

(1989) 04 CAL CK 0059

Calcutta High Court

Case No: C.R. No. 245 (W) of 1981

The Ganges Manufacturing
Company Limited and Another

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision: April 20, 1989

Acts Referred:

- Constitution of India, 1950 - Article 14

Citation: (1990) 1 CALLT 210

Hon'ble Judges: Susanta Chatterji, J

Bench: Single Bench

Advocate: A.P. Sircar and Mr. D.K. Roy, for the Appellant; Tarun Kumar Roy for Respondent Municipality and Mr. Naranarayan Gooptu, Advocate-General for State, for the Respondent

Judgement

S. Chatterji, J.

The present Rule was issued at the instance of the petitioner No.1, the Ganges Manufacturing Company Limited, a public Limited Company and the petitioner No.2 being its General Manager challenging the vires of Sections 138 and 147(2) of the Bengal Municipal Act, 1932 and the notices dated 17.12.80, 18.12.80 and 22.12.80 as illegal and invalid. There is a prayer for rescinding the aforesaid notices, copies of which are Annexures "K", "L(i)" and "N" to the writ petition. It is stated that the factory/mill of the petitioner No.1 Company is situated within the jurisdiction of Bansberia Municipality. According to the writ petitioners, there has been arbitrary increase in the annual valuation of the said Holding No.53 now numbered as 55 in Ward No. 10 of the said Municipality, without having regard to the provisions of the Bengal Municipal Act and there is unauthorised increase in the annual valuation on the basis of ad hoc valuation of buildings on purported market value including determination of ground rent from time to time. It is alleged that the respondents have deliberately withheld the actual basis and foundation of the assessment and

inspite of repeated representations and/or reminders made by the petitioners to have access and/or for obtaining certified copy of the Statement and/or documents forming the basis of assessment. There is refusal on the part of the respondents to make available the certified copies of the documents forming the basis of assessment. There are averments in the writ petition to the effect that inspite of the objections raised by the petitioners from time to time, the increase in annual valuation has been made by the respondents without complying with the provisions of law. The Assessment Review Committee by its order dated 20th March, 1976 resolved to reduce the appreciation from 400% to 350% and the total annual value including the ground rent came to Rs. 11,61,580/- from Rs. 12,72,460/-. The petitioners have made the allegations that no objective and rational basis has been adopted for applying the purported appreciation to the buildings belonging to the petitioner No.1 and the ground rent has not been determined at any point of time with proper regard to the relevant provisions of the Act and/or the correct data and/or the materials. In response to the notices issued by the respondent Bansberia Municipality as to the increase of the annual valuation of the holding in question, the petitioners are alleged to have replied by letter dated 14th July, 1980 requiring certified copies of the documents viz :

(a) Assessor's assessment list;

(b) Assessor's statement showing his calculation in arriving of annual value of Rs. 12,77,900/ in respect of holding; and

(c) Assessor's report in support of his assessment.

There was, however, an intimation by the Executive Officer of the said Municipality to the petitioners that the certified copies of the assessment list in respect of the holding relating to Items "A" and "B" may be given on the payment of requisite fees. There is also averments of the exchange of letters in this regard and there is serious challenge as to the notice dated 17th September, 1980, 18th December, 1980 and 22nd December, 1980 as wholly illegal, arbitrary and unconstitutional. The entire re-assessment sought to be made on the basis of calculation by the Senior/Junior Land : Reforms Officer and the same is arbitrary and void as alleged. The petitioners have mainly alleged that before initiating proceedings under sections 13g and 147(2) of the said Act it is incumbent upon the respondents to observe the Rules of natural justice and/or procedural justice.

2. Elaborating on this score, the writ petition has been filed on the grounds that there being no materials and/ or circumstances warranting the issuance of notice u/s 138(2) of the Bengal Municipal Act, the notices and consequential steps in pursuance thereof are ultra vires the provisions of the said Act and also the notice u/s 147(2) of the said Act is also illegal and invalid in law. It is incumbent upon the respondent to observe the rules of natural and/or procedural justice before initiating proceedings under sections 138 and u/s 147(2) of the said Act and failure

on the part of the respondents herein to do so in the facts and circumstances of the instant case renders the notice void ab initio. Furthermore, section 138 (1) (c) of the said Act is inconsistent and violative of the Article 14 of the Constitution of India and the absence of any guidelines confers arbitrary power on the Commissioners in the matter of assessment of annual valuation resulting 138 (1)(c) of the said Act violative, the Constitution, and said section suffers from inherent defects as to arbitrariness. The said section does not disclose that the authority concerned after forming an opinion objectively will consider the facts and circumstances of the case. Section 138(2) of the said Act must be construed to provide an opportunity to the parties concerned to the proposed intention of the authorities to alter and/or amend valuation but in the instant case, the authorities have initially decided to alter and/or amend the valuation and thereafter in colourable exercises and purported compliance with the provisions of section 138(2) of the said Act, have issued the notices and such notices are illegal and/or without jurisdiction. The acts done and/or alleged to have been done by the respondents relating to the instant case are wholly unwarranted and uncalled for as submitted by the petitioners.

3. The writ petition is strongly contested by the respondent Municipality by filing affidavits. It is disclosed inter alia that by the impugned annexure "N" to the writ petition, Bansberia Municipality in the district of Hooghly increased the valuation and assessment in respect of the holding the petitioner No.1. The annual valuation was re-determined and the tax was re-assessed with effect from 4th Quarters 1980-81. The annual valuation was determined after the usual quinquennial assessment. As it is found that the ground rent in respect of the concerned holding of the Writ petitioner No.1 was incorrectly valued and the same was duly revised to the correct amount and after due compliance with the relevant provisions contained in Bengal Municipal Act, 1932, the valuation and assessment in respect of the said holding were duly altered by amending the assessment and the assessed tax was revised accordingly. As a consequence of the far reaching amendments being introduced to the said Act in respect of Municipal tax, the said Municipality adopted a resolution for imposing of consolidated rate in respect of the holdings with effect from 1st April, 1983 and as such the valuation of the assessment of the concerned holding of the Writ petitioner No.1 has been revised upwards with effect from 1st Quarter 1983-84: Though the said Municipality duly complied with the requirements of section 138(2) of the said Act, the writ petitioners did not avail the facilities of section 138 (3) of the said Act in so far as they did not refer any formal objection to such proposed valuation. In terms of the provisions contained in Rule 8 (b) of the Taxation Rules framed u/s 215 of the said Act, the ground rent for the land comprising in the said holding was duly ascertained from the appropriate authorities. The amendment of the annual value and assessment of the said holding was duly made u/s 138(1)(c) of the said Act after the correct ground rent was ascertained and after due compliance with the condition precedent contained in section 138(2) of the said Act. The writ petitioners, however, refrained from taking the benefit of section

138(3) of the said Act so far as they did not prefer any application for review and/or objection. It is submitted that even in terms of the provisions contained in section 138(4) of the said Act every alteration made u/s 138(1) has been done in the instant case will be subject to the result of an application u/s 148 of the said Act and shall only take effect in the beginning of the quarter next following that in which the alteration was made. Accordingly, the alteration which was made in the instant case was made effective with effect from 4th Quarter 1981. There is denial of all other allegations made in the writ petition as to the steps taken by the respondents in issuing the notices have not been justified. The petitioners have, however, controverted the assertions made by the contesting respondents and reiterated the stand taken by them in the original writ petition. It is mainly argued on behalf of the writ petitioners that the notice u/s 138(2) of the Bengal Municipal Act, 1932 issued on 17th February, 1980 addressed to Messrs. Ganges Manufacturing Company Limited proposing inter alia the Executive Officer u/s 138(1)(c) of the said Act will fix the annual valuation of holding No.55, Rudra Main Road, Ward No.10 at Rs. 16,45,700 and to reassess it on that valuation and such valuation has been increased on the ground rent which was incorrectly valued and the proposed alterations will be made on 13.10.1980 in the Municipal office at 5.00 p.m. and will take effect from the beginning on 4th Quarter 1980-81, is illegal and invalid. The said notice, copy of which is annexure "K" to the writ petition is without jurisdiction according to them.

4. Mr. A.P. Sircar, the Learned Counsel appearing for the writ petitioners, has developed his argument by drawing the attention of the Court that the issuance of the notice u/s 138(1)(c) is bad in law as it contemplates variation or alteration of any assessment of the holding. The opinion as to incorrect valuation was also bad inasmuch as no such formation of opinion was correctly made. Similarly, the notice u/s 147(2) of the Bengal Municipal Act, 1932 dated 22.12.1980 copy of which is annexure "M" to the writ petition is also unwarranted. The objections against notice u/s 132 have not been dealt with properly as the same is independent. While the re-assessment has been challenged, an objection has to be dealt with, u/s 138(3) of the said Act. The attention of the Court is drawn to the scheme on assessment as envisaged in Bengal Municipal Act and the cases reported in 1978(1) CU 276 (Prosad Kumar Mondal & Ors. vs. The Commissioners of Krishnanagar Municipality & Ors.), 82 CWN 457 (Prosad Kumar Mondal & Ors. vs. The Commissioners of Krishnanagar Municipality & Ors.), and 44 CWN 277 (Municipal Commissioners of Dacca vs. Gangamani Choudhurani). He has argued further that the Assessor unlike an arbitrator should give reason to form an opinion. He has also submitted that the report of the Senior Land Reforms Officer dated 26.5.1980 copy of which is annexure "L" to the writ petition cannot be considered effectively as not all Mouzas were included and considered in the proper perspective. He has also drawn the attention of the Court to case laws reported in [Sri Sri Iswar Ganesh Jiu and Others Vs. The Municipal Commissioners of Hooghly-Chinsura and Another](#), and in particular para 5 at page 187. There is also reference of AIR 1985 NUC (Cal.) 5608, (Anqus Company

Ltd. vs. Municipal Commissioner of Champdany Municipality).

5. The Learned Advocate-General appearing for the contesting respondents has argued that there is no arbitrary assessment made by the Assessor which is otherwise liable to be reopened. He has drawn the attention of the Court of a letter dated 12.5.1980 by the Assessor to the Executive Officer. According to him, the averments made in paragraph 14 of the writ petition must be read with the averments made in paragraph 28 of the writ petition. The main grievances as canvassed by the writ petitioners have no basis and the writ petition is an attempt to stall collection of taxes. The same is not bona fide as there is substantial compliance of Rule 8(b) to the Rules framed under Bengal Municipal Act. There is not only compliance by collecting materials from the registration office but from other sources. References have been made u/s 215 of the Act as to the power to make Rules for taxation. The scope of section 138(1)(c) of Bengal Municipal Act, 1932 has been referred to indicate inter alia the power to be exercised by the Executive Officer. According to him, there is no materials and/or mala fide steps as can be attributed by the writ petitioners against the officials of the Municipality. The entire provisions of law prior to the amendment of 1980 relating to an Act were brought to the notice of the Court and the scope of section 67 A and the notification as well as the revenue asked for by the Municipality concerned. There is no arbitrary exercise of power by the Assessment Department and the main criterion for assessment and/or valuation is to consider the ingredients to form the opinion. Since, there is substantial compliance of Rule 8(b), there is nothing arbitrary in assessing ground rent. All the objections as raised by the writ petitioners towards the objections as to assessment are wholly unwarranted and uncalled for. The case laws as placed by the Learned Lawyers of the petitioners have been discussed and sought to be distinguished on the facts and the contention is that the ratio of the said decisions does not have any bearing so far as the adjudication of the present case is concerned. He has, however, referred to [Ganpat Roy and Others Vs. Additional District Magistrate and Others](#), as the maintainability of the writ petition.

6. After hearing the Learned Counsels of both sides at length, this Court finds that Chapter V starting with section 123 of Bengal Municipal Act 1932 deals with Municipal taxation and imposition of taxes. Section 133 of the Bengal Municipal Act, 1932 provides inter alia that when it has been decided to impose any rate to be assessed on the annual value of holdings, the Assessor, after making such inquiries as may be necessary, shall determine the annual value of all holdings within the Municipality in the manner provided in Chapter V and shall enter such value in a valuation list. There is also provision for preparation of Assessor's list as will appear from section 136 that as soon as possible after the percentage at which the rate and/or rates shall be levied for the next year has been determined u/s 135, the Commissioner shall cause to be prepared an assessment list, which shall contain the following particulars and any others which the Commissioner may think properly to include-

- (a) the name of the Street in which the holding is situated;
- (b) the name of the holding on the register;
- (c) a description of the holding;
- (d) the annual value of the holding;
- (e) the name of the owner;
- (f) the amount of rate payable for the year (each rate to be shown separate page);
- (h) the amount of quarterly instalment;
- (i) if the holding is exempted from assessment, a note to that effect.

7. Section 137 of the said Act deals with the revision of the list. It indicates inter alia that the new valuation list shall unless otherwise ordered by the (State Government) be prepared in the same manner as the original list, once in every 5 (five) years. Section 137(2) lays down that subject to any alteration or amendment made u/s 138 and to the result of any application u/s 148 every valuation and assessment entered in a valuation or assessment list shall be valid from the date on which the list takes effect in the Municipality and until the first day of April next following the preparation of a new list. Under this Scheme as provided in the Bengal Municipal Act section 138 deals with amendment and alteration of list. For better appreciation section 138 of the Act is set down hereinbelow :

Section 138:

(1) The Commissioners at a meeting may for reasons to be recorded in writing at any time, direct alteration or amendment of the assessment list-

(a) by entering therein the name of any person or any property which in their opinion ought to have been entered, or any property which has become liable to taxation after the authentication of the assessment list u/s 147; or

(b) by substituting therein for the names of the owner of any holding the name of any other person who has succeeded by transfer or otherwise to the ownership of the holding; or

(c) by altering the valuation of or assessment on any holding which in their opinion has been incorrectly valued or assessed; or

(cc) by re-valuing or re-assessing any holding, the valuation or assessment of which has been set aside or declared to be void by an order of a Court; or

(d) by re-valuing or re-assessing any holding, the value of which has been increased by additions or alterations to buildings; or

(dd) by altering the valuation or assessment of any holding where such alteration is necessitated by the amendment of any of the provisions of this Act; or

(e) where the percentage on the annual value at which any rate is to be levied has been altered by the Commissioners under the provisions of section 135 by making a corresponding alteration in the amount of rate payable in each case; or.

(f) by reducing, upon the application of the owner the valuation of any holding which has been wholly or partly demolished or destroyed, or the value of which has been diminished from any cause beyond the control of the owner the operation of which could not have been prevented with due precaution. or

(g) by correcting any clerical or arithmetical error.

(2) The Commissioners shall give at least one months' notice to the recorded owner or owners of any alteration which the Commissioners propose to make under clauses (a), (b), (c), (cc), (d) of sub-section (1) of the date on which the alteration will be made.

8. In the instant case a long argument has been made with regard to section 138(1)(c) of the said Act. Much emphasis has been laid with the formation of opinion to alter the valuation of or assessment or any holding is argued that if it can be shown that by reason of any fraud, mistake misrepresentation the original assessment was not correctly made, the commissioners derived the power to alter and amend the assessment u/s 138(1)(c) of the said Act as it has been found in the case reported AIR 1955 NUC (Cal), 5608 (Anqus Company Ltd. vs. Commissioners of Champdany Municipality). It will, however, be found that Angus Company's case was explained by R. N. Dutta JJ. in [Sri Sri Iswar Ganesh Jiu and Others Vs. The Municipal Commissioners of Hooghly-Chinsura and Another](#), . It was laid down that alteration can be made only having regard to the state of things existing at the time when the valuation was made. No alteration can be made by reason of a statutory changes altering the principles of assessment or the rate of percentage of the assessment. In the instant case, the petitioners have challenged the notice given u/s 132 which further provides that the Commissioners shall give at least one months' notice of any alteration which the Commissioners proposed to make under Clauses (a), (b), (c), (cc), or (d) of sub-section (1) and of the e on which the alteration will be made. There is scope for filing objections and is clearly laid down u/s 138(3) that the provision of sections 148 to 151 will be applicable to objections. This court does not appreciate that the notice u/s 138(2) can be challenged on the face it unless a case is made out that nothing exists to impair the authorities issuance of such notice. The attention of this Court has been drawn to decision made in Prosad Kumar Mondal & Ors. vs. The Commissioners Krishnanagar Municipality & Ors. (reported in 1978 (1) CLJ 276: 82 CWN 457). The Division Bench held that reading the provisions of the Bengal Municipal Act and the Rules framed thereunder, it appears that the Assessor is required to determine the annual value of each holding on the is of gross annual rental at which holding may reasonably be expected let unless in his opinion such a rental cannot easily be ascertained in which case he is to proceed on the cost of constructing basis again, when proceeds to determine the annual value on the

gross annual rental basis that rental is to be individually determined as a positive act of determination by comparison with rents of similar holdings in the vicinity. But in ascertaining the gross annual rental, the Assessor to have regard for the rent which might reasonably be expected in an average year irrespective in actual rent being paid at a particular time or in a particular year that the Assessor is to ascertain the gross annual rental in each case in a positive manner is inherently in the same and is well indicated by what he is required to record. In column 16 of Form B read with Rules 9 and 10 of the said Rules, this already reflects the scope of the scheme. There cannot be any ambiguity and/ or confusion. The case reported in 44 CWN 277 has obviously no bearing with the facts of the present case inasmuch as it was found that a valuation list prepared under the Bengal Municipal Act, 1932 and assessment of Latrine tax u/s 86(f) of that Act are not saved by the proviso to section 2 of the Bengal Municipal Act, 1932, consequently, an assessment of conservancy rate u/s 123 of the later Act without preparing a fresh valuation list is ultra vires. In the instant case, relevant informations and materials were made available to form an opinion as envisaged u/s 138(1) (c) of the Act and consequently the power was exercised to cause a notice u/s 138(2) of the Act. There is nothing wrong to issue such a notice and the petitioner cannot be allowed to argue that there is no material to form an opinion and the notice issued is consequently irregular and illegal. The petitioner had every chance to file objection to the said assessment and the same will be dealt with by the procedure as laid down under sections 148 to 151 of the Act.

9. u/s 147 of the Bengal Municipal Act, 1932 there will be publication of notice of assessments under sub-section (1) when the assessment list mentioned in section 136 has been prepared or revised, the Chairman was signed the same and shall cause it to be deposited in the office of the Commissioners and shall give public notice of the place where the list may be inspected. Under sub-section (2) in all cases in which any property is for the first time assessed or the assessment is increased the Chair- man shall also give notice thereof to the owner and occupier of the property, if known. The entire scheme of revision of annual valuation as contemplated in section 138(1) (c) has been found if it is read with Rule 8(b) framed under Bengal Municipal Act and it will appear that there is compliance by getting the information not only from the registration office but from other sources.

10. With all anxieties, this Court has considered the three-fold objections made by the petitioners viz:

(1) The steps by the respondents are without jurisdiction;

(2) informations were collected from impermissible source and

(3) no fraud, misrepresentation or in otherwise are present in the instant case.

This Court has considered such objections looking to the scope of the Bengal Municipal Act and the Rules framed thereunder and the materials produced before

this Court. The objections as raised for issuance of the notices are wholly unwarranted and uncalled for. The petitioners may very well ask for review u/s 148 of the Act that any person is dissatisfied with the amount assessed upon him or that the valuation of assessment of any holding or who disputes his occupation of any holding, or his liability to be assessed, may apply to the Commissioners to review the amount of assessment or valuation or to exempt him from the assessment of rate. There is scope for hearing and determination of application u/s 149 of the said Act and there will be formation of Municipal Assessment Tribunal u/s 149A of the said Act.

11. In view of the provisions of law as discussed above, the petitioners cannot move the writ jurisdiction of the Court unless it is proved that the acts done and/or caused to have been done by the respondents in issuing the impugned notices have acted without jurisdiction causing prejudice to the interest of the petitioners and that the acts complained of are in excess of jurisdiction conferred upon them or that there is any breach of any fundamental right of the petitioners guaranteed under the Constitution of India. This Court having considered all the submissions made on behalf of the writ petitioners does not find any merit in the writ petition. In the result, the Rule is discharged. All interim orders are vacated. There will no order as to costs.