(2003) 09 DEL CK 0087

In the Delhi High Court

Case No : CWP No. 4061 of 1994

R.L. Khera Charitable Trust (Dr.) and Another — APPELLANT

Vs

M.C.D. and Others — RESPONDENT

Date of Decision : 05-09-2003

Acts Referred:

Delhi Municipal Corporation Act, 1957 — Section 115(4), 126

Citation : (2003) 71 DRJ 97

Hon'ble Judges : Sanjay Kishan Kaul, J

Bench : Single Bench

Advocate : Vijay Kishan and Vikram, for the Appellant; Reyaz Ahmad, for the Respondent

Final Decision : Allowed

Judgement

Sanjay Kishan Kaul, J.—The petitioner No. 1 was issued a notice dated 16.3.1991 u/s 126 of the Delhi Municipal Corporation Act, 1957 (hereinafter to be referred to as ''the said Act'') for enhancement of the rateable value on the ground of ''increase in R.V.s. due to re-erection of Bldg./Alteration/Add. and amendment in the DRC Act''. The petitioner No. 1 filed objections against the said notice and subsequently the impugned order dated 10.3.1994 was passed.

2. Learned counsel for the petitioners firstly contends that the aforesaid order has been passed in violation of the Order dated 7,10.2003 passed in CWP No. 4009/1992 between the same parties. The petitioner No. 1 had impugned the earlier assessment order on the ground that petitioner No. 1 had applied for exemption from payment of property tax being a charitable institution u/s 115(4) of the said Act. The Division Bench held that the rateable value should be re-determined after considering the aforesaid application of petitioner No. 1.

3. I am in agreement with the submission of learned counsel for the petitioners since a reading of the impugned order shows that there is no discussion on the issue of the claim of the petitioner for exemption from payment of property tax.

The application should either have been accepted or rejected before proceeding to determine the liability of the petitioner No. 1 towards payment of property tax.

4. The second issue raised by learned counsel for the petitioners is in view of the fact that notice u/s 126 of the said Act is a stereo-typed notice and does not really set out the reasons for increase in rateable value.

5. Learned counsel for the petitioners has referred to the Division Bench judgment of this Court in Savitri Devi Vs. Municipal Corporation of Delhi, where almost an identical endorsement was made on the notice issued u/s 126 of the said Act. In the said case, the Division Bench held that the said notice did not conform to the basic principles of natural justice as no details of additions or alterations were specified in the show-cause notice nor was any copy of the inspection report furnished on the basis of which it was proposed to increase the rateable value. It was thus, held that the show-cause notice given cannot be effectively replied to and, thus, a direction was passed to the respondent to issue a supplementary show-cause notice giving all particulars mentioned therein.

6. Learned counsel has referred to judgment of the learned Single Judge of this Court in K.L. Rathee Vs. Municipal Corporation of Delhi, . In that case, learned Single Judge was faced with the similar position where endorsement was made in stereo-typed manner. It was held that a mere bald assertion that the building has been altered or tenancy created without any particulars cannot be termed as stating the reasons. This judgment was upheld by the Division Bench in K.L. Rathee Vs. Municipal Corporation of Delhi, .

7. Learned counsel has also referred to the Division Bench judgment of this Court in DCM Ltd. v. M.C.D. and Ors. 1998 HI AD (Delhi) 289, where the Division Bench held that in order to enable the notice to effectively meet the case proposed against him, the basis of arriving at the proposed figure of the rateable value ought to be disclosed to the assessed, especially when the assessed makes a demand for the same and there is nothing secret or sacrosanct about the same. It was held that it was not an answer to the said contention that there is no requirement of disclosing the bassi of the proposed figure since the entire facts are available with the petitioner. The Division Bench once again without invalidating the notice u/s 126 of the said Act directed the Corporation to supply the information sought for by the petitioner and directed that supplementary notice/information may be supplied to the petitioner.

8. Learned counsel has also referred to the judgment of the Supreme Court in Food Corporation of India v. State of Punjab and Ors. JT 2000 (Supp. 3) SC 376. which dealt with the provisions of the Punjab Municipal Act, 1911, which are identical to the provisions under the said Act. It was held that there cannot be a vague notice and the reasons must be set out therein to comply with the statutory requirements.

9. Learned counsel lastly referred to another judgment of the Supreme Court in Lt. Col. P.R. Chaudhary (Retd.) Vs. Municipal Corporation of Delhi, , wherein it

was held that a notice for enhancement of rateable value has to be based on reasons, which must exist and the owner is entitled to be apprised of those reasons.

10. The aforesaid judgments are squarely applicable to the facts and circumstances of the present case where the notice has been issued in almost identical terms - the only difference being that instead of rubber stamp endorsement, the endorsement has been made in hand. No material has been disclosed as to what is the basis of alleging any addition or alteration and as to where such addition or alteration has been made. There is no detail given about the said erection of building or relating out of the same. In order to enable the petitioner to file an effective reply to the notice, it is necessary that the petitioner should have the basis of the material which persuaded the assessing authority to issue notice u/s 126 of the said Act.

11. I am inclined to follow the course of action taken in the aforesaid judgments and a direction is, thus, issued to the respondent. Corporation to issue a supplementary notice to petitioner No. 1 setting out the reasons for proposing the increased of the rateable value. On such notice being issued, the petitioner shall file a reply thereto, which shall be considered on its own merits. Needless to say that the application of petitioner No. 1 u/s 115(4) of the said Act should be considered first since if the petitioner is entitled to exemption, there will be no issue of payment of property tax.

12. The writ petition is allowed in the aforesaid terms leaving the parties to bear their own costs.

13. The petitioner to appear before the assessing authority through authorised representative(s) on 29.9.2003 at 3.00 p.m. for further proceedings