated May 2

"Under S. 144 (1) of the Madhya Pradesh Municipal Corporation Act, you are hereby informed that the necessary particulars in the proforma given below, together with the detailed plan of the building of the abovementioned factory may please be furnished within 7 days from the receipt of this letter for the purpose of assessment. As the case has been remanded by the court, it is necessary to make assessment again."

The notice itself specifically states that the assessment was to be made again in pursuance of the order of remand. The notice No. 10195 dated October 12, 1965 is under Section 146 of the Municipal Act and it stated that on remand of the matter from the District Court regarding the assessment of the property No. 1, Shivaji Nagar, the annual tax has been assessed at Rs. 764.18 and called upon the appellant to file any objections if he has within 30 days from the receipt of the notice under S. 147(1) of the Act. The notice itself makes it clear that the Commissioner was proceeding to fix the value in pursuance of the remand and called upon him to file his objections under S. 147. The plea of the learned counsel for the appellant is that the Commissioner is not authorised to determine the value and impose a tax for any period before the date of issue of the notice. This contention ignores the fact that the valuation and determination of the tax from the year 1954 was pending and the proceedings related to that

8. The second contention is based on S. 149 of the Madhya Pradesh Municipal Corporation Act, 1956. It provides that an appeal shall lie from the decision of the Municipal Commissioner to the District Court, when any dispute arises as to the liability of any land or building to assessment. Sub-s. (1) of S. 149 provides that the decision of the District Court shall be final. It was submitted that the decision of the District Court was therefore final and that the High Court was in error in entertaining a Revision Petition. This plea cannot be accepted for, under Section 115 of the Civil Procedure Code the High Court has got a power to revise the order passed by courts subordinate to it. It cannot be disputed that the District Court is a subordinate liable to the revisional jurisdiction of the High Court. That leaves us with the last contention of the appellant that the High Court acted beyond its power as a court of revision. This point will have to be summarily dismissed as the question of want of jurisdiction

9. In the result we find that there is not substance in this appeal and dismiss the same with costs.

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