

Pk Agrawal Vs. Ndmc

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Court : Delhi

Decided On : Dec-18-2014

Judge : Manmohan

Appellant : Pk Agrawal

Respondent : Ndmc

Advocate for Def. : Mr. Manish Mohan, Ms. Sidhi Arora, Ms. Manisha Rana Singh

Advocate for Pet/Ap. : Ms. Mercy Hussain

Judgement :

12 \$~ * IN THE HIGH COURT OF DELHI AT NEW DELHI + W.P.(C) 4544/2010
PK AGRAWAL Petitioner Through: Petitioner in person with Ms. Mercy
Hussain, Advocate. versus NDMC Respondent Through: Mr. Manish Mohan,
Advocate with Ms. Sidhi Arora and Ms. Manisha Rana Singh, Advocates. Date of
Decision :

18. h December, 2014 % CORAM: HON'BLE MR. JUSTICE MANMOHAN

JUDGMENT

MANMOHAN, J: (Oral) 1. Present writ petition has been filed seeking a direction to the respondent to grant vacancy remission under Section 110 of the New Delhi Municipal Council Act, 1994 (for short Act, 1994) for the period Flat No.817A, Amba Deep, 14 Kasturba Gandhi Marg, New Delhi-110 001 measuring 292 sq. ft.

of super area remained vacant.

2. Petitioner, who appears in person, submits that the only requirement for grant of remission is that the property should have remained vacant and unproductive of rent for more than sixty days.

3. He contends that in the present case the vacancy remission has been denied only on the ground that the respondent was of the view that efforts had not been made by the petitioner to let out the aforesaid flat.

4. Mr. Manish Mohan, learned counsel for respondent-Council draws this Courts attention to para 4 of the counter affidavit, which reads as under:

4. That the request of Shri P.K. Aggarwal cannot be accepted because the flat has not been let out for the last so many years and as such his request has not been covered under the One Time Settlement Scheme. In the said context, it is submitted that Vacancy Remission is granted for the period during which a given premises remains vacant for want of a tenant and not for self use or otherwise. In the present case, the petitioner through his letters AND communications has always informed the NDMC that the flat has not been let out. It has never ever been stated or communicated to the NDMC that efforts are being made to rent out the flat or that efforts to let out the flat have borne no result so as to give a positive and real indication that the flat is actually remaining vacant for want of tenant for which efforts are on. Quite to the contrary the real intention was always to keep the flat vacant with no intention to let out the flat. It is to submit that the onus to prove the applicability of a given scheme is always on the assessee which onus the petitioner has failed to discharge. Accordingly the request for Vacancy Remission has not been and cannot be acceded to.

5. He states that from the correspondences placed on record, it would be apparent that petitioner had not let out the aforesaid flat only because he had not found a reputed company as a tenant.

6. Having heard both the parties, this Court is of the view that present case revolves around the interpretation of Section 110(1) of the Act, 1994. The said

Section reads as under:

110. Remission or refund of tax-(1) If any building together with land appurtenant thereto has remained vacant and unproductive of rent for sixty or more consecutive days, the Chairperson shall remit or refund, as the case may be, two-thirds of such portion of the property tax assessed on the rateable value thereof, as may be proportionate to the number of days during which the said building together with the land appurtenant thereto has remained vacant and unproductive of rent.

7. In the opinion of this Court, an owner of the building is entitled to vacancy remission or refund of tax on fulfilment of only two conditions, namely, that the property remains vacant and unproductive of rent. Nowhere the aforesaid Section stipulates that efforts have to be made by the landlord/owner for letting out the premises or that the premises should have remained vacant beyond the control of the owner.

8. Two Coordinate Benches of this Court have already taken a similar view. In *Angle Properties P. Ltd. vs. Municipal Corporation of Delhi*, 144 (2007) DLT651 it has been held as under:

15. As already emphasised in the above decision, the very purpose of grant of vacancy remission is to acknowledge the fact that a property which is vacant and unoccupied does not place a burden on scarce municipal resources and, therefore, when it is shown that a certain portion has remained vacant then remission is granted in respect of the two-thirds of the portion of the general tax on the rateable value as may be proportionate to the number of days during which the said building together with the land appurtenant thereto is vacant and unproductive.

9. In *MCD vs. Rani Arya*, 2011 IAD(Delhi) 349, it has been held as under:

4. In the present case there is no dispute that the flat was lying vacant and unproductive of rent for the period between 26th December, 1988 and 25th December, 1995. The counsel for the petitioner MCD has however urged that

vacant and unproductive of rent should be for reasons beyond the control of the owner. The counsel for the petitioner MCD has argued that the MCD cannot be deprived of full tax by the owner of a property of his own volition keeping the property vacant and unproductive of rent and it is only when the property remains vacant for reasons beyond the control of the owner and/or when the owner for reasons not attributable to him is neither able to occupy the same himself nor able to let out the same, that he becomes entitled to vacancy remission..... xxx xxx xxx 6. The Supreme Court in State Vs. Parmeshwaran Subramani (2009) 9 SCC729 observed; It is settled that where there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the court to undertake any exercise to read something into the provisions which the legislature in its wisdom consciously omitted. Such an exercise if undertaken by the courts may amount to amending or altering the statutory provisions..... 7 In my opinion the only requirement for availing vacancy remission is that the building has remained vacant and unproductive of rent. The twin test has been laid inasmuch as in a particular situation it is possible that the property may be lying vacant though yielding rent to the owner. The tenant after taking the property on rent may choose not to occupy it for some time and in which case the vacancy remission cannot be claimed.

8. Vacancy remission is in the nature of exception to the general law of the building being liable for property tax. The Supreme Court in UOI Vs. Wood Papers Ltd. AIR 1991 SC2049 has held; When the question is whether a subject falls in the notification or in the exemption clause then it being in nature of exception is to be construed strictly and against the subject but once ambiguity or doubt about applicability is lifted and the subject falls in the notification then full play should be given to it and it calls for a wider and liberal construction.

Following the above, I find that once a building is found entitled to vacancy remission, fetters thereon need not be placed.

10. Keeping in view the aforesaid categorical exposition of law, this Court directs the respondent to grant vacancy remission to the petitioner under Section 110 of the Act, 1994 of Flat No.817A, Amba Deep, 14 Kasturba Gandhi Marg, New Delhi-

110 001 measuring 292 sq. ft. of super area for the period it remained vacant namely, w.e.f. 01st May, 2002 to 31st March, 2009. With the aforesaid observations and direction, present writ petition stands disposed of. MANMOHAN, J DECEMBER18 2014 js

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