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MUNICIPAL CORPORATION OF DELHI

v.

C.L. BATRA

AUGUST 10, 1994

B

[B.P. JEEVAN REDDY AND SUHAS C. SEN, JJ.]

Municipalities: Delhi Municipal Corporation Act :

C *S.170(b)—Property tax—Payment of admitted tax only—Not paying tax pending appeal—Stay of recovery of tax—Interim orders issued by Court and extended from time to time—Validity of.*

D In this appeal, the grievance of the appellant- Corporation was that an interim order has been passed by the Delhi High Court by which the assessee has obtained stay of recovery of tax of about Rupees one crore, and it was permitted to deposit only the admitted liability of Rs. 3,00,000 in respect of the property in question. It was contended by the appellant that the said interim order has opened a flood gate and many other suits have been filed bypassing the statutory provisions of appeal; stay orders have been obtained in respect of demands totalling about Rupees twenty crores; and that the assessment have been completed in accordance with
E law.

The assessee contended that an authenticated Assessment List being condition precedent to any recovery proceeding and in the absence of such list, no recovery proceeding could be commenced.

F

Allowing the appeal, this Court

G **HELD :** 1.1. It has not been satisfactorily explained, why the statutory remedy of appeal was allowed to be bypassed. The Trial Judge was conscious of this aspect of the matter and the judgment of the Delhi High Court in an earlier case. There is no explanation why even after this he entertained the suit and passed the interim order. [507-A, C]

1.2. The assessee had filed a Writ Petition, praying for similar relief. When interim order was not granted on that Writ Petition, he withdrew the Writ Petition and filed this suit. This was an abuse of process of law.

H No liberty was obtained from the Court to file a suit on the same cause of

action, when the Writ Petition was withdrawn. [507-C, D]

1.3. As early as on January 6, 1984, in the case of *Siliguri Municipality*, this Court had vacated an interim order staying recovery of tax. [507-D]

1.4. In the instant case, there is no question of constitutional invalidity of any provision of law. In fact, this Court held Section 170(b) of the Delhi Municipal Corporation Act was *intra vires* and the District Judge had no jurisdiction to waive the condition of deposit or stay the collection of tax, pending disposal of the appeal in the Court. It was, however, pointed out that the District Judge had the power to adjourn the hearing of the appeal or pass interim orders enabling the assessee to pay up the taxes before the appeal was actually heard and determined. But, this power had to be exercised judicially bearing in mind the interests of Revenue and the position of the cases before him. [508-D, E]

1.5. No ground was indicated for passing the interim order staying recovery of tax. The order was passed even without deciding the question of maintainability of the civil suit, and the interim order has been extended from time to time. [509-C]

1.6 Having regard to the law which is now well-settled, it is difficult to understand how an interim order of stay of realisation of tax could be passed in a case like this. The interim orders are set aside. The Delhi Municipal Corporation will be at liberty to recover the taxes due. [509-D]

Siliguri Municipality and Ors. v. Amalendu Das and Ors., [1984] 2 SCR 344; *Assistant Collector of Central Excise, Chandan Nagar, West Bengal v. Dunlop India Ltd. and Ors.*, [1985] 2 SCR 191 and *Shri Shyam Kishore and others v. Municipal Corporation of Delhi and another*, JT (1992) 35 SC 335, relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4671 of 1994.

From the Judgment and Order dated 16.12.93 of the Delhi High Court in Suit No. 1851 of 1993.

Arun Jaitley, Ms. Madhu Tewatia and Ranbir Yadav for the Appellant.

A Awadh Behari Rohtagi and R.P. Sharma for the Respondent.

The Judgment of the Court was delivered by

B SEN, J. This appeal arises out of an interim order of stay passed by a Single Judge of the Delhi High Court dated 16.12.1993 in Suit No. 1851 of 1993. This suit was filed by the plaintiff, C.L. Batra, after the previous attempt to obtain interim order of stay filed in a Writ Petition (Civil Writ Petition No. 583/1992), which was dismissed as withdrawn on 27th February, 1992.

C The grievance of the appellant, Municipal Corporation of Delhi, is that an interim order has been passed in this suit by which the assessee has obtained stay of recovery of tax of nearly one crore of rupees. The assessee was directed to deposit the admitted liability of Rs. 3,00,000 only in respect of the property, M/s. Grindlay Cinema Building, New Friends Colony, New Delhi.

D The interim order was extended from time to time. The last of such extension was granted on 16th December, 1993 in Suit No. 1851 of 1993.

E The grievance of the appellant is that this interim order has opened a flood-gate and many other suits have been filed bypassing the statutory provisions of appeal. Stay orders have been obtained in respect of demands totalling about Rupees twenty crores. The case of the appellant is that the assessments have been completed in accordance with law. Copies of the assessment orders have been annexed to the Special Leave Petition.

F On behalf of the assessee, It has been contended that an authenticated Assessment List is a condition precedent to any recovery proceeding. In the instant case, there is no such list in existence. Therefore, no recovery proceedings can be commenced. It has been pointed out that written statement filed on behalf of the Municipal Corporation was found inadequate and the written statement has to be amended. This necessitated the extension of the interim order. In the background of these facts, it cannot be said that the suit is not maintainable or the recovery proceedings should not be stayed.

G
H In our view, no interim order should have been passed in this case at all for three reasons :

Firstly, it has not been satisfactorily explained why the statutory remedy of appeal was allowed to be bypassed. The Trial Judge was conscious of this aspect of the matter and judgment of the Delhi High Court in an earlier case. In fact, he has recorded in his order dated 9th September, 1993 this fact :

"..... I am conscious of the Order passed by the Division Bench of this Hon'ble Court in Abaskar Construction Pvt. Ltd. decided on 30.9.1991."

There is no explanation why even after this he entertained the suit and passed the interim order.

Secondly, the assessee had filed a Writ Petition, praying for similar relief. When interim order was not granted on that Writ Petition, he withdrew the Writ Petition and filed this suit. This was an abuse of process of law. No liberty was obtained from the Court to file a suit on the same cause of action, when the Writ Petition was withdrawn.

Thirdly, as early as on January 6, 1984, in the case of *Siliguri Municipality & Ors. v. Amalendu Das & Ors.*, [1984] 2 SCR 344, this Court had vacated an interim order staying recovery of tax. In that case, it was pointed out :—

"The Court has to show awareness of the fact that in the case of a Municipality it cannot function or meet its financial obligations if its source of revenue is blocked by an interim order restraining it from recovering the taxes as per the impugned provision. The Municipality has to maintain essential civic services, run public institutions, purchase supplies and pay the salaries of its employees etc. The grant of an interlocutory order would paralyze the administration and dislocate the entire working. These serious ramifications were lost sight of by the High Court in the instant case while making the impugned order."

In the case *Assistant Collector of Central Excise, Chandan Nagar, West Bengal v. Dunlop India Ltd. and Ors.*, [1985] 2 SCR 191, it was held that interim orders were not to be granted in revenue matters merely because a *prima facie* case had been shown. It was also emphasised in that case that even assuming that the assessee had established a *prima facie* case, it was

A not a sufficient justification for granting the interim orders. It was observed:

B "It is only where statutory remedies are entirely ill- suited to meet the demands of extraordinary situations, as for instance where the very vires of the statute is in question or where private or public wrongs are so inextricably mixed up and the prevention of public injury and the vindication of public justice require it, that recourse may be had to Art. 226. The Court must also have good and sufficient reason to bypass the alternative remedy provided by statute. Matters involving the revenue where statutory remedies are available are not such matters."

C In the instant case, there is no question of constitutional invalidity of any provision of law. In fact, in the case of *Shri Shyam Kishore and others v. Municipal Corporation of Delhi and another*, JT (1992) 5 SC 335, this Court held Section 170(b) of the Delhi Municipal Corporation Act was *intra vires* and the District Judge had no Jurisdiction to waive the condition of deposit or stay of collection of tax, pending disposal of the appeal in the Court. It was, however, pointed out that the District Judge had the power to adjourn the hearing of the appeal or pass interim orders enabling the assessee to pay up the taxes before the appeal was actually heard and determined. But, this power had to be exercised judicially bearing in mind the interests of revenue and the position of the cases before him.

F The order dated 29-9-1993 and the subsequent orders that were passed, indicate that the Single Judge of the Delhi High Court had lost sight of the aforesaid considerations and interim orders were passed. In fact, the first interim order passed on 28-9- 1993 was to the following effect:—

"28.9.1993

Present : Mr. R.P. Sharma for the plaintiff. Mr. P.C. Jain, Sr. Clerk in the Law Office of the defendant in person.

G LA.7136 in S, 1851/93.

Mr. P.C. Jain Senior Clerk in Law Office of the Defendant is present in Court in response to the notice issued to the M.C.D.

H Time is sought to respond to the notice. The response be filed

regarding maintainability of the Suit within a week. Response A
should be filed in each of the Suits.

Till the next date of hearing there shall be no recovery proceedings. The admitted amount however be paid.

A copy of the plaint, application, annexures and the documents B
relied upon be given to Mr. Jain today itself.

Case for 18.11.1993."

No ground was indicated for passing the interim order staying recovery of tax. The order was passed even without deciding the question of maintainability of the civil suit. This interim order has been extended from time to time. C

Having regard to the law, which is now well-settled, we fail to say how an interim order of stay of realisation of tax could be passed in a case like this. Under these circumstances, we set aside the interim orders under challenge. The Delhi Municipal Corporation will be at liberty to recover the taxes due. D

The appeal is allowed. There will be no order as to costs.

G.N.

Appeal allowed. E