(2012) 02 DEL CK 0029

In the Delhi High Court

Case No : Writ Petition (C) 81 of 2003

M/S J.K. Indusries Ltd. APPELLANT

Vs

N.D.M.C. RESPONDENT

Date of Decision : 08-02-2012

Acts Referred:

Citation : (2012) 187 DLT 441

Hon'ble Judges : Hima Kohli, J

Bench : Single Bench

Advocate : R.P. Sharma and Ms. Parul Sharma, for the Appellant; Arjun Pant, for the Respondent

Judgement

Hima Kohli, J.—The present petition has been filed by the petitioner praying inter alia for quashing of the property tax demand raised by the respondent/NDMC for the year 2002-03 by way of a demand notice dated 05.11.2002 in respect of flat No. A-2, 4th Floor, CPS, S-8, Girdhar Apartments, New Delhi (Annexure P-11)

2. Learned counsel for the petitioner states that the necessity of filing the present petition has arisen on account of the failure on the part of the respondent/NDMC to re-assess the rateable value of the subject premises on the basis of a previous order passed by the Single Judge in W.P.(C) 4118/2001 entitled, "Straw Products Ltd. vs. NDMC". It is stated that in the aforesaid writ petition, the Court was examining four petitions pertaining to different flats in Girdhar Apartments, wherein a common question of law had been raised as to whether the assessing authority could have taken the purchase price of the flat as the basis for estimating the rateable value of the flats in question for the purpose of determining property tax. A copy of the aforesaid order dated 19.09.2002 has been enclosed as Annexure P-10 to the writ petition. Learned counsel for the petitioner states that while considering the aforesaid connected matters, counsels for both, the private writ petitioners and the respondent/ NDMC, had relied upon an earlier decision dated 14.03.1996 of the Division Bench of this Court in W.P.(C) 4204/1995 entitled NDMC vs. L&T Ltd.. In the

aforesaid batch of writ petitions before the Division Bench, the flats in question were in the very same building, namely, Girdhar Apartments. The observations of the Division Bench were reproduced by the learned Single Judge in the case of ''Straw Products (Supra)'', whereafter, it was observed as below:

The Division Bench clearly expressed its view that if a transaction was entered into by the flat buyers in close proximity of time with the date of commencement of construction, say by an year or so then only the price paid by the buyer would be treated as a guide for calculating the cost of the land and the cost of construction.

In the present case, the flat buyers have purchased the flats in 1986. The construction commenced some time in 1981 though was completed in 1986. This gap of five years would, thus, not make the purchase price as in close proximity with the date of commencement of construction and, thus, the purchase price cannot be taken as an indicator in view of the observations of the Division Bench. Despite this, the assessing authority and the appellate authority have held a view that the purchase price is the right indicator.

The alternative to be followed in such a case has also been observed by the Division Bench by stating that in case there is no proximity of time as aforesaid the assessing authority may have the cost of construction determined by an independent valuer of the land and the cost of land determined by reference to the date made available by evidence of comparable transactions involving the same types of land. It was this alternative direction which should have been followed. In the present case in the absence of a close proximity between the date of commencement of construction and the date of purchase of the property.

3. After making the aforesaid observations, the impugned assessment order and the order of the appellate authority were set aside by the Single Judge and the matter was remanded back to the assessing authority for redetermination of the rateable value of the flats in question on the basis of the directions issued by the Division Bench in W.P.(C) 4204/1995, for the NDMC to arrive at the rateable value after assessing the cost of construction to be determined by an independent valuer and the cost of the land to be determined by reference to the date made available by evidence of comparable transactions involving similar types of land. The writ petition was disposed of with directions to the parties to appear before the Adviser (Revenue) on a fixed date and time.

4. Counsel for the petitioner states that despite the decision of the Division Bench in the case of L&T Ltd. (supra) and the decision of the Single Judge in the case of Straw Products Ltd. (supra), till date, the respondent/NDMC has not taken any steps whatsoever to determine the rateable value of the flat of the petitioner in terms of the aforesaid decisions. It is most unfortunate that after passage of over 15 years from the date of the decision of the Division Bench and over a decade from the date of the decision of the Single Judge, the respondent/ NDMC has not bothered to pass a fresh assessment order by taking into

consideration the manner of calculating rateable value in terms of the directions issued by the Division Bench in W.P.(C) 4204/1995. Even while passing the order dated 19.09.2002, the Single Judge had expressed a hope that the endless process of constant litigation on the said issue would be brought to an end.

5. The manner in which the respondent/NDMC has processed the cases for carrying out fresh assessment for recovery of annual property tax in respect of the flats situated in Girdhar Apartments is quite mystifying to say the least. It is rather strange that in all these years, the respondent/NDMC has not shown any hurry to correctly assess the property tax in respect of the flats in Girdhar Apartments and then proceed to collect the property tax dues from the assesses. There is no explanation worth its name offered by the learned counsel for such inordinate delay on the part of the respondent/NDMC.

6. Following the decision of the Division Bench in the case of ''L&T Ltd. (Supra)'' and that of the Single Judge in the case of ''Straw Products (Supra)'', the impugned demand notice dated 05.11.2002 for the assessment year 2002-03 in respect of the subject flat is quashed and set aside. The petitioner is directed to appear before the Director (Tax), NDMC, on 29.02.2011 at 3 PM for a hearing. The Director (Tax), NDMC shall consider the submissions made by the petitioner and thereafter positively pass a speaking order within a period of six weeks from the date of conclusion of submissions under written intimation to it. A copy of the decision taken shall be placed on record by the respondent/NDMC within a period of two weeks thereafter. In case the respondent/NDMC does not pass a speaking order within the time granted hereinabove, the petitioner shall be entitled to approach this Court for appropriate ordeRs.

The petition is disposed of.

A copy of this order be forwarded by the Registry to the Chairperson, NDMC, for perusal and compliance.

