

(1993) 04 CAL CK 0050

Calcutta High Court

Case No: C.O. 9472-73 (W) of 1987

Shri Gobardhandas Damji
Parmar and others

APPELLANT

Vs

State of West Bengal and others

RESPONDENT

Date of Decision: April 26, 1993

Acts Referred:

- Bengal Municipal Act, 1932 - Section 123(1), 128, 128(1), 128(2), 136
- Bengal Municipal Rules, 1932 - Rule 8
- Calcutta Municipal Corporation Act, 1980 - Section 179
- Constitution of India, 1950 - Article 14, 300A
- West Bengal Central Valuation Board Act, 1978 - Section 11, 14, 3, 9, 9(1)

Citation: AIR 1993 Cal 208

Hon'ble Judges: Susanta Chatterji, J

Bench: Single Bench

Advocate: Bidyut Kr. Banerjee and Miss. Shila Sarkar, for the Appellant; Arun Prakash Chatterjee, Arabinda Chatterjee and Sudhis Dasgupta Advs., for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. The present writ petitions have been filed by a large number of petitioners praying, inter alia :--

a) To grant leave to the petitioners to present and move the present writ petition on behalf of such other owners of holdings and rate payers within Asansol Municipality who are aggrieved by the impugned Notification being Annexure "A" to this petition.

a) Issue a writ of or in the nature of Mandamus commanding the respondents to cancel and/or quash the Notification being Annexure "A" to this petition and further commanding the respondents their respective men, agent and subordinates not to

give any effect or further effect to the impugned Notification being Annexure "A" to this petition and further restraining the respondents their respective men, agent and subordinates from proceeding in any way or manner with the purported assessment of general valuation of land and building situated within the local limits of Asansol Municipality in any way or manner.

b) Issue a writ of or in the nature of Certiorari commanding the respondents to certify and transmit the records of your petitioners' case to the learned Registrar appellate side of this Hon'ble Court or cause them to be produced at the time of hearing so that condonable justice may be done by quashing the impugned Notification being Annexure "A" to this petition.

c) Declare that the provisions of the said Act of 1978 is ultra vires and the Central Valuation Board has no authority or competence to make valuation for the purpose of assessment of rates and taxes on holdings situated within the local limits of Municipal Corporation or any Municipality including Asansol Municipality.

d) Issue a Rule Nisi in terms of above prayer.

e) Make the Rule absolute after hearing the causes shown of if no cause is shown and/or to pass such other Writ, Order or Direction as to your Lordships may deem fit and proper.

f) Grant an interim order restraining the respondents their respective men, agent and subordinate from giving any effect or further effect to the the impugned Notification being Annexure "A" to this petition as well as from taking any steps for punishment of ratepayers and further restraining the respondents their respective men, agent and subordinates from proceedings in any way or manner with the purported assessment of general valuation of lands and buildings situated within the local limits of Asansol Municipality till the hearing of the instant Rule.

g) Grant Cost.

2. It is stated in details that the petitioners are all owners of holdings as mentioned in the cause title of the writ petition and they are all ratepayers in respect of their respective holdings. They are aggrieved by and dissatisfied with the same set of facts and since they have common grievances, the present petition has been filed in the representative capacity. It is placed on record that S. 28 of Bengal Municipal Act of 1932 provides that annual value of holding shall be deemed to be gross annual rental at which the holdings may reasonably be expected to let out less in the case of a building, allowance of 10% for repairs and for other expenses necessary to maintain the building. As per the said section where gross annual rental cannot be determined, recourse may be had to an alternative method for assessment of the annual valuation by calculating the value of the building or buildings on such holdings at the time of such assessment plus a reasonable ground rent for the land taking percentage not exceeding 9% on the total value of the building. There is

reference of S. 133 of the said Act providing that when it has been decided to impose consolidated rate to be assessed on the annual value of the buildings the Commissioners of the said Municipality shall cause a valuation list to be prepared on the annual value of the building within the Municipality . by the assessor or if there is no assessor among their own officers, by a person, possessing the prescribed qualification to be appointed by the Commissioners at a meeting as assessors for the purpose of preparing the valuation list on such salary with such establishment as may be fixed by them. It is also provided that the assessors shall determine the annual valuation of all holdings within the local limits of the Municipality in the manner provided in Chapter V and enter such value in the valuation list. Before the Amending Act of 1980 came into force, S. 145 of the Act of 1932 empowered the Commissioners of the Municipality to appoint an Assessor and in case of failure on the part of the Commissioners to make such appointment. S. 146 empowered the State Government to appoint Assessor. But the Bengal Municipal (Amendment) Act of 1980 provided deletion Ss. 145 and 146 of the Act of 1932. The grievances of the petitioners are that the respondent No. 2 Central Valuation Board, West Bengal, has acted illegally and the issuance of the notification is not lawful and bona fide. It is contended that the purported authority to make general valuation for the purpose of making assessment of rates and taxes under the Bengal Municipal Act, 1932 is wholly unwarranted and cannot be sustained in view of the fact that the general valuation cannot be the basis of the assessment of rates and taxes. There is no scope for making general valuation of land and buildings under Act, 1932 and not sustainable. The entire scheme of the Act, 1978 had not determination of the general valuation of land and buildings is arbitrary and void and the petitions regarding the review is vitiated due to the fact that no guideline has been provided for disposal of review application.

3. Developing all these points with certain detailed facts as averred in the writ petitions, the petitioners have prayed the reliefs as indicated above.

4. The writ petitions are opposed by respondents by filing a comprehensive affidavit in-opposition. It is disclosed that the concerned authorities have proceeded according to the law in making the valuation of the Municipal holding under S. 9(1) of the West Bengal Central Valuation Board Act, 1978. It has empowered that the State Government to specify the area/areas by issuing Notification where the general valuation of land and buildings shall be made by the valuation Board in accordance with the provisions of the relevant Municipal Act which is enforced for the first time in such areas in so far as the same relates to the determination of annual valuation of Municipal holding. S. 3 of the said Act overrides all other laws for the first time in force since the date of Notification issued by the State Government. All other-allegations of the writ petitioners have been denied. It is specifically denied that the power and authority of the respondent No. 2 for making general valuation of land and building in Municipality is arbitrary and uncanalised and the same amounts to delegation of power without any guideline as alleged or at all.

5. The respondents Nos. 2 and 3 have also filed affidavit-in-opposition justifying the provisions of Act, 1978 and the steps taken for assessing general valuation. They have also denied all the allegations of the writ petitioners.

6. The petitioners have, however, filed their affidavit-in-reply reiterating the points raised in the writ petitions and also by controverting the stand taken by the contesting respondents. It is mainly argued that the petitioners are rate-payers having their, respective holdings within the local limits of Asansol Municipality and they have challenged the vires of West Bengal Central Valuation Board of 1978. It is highlighted that Mr. Bidyut Kumar Banerjee, learned Advocate, for the petitioner has strongly argued as follows:--

a) The petitioners are rate payers having their respective holdings as stated in the writ petition within the local limit of Asansol Municipality. The petitioners have challenged the vires of West Bengal Central Valuation Board Act, 1978.

b) West Bengal Central Valuation Board Act, 1978 has been enacted by State Legislature to provide for a Central Valuation Board and Valuation Authorities for the purpose of valuation of lands and buildings in West Bengal. It is not very much clear and free from doubt whether apart from making valuation of lands and buildings within the local limit of Corporation and Municipality the State is also interested in making valuation of all lands and buildings in whole of West Bengal for making total valuation of real estate in West Bengal.

c) The said Act has purported to lay down that on the issuance of Notification u/S. 9(1) the provisions of Bengal Municipal Act, 1932, or the Calcutta Municipal Corporation Act, 1980 or the Howrah Municipal Corporation Act, 1980 or any other law relating to any of the matters provided for in this Act shall be deemed in respect of such area to have been modified to the extent of the provisions made in the said Act of 1978. Save the aforesaid Bengal Municipal Act of 1932 or the Calcutta Municipal Corporation Act, 1980 or Howrah Municipal Corporation Act, 1980 no other law is in force which provides method of valuation for the purpose of consolidated rate.

d) While in the Calcutta Municipal Corporation Act, 1980 the consolidated rate is leviable on annual value determined under the said Act of lands and buildings, the Bengal Municipal Act, 1932 provides imposition of a graduated consolidated rate on the annual value of holding which is defined in the said Act. Under the Bengal Municipal Act unit of assessment is holding but the Central Valuation Board Act does not speak of or make any provision for valuation of holding. The Calcutta Municipal Corporation Act, 1980 is not a complete Code. Rather Calcutta Municipal Corporation Act, 1980 empowers the State Government to make rule providing the detailed procedure for determination of annual value of lands, or buildings at Calcutta. Such Rule together with Regulations made under this Act shall constitute Municipal Assessment Code which has not yet come into being. Under such

Municipal Assessment Code every building together with the site and land apartment thereto shall be assessed as a single unit. The Assessment Code not having come into force mere reference to Calcutta Municipal Corporation Act, 1980 for providing guideline to the valuation authorities under the West Bengal Central Valuation Board Act, 1978 is illusory and in such circumstances the said Act of 1978 shall be deemed to be without any guideline and excessive delegation is inevitable. The Act of 1978 so far as it relates to Calcutta Municipal Corporation Act, 1980 shall thus become ultra vires.

e) The Central Valuation Board Act of 1978 speaks of general valuation of land and building without defining how such land and building shall form a unit. It does not also speak of holding which under Bengal Municipal Act, 1932 constitute a unit of assessment of annual valuation. Therefore, said Act cannot be made applicable for assessment of annual valuation of holding as contemplated by Bengal Municipal Act, 1932.

f) Moreover W.B. Central Valuation Board Act, 1978 speaks of general valuation that is the said Act comprehends total or capital value of land and building and not annual valuation of land and building even if for argument's sake it is accepted that such land and building is constituting a unit. Further Bengal Municipal Act, 1932 while making valuation takes into consideration -only the face of such land because it speaks of holding which would include benefits arising out of land and things attached to earth or permanently fastened anything attached to earth but not everything under it. Effect would be that by taking into account everything under the earth the valuation would be higher and consolidated rate would be excessive though taking into consideration the provisions contained in Bengal Municipal Act, 1932 alone there is no scope of higher valuation due to taking into account everything under the earth and consequently the tax would not be excessive as is inevitable under the said Act of 1978.

g) The expression rate used in Bengal Municipal Act, 1932 means a tax for local purposes imposed by local authority and basis of this tax is the annual value of the holding in connection with which it is imposed by the local authorities arrived at in any of the following three ways viz. 1) actual rent fetched by such holding when it is actually let 2) where it is not let rent based on hypothetical tenancy in case of buildings and 3) where either of the aforesaid two modes is not available by valuation based on capital value from which annual value has to be found by applying a suitable percentage which may not be the same applying the earlier two modes.

h) In Bengal Municipal Act the expression graduated consolidated rate must have been used in that particular meaning which it had acquired in the legislative history in India. The matter would have been otherwise if in Bengal Municipal Act "graduated consolidated tax" in place of "graduated consolidated rate" would have been used. But the use of word rate in S. 123(1)(a) of B.M. Act definitely means that

it is that particular kind of tax which in legislative history and practice was known as rate on annual value of holding which the Municipality could impose and not any other kind of tax.

i) According to S. 9 of the W.B. Central Valuation Board Act, 1978 Board under the said Act are only empowered to use one base of valuation that is capital value inasmuch as the said section uses the expression general value of lands and buildings. The valuation authority under the said Act of 1978 has been only empowered when fixing rate to fix as so much percentage of capital value. This is possible in accordance with the third mode only as aforesaid for arriving at annual value referred to above. If the law enjoins that the rate should be levied on the annual value of holdings, the valuation authorities cannot levy it otherwise directly at a percentage of the capital value. Thereby the real incidence of rate is camouflaged and the rate payers not knowing the true incidence of tax may possibly be subjected to such a heavy incidence of tax may possibly be subjected to such a heavy, incidence as in some cases it may amount to confiscatory taxation. The provisions of S. 9 of W.B. Central Valuation Board Act; 1978 is thus ultra vires.

j) Further for assessment of valuation the valuation authorities or board under the W.B. Central Valuation Board Act, 1978 has not been named as such in the Bengal Municipal Act, 1932. In the absence of any provisions of appointment of Central Valuation Board for assessment of Municipal valuation the Board has no power and authority to determine the valuation. It is in this connection pertinent to mention the provisions of S. 179 of Calcutta Municipal Corporation Act, 1980 which has authorised State to issue notification empowering Central Valuation Board to make assessment of valuation for purpose of levy of rate on land and building in Calcutta as defined by the said Act of 1980.

k) The Bengal Municipal Act says of annual valuation but W.B. Central Valuation Board Act speaks of general valuation. In the same section viz. S. 9 two expressions have been made or used. It can be said that legislature has understood the distinction between the two expressions and in that view it can be said that the two expressions general valuation and annual valuation do not mean the same thing. In the same section it has been referred to "as far they relate to the determination of annual valuation and thereby it must be meant the last method of valuation as enjoined in S. 128(2) of B.M. Act and Rule 8(b) of Assessment Rule passed under B.M. Act as the only mode for the purpose and methods provided in S. 128(1) of the B.M. Act and Rule 8(a) of Assessment Rule framed under B.M. Act has been discarded.

l) In Bengal Municipal Act there is provision for preparing assessment list under S. 136. Though there is no such provisions in the W.B. Central Valuation Board Act but the provision of S. 11 of the said Act of 1978 has rendered it nugatory. S. 11 of the said Act of 1978 the valuation list has been made final. It is repugnant to S. 139 of B.M. Act. There being no provision relating to assessment list the provision of Ss. 136 and 139 of B.M. Act cannot be said to have been modified as per S.-3 of W.B.

Central Valuation Board Act;

m) The said Act of 1978 though has made provisions of review but has not given any guideline as to what procedure it will follow while reviewing the valuation made by Board. In this connection provisions contained in Rr. 11 to 14 of Assessment Rule made under B.M. Act may be referred which provides complete procedure to be followed by the Assessment Review Committee appointed, under Bengal Municipal Act, 1932. No such provision is there in the W.B. Central Valuation Board Act, 1978 and Rules framed thereunder. The provisions for review contemplated by the said Act of 1978 can thus be said to be illusory.

n) According to writ petitioners the provisions contained in the W.B. Central Valuation Board Act, 1978 in view of what have stated, herein before are ultra vires and void and there can be no assessment in the true sense of the term and the entire assessment in the aforesaid circumstances being ultra vires the remedy contemplated by S. 14 of the W.B. Central Valuation Board Act of 1978 is no remedy.

7. Mr. Arun Prakash Chatterjee, learned counsel, appearing for West Bengal Valuation Board has argued that the West Bengal Central Valuation Board Act of 1978 empowered the Board under S. 9(1) of the said Act to make only general valuation of land and building. He has argued further that the term general valuation as used in S. 9(1) of the said Act relates to the annual valuation of all lands and buildings in the area at a time and it is distinguishable from the valuation made by the Board when any new building is erected or an existing building is reconstructed or substantially altered or improved in any area. In such a case such valuation or revaluation is to remain in effect from the unexpired portion of the period referred to in sub-sec. (2) of S.9 of the Act.

8. The power of making such intermediate valuation is given by the non obstante clause of S.9(3) of the said Act, which provides for such action to be taken notwithstanding the provisions of sub-sections (1) and (2) of S. 9 of the said Act of 1978.

9. The purpose of such intermediate valuation of lands and buildings under S. 9(3) of the said Act is to determine the annual valuation of such lands and buildings as in the case, of general valuation referred to above.

10. It has been argued also that while the Bengal Municipal Act, 1932 and the rules made thereunder lay down the method of determining the annual valuation of the holdings there is no guideline in the rules.

11. In regard to the question of unit of assessment being centered round the capitalised value as the only method as per provisions of Central Valuation Board Act, 1978, it is far from the requirement of what has been provided either in the Central Valuation Board Act or Bengal Municipal Act, 1932. The valuation base as enjoined in S. 128 of the Bengal Municipal Act, 1932 is the only relevant method that

can be adopted for determination of annual valuation of lands and buildings during the periodical revaluation -- mentioned as general valuation of lands and buildings in Central Valuation Board Act, or during intermediate revaluation made under sub-sec. (3) of S. 9 of the Central Valuation Board Act, 1978 or its equivalent provisions of S. 138 of the Bengal Municipal Act, 1932.

12. The Central Valuation Board while making either the general valuation or the intermediate valuation takes recourse to the " provisions of municipal laws relating to the determination of annual valuation and the provisions of West Bengal Premises Tenancy Act, 1956, and is also guided by the judicial pronouncements particularly by the Apex Court. The present writ application is premature inasmuch as no action has been taken by the Board in the matter of valuation/ assessment of lands and buildings in Asansol Municipal area. The allegations regarding non-existence in the Central Valuation Board Act of similar provisions to S. 136 of the Bengal Municipal Act, 1932 are baseless as two sets of valuation list-draft and final are prepared and published Under Ss. 10 and 11 of the Central Valuation Board Act. The allegation made that there is no guideline for disposal of review application is also incorrect, immaterial and irrelevant because the provisions of law as specified in the West Bengal Central Valuation Board Act, 1978 and the Rules made under the West Bengal Central Valuation Board (Valuation of Lands and Buildings) Rules, 194 are adequate and are free from any doubt.

13. With great anxiety and with utmost patience this Court has considered the submissions made on behalf of the writ petitioners and the contesting respondents. The attention of this Court has been drawn to several reported decisions mainly [Patel Gordhandas Hargovindas Vs. Municipal Commissioner, Ahmedabad](#) ; [The Anant Mills Co. Ltd. Vs. State of Gujarat and Others](#) ; [Km. Sonia Bhatia Vs. State of U.P. and Others](#) ; [State of Rajasthan Vs. Leela Jain](#) ; [Godhara Borough Municipality Vs. Godhara Electricity Co. Ltd.](#) ; [B. Prabhakar Rao and Others Vs. State of Andhra Pradesh and Others](#) ; [Shivram Anand Shiroor Vs. Radhabai Shantram Kowshik and Another](#) ; [Sm. Shyamali Sarkar Vs. Ashim Kumar Sarkar](#) ; [Hindustan Motors Ltd. Vs. State of West Bengal and Others](#) . The ratio of the said decision cited from the Bar in support of the case made by the writ petitioners is not challenged by the contesting respondents. The constitutional validity of the West Bengal Central Valuation Board Act, 1978 has been challenged. Nothing has been demonstrated that the said Act is contrary to the fundamental rights guaranteed to the petitioners. The concept of the right to property is no longer a fundamental right. However, the provisions of Art. 300A of the Constitution of India has to be appreciated and/or understood in the proper perspective. The owners of the Municipal holdings have to pay the taxes on the basis of the annual valuation has to be understood in the "Bengal Municipal Act, 1932 or the Calcutta Municipal Corporation Act, 1980 or the Howrah Municipal Corporation Act, 1980 or any other law relating to any of the matters provided for in this Act. It has to be appreciated as to whether the provisions laid down in West Bengal Central Valuation Board Act, 1978 are contrary

to and inconsistent with the earlier Acts and or whether the provisions of West Bengal Central Valuation Board Act, 1978 have abridged the rights enjoyed by the petitioners under the provisions of the earlier Act. It is open to the legislators to provide any law if it is not ultra vires to the Constitution. Considering the submissions of both sides, this Court does not find that the Act of 1978 is irregular and illegal. The concept should be clear to appreciate the earlier law of 1932 and the impugned provision of the Act, 1978 in the right way. Considering all the aspects of the matter this Court is of the view that for understanding and/or appreciating this scope of fixing the annual valuation of the respective holdings within the Municipal area, it must be noted that both the laws are not contradictory to each other. Rather, they are complimentary to each other. Notwithstanding, the provisions of West Bengal Central Valuation Board Act, 1978, each owner and/ or occupier has still the right to challenge the annual valuation of the respective holding in the manner as provided by the earlier Act. The remedy has not been taken away by West Bengal Central Valuation Board Act 1978. Under the provisions of West Bengal Central Valuation Board Act of 1978, the scope of general valuation has been enlarged. The respective owners of the Municipal holdings" cannot say that West Bengal Central Valuation Board Act itself is bad in law as it does not provide any guideline and/or remedy to the owners and/ or occupiers of the Municipal holdings to challenge the annual valuation and vis-a-vis the rights of taxes. Every owner or occupier of the respective holding has still the right to challenge the annual valuation and the remedies are still open. This Court is however of the view that the provisions of West Bengal Central Valuation Board Act 1978 have not taken away any right of individual owner to challenge the annual valuation made by the Municipal/Corporation for the purpose of taxes arbitrarily and capriciously. The provisions of West Bengal Central Valuation Board Act 1978 must be interpreted that the said provisions have not eroded and/or abridged the rights of the respective owners and/or occupiers of the holding to canvass their lawful objections against the annual valuation as would be proposed by the Municipal/corporation in the same manner as provided in the old Act- This Court does not find that the Act of 1978 suffers from any defect and it is found to be intra vires.

14. The writ petitions are therefore disposed of with the observations as indicated above. All interim Orders are vacated.

15. There will be no order as to costs. Order accordingly.