

(2002) 10 DEL CK 0123
In the Delhi High Court
Case No : C.W. 3731 of 1990

MCD

APPELLANT

Vs

Subhash Chander Goel and Another

RESPONDENT

Date of Decision : 01-10-2002

Acts Referred:

Delhi Municipal Corporation Act, 1957 — Section 126, 126(1), 126(2), 129, 44
Punjab Municipal Act, 1911 — Section 67(1)

Citation : (2002) 100 DLT 519

Hon'ble Judges : Jiwan Dass Kapoor, J;B.A. Khan, J

Bench : Division Bench

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

Final Decision : Allowed

Judgement

J.D. Kapoor, J.—Main question involved in this petition is whether notice u/s 126 of the Delhi Municipal Corporation Act, 1957 (hereinafter called "the Act") is illegal and invalid because of its being not served within the year to which it related as contemplated u/s 126 of the Act and secondly imperative conditions of service u/s 444(1)(d) of the Act having not been complied with.

2. The respondent No. 1 took the suit property on lease from DDA in 1979 for a premium of Rs. 14795/-. He started construction on the said plot of land in 1980. It is also not in dispute that the said property was put to residential use only. A notice u/s 126 of the Act was issued by the petitioner proposing to enhance the rateable value of the said property from Rs. 2520/- to Rs. 37800/- w.e.f. 1.4.1980 on account of erection of building on plot. The cost of the land was assessed at Rs. 1600/- per sq. meter existing in the year 1980 on the basis that for different colonies of the DDA and L.D.O., the market rate of land in the year 1960 in Safdarjung Development Area was Rs. 1600/- per sq.meter. The cost of construction was assessed at Rs. 2,03,000/-.

3. Section 126 of the Act provides as under:-

"(1). The Commissioner may, at any time, amend the assessment list.

- a. by inserting therein the name of any person whose name ought to be inserted; or
- b. by inserting therein any land or building previously omitted; or
- c. by striking out the name of any person not liable for the payment of property taxes; or
- d. by increasing or reducing for adequate reasons the amount of any rateable value and of the assessment thereupon; or
- e. by making or cancelling any entry exempting any land or building from liability to any property tax; and
- f. by altering the assessment on the land or building which has been erroneously valued or assessed through fraud, mistake or accident; or
- g. by inserting or altering an entry in respect of any building erected, re-erected, altered or added to after the preparation of the assessment list:

provides that no person shall be reason of any such amendment become liable to pay any tax or increase of tax in respect of any period prior to the commencement of the year (in which the notice under Sub-section (2) is given)

2. Before making any amendment under Sub-section (1) the Commissioner shall give to any person affected by the amendment, notice of not less than one month that he proposes to make the amendment and consider any objections which may be made by such person."

4. For our purposes Clauses d & g are relevant.

5. Section 129 of the Act casts an obligation upon a person who is primarily liable for the property taxes assessed on the building to give notice in writing to the Commissioner within fifteen days from the date of its completion or occupation whichever first occurs, or as the case may be, from the date of its enlargement or re-occupation and property taxes shall be assessable on the building from the said date.

6. Section 129 reads as under:-

"129. NOTICE OF ERECTION OF BUILDING ETC.

When any new building is erected or when any building is rebuilt or enlarged or when any building which has been vacant is re-occupied, the person primarily liable for the property taxes assessed on the building shall give notice thereof in writing to the Commissioner within fifteen days from the date of its completion or occupation whichever first occurs, or as the case may be, from the date of its enlargement or re-occupation and property taxes shall be assessable on the building from, the said date."

7. Section 444 of the Act provides different modes of service on different kind of entities. Relevant clauses of Section 444 are as under:-

"(1) Every notice, bill summons, order, requisition or other document required or authorised by this Act or any rule, regulation or bye-law made there under to be served or issued by or on behalf of the Corporation, or by any of the municipal authorities specified in Section 44 or any municipal officer, on any person shall, save as otherwise provided in this Act or such rule, regulation or bye-law, be deemed to be duly served.

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d. in any other case, if the document is addressed to the person to be served and

(i) is given or tendered to him, or

(ii) if such person can not be found, is affixed on some conspicuous part of his known place of residence or business, if within the Union territory of Delhi, or is given, or tendered to some adult member of his family or is affixed on some conspicuous part of the land or building, if any, to which it relates, or

(iii) is sent by registered post to that person."

8. Apart from this, the petitioner has also assailed the observations of the learned A.D.J. holding that the notice sent to the respondent was. in printed form. The words new entry/manner were not struck out being unnecessary words. In this regard, reliance has been placed upon a Division Bench of this court in the matter of New Delhi Municipal Committee v. Indian Bank Ltd. wherein following view was taken:-

"That in the notice issued u/s 67(1) of the Punjab Municipal Act, the Munpl. Committee is bound to inform the assessed the reasons for the suggested alteration of the assessment. This is a condition precedent for a valid notice. Where the notice issued is in a printed form it is the duty of the issuing officer to strike out the unnecessary words in the printed form."

9. We are afraid the learned ADJ fell in error while holding the notice as vague on the aforesaid ground as in the notice it was specifically made clear that the rateable value was proposed to be enhanced on account of erection of building. Thus, reasons for enhancement of rateable value were made clear. Even if it is assumed that the unnecessary words were not struck off, it makes no difference as these words were not relevant for the revision of rateable value as the reasons for enhancement were adequately made known to the respondent.

10. The object of striking off unnecessary words is only to make an assessed aware of the reasons, or the grounds for revising or enhancing the rateable value. In the above referred judgment also this court has held that the obligation of the corporation is to inform the assessed the reasons for assessment. It is not the case of the respondent as to what kind of confusion was created by non-deletion of unnecessary words nor is it the case of the respondent that he did not

understand the reasons for enhancement of assessment. Thus objection is highly frivolous and meaningless.

11. The other objection that notice is invalid because the formula on which it proposed to base the new assessment was not intimated to him is groundless as it was only the proposed or the suggested enhancement for alteration in the rateable value on account of new construction. The proposed or suggested enhancement or alteration is not rateable value that is final and recoverable. It is just a notice to which the assessed is required to react and come out with his side of the story and the liability. The respondent No. 1 not only appeared before the Assessing Authority but also submitted detailed written objections by taking the plea that the property had been partially rented and partially self occupied and desired that the rateable value of the property be fixed in terms of law laid down by the Supreme Court in *Dr. Balbir Singh v. MCD* 1985 R.L.R. 1. He also filed copy of the lease agreement vide which he rented out first floor, valuation report, receipt for applying for completion certificate, Income Tax assessment order and copy of general power of attorney.

12. It was on the basis of these documents that the Assessing Authority fixed rateable value. However, the Assessor after taking into consideration the details provided by respondent No. 1 and applying the relevant provisions of Delhi Rent Control Act for fixing rateable value in respect of rented property as well as occupied premises and after granting statutory deduction etc. fixed rateable value at Rs. 30,420/- per annum w.e.f. 1.11.1980 and Rs. 25,600/- per annum w.e.f. 1.11.1985. We do not find ourselves in agreement with learned counsel for respondent No. 1 and for that purpose learned A.D.J. that the Commissioner was required to investigate all the aspects of the matter before issuing show cause notice u/s 129 of the Act to the assessed and inform him about the findings of his investigations in detail in the form of proposed order so as to enable the assessed to know the entire case of MCD.

13. We are afraid this is most pedantic and irrational approach as it is for the assessed/property owner or the person primarily liable for property tax to give a notice u/s 129 in writing to the Commissioner within 15 days from the date of completion of a building or when any building is re-built or when any building which is vacant is reoccupied from the date of its enlargement or re-occupation and property tax is assessable on the building from the said date. Instead of discharging his statutory obligation u/s 129 of the Act, the respondent and for that purpose learned A.D.J. found fault with the petitioner and required it to first make investigations into all aspects of the property and then pass proposed orders. The reasoning is very queer as it is for the purpose of investigation that a notice u/s 126 is served upon an assessed informing him about the proposed or suggested rateable value on the basis of new construction or enlargement of construction so as to provide full opportunity to the assessed to challenge the same and confront proposed rateable value. It is like putting a boot on the other leg and not the leg it is meant for.

14. Last but not the least the holding of the notice invalid because of its non-service in terms of Section 444 is completely unsound and untenable. Had respondent No. 1 not been served with a notice there was no occasion for respondent No. 1 to appear before the Assessing Officer and file written statement and present his case through lawyer . The notice was sent by registered post and was received by the assessed which led to filing of written statement by respondent No. 1. Once notice is served by Regd. post, the provision of Section 444(1)(d) of the Act stand duly complied with. On the one hand respondent No. 1 is taking the plea that he was not served with the notice u/s 126 in accordance with Section 444 of the Act which plea is false and self defeating because of his having appeared and filed the objection before the Assessing authority, while on the other hand, he has not discharged the obligation cast upon him by Section 129 of the Act. It is admitted that construction was completed by November, 1980. In spite of this, respondent No. 1 did not give notice as required u/s 129 of the Act so as to facilitate the petitioner to send him the proposed or suggested rateable value as required under. Section 126 of the Act. Since the entire building constructed by respondent No. 1 was a new building, there was no need to specifically indicate to respondent No. 1 that tax was being proposed to be levied on account of entire building. It was not a case of addition, alteration or enlargement or re-occupation of the building. Learned A.D.J. became oblivious of the fact that a detailed inspection report indicating the accommodation was also sent to respondent No. 1.

15. Similarly, it is difficult for us to uphold the findings of learned A.D.J. that if notice is served in the year for which the proposal is sought to be made then the notice per se would become illegal. Proviso to Section 126 provides the answer. Notice u/s 126 is nothing but a proposal to fix the rateable value and it is open to the assessed to put up his case as to from which particular date or time tax is assessable by providing details as to the date of completion of building and other relevant particulars. Moreover proviso to Section 126 itself provides that assessed would not be liable to pay tax in respect of any period period to the commencement of the year in which notice is given. Merely because notice is not served in the year for which the proposal is sought to be made does not render it per se illegal and invalid.

16. At the end, we are also constrained to observe that the learned A.D.J. on the one hand took upon himself to assess the rateable value which according to him come out to Rs. 19,530/- per annum while on -the other hand ordered the original rateable value of the property to continue to be Rs 2520/- per annum till such time petitioner takes fresh steps in accordance with law to revise/enhance the rateable value on account of failure to serve the notice u/s 126 of the Act and the notice being also illegal and invalid. The approach adopted by learned A.D.J. was strange which we find difficult to appreciate. Perversity is writ large on his order and so was his entire approach was fallacious, illegal and completely myopic. The impugned judgment cannot stand judicial scrutiny and has to be set

aside.

17. As a result petition succeeds and rateable value assessed by Deputy Assessor and Collector of MCD is upheld and the impugned order dated 28.7.1989 of the Learned A.D.J. set aside.