Goverdhan and others v. The Deputy Custodian-General of Evacuee Property and another

houses which were abandoned by the Muslim *Telies* in the present case constitued evacuee property and I consider that the decision of the Deputy Custodian-General permitting the present petitioners to continue in occupation of the sites which they now hold on payment of their value is quite fair and just. I see no reason to interfere and would dismiss the petition but leave the parties to bear their own costs.

Falshaw, J.

CHOPRA, J.—I agree.

Chopra J.

R.S.

CIVIL WRIT.

Before Falshaw and Chopra, JJ.

KHAZAN CHAND,—*Petitioner.*

versus

THE NEW DELHI MUNICIPALITY,—*Respondent.*

Civil Writ No. 1-D of 1957.

1959

Oct., 20th

Punjab Municipal Act (III of 1911)—Section 65—Assessment of house tax—Objections to—Whether to be heard by Municipal Committee—Persons objecting—Whether should be informed of the material taken into consideration by the Committee—Principles of natural justice—Breach.

Held, that it is the Committee which has to prepare the list and to issue the notices inviting objections, which have to be served on individual occupiers either in the case of fresh assessment or proposed increase in the previous assessment, and in the absence of any word indicating a contrary sense it must be presumed that the objections, when preferred, are to be dealt with by the person or body which invites them, which is the Committee. If the objections are heard and decided by a Sub-Committee or a single member and the recommendation made is approved

by the Municipal Committtee by a resolution, the resolution will be a nullity. The intention of the law cannot be that the inviting of objections from persons affected by the proposed increased assessments and the provisions for the disposal of such objections are to be a mere formality, and that the objections are intended to be automatically consigned to the waste paper basket in pursuance of a decision previously arrived at.

Held, that the petitioners were entitled for the proper disposal of their objections to be informed of the formula on which it was proposed to base the new assessments both for the purpose of challenging its general validity and also its application in individual cases. In the absence of such information the petitioners were not in a position to present their objections in an effective manner and their objections, not having been dealt with according to law, the assessment made on them was bad.

Petition under Article 226/227 of the Constitution of India praying that Hon'ble Court be pleased:—

(i) *To call for the record of the New Delhi Municipality concerning the revised assessment of the annual value of the houses situated in Nizamuddin East, and house No. D-32 Nizamuddin East along with the record of appeal filed by the petitioner before the A.D.M. Delhi,*

(ii) *To issue Writ in the nature of certiorari or other suitable writ order or directions to quash the revised assessment and resolution No. 5 dated the 28th March, 1956, and the order in appeal passed by the A.D.M. Delhi.*

(iii) *To issue Writ in the nature of prohibition or other suitable writ or order prohibiting the respondent Municipality for recovering house-tax on the basis of revised assessment for the year 1956-57.*

(iv) *To issue Writ of Mandamus to the respondent Municipality to assess the house-tax according to law and principles of natural justice.*

(v) *To stay recovering of house-tax for 1956-57 pending disposal of Writ Petition.*

(vi) *To pass such other order in revisional jurisdiction under section 227 of the Constitution as is deemed proper.*

NAUNIT LAL AND SANT SINGH, for Petitioner.

BISHAMBAR DAYAL AND KESHAV DAYAL, for Respondent.

ORDER

Falshaw, J. FALSHAW, J.—This judgment will deal with five similar petitions under article 226 of the Constitution which have been referred to a larger Bench by Bishan Narain, J., because of the importance of the point involved.

Four of the petitioners are individual house holders and one petitioner is a society registered under the Societies Registration Act and styles "Nizam-ud-Din Extension Colony Association". Briefly the case of the petitioner is that they are refugees who now own houses in the area administered by the New Delhi Municipal Committee, adjoining the Mathura Road known as Nizam-ud-Din East. The Government itself built a number of houses of different types in that area for the accommodation of refugees, and of the individual petitioners three were permitted to purchase the houses occupied by them for Rs. 6,000 each while the fourth, who apparently had a larger house, for Rs. 11,000. Most of the refugee house-holders in the Colony are said to belong to the petitioner association.

In previous years and in the year 1955-56 the Municipal Committee assessed the houses in this region for the purpose of levying house tax under section 65 of the Punjab Municipal Act as extended

to Delhi. In this assessment those houses which had been purchased by the owners for Rs. 6,000 each were assessed at an annual rental value of Rs. 360, the house tax payable on this assessment being Rs. 32-6-0. In the case of the house purchased for Rs. 11,000 the annual value was assessed at Rs. 960 on which house tax of Rs. 86-6-0 was payable.

In February, 1956, the house-holders were served with notices under section 65(1) of the Act informing them that the annual rental value of the six thousand rupee houses was increased for the year commencing 1st of April, 1956, from Rs. 360 to Rs. 1,386 and that, therefore, the house-tax was proposed to be increased from Rs. 32-6-0 to Rs. 124-12-0. A proportionate increase was also notified in the case of the house which had been purchased for Rs. 11,000. Under the provisions of the Act the house-holders were informed that 21st of March, 1956, was fixed as the date for hearing any objections which they wished to raise under sub-section (2) of Section 65.

The notices served on the petitioners did not contain any details of the reasons for the proposed increase in the assessment and the President of the petitioner association addressed a letter, dated 24th of February, 1956, to the Secretary of the Municipal Committee, asking for clarification on the points involved, but it is stated that no such clarification was furnished by the Committee, which did not even reply to the letter.

However, at the hearing on the 21st of March, 1956, the President and some members of the executive committee of the association appeared and individual house-holders also submitted objections. It is categorically alleged in the petitions that only one member of the respondent Municipal

Khazan Chand
v.
The New Delhi Municipality

Falshaw, J.

Committee, Mr. Mohan Singh, was present to hear and decide the objections, and that on behalf of the association and other objectors the point was raised that a single member of the Municipal Committee was not competent to hear and decide the objections, but this objection was ignored. The President of the association asked for information as to the basis for determination of the annual valuation but the single member of the Committee did not in any way clarify the basis of the proposed increased assessment.

Subsequently the petitioners learnt that their objections had been rejected and the new assessment confirmed by the Municipal Committee. They appealed under the provisions of section 84 of the Act but the appeals were dismissed by the Additional District Magistrate exercising the powers of the Deputy Commissioner under that section on the 8th of September, 1956, and the present petitions were then filed in this Court.

The main grievance of the petitioners is that the assessment has not been carried out in accordance with the provisions of law, and in particular that the dismissal of their objections under section 66 of the Act by a single member of the Municipal Committee contravened both the provisions of law and of natural justice.

The relevant provisions of law are as follows. Section 63 provides for the preparation of an assessment list of all buildings and lands on which any tax is imposed. Section 64 provides for the publication of this assessment list. Section 65 reads :—

> "(1) The committee shall at the time of publication of such assessment list give

public notice of a time, not less than one month thereafter, when it will proceed to revise the valuation and assessment; and in all cases in which any property is for the first time assessed, or the assessment, thereof, is increased, it shall also give notice, thereof, to the owner or occupier of the property.

(2) All objections to the valuation and assessment shall be made in writing before the time fixed in the notice, or orally or in writing at that time."

Section 66 which deals with the settlement of the list starts with the words "After the objections have been enquired into and the persons making them have been allowed an opportunity of being heard either in person or by authorised agent, as they may think fit, and the revision of the valuation and assessment has been completed, the amendments made in the list shall be authenticated by the signatures of not less than two members of the committee * * * * *

The position adopted by the respondent Committee is set out in the affidavit of Mr. P. L. Sondhi, the Secretary. The Committee's case was that at a special meeting held on 8th February, 1956, it was decided that the assessment of houses in colonies like Nizam-ud-Din Extension East, where additions and alterations had been carried out by the owners and the houses were owner-occupied, the assessment should be carried out according to a certain formula, the details of which were set out. It was maintained that it was not the duty of the Committee to furnish any information to occupiers of property for the purpose of enabling them to file objections. It is somewhat regrettable that the affidavit did not contain a specific

Khazan Chand
v.
The New Delhi Municipality

Falshaw, J.

denial of the petitioners' allegations that objections were heard by a single member of the Committee, and that the objection that a single member of the Committee was not competent to hear the objections was raised at the outset of the proceedings before him. These allegations are contained in para 10 of the petitions the reply to which in the Secretary's affidavit reads :—

> "Para 10 of the petition as stated is not admitted. Objections were heard on 21st March, 1956, by the Chairman of the Tax Sub-Committee of which the Secretary of the Committee was also a member."

To say the least this reply is ambiguous, and indeed I consider that evasive is not too strong a term to use. The Secretary of the Committee may be *ex-officio* member of the Tax Sub-Committee, as indeed from bye-law 15 he appears to be of every Sub-Committee, but that does not mean that he was necessarily present even if the objections were supposed to be being heard on the 21st March, 1956, by the Tax Sub-Committee, and the allegation that the objection was raised to the hearing of the objections by a single member of the Committee at the outset of the proceedings is ignored altogether. In the circumstances I can only regard the reply to para 10 of the petition as being virtually an admission of the truth of the allegations contained therein, and therefore, even if under the provisions of the Act the duty of entertaining objections under sections 65 and 66 could be deputed to the Tax Sub-Committee or any other Sub-Committee, it cannot possibly be said that the objections were validly dealt with by the Tax Sub-Committee since a single member could not possibly constitute a quorum.

However, it seems doubtful, as was contended by the learned counsel for the petitioners, whether the power of entertaining objections under sections 65 and 66 could in the case of the New Delhi Municipal Committee, be delegated to the Tax Sub-Committee or any other Sub-Committee. It appears that there is some such provision in the bye-laws of the Delhi Municipal Committee, but the bye-laws of the New Delhi Committee are silent.

It was contended by the learned counsel for the Committee that section 66 does not in terms say that the objections have to be dealt with by the Municipal Committee as a whole, but I am of the opinion that the statute must be interpretted in this way in the absence of any provision to the contrary in the bye-laws. The previous sections clearly indicate that it is the Committee which has to prepare the list and to issue the notices inviting objections, which have to be served on individual occupiers either in the case of fresh assessment or proposed increase in the previous assessment, and in the absence of any word indicating a contrary sense it must be presumed that the objections when preferred are to be dealt with by the person or body which invites them, which is the Committee. I am, therefore, of the opinion that if the statute is intended to have any other meaning, it should be suitably amended so as to make this meaning clear.

It was even contended by the learned counsel for the petitioners that in any case there could be no lawful delegation of powers of the Committee under sections 65 and 66 to any Sub-Committee since the sections under which the various powers given to the Municipal Committee under the Act can be delegated to the President, a Vice-President, the

Khazan Chand
v.
The New Delhi Municipality

Falshaw, J.

Secretary or a Sub-Committee, are enumerated in section 33(1)(a), and the sections there enumerated do not include section 65 or section 66. Since, however, there does not appear to have been any delegation by the New Delhi Municipal Committee of these powers to the Tax Sub-Committee I do not consider it is necessary to decide whether such a delegation would have been lawful if it had in fact been made.

In the circumstances I am of the opinion that the objections of the present petitioners against the proposed increase in the assessment have not been dealt with according to law, and that, therefore, the resolution of the Municipal Committee of the 28th of March, 1956, which purported to approve the recommendations of the Sub-Committee is a nullity.

Apart from this it has been contended that the principles of natural justice have not been observed in dealing with the petitioners' objections. On this point I must confess that my own initial reaction was on the lines put forward by the learned counsel for the respondent Committee, namely, that the Committtee was not bound to disclose its reasons for any proposed increase in house-tax assessment, which must be presumed to be based either on the ground that the properties under assessment had been previously assessed at less than their real value, or else that the value of property in the area in question had increased since the last assessment was made. It is, however, clear in the present case that the position adopted by the respondent Committee itself in opposing the petitions was that the increased assessments are based entirely on a formula previously drawn up for the purpose and approved by the Committee.

It is obvious that the intention of the law cannot be that the inviting of objections from persons affected by the proposed increased assessments and the provisions for the disposal of such objections are to be a mere formality, and that the objections are intended to be automatically consigned to the waste paper basket in pursuance of a decision previously arrived at. Yet this is exactly what appears to have been done in the present case on the basis of the formula drawn up and approved by the Committee. It is not alleged on behalf of the Committee that particulars of this formula were disclosed to the present objectors, who are, therefore, right in saying that they did not know what case they had to meet. It certainly appears to be probable that if in response to the letter of the petitioner association the decision of the Committee regarding the formula which was intended to be followed had been disclosed, the householders would have been in a much better position to file effective objections either challenging the basis of the formula itself or showing that it operated harshly in individual cases.

Our attention has been drawn to a decision of the Court of Appeal in *R.* v. *Westminister Assessment Committee, Ex parte Grovernor House (Park Lane), Ltd.* (1), which arose out of a rating case in which it appears that the order of the authority which was being challenged had been based to some extent on a report of which the particulars had not been disclosed to the assessee. Du Parcq, L.J., at page 142, observed :—

> "We now turn to the question as to whether or not the assessment committee has in any respect failed in its duty. In our opinion, it was entitled to seek the aid

(1) (1940) 4 All. England Law Reports 132

Khazan Chand
v.
The New Delhi
Municipality

Falshaw, J.

of the "competent person" whom it did in fact employ. Giles' affidavit tells us that the committee had the advantage of a general report from Mr. Eve as to the effect of the war upon the value of various classes of business premises, including hotels, and as to the factors producing such effect. We do not doubt that it is lawful to obtain such a general report under the Rating and Valuation Act, 1925, Section 38. We were told by counsel for the appellants that the committee obtained, or at any rate purported to obtain, Eve's report under that section, and we do not share the difficulty which Humphreys, J., felt in accepting that statement. In the absence of clear evidence, we think that we ought to assume that the committee was acting in conformity with the law. *Omnia rite esse acta.* We are clearly of opinion, however, that, having obtained the report, the committee was bound to communicate to the rating authority and to the objectors such parts of it as were relevant to the inquiry. It is obvious from the reference to the report in Giles' affidavit that at least some parts of it were so relevant. We are well content to adopt and apply to this case language used by Lord Loreburn with regard to an inquiry by the Board of Education, when he said, in *Board of Education* v. *Rice,* (1), that the board must always give a fair opportunity to those who are parties in the controversy for correcting or contradicting any relevant statement pre-

(1) (1911) A.C. 179

judicial to their view. These words may properly be applied, in our opinion to any inquiry of a judicial character. Counsel for the appellants suggested that Lord Loreburn was referring only to statements of fact, and not to expressions of opinion. For all we know, there may have been statements of fact in Eve's report, but, even if there were not, it can hardly be doubted that expressions of opinion by an expert of acknowledged experience may be as impressive and as damaging as statements of fact. In our opinion, the fact that the committee is entitled to obtain a report for its guidance does not relieve it of the duty of communicating any relevant part of that report to the persons seeking a determination.

Applying the principle laid down above to the facts of the present case it would certainly appear that the petitioners were entitled for the proper disposal of their objections to be informed of the formula on which it was proposed to base the new assessments both for the purpose of challenging its general validity and also its application in individual cases.

In view of these findings I am of the opinion that the assessments in these cases are bad because the objections of the petitioners were not dealt with according to law and because they were not in a position to present their objections in an effective manner. I would accordingly accept the petitions with costs, counsel's fee Rs. 50 in each case, and set aside the assessments of the petitioners' houses for the year 1955-56 which must be carried out according to law.

CHOPRA, J.—I agree.

R.S.