(2008) 03 DEL CK 0242

In the Delhi High Court

Case No : Writ Petition (C) No. 5131 of 2007

B.B. Ahuja APPELLANT

Vs

M.C.D. and Another RESPONDENT

Date of Decision : 28-03-2008

Acts Referred:

Delhi Municipal Corporation Act, 1957 — Section 126, 126(1)

Citation : (2008) 03 DEL CK 0242

Hon'ble Judges : Sanjiv Khanna, J

Bench : Single Bench

Advocate : Ujjwal K Jha, for the Appellant; Amita Gupta, for the Respondent

Final Decision : Disposed Off

Judgement

Sanjiv Khanna, J.—The petitioner is owner of property B1/7, Safdarjung Enclave, New Delhi-29 and is assessed to property tax under the Delhi Municipal Corporation Act, 1957 (hereinafter referred to as Act). The rateable value of the said property was enhanced to Rs. 2,24,950/- vide assessment order dated 29.9.97. There is no dispute about the said assessments and the rateable value fixed vide order dated 29.9.1997.

2. On 30th March, 1999 MCD issued notice u/s 126 of the Act for enhancement of the rateable value to Rs. 5,10,000/- w.e.f 1/4/1998 due to increase in rent. Thereafter the assessment order was passed enhancing the rateable value to Rs. 5,10,000/- w.e.f 1.4.1998 and to Rs. 4,62,610/- w.e.f. 12.3.2000.

3. The petitioner deposited Rs. 1,67,102/- on 16.5.2002 and filed an appeal challenging the enhanced rateable value. The appeal was allowed on the short ground that notice u/s 126 dated 30.3.1999 was served upon the assessee on 3.4.1999 i.e. after the end of financial year 1998-99. It is the case of the petitioner that no appeal was filed against the said order dated 11.7.2002 passed by the Additional District Judge and the said order has become final and binding. I may note here that the Additional District Judge while passing the said order

had directed for refund of the tax amount deposited by the assessee. It is accordingly directed that the petitioner will be entitled to refund of the deposited amount for the financial year 1.4.1998 till 31.3.1999 and he will be charged property tax on the basis of earlier rateable value of Rs. 2,24,950/-. The extra tax paid by the petitioner will be refunded to him in terms of the order passed by the Additional District Judge on 1.7.2002.

4. The respondent/MCD had issued another notice dated 27.3.2000 u/s 126 of the Act enhancing the rateable value from Rs. 2,24,950/-/ Rs.5,10,000/- to Rs. 6,12,000/- w.e.f. 1.4.1999. This notice for enhancement was issued on account of increase in rent. The petitioner filed objections to the proposal stating inter alia that the notice was not served on or before 31.3.2000 and therefore enhancement of rateable value cannot be effective for the financial year 1999-2000. Similarly, contention was again raised before the Assessing Officer that notice for enhancement dated 27.3.2000 was received on 1.4.2000, and therefore, it is invalid and cannot be effective for financial year 1999 - 2000, as per proviso to Section 126 of the Act.

5. The Assessing Officer, however, fixed the rateable value at Rs. 5,18,710/- w.e.f. 1.4.1999 and Rs. 4,62,610/- w.e.f. 12.3.2000. For the period 1.4.2001 the rateable value was fixed by a separate assessment order.

6. The petitioner filed an appeal against the said assessment order before the Additional District Judge. The Additional District Judge held that the notice u/s 126 was dispatched on 30.3.2000 and therefore the said notice was valid. However, he remanded the case back to the Assessing Officer for the determination of rateable value in accordance with law after giving opportunity of hearing to the assessee.

7. Not satisfied, the petitioner filed a writ petition before this Court questioning and challenging order dated 21.1.2003 passed by the Additional District Judge as well as assessment order dated 2.9.2002 fixing rateable value at Rs. 5,18,710/- w.e.f. 1.4.1999 and Rs. 4,62,610/- w.e.f. 12.3.2000. This W.P.(C) No. 4056/2003 was allowed following the judgment of High Court in the case of ''Dharam Properties v. MCD'' 2005 JAD (Delhi) 21. It was held that the notice u/s 126(1) should have been served within the financial year, itself and in the present case notice was dispatched on 30th March 2000 and was received after the financial year on 1.4.2000 and therefore, no enhanced assessment could have been made for the period ending 31.3.2000. This order was passed on 7.4.2005 and has not been challenged by MCD. Accordingly, the said order has attained finality. In view of the above order, the petitioner is also entitled to refund of the additional tax paid by him for the period ending 31.3.2000 on the basis of rateable value fixed by the Assessor and Collector by his order dated 2.9.2002. However, w.e.f. 1.4.2000 the petitioner shall be liable to pay property tax in accordance with law. Rateable value for the said period will have to be fixed in terms of order dated 21.01.2003 passed by the Additional District Judge in appeal.

8. Order dated 7.4.2005 passed by this Court in W.P.(C) No. 4056/2003 in the operative portion reads as under:

6. In my considered view, having regard to the facts of this case, the petitioner is entitled to relief. The ruling in Dharma Properties, squarely covers the facts of the present case. The notice in question was received on 1.4.2000; it sought to revise the rateable value for the period effective from 1.4.1999. It was beyond the period prescribed.

7. The writ petition is accordingly allowed. An appropriate direction is issued quashing the impugned order of the appellate authority dated 1st January, 2003, as also the order of the respondent assessing the property of the petitioner dated 2.9.2002. The pending interlocutory application is also disposed off in the light of this judgment. No costs.

9. The operative portion of order dated 7th April, 2005 is to be read along with the contention raised by the petitioner and the findings by the court in the said writ petition. The contention raised by the petitioner was that notice u/s 126 of the Act was served after 31.3.2000 and therefore revised or enhanced tax for the period ending 31.3.2000 cannot be charged. It was not the contention of the petitioner that rateable value cannot be increased or enhanced tax cannot be charged after 1.4.2000. This is the limited effect of the direction issued vide order dated 7th April 2005. I may note here that even in the objections raised before the Assessing Officer the petitioner had contended that no notice in terms of Section 126(1) of the Act was not served on or before 31.3.2000 and therefore the notice in question was not effective for the financial year 1999-2000. It was not the contention of the petitioner that the said notice was invalid for the year 1.4.2000 onwards. In view of the above it is directed as under:

(1) The petitioner is entitled to refund of additional tax paid by him for the financial year 1.4.1998 to 31.3.1999 and 1.4.1999 to 31.3.2000 and for the said years rateable value will be treated as Rs. 2,24,950/-. This direction is being issued as order dated 11.7.2000 passed by the Additional District Judge and order passed by this Court in W.P.(C) No. 4056/2003 on 7th April, 2005 have become final and binding on the MCD and no appeal has been filed against the said orders.

(2) For the period after 1.4.2000 MCD will pass a fresh order in terms of order dated 21.1.2003 passed by the THE ADDITIONAL DISTRICT JUDGE remanding the case back to the assessing officer for re-computation of the rateable value after affording opportunity of hearing to the assessee. The petitioner will appear before the Assessing Officer on 21st April, 2008 at 3.30 p.m. for complying with order dated 21.01.2003. It is however, clarified that the said assessment order will be valid for the period on or after 1st April, 2000. It is also clarified that this order shall not effect any other notice for enhancement or increase in rateable value.

The writ petition is accordingly disposed of.

