

(2002) 10 DEL CK 0079
In the Delhi High Court
Case No : C.W. No. 3568 of 2001

Raman K. Sawhney

APPELLANT

Vs

Chairperson, NDMC and Another

RESPONDENT

Date of Decision : 07-10-2002

Acts Referred:

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

Citation : (2002) 100 DLT 546

Hon'ble Judges : Sanjay Kishan Kaul, J

Bench : Single Bench

Advocate : S.C. Jain, for the Appellant; Sandeep Aggarwal, for the Respondent

Judgement

Sanjay Kishan Kaul, J.—The petitioner has challenged the validity of the notice issued by respondent No. 1 Council u/s 72(2) of the New Delhi Municipal Council Act, 1994 (hereinafter referred to as the said Act) as also the inclusion of the interest factor on security deposit and advance rent beyond a period of ix moths.

2. The property in question is flat No. 513, Ashoka Estate, Barakhamba Road, New Delhi and the rateable value of the same was sought to be enhanced w.e.f. 1.4.1998 in pursuance to the notice u/s 72(2) of the Act. The annual rent was calculated on the basis of the rent and interest factor of 12.5% was charged on the security amount beyond six months rent as also the advance rent not adjusted in the first year. Three different sets of calculations were made for the three assessment years in question starting from 1.4.1998 to 31.3.2001. This assessment order was passed u/s 72 of the Act on 28.2.2001 and same was assailed by the petitioner before the Appellate Authority.

3. The Appellate Authority dismissed the appeal by the impugned order dated 15.5.2001. The Appellate Authority negated the contention of the petitioner that the notice issued u/s 72(2) was invalid on the ground that though the notice is purportedly dated 31.3.1999 the same was received by the petitioner only on 6.4.1999. It was held that the notice is valid for year 1998-99 and that notice

was dispatched through UPC on 31.3.1999 itself. The Appellate Authority also did not agree with the submissions advanced on behalf of the petitioner that advance rent received beyond the period of six months as well as security amount cannot be subject to interest factor for calculation of the rateable value.

4. It is the aforesaid two pleas which are once again sought to be agitated before this Court. The relevant part of Section 72 is as under:

"72. Amendment of assessment list.--(1) The Chairperson may, at any time, amend the assessment list-

(a)

(b)

Provided that no person shall by reason of any such amendment become liable to pay any tax or increase of tax in respect of any period prior to the commencement of the year in which the notice under Sub-section (2) is given.

(2) Before making any amendment under Sub-section (1) the Chairperson shall give to any person affected by the amendment, notice of not less than one month that he proposes to make the amendment and consider the objection which may be made by such person."

5. The first aspect to be considered is whether the notice issued u/s 72(2) of the Act was in fact a valid notice or not. The plea raised by learned Counsel for the petitioner was that the proviso to Sub-section (1) to Section 72 prescribes that a person shall not be liable to pay any tax or increase of tax by reason of any amendment under the said sub-section in respect of any period prior to the commencement of the year in which the notice under Sub-section 2 is given. Subsection (2) mandates the notice to be given. It is the expression "given" or "give" which has given rise to the dispute. Learned Counsel for the petitioner contends that the expression "give" means that the notice should have been received.

6. Learned Counsel for the petitioner has relied upon the judgment of the Supreme Court in K. Narasimhiah Vs. H.C. Singri Gowda, . The Supreme Court was concerned with the validity of the notice of no confidence against the President of the Municipality under the Mysore Town Municipalities Act, 1951. The enactment provided for three clear days notice for holding a special general meeting for such no-confidence resolution. The Supreme Court held that the High Court was wrong in holding that "sending" a notice amounts to "giving" the notice. This was so since the fact that a person who has a legal duty to give notice and dispatches the notice to the address of the person to whom it has to be given will not imply that the giving is complete as it must reach the hands of the person to whom it is sent. The Supreme Court observed as under:

"Giving of anything as ordinarily understood in the English language is not complete unless it has reached the hands of the person to whom it has to be

given in the eye of law however giving is complete in many matters where it has been offered to a person but not accepted by him. Tendering of a notice is in law. Therefore giving of a notice even though the person to whom it is tendered refuses to accept it. We can find however no authority or principle for the proposition that as soon as the person with a legal duty to give the notice dispatches the notice to the address of the person to whom it has to be given, the giving is complete. We are, Therefore, of opinion that the High Court was wrong in thinking that the notices were given to all the Councillors on the 10th October. In our opinion, the notice given to five of the Councillors was of less than three clear days."

7. Learned Counsel for the petitioner also referred to the judgment of the Supreme Court in *Municipal Corporation of Delhi Vs. M/s. Trigon Investment and Trading Private Limited and another*, . The matter in issue related to the notice u/s 126 of the Delhi Municipal Corporation Act, 1957. Section 126(1) and (2) are para materia to Section 72(1) and (2) of the Act. The Supreme Court observed that no person would be liable to pay any tax or rise in tax in respect of the period prior to the commencement of the year in which the notice u/s 126(2) of the said Act was given.

8. Learned Counsel for respondent No. 1 Council, on the other hand, contends that "giving" of notice is different from the receipt of a notice and the purport of the notice is to invite objections. Thus the judgment of the Supreme Court in *K. Narasimhiah's case* (supra), is sought to be distinguished since the said case deals with a situation where the lack of sufficient time visited the person who had to be served with serious consequences while in the present case an opportunity was given to the assessed to file his objections.

9. Learned Counsel for the respondent has referred to the judgment of the Supreme Court in *K. Bhaskaran Vs. Sankaran Vaidhyan Balan and Another*, , where the expression "giving" and "receipt" in the context of the Negotiable Instruments Act were held to have different connotations. The Supreme Court observed as under:

"18. On the part of the payee he has to make a demand by "giving a notice" in writing. If that was the only requirement to complete the offence on the failure of the drawer to pay the cheque amount within 15 days from the date of such "giving", the travails of the prosecution would have been very much lessened. But the Legislature says that failure on the part of the drawer to pay the amount should be within 15 days "of the receipt" of the said notice. It is, Therefore, clear that "giving notice" in the context is not the same as receipt of notice. Giving is a process of which receipt is the accomplishment. It is for the payee to perform the former process by sending the notice to the drawer in the correct address.

19. In Black's Law Dictionary "giving of notice" is distinguished from "receiving of the notice". (vide page 621) "A person notifies or gives notice to another by taking such steps as may be reasonably required to inform the other in the

ordinary course, whether or not such other actually comes to know of it." A person "receives" a notice when it is duly delivered to him or at the place of his business.

20. If a strict interpretation is given that the drawer should have actually received the notice for the period of 15 days to start running no matter that the payee sent the notice in the correct address, a trickster cheque drawer would get the legal consequences of Section 138 of the Act. It must be borne in mind that Court should not adopt an interpretation which clips a dishonest evader and clips an honest payee as that would defeat the very legislative measure.

21. In Maxwell's Interpretation of Statutes," the learned author has emphasized that "provisions relating to giving of notice often receive liberal interpretation, (vide page 99 of the 12th Edn.). The context envisaged in Section 138 of the Act invites a liberal interpretation for the person who has the statutory obligation to give notice because he is presumed to be the loser in the transaction and it is for his interest the very provision is made by the Legislature. The words in Clause (b) of the proviso to Section 138 of the Act show that payee has the statutory obligation to "make a demand" by giving notice. The thrust in the clause is on the need to "make a demand". It is only the mode for making such demand which the Legislature has prescribed. A payee can send the notice for doing his part for giving the notice. Once it is dispatched his part is over and the next depends on what the sendee does.

22. It is settled that a notice refused to be accepted by the addressee can be presumed to have been served on him, (vide Harcharan Singh Vs. Smt. Shivrani and Others, and Jagdish Singh Vs. Natthu Singh, .

23. Here the notice is returned as unclaimed and not as refused. Will there be any significant difference between the two so far as the presumption of service is concerned? In this connection a reference to Section 27 of the General Clauses Act will be useful. The section reads thus:

"27. Meaning of service by post.--Where any Central Act or Regulation made after the commencement of this Act authorises or requires any document to be served by post, whether the expression "serve" or either of the expressions "give" or "send" or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post."

24. No doubt Section 138 of the Act does not require that the notice should be given only by "post". Nonetheless the principle incorporated in Section 27 (quoted above) can profitably be imported in a case where the sender has dispatched the notice by post with the correct address written on it. Then it can be deemed to have been served on the sendee unless he proves that it was not really served and that he was not responsible for such non-service. Any other

interpretation can lead to a very tenuous position as the drawer of the cheque who is liable to pay the amount would resort to the strategy of subterfuge by successfully avoiding the notice."

10. In the present case it is not disputed that notice was dispatched on 31.3.1999 by UPC since the said fact has been verified from the record produced by the Appellate Authority. Once such a notice is dispatched u/s 72 will it contemplate the requirement of receipt of the notice before such a notice is a valid notice? The answer to this question, in my considered view, would be in the negative.

11. It is no doubt true that the notice given must also be received. However, the issue is not that but whether the cut-off date would be foreclosed by the reason of the fact that though the notice was given before the cut-off date, it was received after the said date. It is relevant to note that the context in which the Supreme Court was considering the issue of sending of a notice and giving of a notice in K. Narasimhiah's case (supra), was in the context of the consequences which follow would arise on the expiry of the period of time. Three clear days' notice was required for holding the general meeting. It is in this context that the Supreme Court held that the giving of the notice is not complete unless it has reached the hands of a person to whom it is given unless it is not accepted by him. The Supreme Court was of the view that three clear days' notice was in fact not given in the said case since the dispatch dates cannot be considered for the said purpose on the basis that three days have to be counted from the said date.

12. In the present case while dealing with Section 72 of the Act one month's time is given under Sub-section 2 as the period of notice for making the amendment and considering any objections which may be made by such a person. It is not a case where an assessed has been deprived of the right to file objections. Even if the date of receipt is taken into consideration, it would not make any difference. The proviso to Sub-section 1 has thus to be read in a separate context which only requires the giving of the notice. The notice has admittedly been sent prior to the cut-off date since it was sent on 31.3.1999.

13. The Supreme Court in K. Bhaskaran's case (supra), considered the different context of "giving" of a notice and "receipt" of the notice and held that two expressions are separate. Reference was made to the Black's Law Dictionary which clearly states that for a person to give a notice he must take steps as may be reasonably required to inform the other person in ordinary course whether or not such person comes to know of it. However, a person receives a notice when it is duly delivered to him. The Supreme Court was of the view that strict interpretation to "giving" of notice would not be acceptable as it would defeat the legislative measure and the context envisaged a liberal interpretation. This was so since u/s 138 of the Negotiable Instruments Act, the payee had a statutory obligation to make demand by giving the notice.

14. Proviso to Sub-section 1 is part of the statutory enactment which prescribes

the cut-off date and Sub-section (2) requires giving of the notice. The giving is complete when the same is dispatched. However, the time period for filing of the objections of one month under Sub-section 2 requires giving of the notice before the cut-off date was under proviso to Sub-section 1. Needless to say that if the notice is refused, the assessed would have no right. If the assessed receives the notice he can plead that he must be given a period of one month from the date of the receipt of the notice but the same would not nullify the notice merely because of a gap of time between the dispatch of the notice and the receipt once the notice has been dispatched within the stipulated period of time.

15. I am thus of the considered view that the notice was validly given to the petitioner and that the petitioner can make no grievances in respect of the same.

16. The second aspect to be considered is regarding the issue of assessment of rateable value by taking into consideration the interest factor on the refundable security and advance rent of more than six months.

17. Learned Counsel for the petitioner has referred to the judgment of the Supreme Court in Government Servant Co-operative House Building Society Limited and Others Vs. Union of India and Others, , to contend that the actual rent received by the landlord, in the absence of any special circumstances would be a good guide to decide the rent which a landlord might reasonably expect to receive from a hypothetical tenant. The Supreme Court observed as under:

"8. Therefore, the annual rent actually received by the landlord, in the absence of any special circumstances, would be a good guide to decide the rent which the landlord might reasonably expect to receive from a hypothetical tenant. Since the premises in the present case are not controlled by any rent control legislation, the annual rent received by the landlord is what a willing lessee, uninfluenced by other circumstances, would pay to a willing Lesser. Hence, actual annual rent, in these circumstances can be taken as the annual rateable value of the property for the assessment of property tax. The Municipal Corporation is, Therefore, entitled to revise the rateable value of the properties which have been freed from rent control on the basis of annual rent actually received unless the owner satisfies the Municipal Corporation that there are other considerations which have affected the quantum of rent."

18. Learned Counsel for the petitioner has also referred to the Division Bench judgment of this Court in Punj Sons Pvt. Ltd. Vs. Municipal Corporation of Delhi, , to assail the inclusion of the aforesaid two factors in the rateable value. The issue of inclusion of interest factor of such a situation was dealt with by the Division Bench by reference to two earlier Division Bench judgments of this Court in Municipal Corporation of Delhi Vs. S.D.S. Bali and Another, and Sir Sobha Singh and Sons (P) Ltd. Vs. New Delhi Municipal Council, . It would be relevant to refer to the said paragraphs which are as under:

"5. As to the second contention, the learned Counsels for the petitioners has placed reliance on the Division Bench decision of this Court in Municipal

Corporation of Delhi Vs. S.D.S. Bali and Another, Hon''ble Justice B.N. Kirpal (as his Lordship then was) has held speaking for the Division Bench as under:

"....in determining the rateable value we see no justification as to why it should be presumed that when the security deposit is furnished there will be any earning to the landlord by way of interest or otherwise. Even if it be assumed that the landlord from the security deposit so received, earns some income, by interest or otherwise, that interest or income cannot ipso facto be regarded as an addition to the rent received by the landlord. It is contended by learned Counsel for the petitioner that there may be cases where the rent which is received is much below the market rate and disproportionately large amount of security deposit is received, so as to enable the landlord to earn interest thereon. The contention is that in such a case the real nature of transaction should be seen and it would be found that the income from the security deposit was made to be a part of the rent. We need not go into the merits of this example because in the present case there is nothing to show that the rent which was being charged by the respondents was not market rate. There is no evidence on the record to indicate that security deposit was furnished solely with the view that the rent is depressed and that has compensated by the landlord by earning income from the security deposit so received. It is to be borne in mind that security deposit which was received by the landlord is refundable. The same has to be returned on the termination of the tenancy and it is merely a security against the non-payment of rent. The Delhi Municipal Corporation income accruing on the security deposit so received and further to permit such frictional or actual income to be regarded as a part of the rent receipt. Normally any income from out of the security deposit cannot be regarded as being a part of the rent.

5.1. Incidentally, we may refer to yet another Division Bench decision of this Court in Sir Sobha Singh and Sons (P) Ltd. Vs. New Delhi Municipal Council, . The D.B. has observed (vide para 24):

"If any property forms subject-matter of contractual rent then the rate of rent agreed upon between the parties and which was being actually paid by the tenant and received by the landlord can safely be accepted as determining factor of rateable value unless there be material available to hold the rate of rent having been influenced or depressed by reason of extraneous consideration such as fraud, collusion, relationship, expectation of some other benefit etc.

The Court has noticed some of the instances which might have contributed to depression of rent. To wit-

(1) The landlord has collected huge amount as "Pagri" and is charging nominal rent.

(3) The landlord collects huge amounts as interest-free security ad lets out the premises at nominal rent with permission to sub-let. The tenant, after taking over possession, lets out the premises at exorbitant rent.

(4) The premises are let out to a sister concern at low rent with permission to sub-let, and the sister concern lets out the premises for huge amounts.

In the operative part of the order one of the directions made by the Court while directing Assessing Authority to make the assessment afresh is:

Apart from such other information which the Assessing Authority may be inclined to collect and such enquiry as the Assessing Authority may deem fit to hold, in particular the Assessing Authority shall enquire:

xxxx xxxx xxxx (ii) whether there is any reason to hold the actual rate of rent applicable between the landlord and the tenant either inflated or depressed by reason of extraneous considerations which would justify the Assessing Authority discarding such rate of rent for the purpose of finding out the rate of rent at which the premises may be reasonably expected to let.

5.2. In the case at hand, there is finding recorded by the Assessing Authority that the rate of rent appointed between the parties was an artificial rate of rent or was abnormally below the market rate of rent so as to persuade a finding being recorded that the tenant being made to make a security deposit with the landlord was a device adopted to compensate the landlord against loss of rent by Realizing interest on the amount of security deposit. In the absence of any such finding, the estimated amount of interest on security could not have been taken as part of rent for the purpose of finding out rateable value of the property.

19. Learned Counsel for the petitioner thus contends that unless the Assessing Authority comes to the conclusion that there was an artificial rate of rent and that the rent was abnormally below the market rate of rent and the tenant was made to pay security deposit as a device adopted to compensate the landlord, interest cannot be included in the rateable value.

20. Learned Counsel for respondent No. 1 also refers to the same judgment and more specifically para 5.1 above where reference has been made to the judgment in Sir Shobha Singh's case (supra), where the Court has noticed that there are cases where huge amounts as interest free security are taken as a device to realise interest instead of Realizing higher rent. Learned Counsel for the respondent however, does not seriously dispute the fact that abate reading of the assessment order shows that there is no finding recorded that the rate of rent was artificially reduced and that the security deposit and advance rent of more than 6 months have been taken only to compensate the lower rent. That being the position, the assessment order cannot be sustained since the Assessing Authority has to arrive at a finding to this effect before the interest can be included. Merely because security deposit is taken or advance rent is taken of more than six months cannot ipso facto imply that the same is to compensate the reduced rent and the same can be added only once the Assessing Authority comes to a finding of artificial reduction of rent by making appropriate comparisons.

21. In view of the aforesaid fact the impugned order of the Appellate Authority and the impugned order of Assessing Authority are hereby quashed. The matter is remanded back to the Assessing Authority to determine the rateable value in accordance with law in view of the judgment of the Division Bench of this Court in M/s. Punj Sons Private Limited's case (supra), in so far as the factor on the security deposit and advance rent of more than six months is concerned.

22. The petitioner shall appear before the Adviser (Revenue) on 11.11.2002 at 3.00 p.m. for further proceedings.

23. Writ petition stands disposed of in the aforesaid terms leaving the parties to bear their own costs.