

Supreme Court of India

Municipal Corpn.Of Delhi vs C.L. Batra on 10 August, 1994

Equivalent citations: 1994 SCC (5) 355, JT 1994 (5) 241

Author: S Sen

Bench: Sen, S.C. (J)

PETITIONER:

MUNICIPAL CORPN.OF DELHI

Vs.

RESPONDENT:

C.L. BATRA

DATE OF JUDGMENT 10/08/1994

BENCH:

SEN, S.C. (J)

BENCH:

SEN, S.C. (J)

JEEVAN REDDY, B.P. (J)

CITATION:

1994 SCC (5) 355                      JT 1994 (5)      241

1994 SCALE (3) 719

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by SEN, J.- This appeal arises out of an interim order of stay passed by a Single Judge of the Delhi High Court dated 16-12-1993 in Suit No. 1851 of 1993. This suit was filed by the plaintiff, C.L. Batra, after the previous attempt to obtain interim order of stay failed on a writ petition (Civil Writ Petition No. 583 of 1992), which was dismissed as withdrawn on 27-2-1992.

2.The grievance of the appellant, Municipal Corporation of Delhi, is that an interim order has been passed in this suit by which the assessee has obtained stay of recovery of tax of nearly one crore of rupees. The assessee was directed to deposit the admitted liability of Rs 3,00,000 only in respect of the property, M/s Grindlay Cinema Building, New Friends Colony, New Delhi.

3.The interim order was extended from time to time. The last of such extension was granted on 16-12-1993 in Suit No. 1851 of 1993.

+ From the Judgment and Order dated 16-12-1993 of the Delhi High Court in Suit No. 1851 of 1993

4.The grievance of the appellant is that this interim order has opened a floodgate and many other suits have been filed bypassing the statutory provisions of appeal. Stay orders have been obtained in respect of demands totaling about rupees twenty crores. The case of the appellant is that the assessments have been completed in accordance with law. Copies of the assessment orders have been annexed to the special leave petition.

5.On behalf of the assessee, it has been contended that an authenticated assessment list is a condition precedent to any recovery proceeding. In the instant case, there is no such list in existence. Therefore, no recovery proceedings can be commenced. It has been pointed out that written statement filed on behalf of the Municipal Corporation was found inadequate and the written statement had to be amended. This necessitated the extension of the interim order. In the background of these facts, it cannot be said that the suit is not maintainable or the recovery proceedings should not be stayed.

6.In our view, no interim order should have been passed in this case at all for three reasons.

7.Firstly, it has not been satisfactorily explained why the statutory remedy of appeal was allowed to be bypassed. The trial Judge was conscious of this aspect of the matter and the judgment of the Delhi High Court in an earlier case. In fact, he has recorded in his order dated 9-9-1993 this fact:

"I am conscious of the order passed by the Division Bench of this Hon'ble Court in Abaskar Construction Pvt. Ltd. decided on 30- 9-1991."

There is no explanation why even after this he entertained the suit and passed the interim order.

8.Secondly, the assessee had filed a writ petition, praying for similar relief. When interim order was not granted on that writ petition, he withdrew the writ petition and filed this suit. This was an abuse of process of law. No liberty was obtained from the court to file a suit on the same cause of action, when the writ petition was withdrawn.

9. Thirdly, as early as on 6-1-1984, in the case of Siliguri Municipality v. Amalendu Das' this Court had vacated an interim order staying recovery of tax. In that case, it was pointed out: (SCC p. 438, para 3) "The Court has to show awareness of the fact that in a case like the present a Municipality cannot function or meet its financial obligations if its source of revenue is blocked by an interim order restraining the Municipality from recovering the taxes as per the impugned provision. And that the Municipality has to maintain essential civic services like wafer supply, street lighting and public streets etc., apart from, running public institutions like schools, dispensaries, libraries etc. what is more, supplies have to be purchased and salaries have to be paid. The grant of an interlocutory order of this nature would paralyse the administration and dislocate the entire working of the Municipality. It seems that these 1 (1984) 2 SCC 436:1984 SCC (Tax) 133: (1984) 2 SCR 344 serious ramifications of the matter were lost sight of while making the impugned order."

10. In the case of Assistant Collector of Central Excise, Chandan Nagar, W.B. v. Dunlop India Ltd.<sup>2</sup>, it was held that interim orders were not to be granted in revenue matters merely because a prima facie case had been shown. It was also emphasised in that case that even assuming that the assessee had established a prima facie case, it was not a sufficient justification for granting the interim orders. It was observed: (SCC p. 264, para 3) "It is only where statutory remedies are entirely ill-suited to meet the demands of extraordinary situations, as for instance where the very vires of the statute is in question or where private or public wrongs are so inextricably mixed up and the prevention of public injury and the vindication of public justice require it that recourse may be had to Article 226 of the Constitution. But the Court must also have good and sufficient reason to bypass the alternative remedy provided by statute, Surely matters involving the revenue where statutory remedies are available are not such matters."

11. In the instant case, there is no question of constitutional invalidity of any provision of law. In fact, in the case of Shyam Kishore v. Municipal Corpn. of Delhi<sup>3</sup>, this Court held Section 170(b) of the Delhi Municipal Corporation Act was intra vires and the District Judge had no jurisdiction to waive the condition of deposit or stay the collection of tax, pending disposal of the appeal in the court. It was, however, pointed out that the District Judge had the power to adjourn the hearing of the appeal or pass interim orders enabling the assessee to pay up the taxes before the appeal was actually heard and determined. But, this power had to be exercised judicially bearing in mind the interests of revenue and the position of the cases before him.

12. The order dated 29-9-1993 and the subsequent orders that were passed, indicate that the Single Judge of the Delhi High Court had lost sight of the aforesaid considerations and interim orders were passed. In fact, the first interim order passed on 28-9-1993 was to the following effect:

"28-9-1993 Present: Mr R.P. Sharma for the plaintiff, Mr P.C. Jain, Sr. Clerk in the Law Office of the defendant in person.

IA No. 7136 in S. 1851 of 1993 Mr P.C. Jain, Senior Clerk in Law Office of the defendant is present in court in response to the notice issued to the MCD.

Time is sought to respond to the notice. The response be filed regarding maintainability of the, suit within a week. Response, should be filed in each of the suits.

2 (1985) 1 SCC 260: 1985 SCC (Tax) 75:  
(1985) 2 SCR 190  
3 (1993) 1 SCC 22: JT (1992) 5 SC 335

Till the next date of hearing there shall be no recovery proceedings. The admitted amount however be paid.

A copy of the plaint, application, annexures and the documents relied upon be given to Mr Jain today itself.

Case for 18-11-1993."

No ground was indicated for passing the interim order staying recovery of tax. The order was passed even without deciding the question of maintainability of the civil suit. This interim order has been extended from time to time.

13. Having regard to the law, which is now well-settled, we fail to say how an interim order of stay of realisation of tax could be passed in a case like this. Under these circumstances, we set aside the interim orders under challenge. The Delhi Municipal Corporation will be at liberty to recover the taxes due.

14. The appeal is allowed. There will be no order as to costs.