

(1996) 07 DEL CK 0099

In the Delhi High Court

Case No : Civil Writ Appeal No. 4596 of 1993

Kranti Arora

APPELLANT

Vs

N.D.M.C.

RESPONDENT

Date of Decision : 31-07-1996

Acts Referred:

Constitution of India, 1950 — Article 227
Punjab Municipal Act, 1911 — Section 67

Citation : (1996) 4 AD 87 : (1997) 70 DLT 120 : (1996) 39 DRJ 635 : (1996) 3 RCR(Civil) 721 : (1996) RLR 396

Hon'ble Judges : S.N. Kapoor, J;R.C. Lahoti, J

Bench : Division Bench

Advocate : Rajiv Dutta and Naveen Chawla, for the Appellant;

Judgement

S.N. Kapoor, J.

(1) This petition has been filed for (i) quashing the impugned order dated 24th May 1993 dismissing petitioner's appeal u/s 84 of the Punjab Municipal Act, assessing flat No. 12, having an area of 1148 sq. ft. in Gauri Apartment, 3-4 South End Lane, New Delhi at annual value of Rs-3,72,627 less 10% calculated on the basis of comparable market rent; and (ii) for directing the respondent to assess the property on the basis of cost of construction for the year 1990-91,1991-92 and 1992-93.

(2) According to petitioner's version, on 31st January 1989, the petitioner purchased the aforesaid property under an agreement to sell for a sum of Rs.11,34,327.00 . He got the possession in 1991 and the same continued to be self-occupied. Ndmc issued notice (See P.49-50 of the file Annex.A) dated 17th January 1992 for the purpose of assessing the flat for the first time for the year 1990-91 u/s 67-A of Punjab Municipal Act, 1911 (hereinafter called the Pm Act) at an annual value of Rs.3,72,629.00 minus 10% calculated on the basis of comparable market rent. Despite objections dated 20th February 1993, the Ndmc had upheld the annual value of Rs.3,72,629.00 and assessed the property

accordingly, vide its Resolution dated 2

(3) An appeal was filed against the said order before the Additional District Magistrate, North-East, Delhi u/s 84 of Pm Act. Mrs. Nandita Sehgal, Additional District Magistrate (N/E) Delhi while confirming the impugned order dated 20th May 1993, upheld the contentions of the Ndmc that the annual value was to be calculated on the basis of comparable market rent at the rate of Rs.16.19 per sq. ft. per month, for, in her view the said property did not enjoy the protection of the Delhi Rent Control Act (hereinafter called the Drc Act). In the absence of limiting factor of standard rent, the expression "annual rent "at which the property may reasonably be expected to let" in Section 3(I)(b) of the Pm Act could only mean comparable market rent Ndmc has taken as the basis, the monthly rental of Rs.27,000.00 derived from flat No. 3 of the same building. Flat No.3 was rented out on monthly rent of Rs.15,000.00 plus Rs.12,000.00 per month for furniture, geyser, bath-tubs etc.

(4) We have heard the learned counsel for the parties at length. It appears that the assessment order and the order in appeal is based on the notice dated 17th January 1992 (at p.49 of paper book) which purports to have been issued u/s 67-A of Punjab Municipal Act. But on perusal of the Punjab Municipal Act, 1911, we could not find any Section 67-A in any edition of books on the Punjab Municipal Act. Obviously and in all probability, the Section number has been wrongly mentioned. Without being much influenced by the typographical error, we would go by substance of the things, and for the present, in order to do substantial justice in between the parties, we would not go by just Section 67-A, i.e. by mentioning a wrong section. This notice has been given on the ground that Delhi Rent Control Act was not applicable to the building with an idea to assess the annual value of the said building W.e.f. 1st April 1990. Besides, in the notice in question, the proposed annual value was mentioned at Rs-3,72,629 less 10% comparable rent (at p.50 of the file). The notice indicated that the "Properties self-occupied or with any addition/alterations are proposed to be assessed at the rate of 10% of the market price of the land and cost of construction irrespective of the property is residential or non-residential". It also indicates that "in case you proposed to file any objection in writing the same must be filed with the Assistant Secy. (Tax), Ndmc on or before 21.2.92". However, it also provided that the petitioner may "also appear on 5.2.92 at 10.00 Am, the date fixed for hearing objections ...along with oral and documentary proof in support of your objection", meaning thereby that it was not one month's notice if the hearing was to take place on 5th February 1992 and the filing of objection up to 21st February 1992 was a meaningless formality after hearing was over on 5th February 1992. Thus, the notice which formed basis of assessment order is certainly vague.

(5) In afore-said circumstance, let us see the provisions which authorise the Ndmc to assess or revise the annual value and the property tax livable thereon on the basis of notice dated 17th January 1992. Section 64 relates to publication

and completion of assessment list. Section 65 relates to giving public notice of the time fixed for revising assessment list; Section 66 relates to settlement of list. Section 67 reads as under:

"67. Further amendments of assessment list (1) The Committee may at any time amend the list by inserting the name of any person whose name ought to have been or ought to be inserted, or by inserting any property which ought to have been or ought to be inserted, or by altering the assessment on any property which has been erroneously valued or assessed through fraud, accident or mistake, whether on the part of the committee or of the assessee, or in the case of a tax payable by, the occupier by a change in the tenancy, after giving notice to any person affected by the amendment, of a time, not less than one month from the date of service at which the amendment is to be made. (2) Any person interested in any such amendment may tender his objection to the committee in writing before the time, fixed in the notice or orally or in writing at that time, and shall be allowed an opportunity of being heard in support of the same in person or by authorized agent, as he may think fit."

(6) Section 68 provides that new list need not be prepared every year. Section 68-A is another relevant Section which is being reproduced as below:

"68-A. Power to amend assessment list in certain cases (1) Notwithstanding anything contained in this Chapter, where the prescribed authority is satisfied that any property has been erroneously valued or assessed through fraud, accident or mistake, whether on the part of the committee or of the assessee, it may, after giving to the assessed an opportunity of being heard and after making such enquiry as it may deem fit pass an order amending the assessment already made and fixing the amount of tax payable for that property and on the issue of such an order the assessment list then in force shall, subject to the order, if any, passed in appeal, be deemed to have been amended accordingly with effect from first day of October, next following the month in which the order is passed. (2) Any person aggrieved by an order of the prescribed authority may, within a period of thirty days of the date of communication to him of the order, file an appeal to State Government which shall decide the appeal after giving to the appellant an opportunity of being heard."

(7) It may be mentioned that Section 68-A does not relate at all to the first assessment. Section 67 however authorises the Committee to insert any property in the assessment list which ought to have been or ought to be inserted which has been erroneously omitted from assessment list through fraud, accident or mistake. However, u/s 67, if the property has been erroneously valued or assessed, the Committee may, after giving notice to any person affected by the amendment of a time not less than one month from the date of service, may amend the list. While u/s 68-A, amendments could be made if the erroneous assessment has been made through fraud, accident or mistake, after giving to the assessee, an opportunity of being heard and after making such enquiry, as it may deem fit. It would thus be evident that for amendment of the list u/s 67,

one month's notice was required to be given and u/s 68-A also not only proper notice but an opportunity of being heard was required to be given.

(8) In view of the above, it appears to be a notice u/s 67 and not u/s 67-A. It also appears to be vague and defective. Notice being starting point of any hearing, we would have to see its effect. In Prem Prashad Juneja Vs. Municipal Corporation of Delhi, in similar circumstances, a Division Bench of our own High Court (including one of the us-R.C. Lahoti, J) observed as under:

"...HOWEVER, if the notice is too vague and does not make a clear statement of the grounds/reasons for amendment in the assessment list, then the assessed cannot hold himself back by resorting to technicality and allowing the assessing authority to proceed ahead and then challenge the assessment by submitting that the assessment was bad as the notice itself was bad. Want of notice has to be distinguished from a defective notice. Want to notice under S.I 26 would vitiate the revision in the assessment list. A defective notice can be cured by issuing a supplementary notice as was allowed to be done in Savitri Devi's case (supra) by supplying the reasons/requisite information by the assessing authority on the assessed appearing before it".

(9) As regards the other points raised by learned counsel for the parties, they have already been decided in Delhi Paints & Chemicals & ors. Vs. Ndmc & anr. 1993(2) Delhi 18 (DB), Government Servants Co-operative House Building Society Ltd. and Others Vs. Union of India and Others, and in Indian Hotels Co. Ltd. Vs. Ndmc (LPA 32/1996) decided on 1st July 1996, and Therefore, these judgments should have been followed.

(10) Accordingly, the petition is allowed and impugned assessment order passed by assessing authority and order passed by the Appellate Authority dated 24th May 1992 are quashed and set aside. pursuant to notice dated 17th January 1992, the petitioner is directed to appear before the Committee/Assessor in office thereof under New Delhi Municipal Council Act, on 12th August 1996. The assessing authority shall provide the petitioner with such supplementary information forming the basis for the proposed revision of assessment as the petitioner may ask for. Thereafter, the assessing authority shall after affording an opportunity of hearing, pass an order of assessment afresh consistently with the observations made hereinabove and in accordance with law. No order as to costs.