

M/s. Jajodia Estates (p) Ltd. Vs Corporation of Calcutta and Others

Court: Calcutta High Court

Date of Decision: Jan. 28, 1983

Acts Referred: Calcutta Municipal Act, 1951 " Section 182, 183(3A)

Citation: 86 CWN 391

Hon'ble Judges: Chittatosh Mookerjee, J

Bench: Single Bench

Advocate: Tarun Chatterjee and Jiban Ratan Chatterjee, for the Appellant;Alok Ghosh, for the Respondent

Final Decision: Dismissed

Judgement

Chittatosh Mookerjee, J.

Each of the petitorers in these four writ applications (viz in Re M/s. Jajodia Estates (P) Ltd., M/s. Baiju Chawk

Properties, M/s. Baiju Chawk Properties and Mr. Sambhu Nath Ghosh) being dissatisfied with orders passed u/s 182 of the Calcutta Municipal

Act, 1951 preferred appeals in the court of Small Causes, Calcutta. The learned Chief Judge, Court of Small Causes, Calcutta has declined to

entertain the said appeals unless in terms of subsection (3A) of section 183 of the Calcutta Municipal Act the appellants paid the consolidated rates

payable in respect of their holdings up to the dates of presentation of their appeals on the valuation determined by the orders u/s 182 of the said

Act. The petitioners have urged that the learned Chief Judge has committed error of jurisdiction by applying the provisions of sub-section (3A) of

section 183 and by refusing to entertain the appeals filed by them unless consolidated rates were paid at the rates determined by the Special

Officer u/s 182 of the Act and which were the subject-matter of challenge in the said appeals.

2. Having heard the learned advocates for both parties, I find that no prima facie case has been made out for issue of Rules Nisi and therefore

these applications ought to fail.

3. The petitioners claim to be the owners of their respective holdings situate within the limits of Calcutta Corporation. In each case the valuation of

their holdings have been increased and they filed objections u/s 181 (1) of the Calcutta Municipal Act, 1951. The Special officer concerned u/s

182 of the Act has disposed of the said objections.

4. Sub-section (3A) was inserted in section 183 by Calcutta Municipal (3rd Amendment) Act, 1976 with effect from 22.6.76. It is undisputed, the

re-valuation of the holdings of the petitioners as also disposal of their objections u/s 182(2) of the Act made long after the insertion of said sub-

section (3A) in section 183 of the Act.

5. It is well-settled that right of appeal is a creature of statute. Its scope must be determined by references to the provisions of the statute conferring

it (vide Mulla on Code of Civil Procedure, vol I, page 418 13th edn.). In the instant case, at the date of the accrual of the right of the petitioners to

prefer appeals u/s 183(1) of the Calcutta Municipal Act, 1951 section 183 (3A) was already in statute book. Therefore, their right of appeal u/s

183(1) of the Calcutta Municipal Act, 1951 was subject of the fulfilment of the conditions specified in said sub-section (3A) of section 183 of the

said Act.

6. No doubt, there is some substance in the submission of Mr. Chatterjee, learned advocate for the petitioners, that the said condition for payment

of consolidated rate at the rate determined u/s 182 was a matter not merely of procedure but one affecting substantive rights. The decision of the

Supreme Court in Collector of Customs and Excise, Cochin and Others Vs. A.S. Bava, , supports the said submission of Mr. Chatterjee. But the

said decision does not further lay down that such provision for payment of the tax or rates as a condition for entertaining an appeal would be

unconstitutional. In the case of Collector of Customs and Excise (supra) the Supreme Court has upheld the decision of the Kerala High Court that

u/s 35 of the Central Excise and Salt Act, person aggrieved by any decision or order had an unfettered right to appeal, Section 12 of the Central

Excises and Salt Act, inter-alia authorised the Central Government to adopt only the procedural provisions of the Sea Customs Act, 1878. But the

Central Government u/s 35 of the Central Excises and Salt Act had made section 129 of the Sea Customs Act applicable to appeals u/s 35 of the

Central Excises and Salt Act. Section 129 of the Sea Customs Act was not merely a provision relating to procedure but the same affected

substantive right of appeal. Therefore, the said notification in exercise of powers conferred u/s 12 of the Central Excises and Salt Act, 1944

declaring that the provisions for deposit would be applicable to cases u/s 129 of the Customs Act, 1962 was held to be ultra vires.

7. In the instant case, the very provision of the Calcutta Municipal Act viz, section 183 which confers right of appeal to Small Causes Court has

laid down in sub-section (3A) of the said section that such an appeal shall not be entertained unless the consolidated rate up to the date of

presentation of the appeal on the valuation determined by an order u/s 182 has been deposited in the municipal office and such consolidated rate is

continued to be deposited until the appeal is finally decided.

8. Hardship, if any, caused thereby cannot be urged as a ground for questioning the vires of sub-section (3A) of section 183 of the Act. Sub-

section (2A) of section 207 which was also amended by the Calcutta Municipal (3rd Amendment) Act has provided Inter alia that any sum paid or

deposited u/s 183 in excess shall be refunded or allowed to be set off against any present or future demand of the Corporation under this Act.

Therefore, after final determination of the objection there would be adjustment or refund of the excess, if any, paid or deposited pending disposal

of the objection. The Calcutta Municipal Act itself has created liability to pay consolidated rates. Section 207 read with section 183(3A) have

made provisions for payment of consolidated rate pending the final determination of the objection. Sub-section (1) of section 207 of the Calcutta

Municipal Act, 1981 would be applicable only where an objection to the valuation made u/s 181 of the said Act is pending for determination. But

when a person, being dissatisfied by such determination made u/s 181 (2) of the said Act, files an appeal u/s 183(1) of the Act the consolidated

rates are to be paid according to section 183(3A) read with section 207(2A) of the Act. In the circumstances, I find no merit in these four

applications. The applications are accordingly summarily rejected. There will be no order as to costs.