

St. Mary's School and others

Vs

Cantonment Board, Meerut and others

Civil Appeal Nos. 2922-24 of 1996

(K. Ramaswamy, G. B. Pattanaik JJ)

05.02.1996

### JUDGMENT

1. Heard counsel for the parties. Leave granted.

2. These appeals are preferred against the judgment of the Allahabad High Court allowing the writ petition filed by the Cantonment Board, Meerut and remitting the matter to the appellate authority with a direction that the appellate authority shall give an opportunity to the petitioners to comply with Section 87 of the Cantonment Act. The question pertains to the accessibility of the buildings owned by the petitioner to property tax. The appellants' case is that by virtue of Section 99 of the Act, they are exempt from tax. The assessing authority held that they do not satisfy the requirement of Section 99 and, therefore, not entitled to exemption. Against that order the appellants filed an appeal but they did not deposit the tax as required by Section 87. Even so, the appeal was allowed by the appellate authority on the ground that the appellants are entitled to the benefit of Section 99. It is against the order that the writ petition was filed by the Cantonment Board in the High Court. The High Court held that the requirement of Section 87 is mandatory and accordingly remitted the matter with the above directions.

3. Sir Sorabjee, learned counsel for the appellants, challenges the validity of Section 87 on the ground that it places onerous conditions in the way of the right of appeal. The learned counsel relies upon the decision of this Court in *Shyam Kishore v. Municipal Corporation of Delhi*, (1993) 1 SCC 22 : (1992 AIR SW 2764), which deals with a similar provision of appeal, viz., Section 107 (b) of the Delhi Municipal Corporations Act, 1957. The validity of the said provision was challenged and it was repelled with the following observations and clarifications (at P. 2785 of AIR SCW) :

We appeal thus given time to the assessee to pay the tax or even specifically granting time or instalments to enable the assessee to deposit the disputed tax where be case merits it, so long as it does not unduly interfere with the appellate Court's calendar of hearings. His powers, however, should stop short of staying the recovery of tax till the disposal of the appeal. We say this because it is one thing for the Judge to adjourn the hearing leaving it to the assessee to pay up the tax before the adjourned date or permitting the assessee to pay up the tax, if he can, in accordance with his directions before the appeal is heard. In doing so, he does not and cannot injunct the department from recovering the tax if they wish to do so. He is only giving a chance to the assessee to pay the tax if he wants the appeal to be heard. It is, however, a totally different thing for the Judge to stay the recovery till the disposal of the appeal; that would result in modifying the language of the proviso to read: "no appeal shall be disposed of until the tax is paid." Short of this, however, there is no reason to restrict

the power unduly; all he has to do is to ensure that the entire tax in dispute is paid up by the time the appeal is actually heard on its merits. We would, therefore, read Clause (b) of Section 170 only as a bar to the hearing of the appeal and its disposal on merit and not as a bar to be entertainment of the appeal itself."

4. It is agreed by both the parties that the said observations and clarifications shall equally govern these matters, i. e., the appeals arising under the Cantonment Act. Accordingly, it is directed that any appeal filed under Section 84 of the Cantonment Act shall be dealt with, insofar as deposit of tax is concerned (i. e., with respect of the requirement of Section 87) in the light of and in accordance with the above observations and clarifications.

5. The appeals are accordingly disposed of. The appellate authority shall examine the matter in the light of this judgment and dispose it of according to law.

6. In view of the above orders passed in these appeals, no orders are called for in the writ petition. Dismissed.

7. No costs. Order accordingly.