(2021) 05 DEL CK 0025

In the Delhi High Court

Case No : Civil Writ Petition No. 4244 Of 2021, Civil Miscellaneous No. 12910 Of 2021

Rakesh Khanna APPELLANT

Vs

New Delhi Municipal Council RESPONDENT

Date of Decision : 07-05-2021

Acts Referred:
New Delhi Municipal Council Act, 1994 — Section 72(2)

Citation : (2021) 05 DEL CK 0025

Hon'ble Judges : Sanjeev Sachdeva, J

Bench : Single Bench

Advocate : Vikas Dhawan, Abhijit Mittal, Nandini Aishwarya, Arpan Wadhawan

Final Decision : Allowed

Judgement

Sanjeev Sachdeva, J

1. The hearing was conducted through video conferencing.

2. Petitioner seeks quashing of assessment order dated 26.11.2020, notice of demand dated 04.03.2021 and warrants of attachment dated 23.03.2021,

issued by the respondent/Council.

3. By the impugned assessment order dated 26.11.2020, the rateable value of Rs.1,62,000/- has been enhanced with effect from 01.04.2007 to

31.03.2010 to Rs.3,37,05,600/- and from 01.04.2010 to 31.03.2013 to Rs.3,87,61,400/-, from 01.04.2013 to 31.03.2016 to Rs.4,45,75,600/-, from

01.04.2016 to 31.03.2019 to Rs.5,12,62,000/-and from 01.04.2019 onwards to Rs.5,89,51,300/-.

4. By impugned notice of demand dated 04.03.2021, petitioner has been directed to deposit a sum of Rs.17,40,73,412/-. Further, by warrants of

attachment dated 23.02.2021, the bank account of the petitioner with Central Bank of India, Ashoka Hotel, New Delhi has been attached.

5. Learned senior counsel for the petitioner submits that impugned order dated 26.11.2020 suffers from several infirmity in as much as it records that

no response has been filed to notice dated 31.03.2008. He submits that objections were filed on 02.05.2008, however, the assessing officer has

erroneously recorded that no response was received.

6. Learned senior counsel further contends that for a period of over 12 years there was no communication received from the respondent and

subsequently a notice dated 18.11.2020 was received on 23.11.2020 requiring the petitioner to appear before the assessing officer on 25.11.2020.

7. He submits that since time was short and in view of the prevailing pandemic, request was made to grant an opportunity of 15 days to respond to the

notice, however, instead of acceding to the request, the very next day impugned order has been passed.

8. On 04.05.2021, learned counsel appearing for the respondent had prayed for time to take instructions. Learned counsel for the respondent submits

that respondent is willing to give a fresh hearing to the petitioner provided petitioner deposits at least 75% of the demanded amount.

9. Learned counsel for the respondent submits that insofar as the factual matrix as contended by learned senior counsel for the petitioner is concerned,

there is not dispute with regard to the same. However, he submits that on 25.11.2020 instead of appearing before the Assessing Officer, petitioner had

merely given a request in the Central Registry Branch of NDMC.

10. Be that as it may, it is not in dispute that petitioner had filed objection on 02.05.2008 to the notice dated 30.03.2008. Sub-section (2) to Section 72

obliges the Chairperson of NDMC to give notice to any person affected by amendment in the assessment list and also obliges him to consider any

objection which may be made by such person.

11. Admittedly, the impugned order dated 26.11.2020 has been passed pursuant to notice dated 31.03.2008. Petitioner had filed objections to the said

notice. Impugned order records to the contrary that no response has been received from the recorded owner with regard to the said notice.

12. For a long gap from 31.03.2008 till 18.11.2020, there was no communication from the respondent to the petitioner with regard to the proposed

amendment in the assessment list. On 18.11.2020, notice was issued requiring the petitioner to appear for final hearing on 25.11.2020.

13. The case of the petitioner is that notice was received only on 23.11.2020. The notice has an endorsement â??Regd/Speed postâ?. This

endorsement indicates that the notice would have been dispatched by post and not delivered by hand. The notice is signed on 18.11.2020 and would

have been dispatched either on the same day or the following day. 21.11.2020 and 22.11.2020 was Saturday and Sunday. So, the contention of the

petitioner that notice was received only on 23.11.2020 seems to be plausible.

14. Be that as it may, respondent/Corporation woke up after a gap of about 12 and a half years and required the assessee to come for a final hearing

within a couple of days. Apparently, the period is too short for any assessee to gather material and instruct an authorised person to appear before the

Council for a final hearing. This observation is made particularly keeping in view the situation of the pandemic.

15. Admittedly, the impugned order does not consider the objections filed by the petitioner, which the officer was obliged to take into account in term

of sub-section (2) of Section 72 of the NDMC Act.

16. In view of the above, I am of the view that the impugned order is not sustainable as the same has been passed contrary to sub-section (2) of

Section 72.

17. Accordingly, the impugned order dated 26.11.2020, impugned notice dated 04.03.2021 and warrants of attachment 23.02.2021 are quashed and the

consequential attachment is vacated. The matter is remitted to the assessing authority for passing a fresh assessment order after giving an opportunity

of hearing to the petitioner.

18. Since the earlier objections were filed in the year 2008 and the proposal is to enhance the rateable value till date, petitioner is permitted to file

additional objections, if any, within a period of six weeks from today alongwith all supporting documents.

19. This period of six weeks has been granted to the petitioner in view of the submission of learned senior counsel for the petitioner that the petitioner

is presently unwell and is admitted in hospital.

20. The request of learned counsel for the respondent to direct the petitioner to deposit at least 75% of the demanded amount also cannot be acceded

to particularly in view of the fact that the rateable has been enhanced from Rs. 1,62,000/- since 2008 to Rs. 5,89,51,300/- and a demand of over

Rs.17.40 crores has been raised, which is a substantial enhancement over the existing rateable value.

21. Learned senior counsel for the petitioner under instructions submits that the property tax as per the existing rateable value of Rs.1,62,000/- already

stands deposited with the Council upto date.

22. The petition is accordingly allowed in the above terms.

23. Copy of the Order be uploaded on the High Court website and be also forwarded to learned counsels through email.