Cantonment Board Jhansi vs Pradeep Gupta on 30 May, 2025

HIGH COURT OF JUDICATURE AT ALLAHABAD

Neutral Citation No. - 2025:AHC:93597

HIGH COURT OF JUDICATURE AT ALLAHABAD

Reserved on 25.04.2025

Delivered on 30.05.2025

Court No. - 53

Case :- MATTERS UNDER ARTICLE 227 No. - 2051 of 2018

Petitioner :- Cantonment Board Jhansi

Respondent :- Pradeep Gupta

Counsel for Petitioner :- Shashwat Kishore Chaturvedi

Counsel for Respondent :- Rishikesh Tripathi

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Hon'ble Anish Kumar Gupta,J.

1. Heard Shri S.K. Chaturvedi, learned counsel for the petitioner-Cantonment Board, Shri Rishikesh Tripathi, learned counsel for the respondent.

2. The instant petition has been filed by the Cantonment Board seeking quashing of the order dated 24.11.2017 passed by the Addl. District Judge, Jhansi in Misc. Appeal No. 16 of 2015 (Pradeep Gupta Vs. Chief Executive Officer.

3. The brief facts of the case are that the respondent herein is the owner of House No. 115 Sadar Bazar, Jhansi situated within the area controlled by the Cantonment Board. On 12.6.2014 a notice was issued by the Cantonment Board to the respondent herein with regard to the revision of

assessment of house tax of the said house. In response thereto the respondent herein submitted his written objection on 23.6.2214 wherein it was categorically alleged that in the notice the assessment of the house tax has been increased from Rs.15,000/- to 3,15,000/-, however, no ground or basis for such excessive assessment has been given in the notice. It is further stated in his objection that the notice mentions about a public notice issued on 7.6.2012 and no such notice was actually published nor on the basis of the same the assessment of tax for the year 2012-2015 can be done in the year 2014. It is further stated that since the last assessment no change in the construction of the house has been carried out so that the value of the said house could be increased. The assessment proposed in the notice is without any basis and against the legal principles, therefore, the same is liable to be rejected.

4. According to the respondents without deciding the said objections, the Cantonment Board has issued a bill for the house tax and water tax by enhancing the annual value of the house in question. The said bill was received by the respondent on 23.1.2015 and payment thereof was made on 27.1.2015. Since the said bill was raised by the Cantonment Board without deciding the objections and without any further notice to the respondent herein, he preferred an appeal against the enhanced assessment of tax before the District Judge, Jhansi under section 93 of the Cantonment Board Act, 2006 (Act of 2006) on 27.2.2015. In the appeal the assessment of the valuation of the house and tax thereon was set aside and the matter was remanded back to the Cantonment Board by the impugned order dated 24.11.2017 to decide afresh after considering the objections submitted by the respondent herein. Being aggrieved by the same, the instant petition under Article 227 of the Constitution of India has been filed by the Cantonment Board.

5. The submission of learned counsel for the petitioner is that after the objections were filed by the respondent on 23.6.2014 a further notice was issued on 15.9.2014 inviting the respondent for personal hearing on 19.9.2015. In pursuance thereof, the respondent has appeared before the Cantonment Board and has agreed to the assessment of valuation of the house as Rs.85,000/-, therefore, he could not challenge the assessment by filing the appeal. It is further submitted that the appeal which is barred by limitation as provided under section 96 of the Act, 2006, according to which the appeal was required to be filed within 30 days from the date of authentication of the notice under section 77 of the Act, 2006 and the authentication was done on 29.9.2014, whereas the appeal has been filed in the instant case only on 27.2.2015 without any application for condonation of delay and the appellate court has wrongly entertained the appeal holding the same well within time. It is further submitted that the appellate court instead of remanding the case for re-assessment ought to have assessed the tax itself. The power of appellate court to remand the matter ought not to have been exercised in a routine manner but the same could be exercised in judicial manner. In support of his submission he has relied upon the judgement of this Court in the case of Ram Pratap V. Jameel 2004 (2) A.W.C. 1288 and also Hardeshwar Nath Vs. Nand Lal and others 2009 (4) A.W.C. 3613.

6. Per contra, learned counsel for the respondent submits that after filing of objection on 23.6.2014, the same has not yet been decided by the Cantonment Board on merits and he has not received any notice dated 15.9.2014 nor he had appeared before the Cantonment Board on 19.9.2014 nor had singed the said assessment, as alleged by the petitioner-Cantonment Board. The case of the

respondent is that after filing of the objections dated 23.6.2014, the same was not decided nor any decision was communicated to the respondent and straight away he has received a bill dated 22.12.2014 on 23.1.2015 which he has paid under protest on 27.1.2015 and thereupon he has filed the appeal before the District Judge, Jhansi. Since no order has been passed on the objection of the petitioner any demand of enhanced assessment of tax is illegal and violative of principle of natural justice. Since the objections of the respondent were not decided by the Cantonment Board, the cause of action for filing the appeal arose to the respondent only on receipt of bill for the enhanced tax and thereupon though he has paid the enhanced tax under protest he filed the appeal, which was well within time. He further relied upon section 96 of the Act, 2006 and submitted that the appellate Court has power to condone the delay. He has further relied upon the judgement of the Apex Court in the case of Dwarika Prasad Vs. Prithvi Raj Singh AIR 2025 SC (Civil) 424, wherein the following observations have been made by the Apex Court in paragraph 12, which are as under:

> "12. From the above cases, it is clear that there was no need to file a separate application for condonation of delay in the present case as well. The High Court has erred in taking a hyper technical view and concluding that there was violation of mandatory provision of law. Endorsing such a view would effectively mean ignoring the purpose of judicial procedure. The procedure cannot stand in the way of achieving just and fair outcome. In the present case, the Appellant acted bonafide and diligently. His conduct does not violate any rule of law."

7. He has further relied upon the judgement of this Court in the case of Surendra Mani Vs. State of U.P. and others 2025 (166) R.D. 476, wherein this Court in paragraph 24 has observed as under:

> "24. In view of the law laid down by Hon'ble Supreme Court, this Court and various other High Courts, I am also of the opinion that for condonation of delay under Section 5 of the Limitation Act, a formal application would not be required, if the facts presented before the court satisfies the judicial consciousness of the Court that the applicant before it was prevented for sufficient cause in bringing the proceedings well within limitation. In case, instead of moving a formal application for condonation of delay, averments has been made by a party relating to sufficient cause for not initiating the proceedings well within time in the application or memo of appeal or revision supported by an affidavit with a prayer made therein for condonation of delay will not be fatal for want of separate application for condonation of delay. If the Court is of the opinion that in absence of formal application, the delay cannot be condoned then, it is always the duty of the Court to give an opportunity to the appellant before it to move an application explaining the cause for delay and seek condonation under Section 5 of the Limitation Act. The applicant must get proper opportunity to explain the circumstances which prevented it from drawing proceedings well within time. In this view,I am also supported by judgment of Madras High Court in case of Meghraj v. Jesraj Kasturjee (supra) where the learned Single Judge of that Court has observed in paragraph No. 4 of the judgment as under:

> "4. ....The consensus, therefore, appears to be this. If under explainable circumstances an appeal or an application is filed in court, but without a formal application or a written application for excusing the delay in the presentation of the same then the court should circumvent technicality and afford a reasonable opportunity to the aggrieved party to mend matters. Otherwise, it would lead to miscarriage of justice."

8. Having heard the rival submission of the learned counsel for the respective parties this court has carefully gone through the record of the case.

9. Before proceeding further it would be relevant to take note of the provisions of the Cantonment Act, 2006, relating to assessment of tax and the appeal to be preferred by the aggrieved persons.

10. Sections 68, 73, 74, 75, 76, 77, 79, 93 and 96, which are relevant for the purposes of deciding the controversy in hand, are being quoted as under:

> 68. Norms of property tax.--Save as otherwise provided in this Act, the property tax shall be levied on lands and buildings in the cantonment and shall consist of not less than ten and not more than thirty per cent. of the annual rateable value of lands and buildings:
>
> Provided that the Board may, when fixing the rate at which the property tax shall be levied during any year, determine that the rate leviable in respect of lands and buildings or portions of lands and buildings in which any particular class of trade or business is carried on shall be higher than the rate determined in respect of other lands and buildings or portions of other lands and buildings by an amount not exceedingone half of the rate so fixed:
>
> Provided further that the tax may be levied on graduated scale, if the Board so determines.
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> Explanation.--Where any portion of a land or building is liable to a higher rate of the tax such portion shall be deemed to be a separate property for the purpose of municipal taxation alone.
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> 73. Definition of "annual rateable value".--For the purposes of this Chapter, "annual rateable value" means--
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> (a) in the case of hotels, colleges, schools, hospitals, factories and any other buildings which the Chief Executive Officer decides to assess under this clause, one-twentieth of the sum obtained by adding the estimated present cost of erecting the building to the estimated value of the land appertaining thereto; and

(b) in the case of building or land not assessed under clause (a), the gross annual rent for which such building exclusive of furniture or machinery therein or such land is actually let or, where the building or land is not let or in the opinion of the Chief Executive Officer is let for a sum less than its fair letting value, might reasonably be expected to let from year to year:

Provided that, where the annual rateable value of any building is, by reason of exceptional circumstances, in the opinion of the President Cantonment Board, excessive if calculated in the aforesaid manner, the President Cantonment Board may fix the annual rateable value at any less amount which appears to him to be just.

74. Incidence of taxation.--(1) Save as otherwise expressly provided in the notification imposing the tax, every tax assessed on the annual rateable value of buildings or lands or of both shall be leviable primarily upon the actual occupier of the property upon which the said tax is assessed, if he is the owner of the buildings or land or holds them on a building or other lease granted by or on behalf of the Government or the Board or on a building lease from any person.

(2) In any other case, the tax shall be primarily leviable as follows, namely :--

(a) if the property is let, upon the lessor;

(b) if the property is sub-let, upon the superior lessor;

(c) if the property is unlet, upon the person in whom the right to let the same vests.

(3) The liability of the several owners of any building which is, or purports to be, severally owned in parts or flats or rooms or separate tenements for the payment of such tax or any installment thereof payable during the period of such ownership shall be joint and several.

(4) On failure to recover any sum due on account of such tax from the person primarily liable, these may be recovered from the occupier of any part of the buildings or lands in respect of which the tax is due such portion of the sum due as bears to the whole amount due the same ratio which the rent annually payable by such occupier bears to the aggregate amount of rent so payable in respect of the whole of the said buildings or lands, or to the aggregate amount of the letting value thereof, if any, stated in the authenticated assessment list.

(5) An occupier who makes any payment for which he is not primarily liable under this section shall, in the absence of any contract to the contrary, be entitled to be reimbursed by the person primarily liable for the payment, and, if so entitled, may deduct the amount so paid from the amount of any rent from time to time becoming due from him to such person

> 75. Assessment list.--When a tax assessed on the annual rateable value of buildings or lands or both is imposed, the Chief Executive Officer shall cause an assessment list of all buildings or lands in the cantonment, or of both, as the case may be, to be prepared in such form and in such manner as the Central Government may by rule prescribe.
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> 76. Revision of assessment list.--(1) The Chief Executive Officer shall, at the same time, give public notice of a date, not less than one month thereafter, when he shall proceed to consider the valuation and assessments entered in the assessment list, and, in all cases in which any property is for the first time assessed or the assessment is increased shall also give written notice thereof to the owner and to any lessee or occupier of the property.

(2) Any objection to a valuation or assessment shall be made in writing to the Chief Executive Officer before the date fixed in the notice, and shall state in what respect the valuation or assessment is disputed, and all objections so made shall be recorded in a register to be kept for the purpose by the Chief Executive Officer.

(3) The objections shall be inquired into and investigated, and the persons making them shall be allowed an opportunity of being heard either in person or by authorised agent by the Chief Executive Officer.

77. Authentication of assessment list.--(1) When all objections made under section 76 have been disposed of, and the revision of the valuation and assessment has been completed, the assessment list shall be authenticated by the signatures of the Chief Executive Officer and the President Cantonment Board, who shall, certify that except in the cases if any, in which amendments have been made as shown therein no valid objection has been made to the annual rateable value or any other matters entered in the said list:

> Provided that whenever the General Officer Commanding-in-Chief, the Command or the Principal Director comes to the conclusion that the assessment lists or any entries therein have not been correctly prepared and are prejudicial to the interests of the Board or of the Central Government, they may suo moto re-open the said assessment and issue such directions as deemed fit.
>
> (2) The assessment list so authenticated shall be deposited in the office of the Board, and shall there be open, free of charge, during office hours to all owners lessees and occupiers of property comprised therein or the authorised agents of such persons, and a public notice that it is so open shall forthwith be published.

79. Amendment of assessment list.--(1) The Chief Executive Officer may after obtaining the approval of President Cantonment Board amend the assessment list at any time--

(a) by inserting or omitting the name of any person whose name ought to have been or ought to be inserted or omitted; or

(b) by inserting or omitting any property which ought to have been or ought to be inserted or omitted; or

(c) by altering the assessment on any property which has been erroneously valued or assessed through fraud, accident or mistake whether on the part of administration or assessees; or

(d) by revaluing or re-assessing any property the value of which has been increased; or

(e) in the case of a tax payable by an occupier, by changing the name of the occupier:

> Provided that no person shall by reason of any such amendment become liable to pay any tax or increase of tax in respect of any period prior to the commencement of the year in which the assessment is made.
>
> (2) Before making any amendment under sub-section (1) the Chief Executive Officer shall give to any person affected by the amendment, notice of not less than one month that he proposes to make the amendment.
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> (3) Any person interested in any such amendment may tender an objection to the Chief Executive Officer in writing before the time fixed in the notice, and shall be allowed an opportunity of being heard in support of the same in person or by authorised agent.

93. Appeals against assessment.--(1) An appeal against the assessment or levy of, or against the refusal to refund, any tax under this Act shall lie to the District Court.

(2) If the District Court, on the hearing of an appeal under this section, entertains reasonable doubt on any question as to the liability to, or the principle of assessment of, a tax, the Court may, either on its own motion or on the application of the appellant, draw up statement of the facts of the case and the point on which doubt is entertained, and refer the statement with its opinion on the point for the decision of the High Court.

(3) On a reference being made under sub-section (2), the subsequent proceedings in the case shall be, as nearly as may be, in conformity with the rules relating to references to the High Court contained in order XLVI of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908).

Explanation.--For the purposes of this section and sections 94, 95, 96, 97 and 102, "District Court", in relation to a cantonment, means the Principal Civil Court of original jurisdiction having jurisdiction over the area in which that cantonment is situated, and includes such other Civil Court having jurisdiction over that area as the Central Government may, by notification in the Official Gazette, specify in this behalf, in consultation with the High Court having jurisdiction over that area.

96. Conditions of right to appeal.--No appeal shall be heard or determined under this Chapter unless--

(a) the appeal is, in the case of a tax assessed on the annual rateable value of buildings or lands or both, brought within thirty days next after the date of the authentication of the assessment list under section 77 (exclusive of the time required for obtaining a copy of the relevant entries therein), or, as the case may be, within thirty days of the date on which an amendment is finally made under section 79 and in the case of any other tax, within thirty days next after the date of the receipt of the notice of assessment or of alteration of assessment or, if no notice has been given, within thirty days next after the date of the presentation of the first bill in respect thereof:

> Provided that an appeal may be admitted after the expiration of the period prescribed there for by this section if the appellant satisfies the District Court before whom the appeal is preferred that he had sufficient cause for not preferring it within that period;
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> (b) the amount including the assessed tax or duty, if any, in dispute in the appeal shall be deposited by the appellant every year on or before the due date in the office of the Board till the appeal is decided by the District Court.

11. Section 68 of the Act provides for assessment of the property tax on the lands and buildings in the cantonment area and provides for that such tax shall not be less than 10% and more than 30% of the annual rateable value of the lands and buildings. The annual rateable value has been defined under Section 73 of the Act, which means that the one-twentieth of the sum obtained by adding the estimated present cost of erecting the building to the estimated value of the land appertaining thereto or gross annual rent of the building exclusive of furniture and machinery affixed thereto.

12. Section 75 of the Act, 2006 provides for preparation of the assessment list of the buildings or the land or both for the annual assessment and when the Chief Executive Officer of the Cantonment Board intends to increase the assessment of the house or building concerned, then a general publication of assessment list is to be done. At the same time, Section 76 of the Act, 2006 provides that the said assessment list shall be published and a public notice of the same shall be given and after one month of such publication, C.E.O. shall proceed to consider the valuation and assessment. If the assessment is to be increased of any house or building or land, then individual notice has to be issued to the owner/lessee or occupier of the building inviting objections. If any objection to such increase of valuation or assessment of tax is submitted by the owner, such objections shall be enquired into and shall be investigated and the person shall be allowed an opportunity of being heard by the Chief Executive Officer and when all objections made under section 76 of the Act, 2006 are disposed of and the revision of the valuation or assessment has been completed, the assessment list shall be authenticated in terms of Section 77 of the Act, 2006 by the signatures of the Chief Executive Officer and the President of the Cantonment Board and the assessment list so authenticated shall be deposited in the office of the Board and shall there be open, free of charge, during office hours to all owners lessees and occupiers of property comprised therein or the authorized agents of such persons and a public notice that it is so open shall forthwith be published.

Section 79 of the Act, 2006 provides for the amendment to the authenticated assessment list.

13. Section 93 of the act, 2006 provides for an appeal against the assessment or levy of tax and Section 96 provides for limitation of 30 days from the date of the authentication of the assessment list and where any alteration of assessment or from the date of amendment finally made under section 79 within 30 days from the receipt of notice of assessment or alteration of assessment. In case no notice is given of the alteration of assessment then, 30 days period will be counted from the presentation of the first bill. Proviso to sub section (a) of Section 96 empowers the appellate court to condone the delay, if any, in filing the appeal.

14. In the instant case admittedly no order on merit has been passed on the objection filed by the respondent and first time when the respondent has received the bill on 23.1.2015, after making the payment on 27.1.2015 under protest, he has filed appeal on 27.2.2015. Prior to the issuance of bill no notice has ever been given to the respondent after consideration of his objection. Therefore, assessment of tax without deciding the objections by the Cantonment Board is violative of principle of natural justice. Thus the same cannot be sustained. Though the Cantonment Board alleged that a notice dated 15.9.2014 was issued for hearing on 19.9.2014 when the respondent has appeared and agreed to the assessment done by the Cantonment Board, the respondent has emphatically denied the receipt of notice dated 15.9.2014 and his signatures on the agreed assessment. From perusal of the agreed assessment dated 19.9.2014 it appears that neither consideration have been given to the annual rateable value nor the norms of Property tax, as provided in the Act, has been applied in the case of the house of the respondent. The same appears to be an arbitrary exercise of powers and cannot be considered as a decision on merit of the objections submitted by the respondent. From the bare perusal of the so called agreed assessment, it is apparent, that the signatures of the respondent do not tally with his signatures on his objections. Further the respondent has denied to have either received the notice dated 15.9.2014 or signed the said agreed assessment relied by the petitioner.

15. Admittedly the objections of the respondent were never disposed of on merits, thus the petitioner could not have authenticated the assessment in respect of the house of the respondent. If any authentication is done, without deciding the objections, the same is illegal.

16. From bare perusal of the notice, there is no calculation at all with regard to the assessment of the property tax in terms of Section 68 read with Section 73 of the Act. The objections of the respondent has not been decided by a speaking order after affording due opportunity of hearing in terms of Section 76 of the Act. In the instant case, as per Section 96, since no notice was issued nor the objection of the respondent was decided on merit nor the same was intimated, therefore, period for filing the appeal shall start from the date of presentation of the first bill as per Section 96 of the Act. In the instant case, though, the bill was received by the respondent on 23.01.2015 and he has filed the appeal on 27.02.2015, after payment on 27.01.2015. Though, technically speaking there may be a delay of few days in filing the appeal in terms of Section 96 of the Act, however, looking into the entirety of the matter as neither the objections of the respondents were decided on merit nor the respondent was granted any opportunity of hearing before assessment of the tax, which was violative of the principle of natural justice and as has been held in Dwarika Prasad (supra) and

Surendra Mani (supra), once the Appellate Court has the power to condone the delay merely because no application was filed for condonation of delay, would not vitiate the order of the Appellate Court. The contention of the petitioner that the Appellate Court instead of remanding the matter back to the Cantonment Board ought to have assessed the tax itself, does not find any force as the function of assessment of tax in terms of the provisions of the Act is primarily to be exercised by the Cantonment Board, which has failed in its duty. Therefore, the judgments relied upon by the counsel for the petitioner would be of no avail. Thus, there is no error in directing the Cantonment Board to reassess the tax to be paid by the respondent after deciding the objections raised by the respondent on its merit and after giving opportunity of hearing to the respondent.

17. Thus, there is no apparent error in the impugned order and this Court does not find any good ground to interfere with the impugned order. In view thereof order dated 24.11.2017 passed by the Addl. District Judge, Jhansi in Misc. Appeal No. 16 of 2015 (Pradeep Gupta Vs. Chief Executive Officer) is upheld.

18. For the reasons aforesaid, the petition lacks merit and is accordingly dismissed.

Order Date :- 30.5.2025 o.k.

(Anish Kumar Gupta,J.)