

(2003) 08 DEL CK 0101

In the Delhi High Court

Case No : Civil Writ Petition No. 379 of 1992

Ambica Builders (P) Ltd. and Another

APPELLANT

Vs

New Delhi Municipal Committee

RESPONDENT

Date of Decision : 27-08-2003

Acts Referred:

Constitution of India, 1950 — Article 226
Punjab Municipal Act, 1911 — Section 72, 72(6)

Citation : (2004) 113 DLT 485 : (2005) 1 RCR(Civil) 108

Hon'ble Judges : Sanjay Kishan Kaul, J

Bench : Single Bench

Advocate : P.K. Aggarwal, for the Appellant; Rohit Verma, for the Respondent

Final Decision : Allowed

Judgement

Sanjay Kishan Kaul, J.—The petitioner has filed the writ petition aggrieved by the refusal of the grant of vacancy remission to the petitioner in respect of the flats owned by the petitioner in property at A-18 Ram House, Connaught Circus, New Delhi.

2. The area in question was at the relevant stage of time governed by the Punjab Municipal Act, 1911 (hereinafter referred to as "the said Act"). Section 72 of the Act deals with the issue of vacancy remission which is as under:

"72. Remission of tax on unoccupied immovable property.--(1) When any property assessed to a tax under [Sub-clause (a) of Clause (i) of Section 61], which is payable by the year or by Installments, has remained unoccupied and unproductive of rent throughout the year or the period in respect of which any Installment is payable, the committee shall remit the amount of the tax or of the Installment, as the case may be:

Provided that no such remission shall be granted unless, notice in writing of the circumstances under which it is claimed has been given to the committee within the first month after the expiry of the period in respect of which it is so claimed."

3. In the writ petition, the petitioner has averred in para 3 of the writ petition that the petitioner has been granted vacancy remission from 1.4.1983 to 31.3.1986 but it was not granted for the two assessment years in question even though the petitioner had applied for the vacancy remission in accordance with law and gave necessary notice for the same to the respondent Council disclosing the details of the area lying vacant about the period for which the remission of tax was claimed.

4. It may be noticed that though learned Counsel for respondent initially sought to contend that no notice for the said remission was given, a reading of the reply to para 3 of the writ petition shows that there is only a general denial stating that the petitioner was put to strict proof of the same. The real plea raised by the respondent in view of Bye-law 25 is that the petitioner was required to first deposit the tax and then claim remission and in view of the fact that petitioner failed to deposit the tax, the petitioner was not entitled to the remission.

5. In this behalf, learned Counsel for the petitioner has also referred to the written statement filed by the respondent in the earlier proceedings before the Civil Court filed by the petitioner in respect of the same very years where in para 7 it has been admitted that the applications were received but it has been stated that same were not maintainable because of non-deposit of tax.

6. Thus it cannot now be stated that the petitioner did not apply for the vacancy remission.

7. The only question which thus arises for consideration is whether the petitioner is required to deposit the tax first and then claim remission of the amount or whether it is permissible for the petitioner to deposit the amount after taking the amount of remission.

8. A reference has been made to Bye-law 25 in this behalf which is as under:

"25. No application for remission u/s 72 shall be entertained unless the amount of the tax due has already been credited to the Municipal funds. All applications for remission shall be supported by sufficient documentary evidence to prove that the property really remained unproductive of rent and vacant during the period in question. Besides other documentary evidence, the Committee may also call for an affidavit from the applicant on the point."

9. Learned Counsel for the respondent thus seeks to contend that the aforesaid Bye-law requires that no application for remission u/s 72 of the Act is to be entertained unless the amount of tax due has already been credited to the municipal funds.

10. Learned Counsel for the petitioner, on the other hand, has stated that it is not how the Bye-law was being interpreted by the respondent and that for the earlier years the petitioner was depositing the tax after taking the amount of remission. Learned Counsel for the respondent has also referred to the Resolution No. 147 dated 27.1.1968 dealing with the issue of remission of house

tax in respect of another case where it was resolved as under:

Committees Resolution/Observations:

"Resolved that house tax may not be charged for as long as the house is not occupied. Also resolved that notwithstanding house tax Bye-law No. 25, P.M.C. be authorised to remit the house tax without insisting on the advance payment of the same in such cases wherever he is satisfied on the merits of the case."

11. It is thus contended that the said resolution was not only in the facts and circumstances of that case but the resolution states that the same practice is being followed in view of the reference being made to "such cases". Learned Counsel for the petitioner has also referred to the rejoinder along with which the petitioner has filed the cases of a number of properties as Annexure A where such remission has been granted when the amount of tax is deposited after taking into account the remission.

12. Learned Counsel for the petitioner has also referred to the definition of remission" and "remit" in the Webster's Encyclopedia Unabridged Dictionary where remit" has been defined as "to pardon; to forgive, as sins; to relax; to abate"

13. I have considered the submissions advanced by learned Counsel for the parties.

14. A reading of Bye-law 25 referred to above no doubt shows that before an application for remission is entertained u/s 72 of the Act, the amount of tax due has to be credited to the municipal fund, the question would be as to what is the amount of tax which is due? In my considered view, the amount of tax due would be tax, which would be payable after the amount of remission is taken into account. Thus it is not open to a party to claim remission without depositing the tax which would be due on such remission being granted. It may be noticed that even in cases of rebate for timely payment, this is the manner and mode in which the payment is received and only the balance amount is deposited.

15. It can also not be accepted that a party must first pay the whole amount even though it is not due and is entitled to remission. It is the admitted tax which would have to be paid after taking into account the remission. Needless to say that if the case for remission had been rejected, the party would be liable to pay the balance amount.

16. The reading of the resolution referred to in respect of another property and quoted above would also show that the respondent Council was taking the stand that this is how the payment has to be made and in fact reference has been made to the resolution not to insist on advance payment in "such cases" wherever the merits of the case are satisfied. The petitioner has been granted remission for the earlier three years in similar circumstances.

17. If a person is not required to pay an amount and the amount has to be

remitted, one cannot appreciate the rationale to require petitioner to first deposit the said amount.

18. In view of the aforesaid, a writ of mandamus is issued directing the respondent Council to make necessary inquiry u/s 72(6) of the said Act and consider the case for grant of vacancy remission to the petitioner in terms of the provisions of 72 of the said Act.

Writ petition is allowed leaving the parties to bear their own costs.