

New Delhi Municipal Committee, New ... vs Indian Bank Ltd. on 6 February, 1967

Author: Chief Justice

Bench: Chief Justice

JUDGMENT

K.S. Hegde, C.J.

(1) This appeal arises from the decision of Mahajan, J. in Civil Writ No. 29-D of 1963, wherein the respondent, namely, the Indian Bank Limited, challenged the legality of the resolution of the appellant, passed on 24/3/1961, enhancing the rental value of the premises in the possession of the respondent from Rs. 1,650.00 to Rs. 7,200.00 as well as the legality of the order made by the Additional District Magistrate on 7th December, 1962, affirming the resolution of the Municipal Committee. The learned Single Judge allowed the writ petition and quashed the impugned resolution as well as the Additional District Magistrate's order. Aggrieved by that decision. the appellant (New Delhi Municipal Committee) has filed this appeal.

The short point for decision in. this case is whether the notice issued by the appellant on 18/2/1961. under section 67(1) of the Punjab Municipal. Act, 1911, to be hereinafter referred to as the Act, is in accordance with law.

For the assessment year 1957-58, it is admitted, the annual letting value of the building, with which we are concerned in this case, was fixed at Rs. 1,650. For the assessment year 1958-59, the appellant revised that value and fixed the same at Rs. 7,200. The learned Additional District Magistrate has rejected the appeal of the respondent and upheld the resolution of the appellant. The learned Single Judge has held that as the notice issued under section 67(1) of the Act was not in accordance with law, the enhancement made cannot be sustained.

SECTION 67(1) of the Act prescribes:-

"67.(1) The Committee may at any time amend the list by inserting the name of any person whose name ought to have been or ought to be inserted or by inserting any property which ought to have been or ought to be inserted, or by altering the assessment on any property which has been erroneously valued or assessed through fraud, accident or mistake whether on the part of the committee or of the assessee, or in the case of a tax payable by the occupier by a change in the tenancy, after giving notice to any person affected by the amendment, of a time, not less than one month from the date of service, at which the amendment is to be made."

(2) It may be noted that the power to alter the assessment, be it a question of reduction or enhancement is entirely that of the Municipal Committee. In other words, the Municipal Committee is constituted as the judge in its own cause. But before exercising that power, the assessee should be given due notice of the proposal to alter the assessment and further, the alteration can be effected only for the reason that the property in question had been erroneously valued or assessed through fraud, accident or mistake, whether on the part of the Committee or of the assessee. Hence it follows that Municipal Committee should inform the person to be affected by the alteration its reason for proposing the alteration of the assessment so that he may have an opportunity to satisfy the Municipal Committee that those reasons are non-existent or insufficient to make the suggested alteration or the suggested alteration is not in accordance with law. In other words, the Municipal Committee must intimate to the assessee what mistake had been committed, if there was any mistake, or what fraud had been committed, if there was any that the assessee may be able to meet the case of the Municipal Committee. Even if section 67(1) is read by itself, it would be clear that the Legislature wanted the Municipal Committee to inform the assessee its reason for altering the assessment, so as to give the assessee a reasonable opportunity to meet the case of the Municipal Committee. Such an interpretation would accord with the principle of natural justice. If two reasonable interpretation, which accords the principles of natural justice, would commend itself to Courts. It may be further noted that here we are considering a provision relating to taxation. Such a provision has got to be strictly construed. To all these we must add that we are called upon to construe a provision of law whereunder a party is constituted as judge in its own cause. For these reasons, we agree with the learned Single Judge that in the notice issued under section 67(1) it was bound to inform the petitioner its reason or reasons for the suggested alteration of the assessment. That is a condition precedent for a valid notice. In this connection, reference may be usefully made to the decision of the Bombay High Court in the Cholisgaon Borough Municipality v. Multan Chand Fulchand Sancheti, (1) and the decision of the Punjab High Court in Kaviraj Khazan Chand v. The New Delhi Municipal Committee (1960 P.L.R. 97 (2)).

Now we have to see whether the notice given by the appellant meets the requirements of the law as enunciated above. That notice reads thus (3) "

New delhi Municipal Committee NO.AC. 11/0/906/TS Town Hall New Delhi, the 18/2/61 To The Indian Bank, Limited, 41-G, Block, Connaught Circus, New Delhi.

DEARSir, This is to inform you that your building mentioned at the back of this notice was under-assessed by mistake or fraud or misrepresentation, the details of which are given on the back side of this notice mark 'A' and the annual value for the year 1958- 59 is ought to be revised by amending the list under section 67 of the Punjab Municipal Act, 1911, and this Committee, has vide resolution No. 113 dated 27/1/61 proposed to amend the list for the year 1958-59 by revising the annual values given at the back of this letter.

It is further proposed that the revised tax will take effect from 1/10/58 to 31/3/59. Notice is, hereby, given to you under section 67 of the P. M. Act that the Committee will consider the question of amendment of the list and will hear objections .in

-Meeting Room on 24/3/1961, at 10-30 A.M. You can make all your objections in writing on or before the date and time so fixed orally or in writing at the time and date fixed above, showing the cause why the assessment list should not be amended.

You are also requested to produce on the appointed or adjourned date and time all oral and documentary proof in support of your objections.

YOURSfaithfully, sd/-

ASSTT.Secretary (Taxes) New delhi Municipal Committee , New delhi Note -
All relevant documents such as agreement executed, details of furniture, supplied to tenant etc. may please be produced on this date. No further extension of time will be allowed.

No of Annual Deduct Net House Remarks Bldg. & valuation annual tax of with effect
Locality of the made value 10% from Municipal property for of No. as proper repairs
annual sed under etc. value Section 67 of P. M. Act :ShopNo. 7200-00 720-- 6480--
648- 1/10/58 G-41, to Con. 31/3/59 Circus, New Delhi. M. C. No. 8325 New Delhi.
No. C. No. 1-P/G-42.

Two new rooms were erected and completed on 1/10/58 in the back compound of the premises. The shop including two new rooms is now being used as Bank premises and the same is reasonably expected to be let out at monthly rent of Rs. 600 from year to year. It was under-assessed for the year 1958-59 by accident and, therefore, the assessment is now proposed to be amended as shown above on the basis of monthly reasonable rent of Rs. 600. The expression "misrepresentation", found in the notice, is wholly out of place in this case. "Misrepresentation" is not a ground for altering the assessment. Further, it is nobody's case that the respondent had made any misrepresentation to the Municipal Committee, Apart from mechanically stating in the notice that the respondent was under-assessed "by mistake or fraud or misrepresentation," it is not stated therein what that "mistake or fraud or misrepresentation" is. It is true that the notice in question was issued in a printed form. But it was the duty of the issuing officer to strike out the unnecessary words in the printed form. The present case of the Municipal Committee is that during the assessment year 1957-58 there was an under-assessment due to mistake. If that is true, then the officer, who issued the notice, should have struck out the words "or fraud or misrepresentation". That is not all. In the notice, it is stated that the details of "mistake or fraud or misrepresentation" are given on the back side of the notice. Therein it is merely mentioned that the respondent completed the erection of two new rooms "on 1/10/58 in the back compound of the premises. The shop including two rooms is now being used as Bank premises and the same is reasonably expected to be let out at monthly rent of Rs. 600 from year to year. It is nowhere stated in the notice or in the details given on the back of the notice that the annual letting value of those two rooms was not taken into consideration while determining

the assessment for the assessment year 1957-58, and consequently there was under-assessment. It may be that the officer, who issued the notice, intended to say that the annual letting value of those two rooms had not been taken into consideration in determining the annual letting value of the premises and hence the same was underassessed; but the fact remains that he did not say so. We have already said that a notice under section 67 will have to be strictly construed. The requirements of that section have to be strictly complied with.

Mr. N.D. Bali, learned Counsel for the appellant, wants us to clarify the position that in a notice under section 67 the Municipal Committee need not set out the evidence proposed to be adduced in support of its case. He is under the impression that the learned Single Judge has laid down that it is the duty of the Municipal Committee to set out in the notice the evidence that the Municipal Committee is going to adduce in support of its case. Our attention has not been drawn to any such conclusion. Hence that aspect does not arise for consideration.

Lastly, Bali contended that the learned Single Judge should have rejected the writ petition on the ground that the respondent did not come to this Court with clean hands. His reason for saying so is that although according to him the two rooms, referred to earlier, had been completed in 1958 itself, the respondent pleaded in the writ petition that those rooms were completed only in 1961, which statement, he says, is wholly wrong. The learned Single Judge did not go into the questions as to when the construction of those rooms was completed. We have also not gone into that question. Therefore, we are not in a position to say, which of the two versions is the correct version. That apart, it is entirely within the discretion of the Court to reject or not a writ petition on the ground that the petitioner was guilty of making deliberate mis-statements in his petition. The opposite party has no right to ask the Court to reject the petition on that ground. The discretion in question has to be exercised primarily by the C first Court. The appellate Court rarely interferes with the discretion exercised by that Court.

For the reasons mentioned above, this appeal fails and the d.me is dismissed with costs.