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**(1998) 10 DEL CK 0104**  
**In the Delhi High Court**  
**Case No : CWP 491 of 1989**

M.C.D.

APPELLANT

Vs

C.L. Madhok and Another

RESPONDENT

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**Date of Decision :** 01-10-1998

**Acts Referred:**

**Citation :** (1999) 77 DLT 305

**Hon'ble Judges :** Mukul Mudgal, J

**Bench :** Single Bench

**Advocate :** Mrs. Anjana Gosain, for the Appellant;

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## **Judgement**

Mukul Mudgal, J.—This writ petition on behalf of the MCD arises from the orders of the Additional District Judge, Delhi dated 30.5.87 setting aside the assessment order dated 10.7.85 passed by the Deputy Assessment and Collector of the MCD. The learned District Judge in the impugned order has found that: (a) L & DO norms have not been correctly applied; (b) the addition of sum of Rs. 20,000/- has not been explained properly; and (c) the valuation report, which was accepted by the Income Tax Authorities have wrongly not been accepted by the respondent particularly in view of the fact that there was no counter valuation report filed by the respondent; (d) the fact of the partition was duly intimated to MCD by the registered letter of the petitioner dated 3.10.1988.

2. The learned Counsel for the petitioner M.C.D. has relied upon a Division Bench order of this Court in C.W.P. 2073/1983 dated 22.9.1983 directing the matters remanded to be considered in accordance with law. The Counsel for the petitioner seeks a similar order. I, accordingly, hereby direct that the matter is remanded to the Assessing Authority of MCD to be considered in accordance with law. However, it is clarified that the valuation report of the petitioner shall also be considered by the Assessing Authority and given appropriate consideration though it is not binding.

3. If so far as the issue of partition of property is considered the Counsel for MCD

contended that the provisions of Sec.128(4) & (5) had not been complied with. It is also stated that Bye-laws 3 & 4 of the MCD Taxation Misc. Provision, Bye-laws, 1959 have not been complied with nor prior consent of DDA, the lessor, has been obtained for partitioning the property. The submission of the learned Counsel has substance because mere sending of letter communicating partition is not sufficient compliance of Sec.128 of the MCD Act and Bye-laws 3 & 4. Sec.128, Sub-section 1, 2, 3, & 4 reads as under :

Notice of transfers- (1) Whenever the title of any person primarily liable for the payment of property taxes on any land or building is transferred, the person whose title is transferred and the persons 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 Commissioner.

(2) In the event of the death of any person primarily liable as aforesaid the person on whom the title of the deceased devolves, shall give notice of such devolution to the Commissioner within six months from the date of the death of the deceased.

(3) The notice to be given under this section shall be in such form as may be determined by bye-laws made under this Act, and the transferee or the other person on whom the title devolves shall, if so required, be bound to produce before the Commissioner any documents evidencing the transfer or devolution.

(4) Every person who makes a transfer as aforesaid without giving such notice to the Commissioner shall, in addition to any penalty to which he may be subjected under the provisions of this Act, continue liable for the payment of all property taxes from time to time payable in respect of the land or building transferred unit he gives such notice or unit the transfer has been recorded in the Commissioner's book, but nothing in this section shall be held to affect the liability of the transferee for a payment of the said tax."

The relevant Bye-laws 3 and 4 read as under :

"3. Notice of transfer of title-

The notice regarding transfer of title required to be given u/s 128 shall be either in Form "A" or Form "B" as the case may be, and shall state clearly and correctly all the particulars required by the said form.

4. Property taxes to be paid Up to date.- No such notice shall be deemed to be validly given unless all the property taxes due at the date of the notice in respect of the premises to which it relates have been paid in full."

The above provision not having been complied with, the impugned order is not sustainable on this plea also.

4. Accordingly the writ petition is allowed, the impugned order dated 30.5.1987 in H.T.A. No. 715/86 is set aside and the matter is remanded to the Assessing

Authority for disposal in accordance with law and the clarification regarding valuation given in this judgment. There shall be no order as to costs.