Municipal Corporation of Greater Bombay

Vs

New Standard Engineering Co. Ltd.

Civil Appeals Nos. 501-502 of 1977

(K. Jagannatha Shetty, A.M. Ahmadi, R.M. Sahai JJ)

07.12.1990

JUDGMENT

K. JAGANNATHA SHETTY J

1. The essential question raised by these appeals relates to the determination of rateable value of the respondent's building; whether it is to be determined under sub-section (1) or under sub-section (3) of Section 154 of the Bombay Municipal Corporation Act, 1888 ("Act").

2. The facts giving rise to these appeals briefly are as follows: The respondents M/ s. New Standard Engineering Co. Ltd. is an industrial concern. It has constructed a building for providing housing accommodation for its labourers under a scheme known as the "Government Subsidised Scheme for Industrial Workers". Under the Scheme, the respondent has obtained certain amount by way of subsidy together with a loan advanced by the Government. The subsidy and loan were advanced under an agreement dated 12 November, 1959 entered into between the Government and the respondent. The agreement inter alia, provides that the Government being satisfied that the proposed construction would be helpful in implementing the Government's scheme for giving an impetus to industrial housing with a view to relieving the acute shortage of houses intended for industrial workers, has agreed to grant a subsidy not exceeding a sum of Rs. 75,400 / - and a loan not exceeding a sum of Rs. 1,50,000/-, Clause 5 of the agreement requires the respondent to observe and perform all the terms,'conditions and stipulations as in force at the date of 'Government of India Subsidised Housing Scheme for Industrial Workers 'including the 'Subsidised Housing Allotment Rules 'contained therein. Clause 8 of the agreement reads as under:

> "8. The rent which the loanee shall charge to the allottee for the occupation of one tenement shall not exceed Rs. 26.50 per month, such monthly rent being inclusive of municipal rates and taxes."

3. For the purpose of payment of property tax the Corporation fixed the rateable value of the building by a special notice No. 528 of 1959-60 dated 17 March, 1960 issued under sub-settion (2) of Section 162 of the Act at Rs.33,155/-and by as special notice No. G-558 of 1962-63 dated 18 March, 1963 at Rs.33,495/-. Apparently the annual letting value was fixed at an amount higher than the actual rent charged for each of the tenements. It was indeed determined under sub-section (1) of Section 154 of the Act. It reads:

> "154. (1) In order to fix the rateable value of any building or land assessable to a property tax there shall be deducted from the amount of the annual rent for which such land or building might reasonably be expected to let from year to year a sum

equal to ten per centum of the said annual rent and the said deduction shall be in lieu of all allowances for repairs or on any other account whatever."

4. The respondent questioned the assessment before the Investigating Officer of the Corporation. The case of the appellant has been that the building was erected under the recognised subsidised Housing Scheme for industrial workers, and under the scheme, they are restrained from recovering the rent exceeding Rs. 26.50 from each occupant. The rateable value of the building should, therefore, be limited to the actual rentals recovered and not on any other basis. In other words, the plea put forward on behalf of the respondent is that the rateable value of the building should be fixed under sub-section (3) of Section 154 of the Act, and not under sub-section (1) thereof. The Investigating Officer of the Corporation rejected'the contentions. The appeal preferred by the respondent before the Chief Judge of the Small Causes Court, Bombay also became unsuccessful. Thereafter, the.matter was taken up before the Bombay High Court which has allowed the respondent's claim. The High Court has directed the Corporation to reassess the rateable value of the building taking into account only the actual rentals recoverable from each of the tenants that is at Rs. 26.50 per month which would be the standard rent for each of the blocks.

5. The Bombay Municipal Corporation by obtaining Special Leave has appealed to this Court challenging the correctness of the decision of the High Court.

6. It is common ground that the building has been constructed by the respondent as part of a Government Scheme of subsiding housing for industrial workers. The question, however, is whether it was a recognised scheme as provided under sub-section (3)(b) of Section 154. As the answer to the controversy centres round Section 154, sub-section (3), it is useful to set out hereunder in so far as it is material for this enquiry. It reads:

" 154. Rateable value how to be determined:

xxxxx xxxxx xxxxx

(3) Notwithstanding anything contained in this Section, the rateable value in the case of a building -

xxxxx xxxxx xxxxx

(b) constructed, purchased or occupied on or after the I st day of April, 1947 'as part of a recognised scheme of subsidised housing for industrial workers or persons belonging to lower income groups or poorer classes; and

(c) comprising in part or in whole of tenements let out to such workers or persons on a monthly rent, inclusive of all service and other charges not exceeding rupees thirty-two and fifty naye paise for each such tenement shall be fixed-

xxxxx xxxxx xxxxx

Explanation:- For the purpose of this sub-section "recognised scheme of subsidised housing for industrial workers or persons belonging to lower income groups or poorer classes" shall mean such scheme as may be recognised by the State Government from time to time in this behalf, after consultation with the Corporation."

7. The recognised scheme of subsidised housing for industrial workers or persons belonging to lower income groups or poor classes referred to in sub-section (3)(b) has been given a definite connotation under the Explanation appended thereto. It means a scheme as may be recognised by the State Government from time to time in this behalf 'after consultation with the Corporation'. The rateable value of building constructed, purchased or occupied on or after the first of April, 1947 as part of such a scheme shall be determined only under sub-section (3) and not by the usual rate prescribed under sub-section (1) ' Under sub-section (3) there is limitation for fixing the rateable value exceeding Rs. 32.50 for each tenement.

8. The High Court has found as a fact that in the instant case the Government did not consult the Corporation before sanctioning the scheme pursuant to which the building in question was erected. The correspondence disclosed no such consultation. The witness who stepped into the box for the Corporation before the learned Chief Judge of the Small Causes Court made a categorical statement that there was no consultation with the Corporation. But the High Court did not attach importance to absence of consultation. It has observed that the omission to consult the Corporation makes little difference in the result and it would not take the respondent's case out of sub-section (3) of Section 154. It has expressed the view that the consultation referred to in 4th Explanation is more or less directive in nature and it is not mandatory. On this part of the judgment, the High Court then went on:

> "We are not oblivious to the fact that this safeguard is added because the Corporation is likely to suffer to some extent in its revenue in a given case, but may it be noted here that the plans were got sanctioned before they were presented to the Government for getting the subsidy and the work had already started and it was almost complete. When the Government entered into the agreement referred to above it will have to be presumed that it had taken a judicial note of the rates likely to be charged by the Corporation or the loss, if any, it was likely to suffer. Having considered all the aspects, it has sanctioned the scheme. Moreover, from the language of the Section it seems to us that what is emphasised is the sanctioning of the scheme and not the consultation with the Corporation. From this point of view, we. feel that the omission on the part of the Government to consult the Corporation cannot take the case out of the explanation recognised by sub-section (3) of Section 154 of the Act and the Corporation would not be at liberty to take the rateable value 'more than the actual rentals charged for such tenements."

9. The High Court has also dealt with the terms of the agreement and clause (8) in particular, imposing limitation on the respondent not to charge anything more than Rs. 26.50 per tenement. Reference has also been made to the restrictions under the Bombay Rent Control Act against raising the standard rent and the intention of the legislature in giving the facilities of subsidy and loan under the Industries (Development and Regualation) Act, 1951. It was inter alia, observed that the benefits of subsidy and loan are extended in the larger interests of the society and the nation and also to promote industries. The Government in its wisdom while making concessions in favour of Industrialists has put certain restrictions and they are not pointed out to be unreasonable or discriminatory. The restrictions in. respect of rent cannot be whittled down by allowing the Corporation to choose its own mode or method of assessing the rateable value fixed on the theory of a hypothetical tenent.

10. These are the wide ranging discussions in the judgment of the High Court, the most of which, with all respect, are not well deserving and indeed not relevant to the issue in dispute. The only

question that arises for consideration is about the effect of non-observance of the statutory prescription of consultation with the Corporation on the applicability of sub-section (3) of Section 154. Before us there is no disagreement on the finding recorded by the High Court that there was no consultation with the Corporation in respect of the Scheme in question. Indeed, both Counsel proceeded on the basis of the finding recorded by the High Court that there was no consultation.

11. In the absence of the legislation making it plain what the consequences of failure to observe the statutory requirement, the Court must determine the question. It is a question of construction to be settled by looking at the scope and purpose of the enactment and by examining the relation of that provision to the object sought to be secured by such requirement. Particular regard may be had to its significance, whether it was intended to ascertain the views of individuals or corporate bodies and if so for what purpose. The practical effects of the exercise of power upon the rights of persons or authorities to be consulted, are more relevant for consideration and they often determine the nature of the requirement. If the exercise of power is likely to impair the proprietary or financial interests of named bodies to be consulted, then generally the provision requiring consultation before the statutory power is exercised is construed as mandatory (See De Smith's Judicial Review of Administrative Action, 4th Edition, Pp. 144-45).

12. In Banwarilal Agarwalla v. State of Bihar, (1962) 1 SCR 33: (AIR 1961 SC 849), the question arose whether Section 59(3) of the Mines Act 1952 requiring the Central Government to consult every Mining Board before framing regulations was mandatory. The Court held that since the regulations framed would impinge heavily on the actual working of mines, the requirement of consultation of the Mining Boards is mandatory. This view has been affirmed in Kali Pada Chowdhury v. Union of India, (1963) 2 SCR 904 : (AIR 1963 SC 134). In Narayana Sankaran Mooses v. State of Kerala, (1974) 1 SCC 68 : (AIR 1974 SC 175), the provision regarding consultation with the State Electricity Board in Section 4 of the Electricity Act, 1910 as amended in 1950 for exercising the power of 'revoking a licence by the State Government is held to be mandatory since it was intended to provide additional safeguard to the licence. In Naraindas Indurkhya v. State of M.P., (1974) 4 SCC 788: (AIR 1974 SC 1232) the prior consultation with the Education Board under Section 4(1) of the M.P. Act 13 of 1973 for prescription of textbooks by the State Government is also held to be mandatory since it is a condition for the exercise of the power. In Agricultural, Horticultural and Forestry Industry Training Board v. Aylesbury Mushrooms Ltd., (1972) l WLR 190 the Minister was required before making an industrial training order, to have prior consultations with the interested Associations, under Section 2(4) of the Industrial Training Act, 1964. The Minister invited numerous organisations to consult with him about an order for the agricultural industries, but in one of the cases, the letter miscarried so that the Mushroom Growers' Association was not consulted. Members of the Association, it was held were not bound by the order of the Minister since a mandatory requirement had not been observed.

Prof. Wade points out:

> "Procedural safeguards which are so often imposed for the benefit of persons affected by the exercise of administrative powers are normally regarded as mandatory, so, that it is fatal to disregard them. Where there is a statutory duty to consult persons affected, this must genuinely be done, and reasonable opportunity for comment must be given" (Administrative Law by H.W.R. Wade 6th Ed. p. 247).

13. In the instant case, the Corporation has numerous obligatory functions to perform, namely drains and drainage works, scavenging and removal and disposal of refuse and rubbish, construction

and maintenance of public streets, bridges culverts, of works and means for providing water supply, electricity, maintenance of fire brigade, measures for preventing and checking the spread of dangerous diseases etc. (See Section 61 of the Act). All these measures require funds. The property tax appears to be the major source of Corporation revenue. Consultation as envisaged under the Explanationi is therefore definitely a matter of importance and consequence to the Corporation. Its right to recover normal rates of property tax would be deprived of if the Government prepares a scheme for subsidised housing with its consultation. Section 154 provides for fixing the rateable value of the building for the purpose of levying property tax. Sub-section (1) provides a general principle for fixing the rateable value. Sub-section (3) is an exception to that principle and it is required to be followed in certain specified categories. The Corporation is bound to follow the exception provided under sub-section (3) if the building has been erected as part of a recognised scheme of subsidised housing for industrial workers. In such a case, the rateable value shall not exceed Rs. 32.50 for each such tenement inclusive of all service and other charges. That would affect the financial interests of the Corporation. Even according to the High Court the consultation referred to in the Explanation is a safeguard added in favour of the Corporation because the Corporation is likely to suffer to some extent its revenue in a given case. But nevertheless it was held that the consultation is directory and not to be regarded as mandatory. The High Court seems to have erred in this regard. The right to be consulted in opposition to a claim or, proposal which will adversely affect its financial interests is to be regarded as mandatory.

14. There must be opportunity for the Corporation to express its views on the recognised scheme and the terms thereof. The opinion expressed by the Corporation may not be binding on the Government to take decision. The Government may take its own decision but consultation with the Corporation must be there on the essential points and the core of the subject involved. The consultation must enable the Corporation to consider the pros and cons of the question as to the concessional rate of property tax. (See: (i) Fletcher v. Minister of Town Planning, (1947) 2 All ER 496; (ii) R. Pushpam v. State of Madras, AIR 1953 Mad 392). If there is no such consultation the Corporation cannot be compelled to fix the rateable value of the building under sub-section (3).

15. Finally, we should refer briefly to one other reasoning adopted by the High Court. The High Court has stated that since the building plans were approved by the Corporation and the construction work was almost complete before the respondent approached the Government for subsidy, it will have to be presumed that the Government had taken judicial note of the rates likely to be charged by the Corporation or the loss, if any, it was likely to suffer. This assumption is wholly unjustified. No such inference could be possible from the Corporation licence for building construction. Such licence has no thing to do with the property tax to be levied. Our attention has not been drawn to any other material on which the Government could have taken note of the rates likely to be charged by the Corporation or the loss that it might suffer in recovering the property tax on the basis of rentals of each tenement at Rs. 26.50. We are, therefore, not impressed with the conclusion reached by the High Court.

16. The appeal is accordingly allowed, setting aside the judgment of the High Court and restoring that of Chief Judge of the Small Causes Court, Bombay.

17. In the circumstances of the case, we make no order as to costs.

Appeal allowed.

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