

(2002) 10 DEL CK 0120
In the Delhi High Court
Case No : CM (M) No. 609 of 1999

M.C.D.

APPELLANT

Vs

Shri O.P. Mittal and Another

RESPONDENT

Date of Decision : 01-10-2002

Acts Referred:

Delhi Municipal Corporation Act, 1957 — Section 126, 128, 131, 175

Citation : (2002) 100 DLT 634

Hon'ble Judges : Sanjay Kishan Kaul, J

Bench : Single Bench

Advocate : Amita Gupta, for the Appellant; Nemo, for the Respondent

Judgement

Sanjay Kishan Kaul, J.—Admit.

2. The petitioner corporation has impugned the order dated 12.4.1999 of the learned Additional District Judge holding that the entire proceedings of assessment of house tax and fixing rateable value in terms of the assessment order dated 19.3.1994 and rectified by the order dated 5.10.1995 were without jurisdiction since no notice has been served u/s 126 of the Delhi Municipal Corporation Act, 1957 (hereinafter referred to as the Act) on respondent No. 1.

3. The learned Additional District Judge as the appellate authority has held that since the information was supplied by the Group Housing Society u/s 131 of the said Act, the service of the notice u/s 126 of the Act on the individual assessed as a statutory requirement cannot be ignored and the mere service of the notice on the society would not suffice.

4. Learned counsel for the petitioner has assailed the aforesaid finding by reference to the averments in the writ petition. It may be noted that though notice was served on respondent No. 1 for 28.5.2002 more has put in appearance on behalf of the said respondent who is the assessed.

5. It is stated in the writ petition that notice is served on 23.3.1991 by the

petitioner being a consolidated proposal/notice u/s 126 of the Act on the Adarsh Group Housing Society Ltd and that till the date of issuance of the said notice no statutory compliance has been made by the society or the individual members in terms of Section 128 of the Act read with Taxation miscellaneous provisions bye-laws. The information submitted by the society including the details of the cost and list of individual members were sent only in pursuance to the said notice u/s 126 of the said Act as annexure P2 which gave the details of the list of allottees and states that the said information is u/s 131 and 175 of the Act.

6. I have considered the submissions advanced by learned counsel for the petitioner.

7. The scheme of the act provides that an assessment list is to be prepared u/s 124 while Section 126 provides for the amendment of the assessment list. Section 128 provides for notice of transfer and Section 131 empowers the Commissioner to call for information. As per the averments in the writ petition the society in question did not intimating the list of occupants of each flat and neither did the flat owners approach the petitioner corporation intimating about the transfer of the said flat allotted to them until the notice was served u/s 126 of the Act. This issue was recently considered in CW No. 5871/1999 and connected petitions Municipal Corporation of Delhi v. A.M. Khanwilkar and Anr. decided on 28.2.2002. Reliance was placed on the observation of the Supreme Court in MCD v. Trigon Investment and Trading Private Limited 62(96) DLT 222 where it was held that the corporation should not be running after the assessed and enquiring from the owners about the transfer of any property. It was the duty of the society and individual member to intimate the corporation about the same. In MCD v. A.M. Khanwilkar case (supra) also the society had failed to furnish the list of the occupants and nor had the individuals owners intimated the corporation.

8. In view of the aforesaid, in my considered view, the same principle would apply to the present case. The occasion for the corporation to intimate the individual assessed would have arisen only when the information was furnished. The information is stated to have been furnished post issuance of the notice u/s 126 of the Act. Thus the impugned order insofar as it quashed the entire proceedings of house tax fixing the rateable value in terms of the assessment order dated 19.3.1994 and rectified order dated 5.10.1995 holding them to be without jurisdiction and directing that the petitioner is not liable to pay any house tax cannot be sustained. The said finding is hereby set aside.

9. Insofar as the liability of the resp. No. 1 for house tax is concerned, the Division Bench of this Court in McDowell & Co. Ltd. v. Municipal Corporation of Delhi (1997) VI AD (Del) 191 had held that till mutation is effected and there is compliance of Section 128 of the Act read with the Bye-laws, transferee is liable to pay property tax prior to issuance of Section 126 notice to the transferee. The notice was issued to the society in the absence of any list by the society and intimation by the members and thus the liability of the petitioner to pay house

tax does not cease.

10. I am of the considered view that in such a situation the matter is liable to be remanded back to the assessing authority to determine the rateable value in accordance with law after hearing the respondent No. 1.

11. Writ petition stands disposed of in the aforesaid terms leaving the parties to bear their own costs.

C.M. No. 3149/1999 & 1788/2000

12. No further orders are called for in this application in view of the disposal of the writ petition. Application stands disposed of.