CIVIL MISCELLANEOUS

Before Daya Krishan Mahajan, J.

STATE OF KERALA,—*Petitioner*

versus

THE NEW DELHI MUNICIPAL COMMITTEE,—*Respondent*

Civil Writ No. 579-D of 1963

1965

January, 20th.

Punjab Municipal Act (III of 1911)—S. 67—Application under, made by the owner—Whether must be decided after hearing the owner.

Held, that section 67 of the Punjab Municipal Act, 1911, or as a matter of that the sections, dealing with the procedure for assessing rental value of property for purposes of house-tax deal with citizens' right to property and such assessments have a far-reaching consequence so far as the owner is concerned. Thus the Committee while determining the question of assessment or its revision is acting as a quasi-judicial tribunal. When an application is made to such a tribunal in accordance with law, it is not only the duty of the tribunal to decide the same but also to hear the applicant before deciding the same. This is the minimum requirement according to the rules of natural justice.

Petition under Article 226 of the Constitution of India praying that this Hon'ble Court may be pleased to issue such Writ, Writs, and/or directions, to the Respondent Committee by way of mandamus and certiorari, or otherwise as the Court may deem fit and effective in the circumstances of the case.

V. A. Syed Mohd., Advocate, for the Petitioner.

C. L. Joseph, Advocate, for the Respondent.

Order

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Mahajan, J.—This is an application under Article 226 of the Constitution of India praying that a writ of mandamus, prohibition or some other appropriate writ be issued to the New Delhi Municipal Committee quashing assessment of the annual value of Cochin House for the year 1953-54 fixed at Rs. 34,600. It is further prayed that if the assessment has been made by the resolution dated 31st March, 1953, of the respondent Committee, that resolution may also be quashed. As a consequential relief, it is prayed that the amount of house-tax realised for the year 1953-54

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and thereafter in excess of Rs. 825 per annum be refunded, and in the alternative, it is prayed that the Committee be directed to decide the petitioner's application dated the 30th December, 1953 made under section 67 of the Punjab Municipal Act as applicable to Delhi on the merits, after giving an appropriate hearing to the petitioner's representative.

It will only be necessary for the purpose of this petition to set out briefly the salient facts. The property in dispute at the time of its purchase was named as the 'Cochin House'; at the moment, it is known as 'Kerala House'. The property was purchased in the year 1936 by His Highness the Maharaja of Cochin from Sardar Bahadur Sobha Singh, for the State of Cochin. After the States Reorganization Act, the property has devolved on the State of Kerala as the successor State to the Cochin State. The rental value of this property was assessed for purposes of house-tax under the Punjab Municipal Act as applicable to Delhi, hereinafter referred to as the Act, at Rs. 8,250 and a house-tax in the sum of Rs. 825 per annum was levied by the New Delhi Municipal Committee. On the 6th February, 1953, the New Delhi Municipal Committee, acting under section 67 of the Act, issued a notice to the State of Kerala to the effect that it was proposed to raise the annual value for the purposes of assessment of house-tax from Rs. 8,250 to Rs. 34,600. It is not disputed that the proposed enhancement was on the basis of section 3(1) (c) of the Act. Unfortunately, as is usual with the various State Governments in this country, no steps were taken by the Government to appear before the Municipal Committee on the appointed date and object to the assessment. On the contrary, a letter was written by the Chief Secretary of the State of Kerala to the Municipal Committee protesting against the proposed enhancement. This letter was replied to by the Municipal Committee by its letter dated the 14th of March, 1953 and it was indicated that the basis for enhancement had been furnished in the notice dated the 6th February, 1953, already referred to. It may be mentioned that the date by which the objections under section 67 had to be filed (annexure 'A') was 11th of March, 1953. On the basis of a resolution passed on the 31st of March, 1953, the assessment regarding 'Kerala House' was confirmed, that is, the annual rental value was fixed at Rs. 34,600 and a tax at the rate of 10 per cent was demanded

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from the petitioner. It may be mentioned at this stage that the building had been rented out to the International Labour Organisation at a rental of Rs. 7,950 per annum. This organization vacated the premises on 1st of July, 1953, long after the confirmation of the revised assessment of rental value for purposes of House-tax. It is not disputed and it is a fact that before the confirmation of the new assessment, the petitioner never appeared and questioned the same before the Municipal Committee. The only protest made by the petitioner to the proposed enhancement is to be found in its letter, dated the 9th of March, 1953. The petitioner, however, moved the Deputy Commissioner, Delhi, in appeal, but the appeal was dismissed on the short ground that it was barred by time. However, on the 30th December, 1953, an application under section 67 of the Act was made by the petitioner to the Municipal Committee. Delhi. It is not disputed by the learned counsel for the Municipal Committee that no order has been passed on this application. With regard to this application, there is an assertion made by the Municipal Committee in its return that this application was rejected. No order of rejection, however, has been brought to my notice and I, therefore, proceed on the basis that the application under section 67 of the Act has not been disposed of.

It is in this situation that the present petition was filed on 7th June, 1963. The first contention raised by the learned counsel for the petitioner is that the enhancement of the annual letting value from Rs. 8,250 to Rs. 34,600 is illegal and, therefore, the resolution as well as the final order fixing the value at Rs. 34,600 be quashed. He further urged that as the assessment is wholly without jurisdiction, this Court even after delay of 10 years should quash the same.

In the first instance, what has to be determined is whether the resolution of the Municipal Committee fixing the rental value at Rs. 34,600 is without jurisdiction. Section 67 of the Act gives the Municipal Committee power to further amend assessment lists prepared under section 66. The amendment could only be made, in case property has been erroneously valued or assessed through fraud, accident or mistake, whether on the part of the Committee or of the assessee. The Committee took the view that the value of Rs. 8,250 has been fixed by

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mistake and, therefore, they were entitled to revise it under section 67. Consequently a notice was issued to the owner. In spite of the notice, the owner never appeared before the Committee with the result that the assessment was revised and the proposed enhancement was confirmed. The contention of the learned counsel for the petitioner is that the revision was made on the basis of section 3 (1) (c) and that section 3(1)(c) has no application so far as the present premises are concerned. The revision could only be made under section 3(1) (b). It is not necessary for me to determine the merits of this contention because even if this contention is accepted, all that is established is that a legal error has been committed. A legal error is not the same thing as an error of jurisdiction. The Committee had the jurisdiction under section 67 of the Act to revise the assessment. In revising that assessment, it may or may not have committed the legal error. But if it had committed a legal error, the remedy was by way of an appeal or by a writ of *certiorari* to this Court. The remedy by way of an appeal was pursued but without success. But this Court was not moved and the petitioner has waited for practically 10 years before coming to this Court. In this situation, I am not prepared to exercise my jurisdiction under Article 226 of the Constitution and, therefore, the learned counsel's contention that the confirmed assessment for the year 1963-64 should be quashed, must be rejected.

The second contention raised by the learned counsel is that his application under section 67 of the Act made on 30th December, 1953 has not so far been disposed of and that a direction should issue to the Municipal Committee to dispose of the same. This argument raises two questions (1) whether such an application by the owner is competent under section 67 of the Act? And if such an application is competent, (2) whether the Committee is bound to decide it? If no such application is maintainable by the owner, the argument does not arise. However, after going through section 67 of the Act, I am of the view that it does contemplate such an application by an owner. Moreover, the learned counsel for the Committee has not disputed that such an application by the owner is competent under section 67. The only rider which the learned counsel for the Committee places on his concession is that while deciding the application, the Committee is not bound to hear the applicant, before disposing of the same. It cannot

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be disputed that section 67 or as a matter of that the sections dealing with the procedure for assessing rental value of property for purposes of house-tax deal with citizens' right to property and such assessments have a far-reaching consequence so far as the owner is concerned. Thus the Committee while determining the question of assessment or its revision is acting as a quasi-judicial tribunal. When an application is made to such a tribunal in accordance with law, it is not only the duty of the tribunal to decide the same but also to hear the applicant before deciding the same. This is the minimum requirement according to the rules of natural justice. Moreover, if an application by the owner is competent under section 67, and it is not disputed that it is competent, it follows as a matter of law that the authority to whom it is to be made has to entertain it and decide it. See in this connection the observations of the Gujerat High Court in *Ambalal Shivlal* v. *Vin (D.M.) and others* (1) at page 275, which are as follows:—

> "Where an Act confers jurisdiction it also grants impliedly the power of doing all such acts, or employing such means, as are essentially necessary to its execution which canon is referred to in Maxwell on Interpretation of Statutes, at page 350."

That being so, I am clearly of the view that the Committee is not only required by law to dispose of the application but also to hear the applicant before disposing of the same. Therefore, the second contention of the learned counsel for the petitioner is valid and must succeed.

No other contention has been advanced.

For the reasons given above, this petition is partially allowed and it is directed that the Committee should dispose of the application dated the 30th December, 1953 after hearing the petitioner. The application should be disposed of as expeditiously as possible and without any further delay. In the circumstances of the case, there will be no order as to costs.

B.R.T.

(1) 1964 (2) L.L.J. 271.