Dcm Ltd. Vs. M.C.D. and ors.

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SooperKanoon Citation : sooperkanoon.com/685082

Court : Delhi

Decided On : Apr-03-1998

Reported in : 1998IIIAD(Delhi)289; AIR1998Delhi348; 73(1998)DLT227; ILR1998Delhi284

Judge : Arun Kumar and; M.S.A. Siddiqui, JJ.

Acts : Delhi Municipal Corporation Act, 1994 - Sections 126

Appeal No. : C.W.P.No. 3807/1997

Appellant : Dcm Ltd.

Respondent : M.C.D. and ors.

Advocate for Def. : Mr. Arun Jaitley, Sr.Adv. and ; Ms.Madhu Tewatia, Adv.

Advocate for Pet/Ap. : Mr. Shanti Bhushan, Sr.Adv. and; Mr. B.B. Jain, Adv

Judgement :
ORDER

Arun Kumar, J.

1. This writ petition is directed against an order dated 11th August, 1997 passed by the Joint Assessor and Collector, Karol Bagh Zone, Municipal Corporation of Delhi, determining the rateable value of the property of the petitioner at

Rs.15,17,52,000/- per annum w.e.f. 1.4.1993. The existing rateable value of the property of the petitioner was Rs.6,44,890/-. The same was proposed to be revised to Rs.15,17,52,000/-, vide a notice dated 29th March, 1994 under Section 126 of the Delhi Municipal Corporation Act (hereinafter referred to as the Act). The reason for amendment of the rateable value given in the notice is 'plot, after demolishing of the structure for development'. The notice called upon the petitioner to file objections, if any, against the proposed rateable value within 35 days of the service of the notice. In response to the said notice of the Corporation for revision of the rateable value the petitioner filed objections dated 5th May 1994. Copies of the notice under section 126 as well as the objections filed by the petitioner in response thereto have been annexed as Annx.P-7 and P-8 to the writ petition. In its objections the first and foremost plea taken by the petitioner was that the Corporation should disclose the basis for arriving at the figure of Rs.15,17,52,000/- so that the petitioner could effectively reply to the notice. The petitioner said in its reply/objections that 'no information has been disclosed to us how the Corporation arrived at a figure of Rs.15,17,52,000/- as the proposed rateable value w.e.f. 1st April 1993. Without knowing the basis of the determination of the said figure we are unable to give en effective reply or response in reply thereto'. In a nutshell the petitioner wants to know what is the case of the Municipal Corporation of Delhi which it is required to meet. It was further stated by the petitioner that in the absence of full information and details the notice in question was invalid, illegal and ultra virus. Besides this several objections were taken qua the proposed amount of the rateable value.

2. Although an objection was taken in the counter affidavit filed on behalf of the respondents that in view of the provision of appeal contained in sections 169 and 170 of the Act the present writ petition is not maintainable, yet at the time of hearing this objection was not pressed and, thereforee, this aspect of the matter need not be gone into.

3. On merits the learned counsel for the petitioner challenged the very basis of the revision of the rateable value. It was submitted that section 116(2) of the Act has no application in the facts of the present case. The building was in the course of reconstruction. The erstwhile structure had been demolished for purposes of

reconstruction. The land underneath the structure had become an open piece of land temporarily because the existing structure had been demolished and the new structure is to be put up. In such cases where land temporarily becomes an open piece of land, section 116(2) of the Act has no application. The case ought to have been treated as of a building under reconstruction. The moment reconstruction was complete, notice would be given to the Corporation as envisaged under section 129 of the Act and the assessment for property taxes will follow. The Corporation appeared to be proceeding on the basis of potential market value of the land which it was deriving from a brochure issued by the petitioner and its collaborators who had entered into a commercial venture to develop the land. The Brochure only contained projections which could not be made basis for the market value of the land on the date of the impugned proposal.

4. In this connection it was further submitted on behalf of the petitioner that on 1st April 1993, i.e. the date from which the rateable value was proposed to be revised, the entire building had not even been demolished. In this connection our attention was invited to para 28 of the writ petition wherein it is mentioned that up to 1st April 1993 only 20 % of the old existing structure had been demolished whereas up to 31st March 1994, 77% of the old structure had been demolished. Thus the case of the petitioner is that in any case w.e.f. 1st April 1993, the plot could not be treated as an open piece of land liable to be assessed under section 116(2) of the Act. During the hearing learned counsel for the Corporation disputed this assertion made on behalf of the petitioner. However, reply to para 28 of the writ petition contained in the counter affidavit is vague and evasive. thereforee, there could be substance in the averments contained in para 28 of the writ petition to the effect that the building had not been completely demolished by the effective date, i.e. 1st April 1993.

5. The notice under section 126 of the Act proposing to revise the rateable value of the property has been challenged on the ground that it is vague and thereforee invalid. The notice merely gives the following ground for revision:-

'plot, after demolishing of the structure for development'.

6. This does not disclose any basis on which the proposed figure of rateable value, i.e. 15,17,52,000/- had been arrived at. The petitioner submits that inspire of specific request made by it to the respondent to disclose the basis behind the proposal, nothing was revealed and the petitioner was thus handicapped in meeting the case set up against it by the Corporation.

7. The impugned assessment order dated 11th August 1997 was challenged on the ground that personal hearing regarding the objections filed by the petitioner was given to the petitioner's representative by one officer while the impugned assessment order was passed by another officer. The learned counsel appearing for the Corporation conceded that the hearing was given by one officer while the impugned order was passed by another officer.

8. These are broadly the points of attack qua the impugned assessment order.

9. The first point is by way of an attack on merits of the order, i.e. whether the order was passed on sound legal principles. As already indicated, the case of the petitioner is that section 116(2) of the Act has no application in the facts of the present case. According to the learned counsel for the petitioner the said section can be made the basis of assessment only in cases of lands never built upon. The present is a case of land which was built upon and the building was demolished for purposes of reconstruction. In such cases when temporarily on account of demolition of the existing structure land becomes an open piece of land it cannot be assessed under section 116(2) of the Act. In such cases, according to the learned counsel for the petitioner, assessments are to be made in accordance with sections 129 and 163 of the Act. The two sets of provisions of Act operate in different fields and have to be harmoniously construed. The learned counsel submitted that if section 116(2) is applied in such cases, it will lead to grave injustice. He tried to demonstrate the injustice in the present case by showing that till the old construction was existing on the plot the property was being assessed on the basis of value of the land as per its purchase price and the cost of the structure standing thereon which came to Rs.6,44,890/-. When the reconstruction of the building is completed it will again have to be assessed on the value of land, i.e. cost of its acquisition by the owner and the cost of construction. If in between

period is to be covered under section 116(2) as is being sought to be done in the present case, the results are preposterous as is demonstrated from the manner in which the property is sought to be assessed by the Corporation by way of impugned assessment - they have taken the potential value of the land though the property is presently not yielding anything to the owners nor it is likely to yield anything in near future on account of several hurdles in the matter of construction of the property. The owners are being assessed to property tax on a basis which in effect amounts to expropriation of the property.

10. In this very context it has been submitted on behalf of the petitioners that assuming though not admitting that the Corporation can assess the property under section 116(2) of the Act, the Corporation has to give effect to bye law 4 of the Determination of rateable Byelaws 1994. The said bye-law reads as under:-

DELHI MUNICIPAL CORPORATION (RATEABLE VALUE BYE-LAWS, 19944. In order to fix the rateable value of any land under sub-section (2) of Section 116 of the Act, where the market value of such land, in the year of assessment, is more than the cost paid for the land, the 'estimated capital value of such land' shall be the market value of such land in the year of assessment. Rateable value under this item shall be determined from 1.4.98 where at least twenty five per cent of the permissible covered area is not constructed up to 31.3.98.

Explanationn.- The market value of land for the purposes of this bye-law shall be the land rates notified by the D.D.A./L.& D.O. or any other agency controlling the prices of land for the locality or similarly situated nearby locality.

11. In view of the said bye-law the market value concept cannot be applied prior to 1st April 1998. To buttress this argument the learned counsel for the petitioner invited our attention to sub-section 47 of section 2 of the Act which provides that the rateable value of properties has to be assessed as per the Act and the bye-laws. Accordingly the bye-laws are as much to be given effect to as the main provision of the Act, unless there is any inconsistency between the two. The learned counsel clarified that though this bye-law came into force in 1994 yet since the assessment was already pending on that date and the bye-law contains only a procedural matter, it will have retrospective application in view of the law laid down

by the Supreme Court in Commissioner of Wealth Tax Vs . Sharvan Kumar Swarup & Sons : 1995ECR425(SC) . The learned counsel for the petitioner also relied on a departmental circular being instruction No.2/91 dated 18th January 1991, according to which up to 1986-87 plots lying vacant for more than 3 years were assessed on the basis of the cost paid by the person primarily liable for payment of taxes. The circular directed the same practice to continue till further orders, i.e. the plot may be assessed at the cost paid by the persons primarily liable for payment of property taxes. In the present case there is no change of ownership and, thereforee, it was submitted that the said circular applied which means that the plot in question should have been assessed for the purposes of property tax at the value paid by the owner for its acquisition. Thus it is the case of the petitioner in the alternative that even if the property of the petitioner was to be assessed as an open plot in accordance with section 116(2) of the Act, the value of the plot should have been taken as the price at which it was acquired by the petitioner who continues to be the original owner of the plot.

12. In reply to the aforesaid contentions raised on behalf of the petitioner the learned counsel appearing on behalf of the respondent Corporation submitted that section 116(2) of the Act applies in all cases of vacant land and, thereforee, the said section was rightly applied in the present case. It was further submitted that section 163 of the Act operates in a limited area where refunds have to be made out because of depletion in the value of the property. According to the learned counsel section 163 had no application in the facts of the present case. Regarding bye law 4 and the 1991 circular relied upon by the petitioner the learned counsel for the respondent submitted that these are attracted only in cases where the land has been always vacant and not in cases of the present type where land has become vacant on account of a voluntary act of the assessee. On the question of the basis of arriving at the capital value of land as envisaged in section 116(2) of the Act the learned counsel justified the approach of the Corporation. It was submitted that the basis had been adopted from the material belonging to the petitioner itself, the Corporation had proceeded on the basis of the Brochure issued by the petitioner and its collaborators which was indicative of the market value of the land in question.

13. We have noted the rival contentions raised on behalf of the parties regarding the merits/basis of the assessment of the property in suit for purposes of levy of property tax. We would like to refrain from expressing any final opinion on the issues raised keeping in view the scheme of the Act according to which the Assessor and Collector is the authority entrusted with the function of fixing rateable value of the properties within its jurisdiction. Admittedly it is a quasi judicial function which the Assessor and Collector has to discharge in the first instance. The statute has cast this duty on the Assessor & Collector. The order of the Assessor and Collector is appealable to the District Judge, Delhi under section 169 of the Act. We would, thereforee, like that the authority entrusted with such a function should discharge its function in accordance with law in the first instance and we should not appropriate this function to ourselves. The aggrieved party has a right of appeal against the order of the Assessor & Collector. Any decision on this question in these proceedings will deny the right of hearing before the Assessor & Collector and the right of appeal before the District Judge. We hope that the statutory authorities will carefully consider the points raised in this petition and further points, if any, to be raised by the parties and thereafter arrive at a decision in accordance with law with a reasoned order.

14. The other grounds for challenging the impugned order dated 11th August 1997 are:-

a) Validity of the notice under section 126 of the Act; and

b) The impugned order having been passed by an officer other than the one who had given oral hearing to the petitioner regarding the objections filed by the petitioner to the proposed rateable value.

While dealing with the question of validity of notice under section 126 of the Act it may be appropriate to reproduce the relevant portion of the section itself:-

Sec.126(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 value or assessed through fraud, mistake or accident; or

(g) by inserting or altering an entry in respect of any building, 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 an amendment under sub-section (2) 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.

15. The present is a case of amendment of the assessment list by increasing the amount of rateable value. As per sub-section (2) before making an amendment the Commissioner is required to give the mandatory notice of not less than one month about the proposal to make the amendment and giving opportunity to the effected person to file objections against such a proposal. The notice has to be served within the year in which the amendment is proposed to be given effect to. In the present case it has already been noticed that the only reason for the proposed amendment given in the notice is 'plot, after demolishing of the structure for development'. Besides this only the figure of the proposed rateable value has been given in the notice. The learned counsel for the petitioner submitted that the basis

on which the proposed figure of the rateable value was fixed ought to be disclosed to the petitioner before it could file any objections. The notice is mandatory which shows the importance being attached to the notice. The consequences of the proposal contained in the notice can be grave for the notice and, thereforee, the statute recognised a well established principle of natural justice that nobody should be condemned unheard. To give meaning to this right of assessed it is only just and fair that the notice should contain some basic facts which enable the notice to know what is the case it has to meet. This will enable it to make an effective representation against the proposal. In addition to this it has been pointed out from the facts on record that in the present objections filed in response to the notice, the first thing the petitioner demanded from the Corporation was to disclose the basis of the proposal. In the absence of this disclosure the petitioner was at a loss to know how the proposed figure had been arrived at by the Corporation. The rateable value is proposed to be revised from Rs.6,44,890/- to Rs.15,17,52,000/-.

16. In this connection reply on behalf of the Corporation is that the notice is not vague. The figure of the proposed rateable value is based on the assessor's own document which is well known to the assessee. As a matter of law it is sought to be argued that it is not necessary to disclose how the proposed value is arrived at. It is for the petitioner to show what ought to be the proper value. According to the learned counsel for the Corporation in the notice a tentative value has to be given coupled with the reason for enhancement nothing more was required to be given. The entire information is actually in possession of the assessee.

17. The question of validity of the notice under Section 126 of the Act has been subject matter of certain decisions of this Court.

18. In Kaviraj Khazan Chand v. The New Delhi Municipality (1960) 62 PLR 97 a Division Bench of Punjab High Court was dealing with similar provision in the Punjab Municipal Act as applicable to Delhi. It was held that:-

'The intention of the law cannot be that inviting of objections from persons affected by the proposed increased assessments and the provisions for the disposal of such objections are to be a mere formality, and that the objections are intented to be automatically consigned to the waste paper basket in pursuance of a decision

previously arrived at. The occupiers are entitled for the proper disposal of their objections to be informed of the formula on which it was proposed to base the new assessments both for the purpose of challenging its general validity and also its application in individual cases.'

19. Again in New Delhi Municipal Committee v. Indian Bank Ltd., (1967) 69 PLR 381 a Division Bench of this Court while interpreting similar provision in the Punjab Municipal Act as applicable to Delhi held that:-

'The notice issued under section 67(1) of the Punjab Municipal Act, the Municipal Committee is bound to inform the assessed the reasons for the suggested alteration of the assessment. That is a condition precedent for a valid notice. Where the notice issued is in a printed form it is the duty of the issuing officer to strike out the unnecessary words in the printed form.'

'The power to alter the assessment is entirely that of the Municipal Committee. Before exercising that power, the assessed should be given due notice of the proposal to alter the assessment and further, the alteration can be effected only for the reasons that the property in question had been erroneously valued or assessed through fraud, accident or mistake, whether on the part of the Committee or the assessee. The Municipal Committee intimate to the assessed what mistake had been committed, if there was any mistake, or what fraud, had been committed, if there was any fraud or what accident had happened if there was any, so that the assessed may be able to meet the case of the Municipal Committee.'

20. In Govt. Servants Co-opp. House Building Society Ltd. and Ors. Vs . Union of India and Ors. : AIR1994 Delhi112 a notice under Section 126 of the Act which was almost similar was not held to be bad while in Savitri Devi vs . M.C.D., : 55(1994)DLT391 a similar notice was held to be bad and a via media was found that inspire of totally invalidating the notice the Court permitted the Corporation to give a supplementary notice. It was observed:-

'In our view, the opportunity given to the owner/occupier of the building must be meaningful and the printed form on the basis of which notice dated 5th March,

1993 and 13th January, 1993 are issued, do not conform to basic principles of natural justice. No details as to the additions or alterations etc. were specified in the above show cause notice. In our view, it is some details of additions or alteration, fixtures and fittings etc. are to be furnished to the occupier/owner and a copy of the inspection report on the basis of which it is proposed to increase the rateable value are also to be given. Unless the show cause notice gives particulars, one cannot expect the owner/occupier to give effective reply.'

21. Again in Prem Prashad Juneja Vs . Municipal Corporation of Delhi. : 1996IIAD(Delhi)69 , another Division Bench of this Court followed the decision in Savitri Devi (supra) and gave opportunity to the Corporation to give a supplementary notice.

22. Keeping the various decisions of this Court on this question in view we are of the considered opinion that in order to enable the notice to effectively meet the case proposed against him in the notice, the basis of arriving at the proposed figure of rateable value ought to be disclosed to the assessed specially when the assessed makes a demand for the same as in the present case. Thee is nothing secret or sacrosanct - after all the Corporation must have arrived at the proposed figure of rateable value on some basis, it cannot be that the proposed figure mentioned in the notice has dawned on some officer of the Corporation from the blue. When the proposed figure has been worked out on some basis we see nothing secret or confidential in it so as not to make it available to the assessee. The proposal in the notice has serious repercussions so far as the assessed is concerned and that is why the assessed has been given a right to file objections against the proposal. Saying that the entire facts are available with the petitioner is no answer to the requirement of disclosing the basis of the proposed figure of rateable value. In order to ensure that the right is effectively exercised and that it is not rendered illusory, we are of the view that the Corporation must disclose the basis of arriving at the figure contained in the proposal specially when the assessed has asked for the same. Setting aside the notice on this ground will mean that the petitioner will get a complete tax holiday with effect from the date of the proposed revision in the rateable value till a fresh notice is given. We are mindful of the fact that a fresh notice will be effective only from the year in which it

is given and the result will be that the petitioner will get the benefit of the entire period till a fresh notice containing a proposal for revision of rateable value is given. thereforee, without invalidating the notice under section 126 of the Act given to the petitioner in the present case, we would direct that the Corporation supply the information sought for by the petitioner vide its objections dated 5th May 1994 which were filed in response to the notice under section 126 of the act. The supplementary notice/information may be supplied to the petitioner within four weeks from the decision in this case.

23. The next point is regarding hearing given by one officer while the order was passed by another officer. In this context the facts are not in dispute. The admitted position is that the petitioner's representative was heard on the basis of the objections filed by the petitioner by one officer while the objections were decided by another officer. According to the learned counsel for the petitioner on the face of it this procedure is repulsive and repugnant to the basic principles of natural justice and the impugned order has to be quashed on this ground alone. On the other hand the learned counsel for the Corporation tried to justify this procedure followed by the Corporation by stating that the present is not a case of any oral evidence where demeanor of a witness may be of any significance. The decision of the case is based on material on record. The petitioner had filed detailed objections as well as written submissions in support thereof. The order has been passed by the Assessing Authority on the basis of notice, reply to the notice, objections, written submissions on behalf of the assessed and other relevant documents on record. All the arguments advanced by the petitioner are contained in the replies. In short, it is submitted that the entire material was before the Assessing Officer and he passed the order after looking into the same.

24. In support of this submission the learned counsel for the counsel for the respondent relied on certain decisions. First he cited Ossein and Gelatine Mfrs. Association v. Modi Alkalies & Chemicals Ltd., (1989) 4 S 264. This was a case of grant of license to manufacture ossein and gelatine in the State of Rajasthan. The appellant Association had represented against grant of license to the respondent. They had made written representations in this behalf. Oral hearing was given to them by an officer of the Govt. Final order granting permission to respondent was

passed long after by another officer. In these facts it was held that there was no violation of principles of natural justice. In our view this case has no application in the facts of the present case. This was a case of purely administrative inquiry whereas the case we are dealing with is one requiring discharge of quasi judicial functions. The requirement of oral hearing to be given to the assessed is implicit in view of the statutory provisions. Section 124(5) which deals with objections to the assessment list clearly provides for an opportunity of hearing to the party affected. Section 126 which has been applied in the present case, as noticed earlier, contains a mandatory requirement of notice and also provides for an opportunity to the assessed to file objections to the proposal. It also enjoins on the Commissioner to consider the objections of the assessed in response to the notice under section 126. In fact the learned counsel for the respondent admitted that the Corporation gives an opportunity of oral hearing in all such cases. When the requirement of oral hearing is conceded, the right cannot be rendered meaningless in this manner, i.e. hearing by one officer and order by another officer. The right of hearing has to be given some meaning and has to be made effective which can be possible only if the officer who gives oral hearing also passes the final order.

25. Next the learned counsel relied on a decision in Jeffs & Ors. v. New Zealand Dairy Production & Marketing Board & Ors. (1966) All E.R. 863. This case again pertains to an administrative decision.

26. The Supreme Court decision in State Bank of Patiala & Ors. Vs . S.K. Sharma : (1996)IILLJ296SC was cited to emphasise that test of prejudice in cases of compliance with principles of natural justice has been watered down by the Supreme Court and is no longer in absolute terms as was held in S.L.Kapoor Vs . Jagmohan, : [1981]1SCR746 . This case contains principles to be followed in cases where violation of natural justice is pleaded.

27. The question under consideration before us is fully covered by the decision of Supreme Court in G. Nageswara Rao v. A.P.S.R. T. Corpn. 1959 SC 308 . This was a case of quasi judicial inquiry and the Supreme Court clearly laid down that the decision has to be given by the same officer who heard the party concerned. In

our view in a quasi judicial inquiry this is no answer that the order has been passed in accordance with the material on record specially when oral hearing is envisaged and has in fact been given to the party. The importance of oral hearing cannot be nullified by saying that the authority has considered all the submissions contained in the written arguments. Oral hearing generates discussion and leads to clarification of doubt, if any, which the authority while has to decide might be having in its mind. The importance of benefit of a healthy discussion can never be over emphasised. It is a basic tenet of law by which we are governed. If what has been urged on behalf of the respondent was to be accepted, it would be as good as saying that no oral hearing is required in judicial or quasi judicial matter.

28. For all these reasons the impugned assessment order dated 11th August 1997 passed by the Joint Assessor & Collector, Municipal Corporation of Delhi is hereby set aside and the matter is remanded back to the concerned authority for fresh assessment in accordance with law.