

(1999) 08 GAU CK 0023

Gauhati High Court

Case No: Civil Rule No. 827 of 1993

Assam Tea Plantation Provident
Fund and Pension Fund Scheme
and Another

APPELLANT

Vs

Gauhati Municipal Corpn. and
Others

RESPONDENT

Date of Decision: Aug. 19, 1999

Acts Referred:

- Constitution of India, 1950 - Article 226
- Gauhati Municipal Corporation Act, 1969 - Section 156, 156(3), 156(4), 156(5)

Citation: (2000) 1 GLT 116

Hon'ble Judges: A.K. Patnaik, J

Bench: Single Bench

Advocate: N.C. Das, R.C. Das and A.C. Sarma, for the Appellant; S.N. Sarma, for the Respondent

Judgement

A.K. Patnaik, J.

By this petition under Article 226 of the Constitution, the Petitioners have prayed for quashing the communication/notice dated 4.2.93 issued by the Commissioner, Guwahati Municipal Corporation, Guwahati demanding the Petitioners to pay property taxes.

2. The facts briefly are that the Deputy Commissioner, valuation and assessment, Guwahati Municipal Corporation, Guwahati issued a notice dated 10.7.89 u/s 156(3) of the Guwahati Municipal Corporation Act, 1969(hereinafter referred to as the GMC Act) notifying the assessment list of rate able value of lands and buildings situated in the Ward No. XXXIV under the Guwahati Municipal Corporation, m the said notice dated 10.7.89 it was further stated that any objections to a rate able value or assessment or any other matter as entered in the assessment list should be specific

indicating in what respect the rateable value, assessment or other matter is disputed. The Petitioners filed their objections dated 28.8.89 before the Deputy Commissioner, Valuation and Assessment, Guwahati Municipal Corporation, Guwahati raising their objections to the assessments on rateable value of their building at Rs. 3,21,806/- for the year 1989-90. By a communication dated 4.2.93 issued by the Commissioner, Guwahati Municipal Corporation, Guwahati the comments of the Guwahati Municipal Corporation on the different objections raised were communicated to the Petitioner. In the said communication dated 4.2.93 the Petitioner was also asked to pay property tax of Rs. 1,73,768.00 for the first quarter of 1989-90 to 4th quarter of 1992-93 within fifteen days from the date of receipt of the said communication. Aggrieved, the Petitioners have filed the present writ petition under Article 226 of the Constitution of India for quashing the said communication/notice dated 4.2.93 issued by the Commissioner, Guwahati Municipal Corporation, Guwahati.

3. Mr. Das, learned Counsel for the Petitioner submitted that once an objection is filed pursuant to a notice issued u/s 156(3) of the GMC Act, the objections have to be enquired into and investigated and the person making the objections is to be given an opportunity of being heard, either in person or by his authorised agent, by the Commissioner or any officer of the Corporation authorised in this behalf by the Commissioner, as provided in Section 156(5) of the said GMC Act. But in the instant case no opportunity whatsoever was given to the Petitioner for being heard in respect of the objections raised by the Petitioner in their letter dated 28.8.89 and hence the impugned notice dated 4.2.93 of the Commissioner, Guwahati Municipal Corporation demanding tax on the basis of rateable value of the building fixing at Rs. 3,21,806/- in the notice issued u/s 156(3) of the Act, is liable to be quashed on this short ground alone.

4. Mr. S.N. Sarma, learned standing counsel for the Guwahati Municipal Corporation, on the other hand, submitted that the only contention, raised by the Petitioner in their objection was that the building was not located within the area of the Guwahati Municipal Corporation. According to Mr. Sarma the objections to be made u/s 156(4) of the said GMC Act are objections to rateable value or assessment and not any other matter. He further submitted that by the impugned notice dated 4.2.93, the Commissioner, Guwahati Municipal Corporation has clearly answered the said objection by standing that the land and building of the Petitioners was located within Ward No. XXXIV of the Guwahati Municipal Corporation and that their contention that the land and building was outside the area of the Guwahati Municipal Corporation, was not correct. Mr. Sarma further submitted that in any case the Petitioner can still file an appeal against the impugned notice dated 4.2.93 and in case such an appeal is filed, the same shall be considered and disposed of in accordance with the Rules after giving due opportunity of hearing to the Petitioners. Finally Mr. Sarma contended that as per instruction received by him from Respondent No. 2 and 3, the Petitioners never asked for an opportunity of personal

hearing in the matter and for this reason no notice was given to the Petitioners for hearing on the objections and the assessment was finalised without giving any hearing to the Petitioners.

5. Relevant portion of Section 156 of the Guwahati Municipal Corporation Act, 1971, as amended, is extracted herein below:

(1)...

(2):..

(3) The Commissioner shall, at the same time, give public notice of a date, not less than one month thereafter, when he will proceed to consider the rateable values of lands and buildings entered in the assessment list, and in all cases in which any land or building is for the first time assessed, or the assessment is increased, he shall also give written notice thereof to the owner or to any lessee or occupier of the land or building.

(4) Any objection to a rateable value or assessment or any other matter as entered in the assessment list shall be made in writing to the Commissioner before the date fixed in the notice and shall state in what respect the rateable value, assessment or other matter is disputed and all objections so made shall be recorded in a register to be kept for the purpose.

(5) The objections shall be inquired into and investigated, and the person making them shall be allowed an opportunity of being heard either in person or by his authorised agent, by the Commissioner or any officer of the corporation authorised in this behalf by the Commissioner.

Thus it is clear from a reading of Sub-section (4) of Section 156, as quoted above, that the owner or lessee or occupier of any land or building can file his objection not only to the rateable value or assessment but also on any other matter as entered in the assessment list. Hence the contention of Mr. Sarma, learned standing counsel for the GMC that objection can only be raised to a rateable value or assessment, under Sub-section (4) of Section 156, of the Act, does not seem to be correct. Further a reading of Sub-section (5) of Section 156 would show that the objections will have to be enquired into and investigated and "the person making them shall be allowed an opportunity of being heard", either in person or by his authorised agent. The word "shall" in the aforesaid provision makes it clear that an opportunity of hearing to any person who files an objection under Sub-section (4) of Section 156 is mandatory. Such a mandatory provision has to be complied with even if the person does not ask for an opportunity of being heard. In a case, however, where an opportunity is given to the person by serving notice to him fixing a date of hearing and the person does not avail such an opportunity, the mandatory provision of Sub-section (5) of Section 156 is complied with because the party to whom the opportunity was given has chosen not to avail the opportunity of hearing. But in

the instant case, no notice at all has been served to the Petitioner giving him an opportunity of hearing.

6. Moreover, in the objections filed by the Petitioners in their letter dated 28.8.89 to the Deputy Commissioner, Valuation and Assessment, Guwahati Municipal Corporation it will be clear that the Petitioners have not only contended that the building of the Petitioners is situated near the National Highway, Guwahati and was outside the area of the Guwahati Municipal Corporation but has also raised various other contentions disputing the rateable value of the land and building as fixed by the Guwahati Municipal Corporation. Hence the contention of Mr. Sarma that the objections of the Petitioners were confined to the point that the land and building of the Petitioners were not located within the area of Guwahati Municipal Corporation, is not correct.

7. For the reasons stated above, I quash the impugned communication/notice dated 4.2.93 issued by the Commissioner, Guwahati Municipal Corporation, Guwahati and direct that the Petitioners will appear through an authorised agent before the Commissioner of the Guwahati Municipal Corporation or any other officer authorised in that behalf by the Commissioner for hearing on the objections dated 28.8.89 as filed by the Petitioners and the Commissioner after hearing the authorised agent of the Petitioners will pass orders in accordance with law and communicate the same to the Petitioners. No costs.