(2021) 05 DEL CK 0135

In the Delhi High Court

Case No : Civil Writ Petition No. 5432 Of 2021, Civil Miscellaneous Application No. 16846-16847 Of 2021

Vardhman Properties Ltd APPELLANT

Vs

North Delhi Municipal Corporation RESPONDENT

Date of Decision : 21-05-2021

Acts Referred:
Delhi Municipal Corporation Act, 1957 — Section 156, 158, 158(3)

Citation : (2021) 05 DEL CK 0135

Hon'ble Judges : Sanjeev Sachdeva, J

Bench : Single Bench

Advocate : Sanjay Goswami, Mini Pushkarna, Khushboo Nahar, Latika Malhotra

Final Decision : Disposed Of

Judgement

Sanjeev Sachdeva, J

1. The hearing was conducted through video conferencing.

2. Petitioner impugns order dated 08.04.2021 whereby the property of the petitioner at AW Block (Circular), Sanjay Gandhi Transport Nagar, Badli,

Delhi, has been sealed.

3. Issue Notice. Notice is accepted by learned counsel for the Respondent. With the consent of learned counsels for the parties, the petition is taken

up for final disposal.

4. Learned counsel for the petitioner submits that the sealing order has been passed to enforce an alleged demand of ground rent. He submits that

there is a dispute with regard to the claim of the respondent of the ground rent.

5. Learned Counsel further submits that though an arbitration award has been passed in favour of the respondent, however, petitioner has filed

objections to the award. He further submits that out of the claimed amount of Rs. 47 lakhs, principal amount, as per the respondent, as on 17.12.2020,

was Rs. 25,65,900/- on which respondents have firstly added interest of Rs. 21,97,168/- and then added a further amount of Rs. 8,57,352/-, as interest

to raise a demand of approximately Rs.56,20,420/-.

6. Learned counsel submits that the demand is disputed and petitioner has already deposited the admitted amount of ground rent of Rs.8 lakhs after

the passing of the award.

7. Learned counsel for the petitioner further submits that the lease deed executed in favour of the petitioner on 02.11.2006 specifically provides that in

case of any dues payable to the lessor, the same would be recoverable as arrears of tax under the Delhi Municipal Corporation Act.

8. Learned counsel submits that Section 156 of the Municipal Corporation of Delhi Act, 1957 (hereinafter referred to as the MCD Act) provides that

recovery of tax can be done under a warrant by attachment and sale of immovable property. He submits that there is no provision whereby the

property of the petitioner can be sealed and petitioner prevented from using the property till the property is attached or sold.

9. Learned counsel submits that there is no order passed by the respondent under Section 156 of the MCD Act attaching the property of the

petitioner. He further submits that the respondent has also not taken any steps to enforce the award and has sought to take coercive steps which are

not permissible in law.

10. Learned counsel appearing for the respondent does not dispute the factual matrix. She, however, submits that since there is no stay of the

arbitration award, respondent is entitled to take steps for recovery of its dues. She, however, concedes that no order under Section 156 MCD Act has

been passed. She further submits that the Corporation is in the process of taking steps for enforcing the award.

11. Petitioner has disputed the claim of the respondent Corporation and has also filed objections to the award. No doubt there is no interim stay of the

arbitration award, however, petitioner is claimed to have deposited the admitted amount with the Corporation.

12. Be that as it may, since there is no stay of the arbitration award, nothing prevents the respondent from taking steps for enforcing its rights under

the award.

13. The Perpetual lease deed dated 22.11.2006 executed by the Respondent in favour of the Petitioner specifically provides that â??All dues payable

to the LESSOR in respect of the plot shall be recoverable as arrears of tax under the Delhi Municipal Corporation Act.â??

14. Section 156 of the MCD Act stipulates as under:

156. Recovery of tax.â?"(1) If the person liable for the payment of the tax does not, within thirty days from the service of the notice of

demand, pay the amount due, such sum together with all costs and the penalty provided for in section 155, may be recovered under a

warrant, issued in the form set forth in the Eighth Schedule, by distress and sale of the movable property or the attachment and sale of the

immovable property, of the defaulter:

Provided that the Commissioner shall not recovery any sum the liability for which has been remitted on appeal under the provisions of this

Act.

(2) Every warrant issued under this section shall be signed by the Commissioner.

15. Section 158 of the MCD Act provides as under:

158. Disposal of distrained property and attachment and sale of immovable property.â?"(1) ******

(2) ******

(3) When a warrant is issued for the attachment and sale of immovable property, the attachment shall be made by an order prohibiting the

defaulter from transferring or charging the property in any way, and all persons from taking any benefit from such transfer or charge, and

declaring that such property would be sold unless the amount of tax due with all costs of recovery is paid into the municipal office within

fifteen days from the date of the attachment.

(4) ******â??

16. Section 156 of the Municipal Corporation of Delhi Act empowers the corporation to recover the tax by inter alia attachment and sale of immovable

property of the defaulter under a warrant. Section 158 (3) stipulates that when a warrant is issued for the attachment and sale of immovable property,

the defaulter shall be prohibited from transferring or charging the property in any way and a declaration shall be issued that the property would be sold unless the amount of tax due with all costs of recovery is paid into the municipal office within fifteen days from the date of the attachment.

17. Admittedly no proceedings have been initiated or warrants of attachment issued by the Respondents under Section 156 of the MCD Act, seeking to attach the property of the Petitioner.

18. Also, admittedly no execution proceedings have been initiated by the Respondents for execution of the arbitration award.

19. Further, no provision has been pointed out by learned counsel for the respondent whereby a property can be sealed for the purposes of recovery of arrears of tax.

20. In view of the above, the impugned order dated 08.04.2021 directing sealing of the property of the petitioner, at AW Block (Circular), Sanjay Gandhi Transport Nagar, Badli, Delhi, cannot be sustained. Accordingly, the impugned order of sealing is quashed. Respondent is directed to forthwith de-seal the subject property.

21. It is clarified that this Court has neither considered nor commented upon the merits of the contentions of either parties. It would be open to the respondent to enforce the award or take its remedy under law for recovery of the alleged arrears of ground rent. However, this would be without prejudice to the right of the petitioner to defend such proceedings in accordance with law.

22. All rights and contentions of parties are reserved.

23. Petition is disposed of in the above terms.

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