
(2002) 08 DEL CK 0102
In the Delhi High Court
Case No : C.W. 694 of 1999

Shri Pradep Mehra and Another APPELLANT
Vs
M.C.D. and Another RESPONDENT

Date of Decision : 05-08-2002

Acts Referred:

Delhi Municipal Corporation Act, 1957 — Section 126, 126(1), 126(2), 126(3)

Citation : (2002) 08 DEL CK 0102

Hon'ble Judges : C.K. Mahajan, J

Bench : Single Bench

Advocate : B.B. Jain, for the Appellant; Rajan Sabharwal, for the Respondent

Final Decision : Allowed

Judgement

C.K. Mahajan, J.

Rule.

1. By way of the present petition the petitioners seek quashing of the judgment dated 10th July, 1998 passed by the learned Addl. Distt. Judge as well as the assessment order dated 21st December, 1995.

2. The petitioners are owners of Property No. B-4/70, Safdar jung Enclave New Delhi. The rateable value of the said property was fixed at Rs. 47,380/- by the respondent which was subsequently increased by the respondent/MCD to Rs. 59,230/- per annum w.e.f. 1st April, 1992. For the purpose of increasing the rateable value of the said property the respondent/MCD issued a notice dated 19th March, 1994 u/s 126 of the DMC Act wherein the rateable value of the property was proposed to be increased to Rs. 4,77,860/- p.a. w.e.f. 1st April, 1993 on the ground of "increase in rents".

3. The petitioners filed objections against the said notice and stated that the notice was served on the petitioners on 2nd April, 1994. Therefore, the rateable value of the property for the assessment year 1993-94 cannot be fixed by the

respondent.

4. The objections were decided by the respondent/MCD and the rateable value was fixed vide assessment order dated 21st December, 1995 at Rs. 4,77,860/- w.e.f. 1st October, 1993 and Rs. 4,89,600/- w.e.f. 1st April, 1994.

5. Against the aforesaid assessment order the petitioner s prefer red an appeal which was rejected by the learned Addl. Distt. Judge.

6. I have heard counsel for the parties.

Counsel for the petitioners contended that as per the provisions of the DMC Act the respondent/MCD was under an obligation to give a notice u/s 126 before increasing the rateable value of the property. The said Section 126 is reproduced hereinbelow:

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

(a) by inserting therein the name of any person whose name ought to be inserted, or

(b) by inserting therein any land or building previously omitted; or

(c) by striking out the name of any person not liable for the payment of property taxes, or

(d) by increasing or reducing for adequate reasons the amount of any rateable value and of the assessment thereupon; or

(e) by making or cancelling any entry exempting any land or building from liability to any property tax; or

(f) by altering the assessment on the land or building which has been erroneously valued or assessed through fraud, mistake or accident; or

(g) by inserting or altering an entry in respect of any building erected, re-erected, altered or added to, after the preparation of the assessment list:

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 Commissioner 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 any objections which may be made by such person.

[(3) Notwithstanding anything contained in the proviso to Sub-section (1) and Sub-section (2), before making any amendment to the assessment list for the years [commencing on the 1st day of April, 1988, the 1st day of April, 1989 and the 1st day of April, 1990 under Sub-section (1), the Commissioner shall give to

any person affected by the amendment, notice of not less than one month at any time before the 1st day of April, 1992], that he proposes to make the amendment and consider any objections which may be made by such person.

(4) No amendment under Sub-section (1) shall be made in the assessment list in relation to-

(a) any year prior to the year commencing on the 1st day of April, 1988, after the 31st day of March, 1991;

(b) the year commencing on the 1st day of April, 1988, or any other year thereafter, after the expiry of three years from the end of the year in which the notice is given under Sub-section (2) or Sub-section (3), as the case may be:

Provided that nothing contained in this sub-section shall apply to a case where the Commissioner has to amend the assessment list in consequence of or to give effect to any direction or order of any court."

7. It is contended that the notice dated 19th March, 1994 was sent by ordinary post by the respondent/MCD was served on the petitioners on 2nd April, 1994, Thus the said notice having been served on the petitioners in the assessment year 1994-95 the respondent/MCD cannot collect any property tax on the basis of the said notice. Thus the assessment order passed by the respondent/MCD seeking to collect the property taxes for the assessment year 1993-94 onwards is violative of the provisions of the DMC Act.

8. The respondent/MCD opposed the petition and filed its counter affidavit. It is argued that the appeal of the petitioners has rightly been dismissed by the learned Addl. Distt. Judge.

It is not disputed that the notice dated 19th March, 1994 u/s 126 was served on the petitioners on 2nd April, 1994. Thus the notice has to take effect only with effect from the date on which the same has been served on the assesses. The date of issuance of the notice is not of material importance but it is the date of the service of the said notice on the assesses which is the starting point for the levy and collection of property tax. The respondent/MCD cannot levy or collect property tax prior to the first day of the assessment year in which the notice u/s 126 has been given on an assessed.

9. The Supreme Court in the case of K. Narasimhiah Vs. H.C. Singri Gowda, , interpreted the word "giving" and held 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 eyes 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. Thus 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."

10. A perusal of the notice dated 19th March, 1994 clearly shows that if It was received up to 31.3.94 the taxes were to be paid from 1.4.1993 and if the said notice was received on or after 1.4.94 the taxes were liable to be paid from 1.4.94. Para 2 of the said notice is reproduced hereunder--

"2. As per proviso to Sub-section (1) of Section 126 of the DMC Act, you shall not be liable to pay any tax or increase in tax, due to the amendment in the assessment list, for any period prior to the first day of the financial year in which notice is given. Thus, if you receive this notice up to 31.3.94, please pay taxes from 1.4.1993 and if you receive this notice on or after 1.4.94, please pay from 1.4.94."

11. The rateable value of a property can only be increased with effect from the first day of the assessment year in which the notice u/s 126 was issued by the assessing authority and served on an assessee. The respondent/MCD cannot collect any property tax prior to the first day of the assessment year in which the notice u/s 126 has been served on the assessee.

12. The learned Addl. Distt. Judge thus erred in holding that the date of giving of notice is relevant and not of actual receipt of the notice by the petitioners.

13. In the circumstances the justification given and the finding arrived at thereafter by the Addl. Distt. Judge cannot be sustained. The impugned order dated 10th July, 1998 is set aside. The writ petition is allowed. There will be no order as to costs.