
(2005) 11 DEL CK 0112
In the Delhi High Court
Case No : WP (C) No. 15171 of 2004

ARNIE Club

APPELLANT

Vs

NDMC and Another

RESPONDENT

Date of Decision : 30-11-2005

Acts Referred:

New Delhi Municipal Council Act, 1994 — Section 101, 119, 123, 126, 128
Punjab Municipal Act, 1911 — Section 63, 64, 65, 66, 67

Citation : (2006) 126 DLT 582

Hon'ble Judges : Pradeep Nandrajog, J

Bench : Single Bench

Advocate : R.K. Aggarwal, for the Appellant; Suman S. Rawat, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—At the outset I may record a displeasure. Pleadings of the respondent in the counter affidavit are far from adequate. Learned Counsel for the respondent while drafting the counter affidavit ought to have pleaded the facts with clarity and additionally should have placed on record the relevant resolutions. Needless to state, crystal clear pleadings help in issues being focused and this results in speedy disposal of a case.

2. In the two captioned writ petitions this Court is called upon to adjudicate upon the validity of the bills and notice of demand raised by the respondent upon the petitioners.

3. A residential complex, having numerous flats, called Golf Apartments at Sujan Singh Park was constructed by M/s. Universal Builders and Contractors. Petitioner in WP(C) 15171/2004 purchased flat No. 9. Flat buyer agreement was executed between the petitioner and the builder on 9.9.1997. Possession of the flat was taken over on 23.10.1997. Date on which NDMC was intimated about the transfer has not been stated by the petitioner nor has it been stated by the respondent but admittedly the notice of transfer was after September 1997.

4. Petitioner in WP(C) 15116/2004 purchased flat No. 11 in the same complex. The same was by and under a flat buyer agreement dated 4.7.1997. Possession of the flat was taken over on 23.7.1997. Date on which NDMC was notified about the transfer has not been stated by any party, however, Counsel agree that it was after July 1997.

5. As per the petitioners the flats are self-occupied. This has been recognized by NDMC. Accordingly, petitioners state that the annual value of the flat ought to have been fixed on the cost basis and after notice to the petitioners. Petitioner in WP(C) 15171/2004 received a notice of demand dated 4.2.2004 demanding property tax in sum of Rs. 3,43,496/-. Demand included arrears. Petitioner challenged the demand by way of an appeal before the learned District and Sessions Judge, which appeal, registered as HTA 367/2004 was dismissed vide order dated 14.6.2004 holding that the notice of demand is neither an assessment nor a levy of tax. For record the notice of demand which was questioned is in fact a notice calling upon the petitioner to show-cause as to why a penalty be not levied on account of the outstanding demand. The document reads as under:-

Sub: Imposition of 20% penalty on demand outstanding on 24.1.2004 in respect of property No. Flat No. 9 SF (1904 SQFT) GOLF APARTMENT

We find from our records that a demand of Rs. 343496/- is outstanding which has not been paid in-spite of issue of bills and demand notice. As per Section -101 of the NDMC Act, you are in default, unless, the demand has been stayed by Hon'ble Court or the matter has been remanded by the Court. The department is Therefore proposing to impose a 20% penalty from 5th February, 2004, if the demand is not paid or intimation is not received that the demand is under stay. Please, either pay the demand by 5th of February, 2004, as aforesaid, or produce a copy of the order of stay of demand from the Court or that the entire demand is under remand by a Court of law. If payment is not received or intimation is also not received by 5th February, 2004, penalty of 20% shall be imposed.

6. Petitioner in WP(C) 15116/2004 prays that the notice of demand dated 24.11.2003 demanding arrears of property tax in sum of Rs. 7,63,944/- and current demand in sum of Rs. 86,660/- be quashed. Petitioner rely upon an order dated 23.7.1998 passed in CW No. 4737/1996 filed by the builder. The order reads as under:-

CW No. 4737/96

Learned counsel for the respondent submits that NDMC is prepared to recognize the individual flat owners and assess them with respect to their flats individually subject to their complying with the necessary formalities. In view of this statement made on behalf of the NDMC, the main prayer in the writ petition does not survive.

The writ petition is disposed of accordingly.

7. As per the record of the respondent and its pleadings, the builder applied for completion certificate for the entire complex in the year 1992. Treating this to be a notice of completion of the flats, on 2.2.1993 NDMC issued a notice u/s 65 of the Punjab Municipal Act 1911 proposing the annual value of Rs. 2,26,08,576/- less 10% for the entire complex w.e.f. 1.4.1992.

8. Needless to state when the notice aforesaid was issued the New Delhi Municipal Council was not in existence. New Delhi Municipal Committee was in existence and Punjab Municipal Act 1911 applied to the area where the property was situated.

9. The builder did not file any objections to the notice in spite of being served. Accordingly, at a meeting of the Council held (date could not be ascertained from the record and has not been pleaded in the counter affidavit), the proposal pursuant to the notice dated 2.2.1993 was confirmed.

10. The confirmed annual value, as per the order which was passed in the year 1994, was continued to be adopted till the assessment year 1996-97. None ever objected. The composite annual value was bifurcated in respect of the flats. This assessment order annexed as Annexure R-2 in WP(C) 15171/2004 was also not questioned by any person.

11. In the meanwhile, with the promulgation of the New Delhi Municipal Act 1994, New Delhi Municipal Council came into existence and took over the functions of the erstwhile Committee.

12. Pertaining to the assessment year 1998-99, when the Council issued the requisite notice informing that it was proposing to adopt the existing rateable values of different properties in its area for the assessment year 1998-99, petitioner in WP(C) 15171/2004 filed general objections. These were disposed of vide assessment order dated 4.3.1999. On cost basis, annual value was fixed at Rs. 99,000/- less 10% for the assessment year 1998-99.

13. Petitioner of WP(C) 15116/2004 did not file any general objections. However, relying upon assessment orders passed qua those purchasers who had filed general objections, on 9.10.1998 petitioner informed NDMC that rateable annual value of the flat purchased by it be also fixed on cost basis.

14. Needless to state that the demands raised by respondent in the two cases pertained to the assessment year 1.4.1992 -31.3.1993 and onwards.

15. It was urged by Shri R.K. Aggarwal, learned Counsel for the petitioners that NDMC never issued, much less served a notice upon the petitioners u/s 72 of the New Delhi Municipal Council Act 1994 and Therefore all assessments pertaining to the two flats are null and void. Additionally, it was urged that the assessment order dated 4.3.1999 pertaining to the writ petitioner of WP(C) 15171/2004 and similar orders passed in respect of a few other flats required NDMC to determine

the rateable value on cost basis right from the inception.

16. As noted above, assessment was initially framed under the Punjab Municipal Act 1911. Procedure for assessment of tax under the Punjab Municipal Act 1911 is governed by Section 63 to 68-A of the said Act. Section 63 obliged the then Committee to prepare a list of all lands and buildings on which tax was to be imposed. u/s 64, the said list had to be notified by way of a public notice. u/s 65 not less than one month's time had to be granted for filing objections. In case a property was being assessed for the first time or annual value was increased, a personal notice to the owner or occupier had to be served. Objections, if any filed, had to be considered. Assessment orders were to be passed and u/s 66 the list had to be finally settled. Further amendments were governed by Section 67. The section required that if further amendment to the assessment list was to be made, the owner had to be notified and given an opportunity to file objections.

17. Section 68 of the Punjab Municipal Act 1911 give an option to the Committee to either prepare new assessment lists every year or adopt the valuations and assessment contained in the list for the previous year and while so doing it empowered the Committee to make alterations in the assessment list, but after giving notice to the person affected by such alteration, so that the person affected could file objections. Section 68 reads as under:-

68. New list need not be prepared every year. - It shall be in the discretion of the committee to prepare for the whole or any part of the municipality a new assessment list every year or to adopt the valuation and assessment contained in the list for any year with such alterations as may in particular cases be deemed necessary, as the valuation and assessment for the year following, giving to persons affected by such alterations the same notice of the valuation and assessment as if a new assessment list had been prepared.

18. Corresponding provisions are to be found in Section 70, 71, 72 and 73 of the New Delhi Municipal Council Act 1994.

19. Sub-section 1 of Section 74 of the Punjab Municipal Act 1911 required that whenever title to a property is transferred, the transferor and the transferee shall within 3 months of the transfer notify the committee. The provision reads as under:-

74. Notice to be given to the committee of all transfers of title of person primarily liable to payment of property tax.-(1) Whenever the title to or over any building or land of any person primarily liable for the payment of property taxes on such property is transferred the transferor and the transferee shall within three months of the registration of the deed of transfer if it be registered, or if it be not registered within three months of its execution or if no instrument be executed of the actual transfer give notice in writing of such transfer to the committee.

20. Pari materia provisions has been incorporated in sub-section 1 of Section 74 of the New Delhi Municipal Council Act, 1994. It reads as under:-

74. Notice of transfers- (1) Whenever the title of any person primarily liable for the payment of property tax on any land or building is transferred, the person whose title is transferred and the person to whom the same is transferred shall within three months after the execution of the instrument of transfer or after registration, if it is registered, or after the transfer is effected, if no instrument is executed, give notice of such transfer in writing to the Chairperson.

21. u/s 69 of the NDMC Act 1994 property taxed due under the Act, subject to the prior payment of land revenue are a first charge on the property.

22. A perusal of the scheme of assessment under the Punjab Municipal Act 1911 and the New Delhi Municipal Council Act 1994 is that while framing the assessment for the first time the person whose name is entered in the municipal records as owner of the property has to be notified. Thereafter assessment has to be finalized. For the ensuing years the said rateable value can be adopted without a personal notice being served. Only requirement is to issue a public notice. If objections are filed the same have to be considered. If no objections are filed, the rateable value determined for the previous year can be adopted for the ensuing year. Further, a buyer of the property has to intimate NDMC the factum of purchase to enable the committee to enter the name of the buyer as person primarily liable to pay property tax. Further, property tax being a first charge on the property, tax dues are recoverable from the property. It matter least that the property has changed hands.

23. This makes it incumbent upon the buyer to find out the outstanding dues.

24. When the first notice was issued u/s 65 of the Punjab Municipal Act on 2nd February, 1993, petitioners were nowhere in the scene. The property was owned by Universal Builder and Contractors. The Committee was justified in serving the notice upon the builder. Annual value was proposed under the notice dated 2.2.1993. Since no objections were filed, no fault can be found with the decision of the committee when it confirmed the proposed annual value. Thus, effective from 1.4.1992 (since the notice dated 2.2.1993 proposed the annual value effective from 1.4.1992) the annual value of the entire complex got fixed and the committee was entitled to recover the tax, pro rata, depending upon the covered area of the flats, while enforcing the demand qua individual facts.

25. It was only on 16.1.1998 that the builder supplied information pertaining to the different flats and based thereon NDMC bifurcated the annual value.

26. Petitioner M/s. ARNIE Club, for the first time, filed the general objections when NDMC issued the public notice adopting the existing rateable values for the previous year as entered in the assessment list for the ensuing assessment year 1998-99. These general objections were disposed of on 4.3.1999.

27. It is trite that each assessment year furnishes an independent cause of action. It is permissible for an assessed to file objections each year when adoption of the assessment list is notified and objections invited to the proposed

adoption. Meaning thereby that when a general objection is decided, it relates to the year in question and is not retrospective in operation.

28. As far as M/s ARNIE Club is concerned, the rateable value got reduced to Rs. 99,000/- less 10%, but for the assessment year 1998-99. This annual value got adopted for the subsequent years. But, for the previous years, assessment got finalized as an unchallenged assessment. Consequences must flow.

29. Petitioner of WP(C) 15116/2004 did not file any general objections. Consequences qua this petitioner have likewise to flow.

30. As regards the plea of the petitioners that NDMC never served a notice upon them, I may only note the decision of the Hon"ble Supreme Court reported as Municipal Corporation of Delhi Vs. M/s. Trigon Investment and Trading Private Limited and another, *Pari materia* provisions under the New Delhi Municipal Council Act 1997 were being considered. It was held as under:-

The property tax constitutes first charge upon the land/building and because the land/building is fastened with this liability, the liability travels with the land/building. The transferee of the land/building is liable to pay the property taxes due thereon not only for the period subsequent to transfer in his favor but even for the period anterior to the transfer. What Section 128 does is to keep alive and continue the liability of the transferor to pay property taxes even after the transfer till he gives the notice contemplated by Section 128(1). While making him so liable, Section 128(4) declares that this liability cast on the transferor shall not relieve the transferee from the obligation to pay the said tax. This liability of the transferee is in no way qualified, curtailed or abridged by any provision in Section 126. Section 126 deals with amendment of assessment list and the procedural aspects concerning amendment. Section 126 no doubt provides that no person shall become liable to pay any tax or increase of tax in respect of any period prior to the commencement of the year in which notice under sub-section (2) is given. But if a transferee of building/land is allowed to say that he is not liable to pay tax for period before notice it would amount to making provisions of Section 128(4) and Sections 119 and 123 (Property taxes being levied upon the lands/buildings and their Constituting a first charge on such lands/buildings) nugatory and meaningless. Thus so far as transferee is concerned. Section 126 does not have the effect of relieving a transferee of a land/building from the liability to pay property taxes duly assessed upon such land/building and this liability extends even for the period prior to the transfer in his favor and such taxes can be recovered from him according to law.

(Para 15)

The Act places the obligation upon the transferor to intimate the Corporation of any transfer and also provides for the consequences flowing from failure to inform. The Act does not contemplate the Corporation going about enquiring whether and when a particular land/building is transferred and to whom? Any notices required to be issued by the Corporation can be validly issued to the

transferor until he intimates the Corporation of the transfer and it would be a valid and sufficient service in law; the transferee cannot contend that since he has not been served with the relevant notice, the assessment made or any other action taken is bad in law. If he takes a transfer from a particular person, it is his duty to ensure that the transferor send the intimation contemplated by Section 128(1) and his (transferee's) name is recorded as the "owner" or as the person primarily liable, the Municipality cannot be found fault with for not sending relevant notices to the transferee. The substantive liability of the "owner" to pay taxes cannot be defeated by the non-intimation u/s 128 or by the failure of the transferee to have his name entered in the Municipal records.

(Para 17)

31. Reliance upon the order dated 23.7.1998 in WP(C) 4737/1996 is misplaced. Order dated 23.7.1998 records the concession of NDMC that it was prepared to recognize the individual flat owners with respect to their flats individually, subject to their compliance with the necessary formalities. This means that the individual flat buyers were required to seek mutation. They were required to file the necessary objections. Order dated 23.7.1998 nowhere records the concession that NDMC was prepared to revise the assessments retrospectively.

32. Orders passed by a Court and in particular orders on concession have to be understood in the context of the law applicable.

33. It is evident that the petitioners have remained negligent in seeking timely remedies. They have purchased flats which were assessed to property tax in the hands of the builder. They did not bother to ensure that the builder clears the tax. They did not bother to find out that the builder had allowed ex-parte assessment to be framed and adopted for the subsequent years. They did not bother to understand the law that each year's assessment is a separate cause. They did not bother to challenge the assessments which were framed. Looked at from any angle, no case is made out for interference.

34. It was not the case pleaded by the petitioners that the bills raised are not on the correct percentage of the annual value/rateable value determined.

35. Writ petitions are dismissed. No costs.