

(1988) 02 CAL CK 0028

Calcutta High Court

Case No: Matter No. 623 of 1981

Dharamsi Liladhar Vora

APPELLANT

Vs

Municipal Corporation, Rajkot
and Others

RESPONDENT

Date of Decision: Feb. 26, 1988

Citation: (1988) 2 CALLT 17

Hon'ble Judges: Susanta Chatterji, J

Bench: Single Bench

Advocate: S.B. Bhattacharya, for the Appellant; Pradip Ghosh and Mr. S.R. Saha, for the Respondent

Final Decision: Allowed

Judgement

Susanta Chatterji, J.

The present writ application is filed by the petitioner for issuance of a Writ of Mandamus commanding the respondent Nos. 1 to 3 to cancel or rescind the impugned notices of demand and to direct them not to give offer to the said demand and to take steps from making attachment and sale of the petitioner's properties as per Annexure "A" and to restrain them from giving any decision or further effect to the purported notice of demand and from taking any step or further proceeding in respect of the alleging composite demands with warrant notice for steps as contained in the notice (annexure "A" to the writ petition) any manner whatsoever. It is stated that the petitioner own 2 houses (old) at No. 35 & 45 Prahalad Plot Street described as "Dharam Niwas" being house No. 5/80 and as "Vora Niwas" being house No. 5/700 both in the town of Rajkot, Gujrat. The respondent No. 1 is Municipal Corporation of Rajkot and the respondent Nos. 2 and 3 are Commissioner and Tax Superintendent of the said Municipality respectively. The tenants/respondent Nos. 4 to 9 have been litigating with the petitioner in different Courts and they have stopped payment of rent to the petitioner long since. The respondent Nos. 1 to 3 are alleged to have wrongfully and illegally assessed the

annual valuation of the holdings without verification and or intimation to the petitioner and the valuation of the said premises has been made fabulously without considering the relevant data had following any basis whatsoever. It is further alleged that there are recognized and generally accepted mode and manner of assessment of the value of immovable properties within the municipal areas for the purpose of levying taxes and rates within the municipal areas for the purpose of levying taxes as provided in the Statute governing the Municipal Body. There is no room for discretion and/or guess work by arbitrary exercise of power by the Municipal Authorities. Prior to the receipt of the notice (Annexure "A") the petitioner had no intimation nor he received any communication from the respondent Nos. 1 to 8 or from any one else with regard to enquiry or inspection or investigation about a standard or a fair valuation of the said two houses belonging to the petitioner. It is also alleged that from the purported notice it appears that there has been arbitrary assessment of valuation without any reference to any acceptable data or basis for valuation of property for the purpose of assessment. There is no disclosure or indication as to the mode of valuation or whether any proper or inspection investigation has been held by the respondent Nos. 1 to 3 in accordance with the law. The petitioner further alleged that the entire assessment proceeding has been held ex parte and behind the back of the petitioner and he had been deprived of filing any objection and the right of hearing before the assessment of valuation of holdings.

2. On the basis of the purported and pretended assessments made ex parte, steps are being taken to realize times arbitrarily while there are old tenants paying meager rents and there is enmity between the petitioner and the tenant. The assessed valuation of holdings figuring Rs. 7,680 and Rs. 5,280 without any notice to the petitioner is unwarranted and uncalled for. The respondent No. 3 is alleged to have issued two notices of alleged demands purported to be dated 7-12-80 and 20-12-80 and served on the petitioner at No. 2, Portuguese Church Street, Calcutta on 28th December, 1980 and 10th of January 1981 in respect of "Dharam Niwas" and "Vora Niwas". The amounts mentioned in the demand notices are all illegal and irregular. There is no basis of illegal assessment and such demands have been made arbitrarily and consequently the notices are absolutely invalid in the eye of the law. The petitioner has strongly challenged the purported assessment and consequent demand. Although the petitioner made representation by placing on records his objection there is no reply to the petitioner and instead the respondent Nos. 1 to 3 issued and served a warrant notice purported to be dated 19-12-80 stated to have been published in Gujarati newspaper named "Nutan Saurashtra" and on the petitioner at No. 2, Portuguese Church Street, Calcutta. Since the said newspaper has its circulation in Calcutta and there is a service of the notice at Calcutta the petitioner files the present writ by making various allegations and seeking reliefs on the grounds that the impugned acts and deeds of the respondent Nos. 1 to 3 are violative of the principles of natural justice and the Rules and the

provisions of the Act governing the respondent No. 1 Municipality for the purpose of assessment of the mode of recovery of taxes. The illegal demands of combined notices purported to be dated 7-12-80 and 20-12-80 seriously challenged and the petitioner contends that they are bad in law and they should be quashed.

3. The writ petition is contested by the respondent Nos. 1 to 3 by filing affidavit-in-opposition sworn by one Chauhan Rashmikan Devjibhai. The allegations made in the writ petition have been controverted and it has been placed on record that the steps have been taken to access the valuation of the premises in question and to realise taxes strictly in accordance with the provisions of the aforesaid Act and Rules for the purpose of assessment to property taxes. The rules for the purpose of assessment of property taxes are provided in Chapter VIII of Schedule "A" appended to the Act according to the provisions of the Rules referred to above, the assessment of the lands and buildings situated within the local limit of city of Rajkot are made under Rule 13. The Commissioner made public notice of the place where the assessment book could be inspected and such public notices were given by advertisement in the local newspaper as provided in Rule 13. Under Rule 14 every person who reasonably claims to be the owner or occupier of some premises may enter in the assessment book as owner or the agent or any such occupier shall be permitted free of charge to inspect and take extracts of any entry of any portion of the said book which relates to the said premises. Under Rule 15 complaints against the valuation publicly announced can be filed within 15 days. The Rule 21 provides for adoption of the assessment in every official year. Under the said provisions of the Act and the Rules the assessment of the property owned by the petitioner was made and all the formalities contemplated in the Rules were duly complied with and the allegations of the petitioner are unwarranted and uncalled for. There is also denial of the allegations of the petitioner. The petitioner has however, filed Affidavit-in-Rejoinder reiterating his contentions in the main writ application and denying the contentions of the contesting respondents. An Affidavit-in-Rejoinder has been filed by the petitioner reiterating the stand taken in the main writ petition.

4. The Learned Counsel for the petitioner has mainly argued that the holdings in question are occupied by the tenants with whom the petitioner has bitter relations. Various litigation pending between the landlord and the tenants and the petitioner has the least opportunity to receive any notice if it is served upon the premises and any notice to be purported to be served upon the holding or the occupier of the premises will not be deemed to be constructive notice upon the petitioner. It is further argued that there is no effective service of any notice upon the petitioner before making annual valuation and/or via-a-vis assessment of taxes for the relevant periods as referred in the writ petition upon the petitioner at any material point of time by any prescribed procedure provided in the statute. Since the essential formalities were not complied with steps taken by the Municipal Corporation of Rajkot in assessing taxes on the basis of illegal annual valuation is bad in law and the consequential steps to issue notice of demand for recovery of

taxes and/or threat to take penal measures are all arbitrary, illegal and ultra vires. The Learned Counsel has referred to various provisions of the Act to draw the attention of the Court that steps taken by Municipal Corporation of Rajkot in assessing taxes and issuing notices for recovery of taxes in respect of the holdings in question of the petitioner precontrary to and inconsistent with the provisions as to serve notice upon the petitioner and assessing annual valuation of taxes without proper basis are bad in law and thus liable to be quashed.

5. The Learned Counsel for the petitioner has tried to demonstrate that the purported ex parte assessment made by the respondent Nos. 1 to 3 for the year 1980-81 in respect of the 2 houses are invalid and bad in law and the assessment of the annual value of the two holdings being Rs. 7,680 and Rs. 5,280 respectively are without any specific data and/or basis since there is no increase of the annual income from the tenants nor it was considered that there was no increase of the potential value of the holdings for the purpose of revising annual value. The steps taken by the Municipal Corporation Authorities are in a cavalier fashion and seriously prejudicial to the interest of the petitioner.

6. With regard to the jurisdiction of this Court, the Learned Counsel for the petitioner has submitted that the notice of demand has in fact been served upon the petitioner in Calcutta wherefrom the petitioner has come to know about the threat to sell by public auction of the property of the petitioner. According to him the cause of action is bundle of facts. The petitioner resides within the jurisdiction of this Court reported in 86 C.W.N P. 348 (Uma Shankar Chatterjee vs. Union of India & Ors.). The bench presided by the Hon"ble Mr. Justice M.M. Dutt as (he then was) held that the course of action arose partly in Calcutta consequent to the service of the impugned order of removal from service. The Writ petitioner was maintainable in Calcutta. The said bench considered one of the definition as given by Breet J. in Cooke vs. Gill (1873 .L.R. S.C. P. 107) as follows:-

The cause of action has been held from the earliest time to mean every fact which is likely to be proved to entitle, the plaintiff to succeed every fact which the defendant would have a right to traverse.

7. It will appear from another Bench decision reported in 90 C.W.N. P. 488 (Everest Coal Company (P) Ltd. vs. Coal Controllers & Ors.) presided by Mookerjee and Shamsuddin Ahmed JJ. decided relating to territorial jurisdiction and part of cause of action in order to maintain a writ application the petitioner has to establish that within the territorial limits of the Court's jurisdiction prima facie a legal right claimed by him has been either infringed or is threatened to be infringed by the respondents. Such infringement may take place by causing him legal injury or threat thereof. Accordingly, when the impugned act of the respondent takes effect within the territorial jurisdiction of a particular High Court the Court may entertain the writ petition of the person aggrieved notwithstanding that the respondents have the offices or residences outside its territorial jurisdiction. An Order which has been

made by an authority or person at a place beyond territorial jurisdiction of a particular High Court but it is given effect against the petitioner within the said High Court's jurisdiction, it gives rise to at least a part of cause of action at the place when it is implemented. When an order becomes effective only when it is communicated or served, the service of the order or receipt of a notice thereof would form a part of cause of action for filing a writ petition by the person aggrieved thereby.

8 It is also submitted by the Learned Counsel for the petitioner that regard being had to the materials on record, the petitioner is entitled to have an opportunity of placing objection and also being heard before the appropriate authority as prescribed under Bombay Provincial Municipal Corporation Act, 1949 The ex parte assessment may be quashed and necessary reliefs as prayed in the writ petition may be granted.

9. Mr. Pradip Ghosh, the Learned Counsel appearing for the respondent Nos. 1 to 3 has drawn the attention of this Court to relevant provisions of Bombay Municipal Corporation Act and the Rules that there is nothing wrong on the part at the Municipal Corporation of Rajkot to proceed with the assessment of annual valuation of holdings and steps taken for recovery of the arrears taxes. He has submitted that according to the Bombay Provincial Municipal Corporation Act, 1949, Schedule "A" Chapter VIII, Rule No. 15 (2) and 20 (2), a special notice was issued in the manner as provided in the statute. No complaint was made within the statutory period and the allegations made by the petitioner against non-service of notice and for ex parte assessment of taxes are wholly unwarranted and uncalled for. The special notice was pasted on the building as the owner was staying out of station and the tenants refused to accept the same. A copy of the peon's return has been filed in this Court to indicate inter alia that there is substantive compliance of statutory requirements. According to him, the writ petition is misconceived and the petitioner is not entitled to any relief as prayed for. He has strongly argued that this Court has not the jurisdiction to entertain the writ petition and the petition ought to be rejected.

10. Having heard the learned lawyers of the respective parties it appears that u/s 472 of the Bombay Provincial Municipal Corporation Act, 1949, notices, bills, schedules, summons and other such documents required by this Act or by any rule, Regulation or By-law to be served upon or issued or presented or given to any person, shall be served, issued, presented or given by Municipal Officers or servants or by other persons authorised by the Commissioner in this behalf. Sections 473 indicates the mode of service how to be effected on owners of premises and other persons. For better, appreciation Section 473 of Bombay Provincial Municipal Corporation Act is set down below:

When any notice, bill, schedule, summons or other such document is required by this Act, or by any rule, regulations or by-law to be served upon or issued or presented to any person such service, issue or presentation shall, accept in cases

otherwise expressly provided for in Section 474, be effected -

(a) by giving or tendering to such person the said notice, bill, schedule, summons or otherwise documents; or

(b) if such person is not found, by leaving the said notice, bill, schedule, summons or other documents at his last known place of abode in the city or giving or tendering the same to some adult member or servant of his family or by leaving the same at his usual place of business, if any, or by giving or tendering the same to some adult employee, if any, or his at such place; or

(c) if such person doesn't reside in the city and his address elsewhere is known to the Commissioner by forwarding the said notice, bill, schedule, summons or other documents to him by post under cover, bearing the said address, or

(d) if none of the means aforesaid be available, by causing the said notice, bill, schedule, summons or other documents to be affixed on some conspicuous part of the building or land, if any, to which the same relates.

11. Section 474 of the said Act also provides procedure as to service on owner or occupier of premises how to be effect the same is also set down here in below: -

When any notice, bill, schedule, summons or other such documents required by this Act, or by any rule, regulation or by-law to be served upon or issued or presented to the owner or occupier of any building or land, it shall not be necessary to name the owner or occupier therein, and the service, issue or presentation thereof shall be effected, not in accordance with the provisions of the last preceding section, but as follows, namely :-

(a) by giving or tendering the said notice, bill, schedule, summons, or other document to the owner or occupier, or if there be more than one owner or occupier, to anyone of the owners or occupiers of such building or land; or

(b) if the owner or occupier or no one of the owners or occupiers is found, by giving or tendering the said notice, bill, schedule, summons, or other documents to some adult member or servant of the family of the owner or occupier or of any of the owners or occupiers; or

(c) if none of the means aforesaid be available by causing he said notice, bill, schedule, summons, or other document to be affixed on some conspicuous part of the building or land to which the same relates.

12. The attention of the Court is drawn to Section 474(c). It is argued that in the instant case the said provision is attracted and the notice has been affixed on some conspicuous part of the building or land to which the same relates.

13. With regard to assessment it will appear from Chapter VIII, Rule 15 that there is time for filing complaints against valuation to be publicly announced. The attention

of this Court has been drawn to Rule 15 (2) of the aforementioned Chapter VIII wherein it is provided that in every case in which any premises has for the first been entered in the assessment book as liable to such payment to property or in which the rateable value or any premises liable to such payment has been increased; the Commissioner shall, as soon as conveniently may be after the issue of the public notice under Sub-Rule (1), give a written special notice to the owner or occupier of the said premises specifying the nature of such entry and informing him that any complaint against the same will be received in his office at any time within 15 days from the service of the special notice. It has to be seen in the instant case as to whether there is fulfillment of the statutory requirement as to the assessment and/or a proper opportunity has been availed to file objection within the time as provided in the statute.

14. Unless a specific objection is filed complaining the increase of the annual valuation by the affected person there cannot be any investigation in the manner prescribed in this statute as to whether the valuation has been properly arrived at or not. Accordingly, this Court feels that if it satisfied that there is proper notice to the persons concerned as to the mode of valuation and then only there will be consideration as to whether the valuation has been effected according to statute or not. But where the court is satisfied that there is proper notice to the persons concerned as to the mode of valuation and then only there will be consideration as to whether the valuation has been effected according to statute or not. But where the Court is satisfied that there is no proper notice to the persons enabling him or hear to file a complaint within time as proved in the statute it will be unnecessary to go into the question of effecting proper valuation as to assessment.

15. Admittedly, when the houses in question are occupied by the tenants of the petitioner any notice upon such occupier cannot be deemed to be a constructive notice to the owner in the background of the facts and circumstances of the case and regard being had to the materials on record. While the Municipality is aware of servicing the notice to the petitioner residing out of town the question of affixing the notice on the part of the building is unwarranted and uncalled for. From the materials on record the court is at least satisfied that at no material point of time there was any effective service of notice upon the petitioner as to the proposed increase of the valuation on assessment to enable him to file a complaint. This court feels that for the end of justice the petitioner should be given an opportunity to file a proper complaint against the proposed enhancement of the annual valuation. As such an objection should be considered according to law by giving him an opportunity of hearing.

16. The question of jurisdiction is not very much relevant in as much as the notice has been given to the petitioner at Calcutta who is affected by special notice and this Court exercise its jurisdiction on the basis of the decisions reported 86 CWN. 348 (Supra), [Everest Coal Co. Pvt. Ltd. Vs. Coal Controller and Others](#), . It is clearly found

that a part of cause of action arises within the jurisdiction of this Court and consequently the present writ petition is moved forward.

17. For the foregoing reason the writ petition is allowed in part. The petitioner is directed to file a complaint against the annual valuation assessed by the respondent municipality within a fortnight and the municipal authorities will consider the same according to law by giving him an opportunity of hearing. Till consideration of such objection the respondent / municipality and its officers are restrained from giving effect to the valuation arrived at and they are also restrained from taking any steps to recover the taxes on the basis of the increased valuation and/or taking any coercive measure to auction sell the property. There will be no order as to costs.