(2012) 04 DEL CK 0427

In the Delhi High Court

Case No : LPA No. 524 of 2006

Ambrish Kumar APPELLANT

Vs

MCD and Another RESPONDENT

Date of Decision : 12-04-2012

Acts Referred:
Delhi Municipal Corporation Act, 1957 — Section 116G(2), 154(1)

Citation : (2012) 04 DEL CK 0427

Hon'ble Judges : A.K. Sikri, Acting C.J.;Rajiv Sahai Endlaw, J

Bench : Division Bench

Advocate : Baankey Bihari, for the Appellant;

Final Decision : Allowed

Judgement

Rajiv Sahai Endlaw, J.—This intra-court appeal impugns the order dated 17.03.2006 of the learned Single Judge in W.P.(C) No. 4021/2006 preferred by the appellant. The said writ petition was filed challenging the notice dated 03.01.2006 of the respondent MCD demanding a sum of Rs. 26,460/- as on 31.03.2004 plus interest from the appellant towards property tax of flat No. 266, Supreme Cooperative Group Housing Society Ltd., Mayur Vihar, Phase-I, Delhi of the appellant and upon failure of the appellant to pay the said sum, threatening to recover the same from the said flat of the appellant. The learned Single Judge, finding that the appellant had not shown any documents evidencing payment of property tax for several years and that the assessment order determines the ratable value of the flat of the appellant on the cost paid by the appellant to the Society for acquisition of the flat, disposed of the writ petition by suspending the operation of the notice dated 03.01.2006 for a period of two weeks subject to the appellant depositing Rs. 20,000/- with the respondent MCD within two weeks and with a further direction to the appellant to appear before the respondent MCD for passing a fresh assessment order.

2. Notice of this appeal was issued and the appeal admitted for hearing and the demand impugned in the writ petition stayed. The counsel for the appellant has

been heard.

3. The counsel for the appellant has invited our attention to the order dated 04.04.2006 of the same learned Single Judge in W.P.(C) No. 5322/2006 preferred by one Sh. P.N. Gupta with respect to flat No. 245 in the same Supreme Co-operative Group Housing Society Ltd. A perusal of the said order shows that a similar writ petition preferred by the said Sh. P.N. Gupta was disposed of on the same terms by the learned Single Judge. The counsel for the appellant has next invited our attention to the order dated 26.09.2006 of a Division Bench of this Court in LPA No. 720/2006 preferred by the said Sh. P.N. Gupta. The Division Bench set aside the order of the learned single Judge and directed the respondent MCD to make a fresh assessment, observing as under:

In this matter the appellant is aggrieved by the finding of the learned Single Judge who has disposed of the writ petition of the appellant by holding that the appellant has filed a Revision Petition earlier. Counsel for the appellant has stated that no Revision Petition was ever filed by the appellant. The writ petition was filed by the appellant with the prayer as under:

(a) a Writ in the nature of Certiorari quashing the demand notice dated 5.1.2006 issued by Respondent No. 2 u/s 154(1) of the Delhi Municipal Corporation Act, 1957;

(b) a Writ in the nature of mandamus directing the Respondents to assess the Property Tax in accordance with the provision contained in sub-Section (2) of Section 116G of the Delhi Municipal Corporation Act, 1957.

The learned Single Judge in paragraph 5 of the impugned order has mentioned as under:

I find that the petitioner has been negligent in prosecuting his remedies, pursuant to the order dated 19.12.2002 passed in the batch of civil revisions, including the civil revision filed by the petitioner.

The learned counsel for the appellant has contended that there was no question of the appellant filing a civil revision petition earlier than the writ petition filed with the aforesaid prayers, therefore, the whole approach of the learned Single Judge is without application of mind and the order is based on the surmises and conjectures. We have gone through the writ petition which was filed by the appellant on 3.4.2006. The learned counsel for the respondent is unable to show us any civil revision petition which was filed by the appellant and included in the batch order dated 22.8.2002. We, therefore, find that the impugned order suffers from infirmity.

We set aside the order dated 4.4.2006 and quash the demand notice dated 05.1.2006. We direct the respondent/MCD to make a fresh assessment of the property tax.

Appeal stands allowed.

4. The counsel for the appellant states that the aforesaid order has attained finality. He further contends that the same order ought to follow in this appeal also. We find the matter to be fully covered by the order aforesaid of the Division Bench in LPA No. 720/2006 and following the said order, allow the present appeal by setting aside the order dated 17.03.2006 impugned herein and by directing the respondent MCD to make a fresh assessment of the property tax due from the appellant for the relevant period, without requiring the appellant to deposit the sum of Rs. 20,000/- as directed by the learned Single Judge.

No order as to costs.