Municipal Corporation Of Delhi vs Dharma Properties Pvt. Ltd. on 15 September, 2017

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8675 OF 2011

MUNICIPAL CORPORATION OF DELHI .....APPELLANT(S)

VERSUS

DHARMA PROPERTIES PVT. LTD. .....RESPONDENT(S)

JUDGMENT

A.K. SIKRI, J.

Vide notice dated March 25, 1998, which was received by the respondent herein on April 4, 1998, the appellant/Municipal Corporation of Delhi (hereinafter referred to as the 'Corporation') proposed to enhance the rateable value of the respondent property w.e.f. April 1, 1997. Pursuant to the said notice, assessment order dated March 11, 2001 was passed whereby assessment pertaining to the years 1997-98, 1998-99 and Signature Not Verified 2001-02 was revised. This order was challenged by the Digitally signed by BALA PARVATHI Date: 2017.09.20 respondent by filing appeal before the Additional District Judge, 16:32:24 IST Reason:

Delhi. The appeal was allowed holding the notice to be bad in law and thereby quashing the order as well. That order has been upheld by the single Judge of the High Court as well as by the Division Bench. The judgment of the Division Bench is impugned in the present appeal. With this introduction, let us recapitulate the facts in brief, leading to the filing of the instant appeal. FACTUAL MATRIX

2) With regard to the property of the respondent in Green Park Extension, New Delhi, the annual rateable value of the property was Rs.16,300/-. On March 25, 1998, the Corporation issued a notice in terms of Section 126 of the Delhi Municipal Corporation Act, 1957 (hereinafter referred to as the 'Act') proposing to enhance the rateable value to Rs.16,30,370/- w.e.f. April 1, 1997. This notice was dispatched under

registered AD cover on March 27, 1998, which was received by the respondent on April 4, 1998. The order finalising the assessment was made on March 11, 2001. As per the said order, rateable value was fixed at Rs.11,35,260/- w.e.f. April 1, 1997; Rs.15,66,720/- w.e.f. March 1, 1998 and Rs.16,30,370/- w.e.f. January 1, 2001. The assessment order was challenged by the respondent by filing an appeal under Section 169 of the Act before the Additional District Judge, Delhi. The ground raised was that the notice dated March

25, 1998 was, in fact, received by it through registered post only on April 4, 1998 and, therefore, the same was time barred. Another ground taken was that the notice in question could not be used for finalising assessments of later and subsequent years in the absence of independent notices in that regard. The Additional District Judge, Delhi vide its judgment dated July 12, 2001 allowed the appeal, holding that the notice proposing enhancement in rateable value had to be served on or before March 31, 1998 and since it was served only on April 4, 1998, the same was time barred.

Aggrieved thereupon, the appellant filed Civil Writ Petition No. 672 of 2002 before the High Court of Delhi. The single Judge by order dated February 21, 2002 affirmed the view taken by the Additional District Judge and dismissed the writ petition. The said order of the single Judge was challenged by the appellant herein before the Division Bench of the High Court in intra court appeal. By impugned order dated March 4, 2005, the High Court dismissed the appeal, thereby affirming the order of the Courts below.

3) Since, the legal issues which need to be decided relate to the interpretation of Section 126 of the Act, we would like to reproduce the said provision at this stage:

"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 3 [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. Explanation.—In computing the period referred to in clause (a) or clause

(b), any period or periods during which the proceedings for the assessment were held up on account of any stay or injunction by the order of any court, or the period of any delay attributable to the person to whom the notice has been given under sub-section (2) or sub-section (3), as the case may be, shall be excluded.

" THE IMPUGNED JUDGMENT

4) The judgment under challenge reveals that two issues were posed for consideration by the High Court, namely:

(i) Whether notice under Section 126 of the Act which was received on April 4, 1998 i.e. after March 31, 1997 would be invalid as beyond the period of limitation prescribed as per Section 126(2) and (4) of the Act? and

(ii) Whether the assessment order in respect of subsequent/future periods could be passed on the basis of such a notice, even if it was barred for the purposes of Assessment Year 1997-98?

5) It was contended on behalf of the Corporation that the notice was not time barred as held by the Courts below since the same was issued in the same Financial Year as per Section 126 of the Act even though it was received by the respondent in the next Financial Year. Section 444 of the Act was also cited by the Corporation to hold that any notice sent by registered post would constitute service. It was also contended that the assessments for the years commencing April 1, 1998, April 1, 1999 and April 1, 2000 were valid even if it was held by the Court that the notice did not cover the period from April 1, 1997 to March 31, 1998. The assessment was complete within the three years period contemplated under Section 126(4) of the Act. The said contention was supported by the judgment passed by the Delhi High Court in CW No. 1473 of 1989 dated May 12, 2003.

6) On the first issue, relying upon the judgments of this Court in K. Narasimhiah v. H.C. Singri Gowda1, Banarsi Debi v. Income Tax Officer2 and other judgments, the High Court has held that impugned notice is time barred as the said notice under Section 126 was served upon the respondent herein beyond the specified period i.e. on April 4, 1998, even when it was dispatched on March 25, 1998. Such a notice could not form basis to determine the rateable value for the year 1997-98.

7) Analysing the scheme of Section 126 of the Act, it is held that the 1 1964 (7) SCR 618 2 1964 (7) SCR 539 giving of notice initiates the proceedings for amendment of the assessment list which culminates in the making of an assessment order. The expression "give", therefore, has a more positive connotation; although it cannot be inter-changed with the term "received", nevertheless it implies the idea of communicating or informing the recipient of the notice. If that objective was to be kept in mind the mere dispatch of notice would not conclude the issue.

8) On the second issue, the High Court has rejected the contention of the Corporation about the notice being valid for a future period, other than the one for which it is given in view of the Explanation to Section 126(4). The High Court has held that it provides for only one situation where the time period can be stretched, viz. where the assessment is held up (after due service of notice) due to a stay order by a court of law. That covers only one eventuality, namely assessment proceedings. The fact that the other periods have not been mentioned leads to the inference that the delay in issuance of notice, or delays in other situations have been intentionally left out, and the consequence of such imperatively framed time period being breached, result in invalidity of the act. In forming this opinion, the High Court has relied

upon a judgment of the Constitution Bench of this Court in Superintendent of Taxes v. Onkarmal Nathmal Trust3.

THE ARGUMENTS

9) After pointing out the facts of the case, learned counsel for the Corporation reiterated the contentions which were taken by the appellant before the High Court and which have already been reproduced above. He heavily relied upon the judgment dated May 12, 2003 of the High Court passed in CW No. 1473 of 1989 and contended that even if the said notice was time barred in respect of Assessment Year 1997-98, the same was well within limitation insofar as other Assessment Years are concerned. Thus, contended the learned lawyer, the assessment in respect of other Assessment Years could not have been invalidated.

10) Learned counsel for the respondent/assessee also reiterated the contentions raised before the High Court which found acceptance by it and submitted that it was a well-reasoned judgment of the High Court which could not be faulted with. His argument was that the High Court has based its conclusions referring to the various judgments of this Court. Additionally, on the second issue mentioned above, the learned counsel relied 3 (1976) 1 SCC 766 upon the judgment of this Court in Shyam Kishore & Ors. v. Municipal Corporation of Delhi & Anr.4.

THE ANSWERS

11) We have given our serious considerations to the respective submissions, which it deserves, of the learned counsel for the parties.

12) Insofar as first issue is concerned that need not detain us for long as we find that the treatment given thereto by the High Court is without any blemish. Sub-section (2) of Section 126 of the Act mandates giving of notice to the affected persons, of not less than one month period, proposing to make amendment of the assessment list as well as giving an opportunity to such a person to file his objection to the proposed amendment. Section 444 of the Act lays down as to how such notices have to be served. It reads as under:

"444. Service of notices, etc.—(1) Every notice, bill, summons, order, requisition or other document required or authorised by this Act or any rule, regulation or bye-law made thereunder to be served or issued by or on behalf of the Corporation, or by any of the municipal authorities specified in section 44 or any municipal officer, on any person shall, save as otherwise provided in this Act or such rule, regulation or bye-law, be deemed to be duly served—

(a) Where the person to be served is a company, if the 4 (1993) 1 SCC 22 document is addressed to the secretary of the company at its registered office or at its principal office or place of the business and is either—

(i) Sent by registered post, or

(ii) Delivered at the registered office or at the principal office or place of business of the company;

(b) Where the person to be served is a partnership, if the document is addressed to the partnership at its principal place of business, identifying it by the name or style under which its business is carried on, and is either—

(i) Sent by registered post, or

(ii) Delivered at the said place of business;

(c) Where the person to be served is a public body, or a corporation, society or other body, if the document is addressed to the secretary, treasurer or other head officer of that body, corporation or society at its principal office, and is either—

(i) Sent by registered post, or

(ii) Delivered at that office;

(d) In any other case, if the document is addressed to the person to be served and—

(i) Is given or tendered to him, or

(ii) If such person cannot be found, is affixed on some conspicuous part of his last known place of residence or business, if within the Union territory of Delhi, or is given or tendered to some adult member of his family or is affixed on some conspicuous part of the land or building, if any, to which it relates, or

(iii) Is sent by registered post to that person.

(2) Any document which is required or authorised to be served on the owner or occupier of any land or building may be addressed "the owner" or "the occupier", as the case may be, of that land or building (naming that land or building) without further name or description, and shall be deemed to be duly served—

(a) If the document so addressed is sent or delivered in accordance with clause (d) of sub-section (1); or

(b) If the document so addressed or a copy thereof so addressed, is delivered to some person on the land or building or, where there is no person on the land or building to whom it can be delivered, is affixed to some conspicuous part of the land or building.

(3) Where a document is served on a partnership in accordance with this section, the document shall be deemed to be served on each partner.

(4) For the purpose of enabling any document to be served on the owner of any premises the Commissioner may by notice in writing require the occupier of the premises to state the name and address of the owner thereof.

(5) Where the person on whom a document is to be served is a minor, the service upon his guardian or any adult member of his family shall be deemed to be service upon the minor.

(6) Nothing in sections 442 and 443 and in this section shall apply to any summons issued under this Act by a court.

(7) A servant is not a member of the family within the meaning of this section."

13) This Section prescribes the manner in which notices etc. are required to be served or issued. The High Court has rightly pointed out that four eventualities are contemplated in Section 444(1). However, the expression "give" does not find mention in any of those eventualities. Mandate of Section 126 is "giving of a notice". Therefore, the question is as to whether at what stage, it would be treated that notice as stipulated in Section 126 has been given. In case K. Narasimhiah, this Court has held that mere dispatch of notice would not amount to "giving" of notice. "Giving" would be complete only when it has been offered to the concerned person/addressee, even when it is not accepted by him on tendering. Likewise, in Banarsi Debi's case, referring to Section 27 of the General Clauses Act, 1897 which deals with the expressions "serve" or "give" or "sent", this Court held that all these expressions, namely, "serve", "give"

and "sent" are interchangeable terms and, therefore, notice would be treated to have been issued only when the entire process of sending the notice i.e. from dispatch till the service thereof, is complete.

14) From the aforesaid, it follows that notice as contemplated under Section 126, was given only on April 4, 1998. Such a notice was clearly not valid for revising the assessment list for the year 1997-98. Reason is obvious and does not need elaboration. The entire basis of an assessment, and in the present case amendment to assessment list, is the issuance of notice. This factor assumes considerable significance because the rateable value is sought to be made effective from commencement of the year in which the notice is given. Even, if the notice is given on the last date of the concerned year, it nevertheless relates back and the consequence of a higher rateable value follows. However, if the notice is not so issued before the expiry of an assessment year, assessment list cannot be amended for that year. We, therefore, agree with the High Court that on the basis of such a notice, there could not have been assessment for the Assessment Year 1997-98.

15) We now address the second question, viz., when such a notice which received on April 4, 1998, whether it was open to the Assessing Officer to revise the assessment for the Assessment Year 1998-99 and Assessment Year 2001-02?

16) Insofar as answer to this question given by the High Court is concerned, we find ourselves in disagreement therewith. It has to be kept in mind that notice in question which was dated March 25, 1998 sought to revise the assessment list w.e.f. April 1, 1997 i.e. from the Assessment Year 1997-98. However, it was received on April 4, 1998. Since the notice was received when the Assessment Year 1997-98 had come to an end and Assessment Year 1998-99 had commenced, we have held that assessment list could not be amended from the year 1997-98. It is to be kept in mind that for the aforesaid reason, notice itself does not invalidate. Therefore, if it was not permissible to amend the list w.e.f. April 1, 1997, at the same time it could always be done w.e.f. April 1, 1998 as the notice had been received in that Assessment Year, namely, on April 4, 1998.

17) In this context, we have to keep in mind the scheme of assessment of buildings for the purposes of property tax as contained in the Act. Section 124 of the Act deals with assessment list i.e. where the assessment is to be made for the first time in respect of any land or building in Delhi. That provision lays down the procedure for making the assessment list and the manner in which rateable value of the property is to be fixed for the purpose of determining the property tax. What is important is that tax under Section 124 of the Act can be demanded only from ensuing year in which the assessment has been authenticated or finalised. On the other hand, by virtue of sub-section (4) of Section 126 of the Act, an amendment cannot be carried out after the expiry of three years from the end of the year in which the notice is given. However, if it is done within the period of three years then the increase proposed in the notice under Section 126 of the Act automatically gets amended and under Section 127, it is that rateable value which is adopted for the following year. When the proceedings under Section 126(2) of the Act get finally determined, the assessment list gets amended with effect from the date as found in the assessment order.

18) Once we keep in mind the aforesaid scheme of the Act, it is obvious that in the normal course, the amendment could have been applicable with effect from the date proposed in the notice. In the instant case, though the date given in the notice was April 1, 1997, it was not permissible for the Corporation to release the tax from April 1, 1997 as the notice was not received in that Assessment Year but was received only in the next Assessment Year i.e. 1998-99. Therefore, the assessment carried out, which was done within three years from the issuance of notice i.e. the time stipulated by sub-section (4) of Section 126 of the Act, the assessment was otherwise valid and could be made applicable from April 1, 1998.

This view of ours gets due support from classic judgment of this Court in the case of Shyam Kishore's case. Following discussion, germane to the issue at hand, needs to be noted in this behalf:

"18. The scheme of Sections 124, 125 and 126 read with the bye-laws is that the assessment has to be duly authenticated by the Commissioner or an officer on his behalf but this list is subject to the other provisions of the Act including Section 126 and the bye-laws and once a notice has been issued under Section 126 (2) of the Act, the assessment list though authenticated under Section 124(6) is subject to the result of that notice and the assessment list as a result of the investigation under Section 126 automatically gets amended from the date of the order or (sic of) assessment passed as a result of notice under Section 126(2) with effect from the date as found in the order of assessment and for the amount the rateable value is finally arrived at.

xxx xxx xxx

20. What do we understand when it is said that the Commissioner may adopt the rateable values contained in the list for any year for the year following? This really refers to adopting the rateable values given in the previous year in respect of land or building. Once a notice under Section 126 proposing an increase has already been given in respect of the land or building by virtue of bye-law 9, the assessment list in the year in which notice is given automatically gets amended and under Section 127 it is that rateable value which is adopted for the following year. When the proceedings under Section 126 (2) get finally determined, the assessment list gets amended with effect from the date as found in the assessment order and since the adoption of rateable value for any year was of the previous year in which the notice was given, as soon as, the assessment order for the previous year gets finalised, the demand is raised for the year in which the rateable value of the previous year was adopted for any year, on the basis of the finalisation of the assessment of the previous year."

19) Therefore, merely because the notice dated March 25, 1998 was received on April 4, 1998 cannot be a ground to defeat the liability to pay the tax, so determined, as a result of revision in the assessment even for subsequent years i.e. w.e.f. April 1, 1998.

20) Reliance by the High Court on explanation to Section 126 (4) of the Act, having regard to our aforesaid discussion would be of no consequence. Similarly, Constitution Bench judgment in Onkarmal Nathmal Trust case is not applicable insofar as issue at hand is concerned as that case was concerned only with the period of limitation prescribed in a taxing statute. We are, therefore, of the opinion that second question has not been rightly decided by the High Court. We answer that question in favour of the appellant.

21) The appeal is accordingly allowed partly to the extent indicated above. There shall, however, be no order as to cost.

.....J.

(A.K. SIKRI) .....J.

(ASHOK BHUSHAN) NEW DELHI;

SEPTEMBER 15, 2017.

ITEM NO.1501 COURT NO.6 SECTION XIV

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

Civil Appeal No(s).8675/2011

MUNICIPAL CORPORATION OF DELHI Appellant(s)

VERSUS

DHARMA PROPERTIES PVT. LTD. Respondent(s)

Date : 15-09-2017 This appeal was called on for pronouncement of judgment today.

For Appellant(s) Mr. Praveen Swarup, AOR

For Respondent(s) Mr. Saurabh Mishra, Adv.
Mr. Abhay Kumar, AOR

Hon'ble Mr. Justice A.K. Sikri pronounced

The judgment of the Bench comprising His Lordship and Hon'ble Mr. Justice Ashok Bhushan.

The appeal is partly allowed, in terms of the signed reportable judgment.

(B.PARVATHI) (MALA KUMARI SHARMA)
COURT MASTER COURT MASTER