(2010) 09 DEL CK 0344

In the Delhi High Court

Case No : Writ Petition (C) 6989 of 2009 and CM No. 2386 of 2009

MCD APPELLANT

Vs

Rani Arya RESPONDENT

Date of Decision : 15-09-2010

Acts Referred:
Delhi Municipal Corporation Act, 1957 — Section 164

Citation : (2011) 1 AD 349

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Mukesh Gupta, for the Appellant; Bhupinder Chandohk and Arya Girdhari, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—The petitioner MCD by this writ petition impugns the judgment dated 11th September, 2008 of the Municipal Taxation Tribunal allowing the appeal of the respondent against the order dated 23rd October, 2006 of the Assistant Assessor and Collector of the petitioner MCD with respect to the assessment of property tax of Flat No. B-67, Pink Apptt., Paschim Vihar, New Delhi and allowing vacancy remission to the respondent for the period from 26th January, 1988 to 25th December, 1995.

2. Notice of the petition was issued. The counsel for the parties have been heard. The challenge is only to allowance of vacancy remission.

3. The provision for vacancy remission was to be found in Section 164 of the DMC Act, 1957 as stood prior to its amendment in the year 2003. The test laid down in Section 164 permitting vacancy remission is "if any building ... has remained vacant and unproductive of rent ...."

4. In the present case there is no dispute that the flat was lying vacant and unproductive of rent for the period between 26th December, 1988 and 25th December, 1995. The counsel for the petitioner MCD has however urged that

"vacant and unproductive of rent" should be "for reasons beyond the control of the owner". The counsel for the petitioner MCD has argued that the MCD cannot be deprived of full tax by the owner of a property of his own volition keeping the property vacant and unproductive of rent and it is only when the property remains vacant for reasons beyond the control of the owner and/or when the owner for reasons not attributable to him is neither able to occupy the same himself nor able to let out the same, that he becomes entitled to vacancy remission. Reliance for contending so is placed on a text book published by Nabhi Publications on Property Tax Laws where the author has observed that "where due to factors beyond his control, the tax payer is not in a position to occupy the flat after taking over possession of the same, vacancy remission from the date of taking over possession to the date of occupation may be allowed."

5. The interpretation of statute cannot be based on a view taken by a particular publisher/author. I am unable to find from a bare perusal of language of Section 164 that to be entitled to vacancy remission, it has to be demonstrated that the vacancy was for reasons beyond the control of the tax payer. If that was the intent, nothing prevented the legislature from providing so.

6. The Supreme Court in State through Central Bureau of Investigation Vs. Parmeshwaran Subramani and Another, observed;

It is settled that where there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the court to undertake any exercise to read something into the provisions which the legislature in its wisdom consciously omitted. Such an exercise if undertaken by the courts may amount to amending or altering the statutory provisions.

In a plethora of cases, it has been stated that where, the language is clear, the intention of the legislature is to be gathered from the language used. It is not the duty of the court either to enlarge the scope of legislation or the intention of legislature, when the language of the provision is plain. The court cannot rewrite the legislation for the reason that it had no power to legislate. The court cannot add words to a statute or read words into it which are not there. The court cannot, on an assumption that there is a defect or an omission in the words used by the legislature, correct or make up assumed deficiency, when the words are clear and unambiguous. Courts have to decide what the law is and not what it should be. The courts adopt a construction which will carry out the obvious intention of the legislature but cannot set at naught legislative judgment because such course would be subversive of constitutional harmony.

7 In my opinion the only requirement for availing vacancy remission is that the building has remained vacant and unproductive of rent. The twin test has been laid inasmuch as in a particular situation it is possible that the property may be lying vacant though yielding rent to the owner. The tenant after taking the property on rent may choose not to occupy it for some time and in which case the vacancy remission cannot be claimed.

8. Vacancy remission is in the nature of exception to the general law of the building being liable for property tax. The Supreme Court in Union of India and others Vs. M/s. Wood Papers Ltd. and another, has held;

When the question is whether a subject falls in the notification or in the exemption clause then it being in nature of exception is to be construed strictly and against the subject but once ambiguity or doubt about applicability is lifted and the subject falls in the notification then full play should be given to it and it calls for a wider and liberal construction.

Following the above, I find that once a building is found entitled to vacancy remission, fetters thereon need not be placed.

9. The Tribunal has also referred to the judgments of this Court in Hamdard (Wakf) Laboratories India Vs. Municipal Corporation of Delhi, and Angel Properties P. Ltd. v. MCD 144 (2007) DLT 651 for granting vacancy remission to the respondent. In Hamdard (Wakf) Laboratories India, this Court negatived the plea of MCD that vacancy remission could be availed of only between two lettings and not for the period the building remained vacant and unproductive of rent prior to its first letting. The Division Bench in judgment reported in MCD Vs. Hamdard (Wakf) Laboratories India, dismissed the appeal.

10. The counsel for the respondent has today also placed reliance on Municipal Corporation of Delhi Vs. Lawrence Cold Storage Pvt. Ltd. and Another and Indraprastha Ice and Cold Storage and Another, wherein Departmental Instructions dated 9th July, 1980 of the MCD reproduced in para 41 of the judgment and from a reading whereof also it follows that a property becomes entitled to vacancy remission for vacancy at the time of or before the first assessment itself.

11. The counsel for the respondent has however sought to urge that the vacancy in the present case was also for reasons beyond the control of the respondent. It is contended that the flat was situated in a Cooperative Group Housing Society, possession whereof was delivered by the contractor in December, 1987 and the society had in January, 1988 issued possession letters to all the members but there were no amenities in the society till then making it impossible for the members to occupy the flat. It is contended that the respondent occupied the flat as soon as it was possible. The counsel for the petitioner MCD has rejoined by contending that no such findings have been returned by the Tribunal. However, in view of what has been held by me hereinabove, the same is immaterial inasmuch as the said factors are not found relevant u/s 164 of the DMC Act.

12. There is no merit in the petition. The same is dismissed. No order as to costs.

