

(1999) 08 DEL CK 0080
In the Delhi High Court
Case No : C.W. No. 5611/97

Narendra Prasad Dube

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 19-08-1999

Acts Referred:

Delhi Municipal Corporation Act, 1957 — Section 126, 444, 491

Citation : (1999) 5 AD 620 : (1999) 81 DLT 378 : (1999) 51 DRJ 152 : (1999) 4 RCR(Civil) 508

Hon'ble Judges : D.K. Jain, J;Arun Kumar, J

Bench : Division Bench

Advocate : Mr. K.L. Rathee, for the Appellant; Ms. Maneesha Dhir, for Union of India and Ms. Madhu Tewatia, for the Respondent

Judgement

Arun Kumar, J.—By this writ petition under Article 226 of the Constitution of India, the petitioner has challenged the assessment and determination of rateable value with respect to property belonging to the petitioner at 57, Poorvi Marg, Vasant Vihar, New Delhi and the notices and bills etc. issued by the respondent Corporation in this behalf. In an order passed by this Court on 17th February, 1998 it was observed: Broadly speaking the writ petition involves two questions: (i) jurisdiction of the respondent to make the assessment for the years 1988-89 to 1991-92; (ii) the determination of rateable value of the property.

2. On the question of determination of rateable value of the property, the assessing authority was directed to assess the rateable value afresh. We find that the assessing authority has determined the rateable value afresh. The petitioner has challenged the same by filing an additional affidavit. We are of the view that the petitioner has statutory remedies available against the order of the assessing authority. We do not wish to entertain the challenge to the rateable value in the present proceedings.

3. Coming to the question of jurisdiction of the assessing authority, the learned

counsel for the petitioner has urged that a notice u/s 126 of the Delhi Municipal Corporation Act, 1957 (hereinafter referred to as the Act) is a sine qua non for any amendment of assessment list and revision of rateable value of any property. In the absence of service of a valid notice u/s 126 of the Act, the assessing authority has no jurisdiction to amend the assessment list or revise the rateable value of any property. A notice u/s 126 of the Act was served on the assessed by way of pasting at the property in question on 28th March, 1992. According to the petitioner this is no compliance with the requirement of notice contained in Section 126. On the other hand according to the learned counsel for the Municipal Corporation of Delhi there is due compliance of the provision of service of notice proposing amendment of rateable value. Secondly, the learned counsel for the petitioner has urged that the alleged notice does not comply with the provisions of sub-section (3) of Section 126 of the Act inasmuch as the notice should have allowed one month's time to the assessed from the date of service and this one month period should expire prior to 1st April, 1992. In other words, the contention is that the thirty-day notice period envisaged under sub-section (3) should expire before 1st April, 1992. Lastly, it was urged that the requirement under sub-section (3) is that the commissioner, M.C.D. should give the notice which means that the notice must be signed by the Commissioner himself. In the present case the notice is admittedly not signed by the Commissioner, therefore, the notice is bad.

4. We have carefully considered all the contentions raised by the learned counsel for the petitioner. So far as the question of service of notice on the assessed is concerned, our attention has been drawn to Section 444 of the Act which contains the provision regarding service of notices under the Act. The said section provides for service through affixation on a conspicuous part of the building to which it relates. In the present case, the notice, photo copy whereof has been placed on record, contains an endorsement regarding affixation of the notice on the property 57, Poorvi Marg, Vasant Vihar, New Delhi. The noting regarding affixation has been duly attested by a Notary Public. There is sufficient material on record to hold that there was due service of notice u/s 126 of the Act. The learned counsel for the petitioner tried to place reliance on the provisions contained in Order V of the CPC regarding service of notices. There it is provided that in case of service of a notice by affixation, the serving officer has to make a report about the circumstances under which he resorted to such a service and the name and address of the person by whom the house was identified and in whose presence the copy was affixed is also to be given. These additional requirements are as a matter of fact not satisfied in the present case. The question, however, is whether these requirements should be incorporated in a case of the present type when the Statute under which the notice is issued has itself given the procedure for service of notices under the Act. In our view when there is a specific provision for service of notices under the Act, we should go by that provision to decide whether there was proper service of notice and we need not have resort to the provisions of the Code of Civil Procedure.

5. The next contention raised by the learned counsel for the petitioner is that the period of 30 days should expire before 1st April, 1992, i.e., the notice u/s 126 sub-section (3) ought to have been served well in advance so as to allow a period of 30 days between the date of service of notice and 1st April, 1992. In our view a plain reading of Sub-section (3) shows that there is no merit in this argument. There is nothing in the section to support this contention of the learned counsel. The relevant portion of Sub-section (3) is reproduced as under:

... the Commissioner shall give to any person affected by the amendment, notice of not less than one month at any time before the 1st day of April, 1992 that he proposes to make the amendment and consider any objection which may be made by such person."

6. From the above provision it is clear that the requirement is of service of a notice of not less than one month before 1st day of April, 1992. This plain language of the section does not convey or suggest that the 30 days notice period should expire before 1st April, 1992. Rather the use of the words "at any time" before 1st day of April, 1992 suggests that the notice can be served at any time before 1st April, 1992. What is important is that the notice should allow a period of 30 days from the date of service. The period need not expire before 1st April, 1992. The interpretation suggested by the learned counsel for the petitioner does not achieve any object. Thus we find no merit in this contention.

7. The third argument raised by the learned counsel for the petitioner to challenge the notice is that the notice has not been signed by the Commissioner which is a requirement under Sub-section (3). In this behalf we have only to note that the Act contains provision for delegation of powers of the Commissioner to his subordinates. Section 491 is the relevant section and is reproduced as under :-

"491. Power to delegate functions of Commissioner -

The Commissioner may by order direct that any power conferred or any duty imposed on him by or under this Act shall in such circumstances and under such conditions, if any, as may be specified in the order, be exercised and performed also by any Municipal Officer or other Municipal Employee specified in the order."

8. The learned counsel for the petitioner does not dispute that there is a delegation of power regarding Section 126(1) and (2) by the Commissioner. However, he argues that Sub-section (3) was introduced by way of amendment in the year 1989 and, Therefore, there should have been a specific delegation with respect thereto by the Commissioner in favor of the other officers. We are unable to accept this contention. Section 126(1) contains the main provision regarding amendment of assessment list. The other Sub-sections only contain the procedure. So long as there is a delegation of power with respect to the main provision, there need not be separate delegation of power with respect to each section. On this aspect we note that a learned Single Judge of this Court has observed as under in K.L. Rathee Vs.M.C.D. (1994) 4 A D 555:-

"26. As to the delegation of powers, the petitioner contended that Section 126(3) is an independent power of the Commissioner and the same was not delegated to any one. I do not think so. The substantive provision to amend the assessment list is found in Section 126(1). Sub-section (2) is actually procedural providing for the notice. Sub-section (3) is another aspect of the same power touching the procedural element governing the assessment list for the years commencing on 1st April, 1988, 1st April, 1989 and 1st April, 1990. Just because, the notification referred to Section 12(1) & (2) separately while delegating the power, it cannot be inferred that Section 126(3) is a distinct substantive provision. A wrong understanding or reading of the Statutory provision by the Commissioner would not convert a procedural provision into a substantive provision. Therefore, a delegation of the power u/s 126 would govern the exercise of the procedural aspects referred in sub-sections (2) & (3) also. Section 126 also shall have to be borne in mind. In the circumstances, the delegation notified on 28.5.1963 though refers to several sections including Section 126(1) & (2) separately, shall have to be read as covering the entire Section 126. The substantive power is the power to amend the assessment list; others are incidental to the said parent power."

9. We are in agreement with the view expressed above. Lastly it was argued that Section 116 of the Delhi Municipal Corporation Act is ultra vires the Constitution of India. We find no substance in this argument. We had occasion to hear the learned counsel for the petitioner on this point at greater length in another matter, i.e., C.W. No. 3445/99 K.P. Soni Vs. Union of India. Vide a detailed order dated 17th August, 1999 passed in the said case we have rejected this point. For same reasons we reject this point. Accordingly we find no merit in this writ petition. The same is hereby dismissed with no order as to costs.