

(2002) 10 DEL CK 0052
In the Delhi High Court
Case No : CW No. 5481 of 2001

New Delhi Municipal Council

APPELLANT

Vs

Sh. Rohit Jain

RESPONDENT

Date of Decision : 25-10-2002

Acts Referred:

New Delhi Municipal Council Act, 1994 — Section 115, 116, 128, 128(1), 74
Punjab Municipal Act, 1911 — Section 84(2)

Citation : (2003) 66 DRJ 155

Hon'ble Judges : Sanjay Kishan Kaul, J

Bench : Single Bench

Advocate : Amit Bansal, for the Appellant; S.C. Kaushik, for the Respondent

Final Decision : Allowed

Judgement

Sanjay Kishan Kaul, J.—Rule.

2. With the consent of learned counsel for the parties the matter is taken up for final disposal.

3. This batch of writ petitions has been filed by the petitioner impugning the orders of the appellate authority and raising a question of law as to whether the mere specification of the arrears of house tax in a house tax bill can give rise to a cause of action to the assessed to impugn the same before the appellate authority in so far as it relates to the arrears for which neither the assessment orders nor bills were impugned earlier.

4. The premises in question bear No. MB-34, Inder Prakash Building, 21, Barakhamba Road, New Delhi were originally purchased by one Master Sudesh Behl (minor), beneficiary Trust and thereafter transferred to the respondent in pursuance to agreement to sell dated 20.4.2001. It is stated that vide the assessment order dated 22.3.97 assessment was completed for the years 1989-1990, 1990-1991, 1991-92 and the rateable value was fixed at Rs. 1,50,000/- and for the assessment years 1989 to 1999-2000 notice are stated to

have been issued for each assessment year but no objections were filed by the assessed and the same rateable value was adopted year after year and bills raised.

5. On 26.3.99 objections were filed by the recorded owner for the assessment year 1999-2000 but the same were rejected on 28.7.1999 and the rateable value was maintained at Rs. 1,50,000/-.

6. The respondents for the first time applied for mutation of the property in their name on 4.4.2000 and the mutation was allowed on 19.4.2000. On 30.9.2000 the assessment order was passed by the competent authority allowing the objections filed by the respondents in respect of the year 2000-2001 and the rateable value was fixed at Rs. 27,000/-. Bills were issued dated 24.10.2000 for the current years showing arrears due in respect of previous years. A representation was made by the respondents for reduction in rateable value and the benefit of the same from the year 1989-1990 onwards. On 20.12.2000 separate appeals were filed by the respondents against the bills in question in respect of different assessment years and the said appeals were allowed on 5.3.2001 by the appellate authority holding that there was no bar of limitation to challenging the earlier orders of assessment in view of the bill dated 24.10.2000.

7. It is this conclusion of the appellate authority which is sought to be impugned in these writ petitions.

8. It would be relevant to note that in the bills dated 24.10.2000 the column for details of property tax shows the current demand and arrears of demand separately as under:-

DETAILS OF PROPERTY TAX

A. CURRENT DEMAND TAX PENALTY NF

Demand Covered in this bill.

Tax demand for the year 2000-2001

6750

Addl. demand raised in 2000-2001 for earlier years. 0

B. ARREAR DEMAND

Demand not Covered in this bill.

Demand for which bills issued up to 31.03.2000 193865 36506 49

Total A + B 200615 36506 49

9. The aforesaid thus shows that the current demand is shown separately and the arrears of demand are separately shown stating that the said demand is not covered in this bill.

10. Learned counsel for the petitioner contends that mere mentioning in the arrears in the bill would not suffice for maintaining the appeal. It is not disputed that in view of the provisions of appeal u/s 115 of the NDMC Act, 1994 (hereinafter referred to as the said Act) an appeal is maintainable both against levy or assessment of any tax. It is, however, contended that in the present case the bill in question only levies the amount for the current year and the mere mention of the arrears under a separate column will not make the same as a levy to make it appealable since the bill itself specifically states that the same is arrear of demand and the said demand is not covered in the bill.

11. Learned counsel for the petitioner further submits that admittedly no notice of transfer was given u/s 74 of the said Act prior to 4.4.2000 even though the property was purchased by the respondent on 30.4.94. Section 74(1) of the said Act is as under:-

74. Notice of transfer- (1) Whenever the title of any person primarily liable for the payment of property tax on any land or building is transferred, the person whose title is transferred and the person to whom the same is transferred shall within three months after the execution of the instrument of transfer or after registration, if it is registered, or after the transfer is effected, if no instrument is executed, give notice of such transfer in writing to the Chairperson.

12. Learned counsel for the respondent on the other hand, contends that once the arrears are mentioned in the bill the same would give a cause of action to the respondent to file an appeal against the same demand since Section 115 of the Act uses the word both assessment and levy of any tax. Learned counsel further contends that once the petitioner has rectified the assessment on 30.9.2000, nothing prohibits the rectification to be carried out from retrospective effect. Learned counsel for the respondents further submits that for purposes of filing an appeal u/s 115 of the said Act the period prescribed u/s 116(a) of the said Act for filing of the said appeal is 30 days. Learned counsel submits that the respondent was not in receipt of any assessment order or bill prior to the bill in question and thus there was no occasion for the respondent to file an appeal and thus the appeal was within time since the same was filed soon after the receipt of the bill dated 24.10.2000 and was within time.

13. Learned counsel for the respondent submits that it was the duty of the petitioner to have sent the bills and the assessment orders to the respondents. Learned counsel also lastly submits that inaction of the petitioner in recovering the amount from the previous owners should not result in the liability being fastened on the respondents since it was the duty of the petitioner to have taken appropriate steps for recovery of dues of tax at least for the period prior to the purchase by the respondents. Learned counsel for the respondents referred to the judgment of this court in Smt. Parvati Devi Vs. Municipal Corporation of Delhi, to contend that the appeals could be filed for the earlier years at a subsequent date and that the petitioner had a locus standi. Learned counsel also referred to the Division Bench judgment of this court in Radhu Palace Vs.

Municipal Corporation of Delhi, to contend that the word levy in Section 169(1) of the said MCD Act would include a Bill and would give rise to an independent cause of action. The division bench while considering the maintainability of an appeal u/s 169(1) of the said MCD Act held that a bill gives to the petitioner an independent cause of action and the appeal has to be regarded as levy of tax against which appeal can be filed u/s 169(1) of the Act. A similar interpretation was taken by the Division Bench of this court in Vishwanath Khanna v. NDMC and Anr. 1996(1) AD Delhi 633 in respect of the word levy in Section 84(2) of the Punjab Municipal Act, 1911.

14. I have considered the submissions of learned counsel for the parties.

15. I consider it appropriate to first deal with the judgments referred to by learned counsel for the respondents. It is not disputed that the appeal would be maintainable against the bill which would be a levy. The judgments cited to this effect by learned counsel for respondent thus need not be considered any further in Radhu Palace's case (supra) and Vishwanath Khanna's case (supra).

16. In so far as Parvati Devi's case (supra) is concerned the only principle laid down therein was that the subsequent purchaser of the property in question can prefer an appeal in respect of earlier assessment years which was decided subsequently and has locus standi for the said purpose. This is in fact apparent from the first paragraph of the judgment itself:-

"The question which falls for consideration in this civil revision petition is, as to whether the petitioner herein who purchase the property in question in the year 1991 could prefer an appeal against an order of assessment dated 28th February, 1994 in respect of the assessment years 1988-89 and 1989-90. The learned Appellate Authority has dismissed the appeal only on the ground that the petitioner has no locus standi."

17. It was thus held that the subsequent purchaser has a locus standi to file the appeal.

18. In the present case the order of the appellate authority is not being impugned on the ground that the petitioner who is a subsequent purchaser has no locus standi to challenge the earlier assessment orders. However, such challenge has to be in accordance with law. not only this it has to be noted that in the case of Parvati Devi's case (supra) though the assessment years were prior to the purchase of the property by the concerned party therein the assessment order was subsequent. This is not the position in the present case for all the assessment orders. Some of the assessment orders are prior to the petitioner purchasing the property in 1994 and some are subsequent thereto.

19. The material aspect to be considered in the present facts is the absence of any notice by the respondent u/s 74 of the said Act. Section 74(1) of the said Act mandates that the person whose title is transferred and the person to whom the same is transferred shall within three months give notice of transfer in writing.

Thus the duty is cast even on the purchaser being the respondent to give notice of transfer. This is so as otherwise it will not be possible for the petitioner to find out for each property when the same is transferred. This very aspect has been considered by the Supreme Court in the case of MCD v. Trigon Investments and Trade Pvt. Ltd. and Anr. 62(1996) DLT 222 and it was observed as under:-

"The Act does not contemplate the corporation going about enquiring whether and when a particular land/building is transferred to whom? Any notices required to be issued by the Corporation can validly issued to the transferor until he intimates the Corporation of the transfer and it would be a valid and sufficient service in law; the transferee cannot contend that since he has not been served with the relevant notice, the assessment made or any other action taken is bad in law. If he takes a transfer from a particular person, it is his duty to ensure that the transferor sends the intimation contemplated by Section 128(1) and his (transferee's) name is recorded as the "owner" or as the person primarily liable, the Municipality cannot be found fault with for not sending relevant notices to the transferee. The substantive liability of the "owner" to pay taxes cannot be defected by the non-intimation u/s 128 or by the failure of the transferee to have his name entered in the Municipal records."

20. Thus the respondent failed to comply with the statutory obligation to intimate the transfer. Once the respondent applied for mutation of the property in their name the assessment orders were accordingly passed and the objections of the respondent were considered. In this situation I am unable to accept the contention of learned counsel for the respondent that there could be a mandatory requirement on the petitioner to either send assessment orders to bills to the respondents. It may be noticed that the petitioner has taken a stand that for every assessment year public notice was duly issued and no-objection was filed. Thus the predecessor in interest of the respondent and respondents failed to file objections as the relevant stage of time they alone are to be blamed for the same.

21. I am unable to accept the contention of leaned counsel for the respondent that mere mention of the amount in the bill would give a cause of action to the petitioner. The bill dated 24.10.2002 is clear. The demand covered under the bill in the current demand which is specified therein over which there is no dispute. Separately arrears of demand are shown and it is clearly stated that demand is not covered in the bill. That being the position the arrears cannot be stated to be the part of the bill and thus there would be no question of an appeal being filed against the bill dated 14.11.2000 since the bill only includes the current demand and does not include the arrears of demand which is what is sought to be impugned by the respondents.

22. In my considered view the appellate authority erred in applying the principle laid down in the judgments of this court dealing with the issue of a bill being a levy since in the present case the arrears were not included in the bill. Thus the conclusion of the appellate authority that since the petitioner had issued the levy/

bill now and thus the same can be impugned by filing the appeal is not sustainable. There would have been no occasion for the respondent to receive the bill prior to the intimation to the petitioner of the transfer of the property in question. It is also not disputed that the appeals were not filed with any applications for condensation of delay but have been held to be within time merely by reason of mentioning of the arrears in the said appeal.

23. The question is not whether the assessments made by the petitioner earlier were correct or not correct but whether the respondents and their predecessor in interest took steps in accordance with law in impugning the decision of the petitioner. In my considered view neither the predecessor in interest nor the petitioner himself took steps for impugning the earlier assessment orders. The respondents did not even take steps to get the property mutated in their name for a period of six years and cannot now cover their negligence and violation of their obligation under the said Act. If what the respondents have done is permitted it would amount to giving a license to the assessed to impugn any assessment order or levy at any stage of time for the past periods even though no appropriate steps were taken to impugn the same within the time prescribed. In fact it would amount to a license to the assessed who have not paid the amount since the mentioning of arrears would only arise in case where the dues are still pending.

24. As far as the aspect of the petitioner taking steps for recovering the tax either against the predecessor in interest of the respondent or the respondents is concerned, that is not an issue to be examined in the present writ petition.

25. In case the petitioner takes steps for recovery of the dues, which according to the petitioner do not form part of the impugned bill, it is always open to the respondent to impugn any such recovery proceedings in accordance in law and if any defenses are available to the respondents on account of belated attempt on the part of the petitioner to recover the amount, the respondents would have every right to raise the same. In the present proceedings under challenge no recovery steps have been taken by the petitioner. On the other hand the petitioners contention is that the arrears have only been mentioned in the bills in question and do not form part of the bill.

26. In view of the aforesaid the writ petitions are allowed and impugned orders of the appellate authority are set aside with the aforesaid observations leaving the parties to bear their own costs.