
(2002) 08 DEL CK 0131

In the Delhi High Court

Case No : Civil Writ Petition No. 1266 of 1976

K.L. Bhargava and Others

APPELLANT

Vs

M.C.D. and Others

RESPONDENT

Date of Decision : 29-08-2002

Acts Referred:

New Delhi Municipal Council Act, 1994 — Section 126, 126(2), 128, 128(5)

Citation : (2002) 08 DEL CK 0131

Hon'ble Judges : Jiwan Dass Kapoor, J;B.A. Khan, J

Bench : Division Bench

Advocate : A.B. Dial and Navneet Mishra, for the Appellant; Geeta Mehrotra, for the Respondent

Judgement

Khan, (J.

C.M. 3712/2002

1. Petitioner CW 1266/1976 was dismissed by court order dated 7.8.2001. They have filed this application for recall of this order and for revival of writ petition. By court order dated 14.8.2002, both sides were required to show merit of the matter for its disposal on merits. This is how this application is being allowed in that view of the matter and CWP 1266/76 is revived and restored to its number.

CWP 1266/1976

2. The dispute revolves around the rate of house-tax and fire tax of property No. N-11 at New Delhi South Extension-I. It's annual ratable value for property tax was firstly assessed at Rs. 1500/- in respect of the vacant land. A construction was raised on it later and it was let out to petitioners on rent by the owner M/s. V.K. Agro Industries. Petitioners now claim to have become its owners vide award dated 12.1.1973, made rule of court by decree dated 17.8.1973. They further assert that intimation of this was given to respondents both by them and the erstwhile owner. They were also required to attest the mutation of the property in their names. But instead they issued notice dated 26.3.1974 u/s 126 of NDMC

Act to the first owner proposing to increase the annual ratable value of the property from Rs. 1500/- to Rs. 1,86,840/- w.e.f. 1.12.1972 without disclosing any basis or reason for it. The erstwhile owner filed objection/reply to it stating that building became fit for occupation on 1.2.1972 was unwarranted and vocative of the provisions of the NDMC Act. It is also claimed by petitioners that they had also called upon respondents to mutate their individual share in the building as per submitted plans vide letter dated 3.5.1973, but no action was taken in the matter and on the contrary order dated 14.10.1996 determining the ratable value of Rs. 1,83,440/- w.e.f. 1.12.1972 was passed by them in disregard of the objectives and the request for mutation which was followed by a revised bill for Rs. 2.12 lacs and odd. They accordingly pray for quashment of the notice, the amended assessment order and the revised Bill.

3. Respondents have filed a detailed counter explaining that premises first belonged to one Mangat Singh and it was first assessed at ratable value of Rs. 1500/- PA for the vacant land. Later construction was raised on it which was completed some time in 1972. The site was then inspected and it was found that petitioners were occupying it as tenants paying a rent of Rs. 17,000/- per month for it. It was on this basis and the information received that assessment of annual ratable value was proposed to be amended to Rs. 1,86,840/- from 1.12.1972. Accordingly, a notice u/s 126 of the Act was sent to erstwhile owner M/s. V.K. Agro Industries Limited with a copy to the first original owner Mangat Singh. In response, M/s. V.K. Agro Industries Ltd. filed objections dated 21.4.1973 along with a copy of the unregistered award dated 12.1.1973. Though it was claimed in the letter that an application "Form A" under bye-law 3 was also filed for mutation, but it was not received. It is denied that any intimation was given by the erstwhile owner regarding transfer of ownership to petitioners u/s 128 of the Act on 1.3.1973 and 12.4.1973. That is how objections filed by the erstwhile owner M/s. V.K. Agro industries were considered and ratable value of the property fixed at 1,83,440/- by order dated 5.10.1976 on the basis of monthly rent of Rs. 16,985/- and the bill of demand raised.

4. Petitioners have assailed both the noticed dated 26.3.1973 and also the amended order of assessment dated 14.10.1976. Their case is that the notice was illegal and vocative of Section 126(2) as it was issued in respect of the years previous to the assessment year. The order of amended was also assessment arbitrary and without jurisdiction as it had determined the ratable value retrospectively from 1.10.1972 when any amendment to the assessment could be made only in respect of the current year in which the order was made, and as it was based on 1973 material. The order also suffers from non-application of mind and was passed in violation of principles of natural justice.

5. Ignoring the disputed areas, it still emerges loud and clear that respondents had undertaken the whole exercise of amending the annual ratable value of the property at the back of petitioners, though they were all along in know of petitioners" holding the property in one capacity or the other and of their getting

affected by the amendment somehow. Since Section 126(2) of the Act contemplates a notice to be given to any person affected by the amendment who may not necessarily be the owner, even if it was assumed that full title had not passed to the petitioners at the relevant time, it was obligatory on respondents to issue notice of proposed amendment to them. No such notice was admittedly given to them. On the contrary, the requisite notice was given to the erstwhile owner M/s. V.K. Agro Industries Ltd. who filed objections to it and also disclosed the ownership of the property having passed on to the petitioners. Despite this respondents went their own way to pass order dated 14.10.1976 amending their assessment and raising it to Rs. 1.83 lacs or so.

6. Respondent's notice u/s 126(2) may not be free from other infirmities, as asserted by the petitioners and may leave much to be desired but we do not deem it necessary to examine these aspects after having taken the view that petitioners being affected persons were not noticed at all by the respondents on the proposed amendment.

7. Coming to the impugned order, the less said the better. It is a model telegraphic non-speaking order bereft of any reasoning whatever. It does not provide any clue about the considerations that had weighed with the assessing authority to assess the ratable value at Rs. 1.83 lacs or so and suffers from gross non-application of mind. The order becomes unsustainable straight away and deserves to be quashed and so does the consequential action raising the demand against petitioners.

8. The other aspect of the matter is that petitioners have been all along clamouring for attestation of the property in question in their name u/s 128 of the Act. This is borne by the record, more particularly the annexure appended to the objections filed by the erstwhile owner to Section 126(2) notice. But still their plea had gone abegging. It is not in dispute that statutory obligation was cast on R-1 to dispose of their request u/s 128(5) of the Act after receipt of notice of transfer. Even so no action was taken in the matter on the plea that no such notice was received from petitioners, we see no sense in this contest because ownership of the property had undisputedly changed hands which had a crucial bearing on the determination of its ratable value also in case mutation was attested in individual names. There was, Therefore, no escape from disposing off petitioner's request in this regard u/s 128. That being so, we are at a loss to appreciate why the commissioner should not be taking a decision on this and pass appropriate orders one way or the other which would have the consequence of perhaps changing the complexion of the determination of liability altogether.

9. Therefore, all things considered, this petition succeeds and is allowed. Respondents' notice dated 26.3.1973 and the consequential impugned order and bills are hereby quashed. They shall, however, enjoy the liberty of undertaking a fresh exercise in the matter which could possibly begin with disposal of petitioner's request for mutation of the property in their names and with passing of appropriate orders on consideration of their objections and after

hearing them. This exercise for amendment in the ratable value shall, however, be deemed to relate back to 26.3.1973 when first notice u/s 126 was issued to the erstwhile owner. In case of non-availability of petitioner application for attestation of mutation, they may submit a fresh claim, fulfilling all prescribed formalities within three weeks from today upon which R-1 shall consider it and pass necessary orders within one month from its receipt.