
(1984) 12 DEL CK 0011

In the Delhi High Court

Case No : Civil R. Appeal No. 628 of 1977

Om Perakash Goda

APPELLANT

Vs

Municipal Corporation

RESPONDENT

Date of Decision : 03-12-1984

Acts Referred:

Citation : AIR 1985 Delhi 67 : (1985) RLR 121

Hon'ble Judges : D.R. Khanna, J

Bench : Single Bench

Advocate : Anil Kumar and Ramesh Chandra, for the Appellant;

Judgement

D.R. Khanna, J.

(1) Objections, and if owner appeals to Distt. Judge, he cannot summarily reject by saying that appellant had not cleared his House Tax dues. Properties bearing Nos. 3642 to 3654 were acquired by late Basheshar Nath, predecessor of the present appellant during his life time at different stages. After his death in 1945, his sons and widow treated these properties as belonging to their joint Hindu family. According to the appellant there was a family settlement with regard to property No. 3643 in terms of which Basheshar Nath's widow Smt. Manno Devi was given a particular portion of this property abutting gali Batlan, and the other fell to the lot of the eldest son Om Prakash Goela who happened to be "karta" of the family. That took place in Oct., 1970. Intimation of this family settlement was said to have been given to the Municipal Corporation.

(2) Subsequently there was stated to be another oral partition of the properties No. 3642 and 3644 to 3654 between the appellant, his three sons and his wife. In terms of this, separate properties fell to the lot of different persons. According to the appellant, intimation of this oral partition was again given in writing to the Municipal Corporation on 10.1.72 and the purpose of this was that mutation accordingly be effected in the municipal record. Subsequently a writing on a stamp paper of Rs. 640.00 was also executed, slated to be a memorandum of

partition incorporating the terms of the oral partition as arrived at on 1.1.72. This writing was dated 15.3.72.

(3) On 28.3.72, a notice was issued by the Deputy Assessor and Collector of the Mcd to Om Prakash Goela intimating that the rateable value of the property for purpose of house-tax was proposed to be raised from Rs. 9,720.00 to Rs, 28,620.00 w.e.f. 1.1.72. To this the appellant filed objections on 3.5.72 in which mention was made of the earlier two partitions, one of 1.10.70 and the other of 1.1.72 and it was contended that the notice on the appellant with regard to all properties was improper and should be withdrawn. An Affidavit dated 29.3.75 was as well filed by the appellant before the Deputy Assessor and Collector in support of his those objections.

(4) However, the Deputy Assessor and Collector by his order dated 16.4.75 without, in any manner, discussing those objections, raised the rateable value of all those properties to Rs. 20,810.00 No mention in this order was made of the pleas raised by the appellant of the two partitions and whether the notice on him of all those properties was valid.

(5) The learned Add District Judge as well dismissed the appeal. While doing so, he rejected the other application moved by the appellant u/s 169 for reference of certain questions of law to the High Court on the ground that those questions were not of substantial nature, nor involved consideration of the provisions of the Constitution. Adverting to the appeal on merits ,he held that the partition had not been recorded in the municipal record, and as such till the appellant had cleared all the arrears of house-tax, he could not be heard. It was also observed by him that the merits of the enhancement of the rateable value had not been contested before him by the parties. It is as such that the appellant feeling aggrieved has moved (he present revision before this Court.

(6) I am afraid, none of the two orders made by the authorities below can be sustained. The Deputy Assessor and Collector should have discussed the objections raised before him by the appellant and given a finding whether he was accepting the petitions and if not, on what grounds. He should have also considered in case of acceptance of partitions whether the notice served on the appellant alone with regard to enhancement of rateable value of all the properties, some of which had ceased to belong to him, was valid. He simply proceeded to discuss the merits of the enhancement, and in doing so, took into consideration the rent realisations. Thus the main controversy raised by the appellant and the other co-sharers who had all signed the notice which had been served upon the Mcd on 10.1.1972 seeking mutation in terms of the partition, was ignored and left undecided.

(7) The learned Adj felt that before the appeal could be heard, the arrears of house-tax should have been cleared. He referred to Section 128 of the Delhi Municipal Corp. Act. However, I do not find any such re-requisite enjoined in S. 128. There is, of course, requirement of deposit of the disputed tax amount u/s

170(b) That would have been relevant in case the order of the Deputy Assessor & Collector had on merits rejected the case of the appellant with regard to the partition. As already observed above, this aspect had not been touched by the Deputy Assessor & Collector at all in his order.

(8) A perusal of the provisions of S. 128 of the D.M.C. Act shows that in the case of any transfer or devolution of property, all that is required is that the persons effected should give notice of the transfer or devolution. Once this is done, it is for the Mcd to thereafter make appropriate order & if the Mcd chooses to sit quiet, and not make any order, the persons concerned cannot be penalised, and their liabilities not enhanced or saddled without decision on their representation.

(9) There is no mention in the order of the Deputy Assessor & Collector that he was rejecting the objections of the appellant for non-deposit of any arrears. The partition was being claimed from 1.1.72, and it had to be determined if there were any arrears prior to this date before the appellant could be required to deposit the entire arrears. His liability naturally could extend to the property which had fallen to his lot. Of Course, this was subject to the acceptance of the partition by the Corporation. Even in this regard, it must be observed that once the co-sharers have entered into partition, the Mcd should not have much say in rejecting or overruling the same. Right to severality is an inherent incident of any joint ownership and when the co-sharers have fallen out, and in their strife and desire for mutual peace decide to separate, the matter entirely concerns them. The Municipal body whose primary concern is to provide civic amenities and civil administration, cannot claim a veto over the co-sharers right to separate, and any impediment sought to be imposed by the rules framed cannot be upheld. The same may be vocative of the light to possess and own property. This is specially so in the present case when different municipal numbers are ascribed to the properties in dispute. How far such division of joint holding can affect the planned development of city, is a matter which can be considered while sanctioning building plans etc., and not where constructions already exist, and the Mcd has already given separate numbers to different parts of the properties. After all mutations in Municipal record neither create nor extinguish title and they at best are evidence of title.

(10) Mr. Ramesh Chandra has made reference to S. 132 of the Act, and pointed out that its provisions are attracted where a partition is effected. He has next made reference to bye-law No. 10 of the Assessment List Bye-Laws, 1959, which requires the filing of a plan, clearance of all property-tax dues and the payment of transfer-fee as may be prescribed. At no stage before the Deputy Assessor & Collector, it is shown that he required the appellant to comply with the requirements of this bye-law. In matters like this where citizen/laymen file their claims and certain technical requirements are necessary, it is appropriate that opportunity should be allowed for fulfilling the technical requirements, and it is only when there is a deliberate defiance that rejection of objections or the representations should take place.

(11) In view of the discussion above, I am constrained to send back the matter to the Deputy Assessor & Collector for proper adjudication of the objections which the appellant filed before him, and also consideration of the representation which the co-owners had submitted with regard to the partitions effected in the years 1970 and 1972. The impugned order dated 16.4.1975 will stand set aside. The Deputy Assessor & Collector will, of course, now proceed afresh after giving notice to the appellant for appearance before him.