(2011) 01 DEL CK 0280

In the Delhi High Court

Case No : Writ Petition (C) 4267 and 4268 of 2007

MCD APPELLANT

Vs

R.P. Estates Pvt. Ltd. RESPONDENT

Date of Decision : 24-01-2011

Acts Referred:

Citation : (2011) 01 DEL CK 0280

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Nalin Tripathi, for the Appellant; B.B. Jain, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—The two writ petitions impugn the common order dated 2nd September, 2005 of the Addl. District Judge, allowing the two appeals preferred by the Respondent herein against the order dated 15th March, 2002 of the Jt. Assessor & Collector of the Petitioner MCD amending the rateable value of the property No. S-9 & S-10 being the first and second floors, in Green Park Extension, New Delhi of the Respondent at Rs. 17,05,400/- w.e.f. 1st April, 1998 and at Rs. 18,03,300/- w.e.f. 1st September, 1998 for the year 1998-99 and which rateable value was also followed for the year 2000-2001.

2. The Addl. District Judge allowed the appeals of the Respondent only for the reason that the Petitioner MCD failed to prove that the notice dated 31st March, 1999 u/s 126 of the Delhi Municipal Corporation Act, 1957 so proposing to enhance the rateable value w.e.f. 1st April, 1998 had been served on the Respondent. Since the proviso to Section 126 of the Act, as it stood prior to the amendment w.e.f. 1st August, 2003, provided that no person by reason of amendment of the assessment list u/s 126 of the Act shall become liable to pay any tax or increase in tax in respect of any period prior to the commencement of the year in which notice under 126(2) of the Act was given, the Addl. District Judge held that the Petitioner MCD having failed to prove that the notice

enhancing the rateable value w.e.f. 1st April, 1998 had been served before 31st March, 1999, could not in pursuance to the notice enhance the rateable value.

3. Aggrieved therefrom the present petitions were filed after nearly two years of the order. When the petitions came up first before this Court the Court directed filing of an affidavit explaining the delay. An affidavit was so filed and whereafter notice issued.

4. In so far as the aspect of delay of about two years in filing the petitions is concerned, this Court in order dated 3rd May, 2006 in titled MCD v. N.N. Bhardwaj W.P.(C) No. 1490/2005 has held that delay has to be seen in the context of the facts; it was held that if the effect of the order impugned would be that the MCD would lose its tax on the enhanced rateable value, meaning thereby the taxpayer citizens of Delhi would suffer due to the sloppy attitude of the Municipal officers, the delay would not come in the way of the Court entertaining the petition. I am in respectful agreement and hold the petitions to be maintainable notwithstanding the delay.

5. The Addl. District Judge has allowed the appeals of the Respondent on finding that the requisite notice u/s 126(2) of the Act had not been served. The said finding is a finding of fact and would ordinarily not be interfered with by this Court in writ jurisdiction.

6. I am even otherwise not in a position to find any error in the order of the Addl. District Judge, calling for a writ of certiorari to be issued. It is not in dispute that, for the Petitioner MCD to enhance the rateable value w.e.f. 1st April, 1998, it was incumbent upon it to "give" the notice to the Respondent on or before 31st March, 1999. The alleged notice is of 31st March, 1999 only. The Petitioner MCD waited for a full year and chose to give the notice on the last day of the year. Section 444 of the DMC Act, 1957 provides for the manner of issuance and service of the notices required to be given by the MCD or any of its officers. Thereunder a notice is deemed to be duly served, where the person to be served is a company, as the Respondent here is, if the document is addressed to the Secretary of the company at its registered office or at its principal place of business and is either sent by registered post or delivered at the registered office or at the principal office or place of business of the company. It is not the case of the Petitioner MCD that the notice dated 31st March, 1999 was sent by registered post. Notice having been prepared on the last day of 31st March, 1999, even otherwise the question of sending it by registered post which in any case would not have reached the Respondent on the same day, did not arise. The case of the Petitioner MCD is that it has tendered the notice to the Respondent and the Respondent refused to take the notice and the same after obtaining necessary permission for pasting was pasted at the site.

7. Needless to state the Respondent denies that the notice was tendered or refused or was pasted. The Addl. District Judge has returned a finding of fact that the name of the officer of the Petitioner MCD who had affixed the notice was not

available; the signature of the officer who affixed or who witnessed the affixation did not exist, the column of date was unfilled; that the attestation of the notary was blank - without any report of service by affixation of notice. The Addl. District Judge thus held that MCD had failed to prove "giving" of notice. Reliance was placed on the Division Bench judgment of this Court in Municipal Corporation of Delhi Vs. Dharma Properties and Another, .

8. The importance of a notice u/s 126(2) of the Act has been repeatedly emphasized by this Court, also in (a) Municipal Corporation of Delhi Vs. M/s. Ajant Iron and Steel Co. Pvt. Ltd. (b) DCM Ltd. Vs. M.C.D. and Others, and (c) New Delhi Municipal Council Vs. Anil Kumar Khanna, .

9. The case of the Respondent in the appeal before the Addl. District Judge was that the Petitioner MCD had also purported to increase the rateable value with effect from 1st April, 1997 vide notice dated 25th March, 1998 sent by registered post AD; however the said notice was delivered on the Respondent only on 4th April, 1998; it was thus the contention of the Respondent that the notice having been served in the year next to the year from which the rateable value was sought to be enhanced, could not result in such enhancement; the Deputy Assessor & Collector of the Petitioner MCD however overruled the said objection and enhanced the rateable value w.e.f. 1st April, 1997; that the said order also was appealed against by the Respondent and which appeal was allowed vide judgment dated 12th July, 2001 and the assessment for the year 1997-98 set aside; that as a result thereof the Respondent sought refund of excess taxes of over Rs. 10 lacs recovered by the Petitioner MCD; that the Petitioner MCD unsuccessfully preferred a writ petition to this Court against the order dated 12th July, 2001 of the Addl. District Judge; that it was then the Petitioner MCD concocted the notice dated 31st March, 1999 to avoid refund of excess taxes to the Respondent. It was further the case of the Respondent in appeal before Addl. District Judge in present case that there was no mention of the notice dated 31st March, 1999 in the assessment order dated 11th March, 2001 of enhancement of rateable value w.e.f. 1st April, 1997 or in the appeal there against ,as would ordinarily have been, had the notice been issued.

10. Though the Learned Addl. District Judge has in the judgment impugned in these petitions not dealt with the aforesaid pleas of the Respondent but in my view the same have an important bearing on the matter and also dissuade me from entertaining these petitions.

11. The Petitioner MCD in my view has utterly failed to prove the service of the notice. The service of the notice was being vehemently opposed by the Respondent. Inspite of the same, the Petitioner MCD neither before the Assessor & Collector nor before the Addl. District Judge led any evidence to prove as to who had tendered the notice to the Respondent; who on behalf of the Respondent had refused to accept the same or who on behalf of the Petitioner MCD had affixed the notice. The notary whose notarial stamp was affixed at the back of the notice was also not proved/examined.

12. Having agreed with the Addl. District Judge, need is not felt to decide the other question raised by the counsel for the Respondent of the mode by way of pasting/affixation being not available u/s 444 when the noticee is a company and being available only in cases where the noticee is neither a company nor a partnership nor a public body or a society, for service on all of whom, special provision has been made.

The petitions are accordingly dismissed. No order as to costs.