S/L 30
13.09.2021
Court. No. 19
GB

WPA 5973 of 2021

Kalidas Roy
Vs.
The Baruipur Municipality & Ors.

(Through Video Conference)

Mr. Tanmoy Chowdhury,
Ms. Ritoprita Ghosh.
... for the Petitioner.

Mr. Kaushick Pradhan.
... for the Valuation Board.

Mr. D.N. Bose,
Mr. Sujay Mondal.
... for the Municipality.

The petitioner is aggrieved by the notice dated December 22, 2020, which is the demand of municipal tax with regard to holding no.559/E, Ward No.02.

It is the contention of the petitioner that before the said demand was issued, a hearing ought to have been given to the petitioner. Today the Valuation Board and the municipality both file individual reports. According to the Valuation Board, the valuation of the property was revised sometime in 2012-13.

Upon hearing the petitioner's objections. The said valuation was accepted by the petitioner and the final valuation list was published upon hearing the petitioner.

Subsequently, the municipality enhanced the property tax by treating the property as a commercial property. It appears that in an order dated December 4, 2018, enhancement of tax was under challenge before this Court in W.P. No. 28332 (W) of 2016. This Court did not find any infirmity with the proposal of the municipality to enhance the rate of tax by considering the fact that, the premise was used for commercial purpose. The Court held that there was no infirmity warranting interference by a writ court. It appears from the report filed by the municipality through the Executive Officer that the said order was challenged by the petitioner in an appeal and the appeal was dismissed. It appears from the order of the learned Division Bench that the enhancement of the tax of the premises was challenged on the ground that the West Bengal Board of Valuation having published the final valuation of the premise for 2012-13, a further revision in the valuation could not have been done within a period of five years.

The next submission was that the decision of the municipality to treat the premise as a commercial premise was a unilateral decision, which could not have been arrived at by the municipality without hearing the petitioner. The Division Bench came to the finding that the municipality had the power under Section 9(4) of the West Bengal Central Valuation Board Act, 1978 (hereinafter referred to as the 'said Act) to report any change of user of the Valuation Board. The Division Bench held as follows:

"7. Admittedly, after the issuance of the notice at page 41 till date, no imposition of tax has been made on the writ petitioner qua assessee. The last sentence of the document at page 41 is, " your tax after new assessment will be intimated

to you in due course". Therefore, the municipality has not yet communicated to the writ petitioner the new rate of tax which would be fixed by the Valuation Board in terms of the change made by the Valuation Board in terms of the report of the municipality made under section 9 sub-section (4) of the Act. Since the municipality has acted very appropriately and strictly in accordance with the said sub-section of section 9 of the Act, we find no infirmity in the order passed by the learned Single Judge or the action of the municipality in making such report to the Valuation Board and communicated it to the writ petitioner.

8. So far as the subsidiary question is concerned, we find that there are several documents on record to show that inspections of the premises of the writ petitioner were made which culminated in a finding that the ground and the first floor areas of the writ petitioner's premises has been re-modeled and was being used for commercial purpose. This allegation was made by the respondents on oath in the affidavit-in-opposition, which is part of the records. The affidavit-in-opposition was affirmed on behalf of the Baruipur Municipality by Chairman on the 1stday of August, 2018. Paragraph 4(g) of the said affidavit-in-opposition states as follows :

"As the nature and character of the building changed and as the petitioner failed to produce sanction plan, Municipality submitted suggested valuation in terms of Board" guidelines for finalization and approval of valuation by the Board in respect of the Baruipur Municipality Holding No.559/E, Ward No.2."

9. Even though we tried with a fine-teeth comb to find any specific denial or any assertion that the premises was not being used for commercial purpose, unfortunately, the only portion of the affidavit-in-reply dealing with this and affirmed on behalf of the writ petitioner on August 6, 2018 is as follows:

"08. With regard to the statements contained in paragraphs 4(a), 4(b), 4(c), 4(d), 4(e), 4(f), 4(g) and 4(h) of the said Opposition, I deny and dispute each and every allegations made therein save and except what are the matters of record. In this regard, I say that the facts as enumerated in the paragraphs under reply are absolutely irrelevant in deciding the present writ application. The writ application is wholly confined to the issue relates to Memo dated July 23, 2016 issued by the answering respondent returning thereby the annual property tax in respect of my building for the period of 2016-2017 and also treating my building as commercial one and no new assessment, but without justifying their cause in issuing the said memo dated June 23, 2016, the answering respect has stated some irrelevant fact, which are not at all the issues herein."

10. In addition to this a report was filed in the form of an affidavit affirmed on September 1, 2018 by the said Chairman of the Baruipur Municipality disclosing an inspection made on September 4, 2018 by the authorities of the municipality after a notice dated September 1, 2018 was served on the writ petitioner by the municipality. Such inspection was followed by a report of the inspection in Bengali where, inter alia, the inspecting authorities have recorded that the ground and first floor areas of the premises are presently being used by the writ petitioner fully commercially apart from other findings as to unauthorised construction. Even though this report was filed in Court and formed a part of records, the writ petitioner did not file any counter to the said report or take any exception thereto or even seek an opportunity to deal with the allegations contained in it including that he was using the said portion of the premises commercially and that the nature of the use of the building had changed or even that no notice was received by him of the inspection.

11. When a petition under Article 226 of the Constitution is to be decided, the Court proceeds on the basis *of what is on record and the affidavits of the authorities adducing evidence, as has been held in Bharat Singh and Others –vState of Haryana and Othersreported in AIR 1988 SC 2181. Summarizing the law laid down by the Hon'ble Supreme Court in Bharat Singh (supra). The most important difference between a suit and a writ petition is that in the writ petition the petition takes the place of both the plaint and the written notes of argument since points of law are also pleaded in the petition itself and the evidence is also adduced by way of affidavit disclosing annexures and their description in the body of the petition. If a person having the opportunity to deal with the allegations contained in an affirmed pleading by one side chooses not to do so then the doctrine of non-traverse would apply with equal force in writ jurisdiction as in the civil jurisdiction. When a specific assertion was made by the chairman of the municipality on oath that the nature of use of the ground and first floor area of the building had been changed to commercial user and when the writ petitioner having an opportunity to deal with it chose not to deny that any part of the building was being used for commercial purposes and also that no notice was issued or received by him of the inspection of the premises at any point of time relating to the earlier notices of the inspection, the irresistible conclusion to which the Court has to come is that the writ petitioner has admitted the fact that he is using part of the premises for commercial purposes and that he had notice of the inspection in which such finding was reached.*

12. Once we come to this conclusion, the findings of the learned Single Judge cannot be taken exception to but since His Lordship has held that once the premises are found to be used for commercial purposes, the acts of municipality have no infirmity, the same has to be sustained.

13. In such view of the matter both the points taken by the petitioner fail and are overruled. Nothing remains in the *appeal or the application to justify the same being kept on the docket any more.”*

It also appears from the report of the municipality that the demand has been sent to the petitioner but the demand has not yet been finalized and the same will be placed before the Board of Administrators of the municipality for an appropriate decision. The Division Bench has already held that the municipality could prove that the premises was used for commercial purpose. However, it was the decision of the Division Bench that as the municipality had not communicated to the petitioner, the new rate of tax, no interference was called for with regard to the proposal to enhance the property tax.

In this case, the Board of Administrators has not yet taken the final decision on the rate/revised assessment as submitted by the learned advocate and as also stated in the report dated August 27, 2021. Section 113 empowers the municipality to reassess in accordance with law even for change of user but upon hearing the assessee. As it is already submitted by Mr. Bose, that this demand notice is not the final assessment and the Board of Administrator which is discharging the functions of the Board of Councillors will take a decision, the writ petition is premature. The question of commercial use has been accepted by the Division Bench.

Under such circumstances, the writ petition is disposed of with a direction upon the concerned municipality/Board of Administrators to take a final decision on the reassessment upon hearing the petitioner. The demand notice shall not be given effect to until such decision. The Board of Administrators shall take the decision as expeditiously as possible, preferably within a period of eight weeks from date of communication of this order. The demand shall abide by the result of this decision.

Accordingly, the writ petition is disposed of.

However, there shall be no order as to costs.

Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)