

(2000) 07 DEL CK 0031
In the Delhi High Court
Case No : C.W. No. 5872 of 1998

Vinod Chawla

APPELLANT

Vs

M/s. V.C. Investment Pvt. Ltd. and Another

RESPONDENT

Date of Decision : 21-07-2000

Acts Referred:

Citation : AIR 2001 Delhi 112

Hon'ble Judges : Dr. M.K. Sharma, J

Bench : Single Bench

Advocate : Mr. R.P. Sharma, for the Appellant; Ms. Amita Gupta, for the Respondent

Judgement

Dr. M.K. Sharma, J.—In the present writ petition the petitioner has challenged the notices issued u/s 126 of the Delhi Municipal Corporation Act, hereinafter called the DMC Act in short, and the assessment orders passed in respect of the property No. A-1/55, Safdarjang Enclave, New Delhi as also the letter of attachment issued by the respondent Corporation in respect of the aforesaid property.

2. Smt. Iqbal Devi is the recorded owner in respect of the aforesaid property in the records maintained by the Corporation. A notice u/s 126 dated 27.3.1992 was issued in the name of Smt. Iqbal Devi C/o Shri Vinod Chawla proposing to fix ratable value of the said property at Rs. 8,64,000/- in response to which the petitioner filed objections on 11.4.1992. A call letter was issued by the respondent Corporation for personal hearing, in response to which the petitioner appeared and informed that the property was let out to Rajdoot Guest House on rent @ Rs. 4,000/- up to 31.3.1990 and at Rs. 6,000/- from 1.4.1990. A notice was also sent u/s 131 by the Corporation to the present occupier M/s. Madura Communications Limited who in response informed that rent for the property in question from 5.5.1998 was Rs. 50,000/- per month whereas rent was being paid in respect of the property at Rs. 57,000/- per month w.e.f. 15.7.1990 and at Rs. 87,000/- per month w.e.f. 5.5.1991. The said occupier also informed the

respondent Corporation that there was a security deposit of Rs. 2,70,000/- which was paid sometime in the month of May, 1998 and that a security amount of Rs. 5,22,000/- was paid in the month of May, 1991 to M/s. Rajdoot Guest House who had entered into the agreement with the petitioner. The aforesaid informations were not supplied by the recorded owner to the Assessing Authority and Therefore, on the basis of the aforesaid informations and on perusal of the record, and after giving personal hearing to the petitioner ratable value of the property was fixed at Rs. 5,40,000/- w.e.f. 5.5.1988 and at Rs. 6,16,000/- w.e.f. 16.7.1980 & at Rs. 8,64,000/- w.e.f. 5.5.1991 by an assessment order dated 21.5.1994 and a copy of the same was sent to her. Subsequently another notice u/s 126 of the Delhi Municipal Corporation Act was sent to Smt. Iqbal Devi, proposing fixation of ratable value at Rs. 9,39,600/- inasmuch as it was believed by the respondent that the valuation was erroneously fixed and that there has been an increase in the ratable value of the property. In response to the same the petitioner filed objections dated 4.4.1994. A call letter was also issued to Smt. Iqbal Devi for personal hearing. Pursuant to the said letter, however, neither the assessed appeared for the personal hearing nor furnished copies of the requisite documents so as to enable the Assessing Authority of the respondent Corporation to decide the case on merits. Accordingly the ratable value of the property was fixed at Rs. 9,39,600/- w.e.f. 1.4.1993. Consequent to the same a bill dated 19.8.1998 was sent to Smt. Iqbal Devi claiming payment of a sum of Rs. 31,98,979/- and as the said amount was not paid an attachment order was issued in respect of the property in question. Being aggrieved by the aforesaid actions on the part of the respondent Corporation the petitioner filed the present petition challenging the order of attachment, the impugned bills, the orders of assessment as also the notices issued u/s 126 of the DMC Act.

3. Learned counsel appearing for the petitioner, during the course of arguments, submitted that no notice under sections 124 and 126 of the DMC Act was served on the petitioner by the respondent No. 2 although the said respondent had due notice of the fact that the petitioner was the owner of the property, he having acquired the same by way of perpetual lease dated 27.2.1967 and as such the entire assessment proceedings are illegal and vitiated. It was also submitted that as no proceeding u/s 124 was initiated and no notice u/s 124 of the DMC Act was served on the petitioner the assessment proceedings are illegal and violative of the provisions of section 124 of the DMC Act. It was also submitted that no basis or formula was disclosed in the notices issued u/s 126 of DMC Act as to how the assessment proposed was worked out and as such the impugned actions are illegal. Counsel for the petitioner further submitted that the assessment list is an annual affair and creates a fresh and independent cause of action every year and Therefore, the respondent No. 2 could not have issued one composite notice for amending the assessment list for four years and that it was necessary for respondent No. 2 to get separate and independent notices served on the petitioner for the years 1988-89, 1989-90, 1990-91 and 1991-92.

4. Counsel appearing for the respondent Corporation on the other hand

submitted that the impugned notices u/s 126 were issued on 27.3.1992 and dated 7.2.1994 whereas orders of assessment in respect of the said property were passed respectively on 25.1.1994 and 10.2.1997. It was contended that neither the aforesaid assessment orders nor the notices issued u/s 126 of the DMC Act were challenged within the period of limitation as prescribed although appropriate statutory remedy is provided for, for challenging such assessment orders and Therefore, this petition which was filed in the later part of the year 1998 is belated and liable to be dismissed on that count alone. It was also submitted that the petitioner has an efficacious alternative remedy provided for under the Statute and there is no reason why the petitioner should by-pass the said effective remedy provided to him to challenge the impugned orders of assessment which are the basis for issuance of impugned bills and attachment order and on that count also the writ petition should be dismissed. She also submitted that all the points urged before the court by the petitioner have no merit at all. She contended that the petitioner is not the recorded owner in respect of the property in the records maintained by the Corporation and it is Smt. Iqbal Devi who is the recorded owner and Therefore, the notices issued to said Smt. Iqbal Devi are valid in law. It was also submitted that the said notices were received and objections were filed in respect of the notice u/s 126 dated 27.3.1992 and that pursuant to call letter issued the petitioner appeared for the personal hearing and only after the aforesaid exercise the impugned order of assessment was passed on 25.1.1994, which was not challenged by the petitioner at any stage till the present writ petition was filed. She also submitted that as the respondent No. 2 believed that the property was erroneously valued and that there has been an increase in the ratable value of the property, a notice u/s 126 was issued to the petitioner proposing ratable value of Rs. 9,39,600/- and that although the said notice was served none appeared on behalf of the assessed in response to the call letter and accordingly, the ratable value proposed at the amount of Rs. 9,39,600/- was fixed in respect of the property by the assessment order dated 10.2.1997. She further contended that a copy of the said assessment order was sent to the recorded owner which was received and the same was also not challenged by the petitioner through the efficacious remedy provided for in the concerned Statute. It was submitted by her that the said notices as also the orders of assessment were issued and passed by the respondent No. 2 in accordance with the provisions of the Statute and Therefore, the writ petition is misconceived.

5. In the light of the aforesaid submissions I proceed to scrutinise the merits of the rival submissions of the counsel appearing for the parties.

6. There are a number of decisions of this court as also of the Supreme Court wherein it has been held that as against the orders of assessment and property tax bill further remedy could be availed of by the aggrieved person and when such alternative remedy is available generally no writ petition should be entertained. In this connection reference may be made to the decision of this court in Castrol India Limited Vs. General Manager, Northern Railway and

another, C.W.P. 110/1997 wherein it was held that as against the order of assessment, which was received by the petitioner, further remedy could have been availed of by the petitioner, accordingly so far as the writ petition related to challenge of the assessment order dated 19.3.1994 the court declined to entertain it. In the case of Executive Engineer, Bihar State Housing Board Vs. Ramesh Kumar Singh and others, , the Supreme Court held as follows:

"For entertaining a writ petition under Article 226 of the Constitution of India against a show cause notice, at that stage, it should be shown that the authority has no power or jurisdiction, to enter upon the enquiry in question. In all other cases, it is only appropriate that the party should avail of the alternate remedy and show cause against the same before the authority concerned and take up the objection regarding jurisdiction also, then. In the event of an adverse decision, it will certainly be open to him to assail the same either in appeal or revision, as the case may be, or in appropriate cases, by invoking the jurisdiction under Article 226 of the Constitution of India."

In Prem Prakash Dohil Vs. MCD, C.W.P. No. 1224/1990 it was held by the Division Bench of this Court that as the property tax bill was served on petitioner u/s 129 of the DMC Act the appeal was maintainable as against the said levy or assessment of tax as against which the right to file appeal u/s 169(1) of the DMC Act would arise. The Division Bench dismissed the writ petition on the ground that such remedy was not resorted to.

7. As against the orders of assessment which are impugned in the present writ petition the petitioners could have challenged the same by filing an appeal in accordance with the provisions of the Delhi Municipal Corporation Act. In the event of filing of such appeals the same were required to be filed within the period of limitation prescribed therein. The petitioner did not challenge any of the said assessment orders by filing appeals which was an efficacious remedy. No cogent reason has also been given by the petitioner for not filing the appeals as also for filing the writ petition at such a distant date. As because an attachment order has been issued just prior to the filing of the writ petition is no ground to hold that the writ petition is maintainable although the limitation for filing appeals as against the orders of assessment has long expired. Besides an appeal was also maintainable as against the property tax bill impugned herein u/s 169(1) of DMC Act and the said remedy was not resorted to. On that count also the writ petition is liable to be dismissed.

8. However, as the learned counsel for the parties addressed arguments on other issues raised in the writ petition, I propose to deal with their submissions as under.

9. The records placed before me indicate that notices u/s 126 of the DMC Act was issued to Smt. Iqbal Devi as she is the recorded owner in the records of the Corporation. It is not the case of the petitioner that after alleged acquisition of the property in question the petitioner had sent any notice u/s 128 of the Delhi

Municipal Corporation Act to the Corporation seeking for mutation of the property in his name. The provisions of section 128 of DMC Act are clear which provide that on acquisition of a property the person primarily liable for payment of the property taxes and the person whose title is transferred as also the person to whom the same is transferred have to give notice of such transfer in writing to the Commissioner within 3 months after the execution of the instrument of transfer. No such document is proved on record which indicates that such intimation as required u/s 128 was sent to and received by respondent No. 2. On the other hand it is disclosed from the records that as against the notice issued u/s 126 dated 27.3.1992 the petitioner replied to the notice and also appeared before the Assessing Authority before finalising the ratable value and Therefore, no prejudice was caused to the petitioner. Reference may be made to the decision in MCD Vs. Surrender Pal Singh 1998(1) AD-Del 6, wherein it was held that no fault can be found with the MCD for not issuing notices to the persons claiming to be owners but not intimating the MCD about such transfer. The subsequent notice u/s 126 was also sent to the same address to which the earlier notice u/s 126 of the DMC Act was issued and served pursuant to which the petitioner also appeared for personal hearing. As against the subsequent notice also, Objections were filed by the petitioner. In that view of the matter no illegality is found in the actions of the respondent No. 2 in issuing the notices u/s 126 and that there was no violation of the principles of natural justice or of any other provision.

10. With regard to the next contention that the respondent No. 2 acted illegally and without jurisdiction in issuing the notices u/s 126 without complying with the provisions of Section 124, it could be stated that there is no material difference between the two provisions i.e. the provisions of Section 124 and Section 126 governing the issuance of notices. In this regard reference may be made to the decision of this court in Smt. Santosh Chandiok Vs. Municipal Corporation of Delhi, reported in 1972 RLR 98 (N). Another important aspect needs to be mentioned. As against the notices u/s 126 DMC Act, objections were filed by the petitioner before the assessing authority and in none of the said objections, the petitioner raised the aforesaid issue. There is not even a whisper in such objections that no notice u/s 126 DMC Act could be issued without complying with the provisions of Section 124 DMC Act and that the petitioner was prejudiced because of the same. Besides the notice u/s 126 of the DMC Act is only a proposal to enhance the ratable value as against which the assessee/petitioner could file objections and in fact, such objections were filed by the petitioner and Therefore, no prejudice was caused to the petitioner.

11. Next submission of the learned counsel appearing for the petitioner is that the assessment list is an annual affair and Therefore a composite notice u/s 126 of the DMC Act, could not have been issued on 27.3.1992 for the four assessment years. The said submission is also baseless when the provisions of section 126 of the DMC Act are considered. Sub-section (3) has been inserted by way of an amendment in Section 126 of DMC Act which provides that

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 would consider any objections which may be made by such person. In the light of the aforesaid provisions, not only the notice dated 27.3.1992 was within the period of limitation but the same issued for four years contemplated by the said amended provision is legal and valid.

12. The submission of the learned counsel appearing for the petitioner that no formula is indicated in the notice issued u/s 126 of the DMC Act as to how the respondent No. 2 arrived at the proposed ratable value is also considered by me. The scheme of the Act makes it crystal clear that it is not necessary to furnish all materials as to how the proposed ratable value was arrived at by respondent No. 2 in the notice issued u/s 126 of the Act. The proposal is based on informations and records available with the Corporation. At that stage the Commissioner is under no obligation to inform as to how the ratable value, which is proposed to be enhanced, has been arrived at as the principles for fixation of ratable value are well known. In this connection reliance could be placed for the aforesaid conclusions in paragraphs 39 and 40 of the Supreme Court decision in Asstt. General Manager, Central Bank of India and Others Vs. Commissioner, Municipal Corporation for the City of Ahmedabad and Others, . The notices are issued to the recorded owners who could file her objections and then she was called for personal hearing. During the course of such hearing the entire materials are shown and made available to the concerned person, which indicates the formula and the reasons for arriving at the proposed ratable value and Therefore in no manner any prejudice has been caused to the petitioner.

13. In the light of the aforesaid findings no case is made out by the petitioner for exercising extraordinary jurisdiction of this Court under Article 226 of the Constitution of India and Therefore, the writ petition is dismissed but without any costs.