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MCD Vs Indermeet Kaur Kochhar

Writ Petition (C) 16210 of 2004 and 1773 of 2005

Court: Delhi High Court

Date of Decision: April 13, 2012

Acts Referred:
Delhi Municipal Corporation Act, 1957 â€" Section 124(3), 126

Citation: (2012) 04 DEL CK 0334

Hon'ble Judges: Hima Kohli, J

Bench: Single Bench

Advocate: Amita Gupta, for the Appellant; B.B. Jain, for the Respondent

Final Decision: Dismissed

Judgement

Hima Kohli, J.
The petitioner/MCD is aggrieved by the judgment dated 11.07.2003 passed by the Additional District Judge in HTAs

No.21/2003 and 22/2003. By the aforesaid common decision, both the appeals preferred by the respondent/assessee in respect of the property

tax for the assessment years 2001-02 and 2002-03 against the common assessment order dated 16.12.2002 passed by the petitioner/MCD

determining the rateable value of the first floor of the premises bearing No.C-209, Defence Colony, New Delhi, were allowed and the impugned

assessment order dated 16.12.2002 was set aside. By the assessment order dated 16.12.2002, the rateable value of the subject premises was

fixed by the MCD at Rs. 2,38,000/- w.e.f. 01.04.2001 and at Rs. 4,08,000/- w.e.f. 15.11.2002. The assessment w.e.f. 01.04.2001 had been

done on the basis of the purchase price of the subject flat, which the respondent/assessee had purchased for a sum of Rs. 28 lacs vide sale deed

dated 13.11.2002. The assessment w.e.f. 15.11.2002 was done on the rental basis, by taking into account the rent of Rs. 40,000/- per month,

fetched by the property after its purchase w.e.f. 15.11.2002. The aforesaid assessment orders were assailed by the respondent/assessee before

the learned ADJ on various grounds. One of the grounds taken in the appeals was that the petitioner/MCD had not issued any statutory notice u/s

126 of the DMC Act either for the assessment year 2001-02 or for the assessment year 2002-03 and that such a statutory notice was neither

served upon the respondent/assessee nor on her predecessor-in-title and therefore, as per law, the petitioner/MCD did not have any authority to

increase the rateable value of the subject premises for any of the two assessment years.

2. In support of its stand that the respondent/assessee had been served with a notice u/s 126 of the DMC Act, the petitioner/MCD had produced

a post card, before the Court below, purported to be an acknowledgement card to show that the notice u/s 126 of DMC Act had been duly

served upon the predecessor-in-title of the respondent/assessee, namely, M/s R.K. Apartments. It was the case of the petitioner/MCD that service

effected on M/s R.K. Apartments by dispatching the aforesaid post card ought to have been considered sufficient to establish that service of the

statutory notice u/s 126 of the DMC Act had been effected on the respondent/assessee.

3. The aforesaid claim of the petitioner/MCD came to be examined at length in the impugned order, wherein it was finally observed that the post

card in question did not bear the postal seal either of the sender''s post office or the addressee''s post office and that the petitioner/MCD had failed

to produce any other proof of service of notice u/s 126 of the DMC Act either on the respondent/assessee or her predecessor-in-title. It was

further held that even if it is assumed that the petitioner/MCD had received back the post-card, which could be treated as an acknowledgement

card for the purpose of effecting service of the statutory notice u/s 126 of the DMC Act, the petitioner/MCD had not been able to prove the

service of the notice by producing its dispatch register as maintained in its office that would have contained the inward entry reflecting the receipt of

the AD card. In view of the above, the learned ADJ held that he had no option but to hold that the petitioner/MCD had failed to prove service of

statutory notice on the respondent/assessee or her predecessor-in-title as per law. Consequently, the impugned assessment order dated

16.12.2002 was held to be vitiated for want of service of the statutory notice and both the appeals preferred by the respondent/assessee were

allowed by the learned ADJ.

4. Aggrieved by the aforesaid decision, the petitioner/MCD has preferred the present petitions. The main plank of the arguments urged by learned

counsel for the petitioner/MCD is that the court below erred in observing that the notice u/s 126 of the DMC Act had not been served on the

recorded owner, namely, M/s R.K. Apartments as per the provision of law. She urged that the notice for amendment in the assessment list is

required to be served on the owner or lessee or occupier of the building in terms of the provisions of Sections 124(3) and 126 of the DMC Act

and that in the present case, the court below ought to have held that the notice, having been duly served on M/s R.K. Apartments, was deemed to

be adequate the service on the recorded owner of the property.

5. Learned counsel for the respondent/assessee refutes the aforesaid submission and supports the impugned judgment by submitting that the

petitioner/MCD had failed to produce the inward entry of the dispatch/Dak register, based on which it was contended that the post card had been

received back by the petitioner/MCD after service. He contends that the post card in question, alleged to be the AD card, did not bear the seal of

the sender''s post office or for that matter the receiver''s post office and even if it is assumed that the inward entry was recorded in the dispatch

register upon being received back in the office of the petitioner/MCD, this fact was not established as the said register had not been produced by

the MCD before the court below. He further states that assuming without admitting that the post card received back by the petitioner/MCD was

ample proof of valid service of notice u/s 126 of the DMC Act, by no stretch of imagination, could the said service be treated as a service on the

respondent/assessee, for the reason that M/s R.K. Apartments was not the predecessor-in-title of the subject premises or for that matter, the

recorded owner thereof.

6. The aforesaid submission made by learned counsels for the parties was taken note of in the order dated 11.07.2011, on which date, learned

counsel for the petitioner/MCD was granted time to verify from the records of the Department as to the status of the ownership of the first floor of

the subject premises at the relevant time. She was also directed to produce the dispatch register/inward register maintained by the petitioner/MCD

in respect of the registered AD card, subject matter of the present petitions. The petitioner/MCD was therefore directed to file the extracts of the

relevant records alongwith an affidavit while producing the originals in Court. The said affidavit to be filed by MCD was required to indicate the

status of mutation of the subject property on the date when the notice u/s 126 of the DMC Act had been issued by the petitioner/MCD.

7. On 25.07.2011, learned counsel for the petitioner/MCD had submitted that as per the records of the Department, the subject premises had

remained in the name of M/s R.K. Apartments and no steps for mutation had been taken on the date when notice u/s 126 of the DMC Act was

issued by the petitioner/MCD to the aforesaid recorded owner. As regards the production of the dispatch register/inward register, she had stated

that the said documents were not traceable in the office of the MCD.

8. Today, learned counsel for the petitioner/MCD states that an additional affidavit had been filed on behalf of the MCD in September 2011, in

compliance with the order dated 11.07.2011. The said affidavit is however not on record. A copy thereof is furnished by learned counsel for the

petitioner/MCD with a copy to the other side and the same is taken on record.

9. As per the aforesaid additional affidavit filed by the petitioner/MCD, the President of India had executed a perpetual lease deed dated

06.05.1959 in respect of the subject plot in favour of one, Shri R.L. Sharma. Vide registered sale deed dated 19.10.1959, the aforesaid owner,

Shri R.L. Sharma sold the subject plot to Smt. Ira De w/o Sh. K.C. De. Smt. Ira De constructed ground floor and first floor on the subject plot.

On 22.10.1993, she entered into an agreement with one Smt. Urmil Angurish with respect to the roof rights of the first floor for construction of the

second floor. Smt. Urmil Angurish in turn entered into an agreement dated 23.02.1998 with one Smt. Sangeeta Butalia and transferred her rights in

the agreement dated 22.10.1993 to the latter.

10. On 05.02.1996, Smt. Ira De expired. By virtue of her last will dated 18.01.1994, she bequeathed the subject property in favour of her son,

Shri Arijit De. Vide Agreement to Sell dated 04.12.1998, Smt. Sangeeta Butalia purchased the ground floor and the first floor of the subject

property from Shri Arijit Dey. On 01.12.1999, a conveyance deed was executed by the competent authority in favour of Shri Arijit De, converting

the leasehold rights in the subject property into freehold.

11. On 09.12.1999, Smt. Sangeeta Butalia entered into a collaboration agreement with M/s R.K. Apartments for the re-development of the

subject property. In terms of the collaboration agreement, the basement, ground floor, second floor and the terrace above the second floor fell in

the share of M/s R.K. Apartments, while the first floor fell in the share of Smt. Sangeeta Butalia. After re-development of the subject property in

terms of the collaboration agreement, the first floor thereof was sold by Smt. Sangeeta Butalia to the respondent/assessee herein by virtue of a sale

deed dated 13.11.2002, wherein Mr. Arijit Dey was the seller while Smt. Sangeeta Butalia was made the confirming party.

12. In view of the aforesaid sequence of documents executed in respect of the subject premises from time to time, it is apparent that at no point in

time was M/s R.K. Apartments the recorded owner of the first floor of the subject premises. Even if it is assumed that by virtue of the

collaboration agreement, M/s R.K. Apartments had the authority to receive the service of the statutory notice issued u/s 126 of the DMC Act, the

said authority would be limited to the basement, ground floor, second floor and the terrace above the second floor of the subject premises, but not

to the first floor thereof, which had fallen to the share of Smt. Sangeeta Butalia. It is also not the case of the petitioner/MCD that the statutory

notice u/s 126 of the DMC Act was ever received by Smt. Sangeeta Butalia, being the predecessor-in-title of the respondent/assessee herein,

much less the respondent/assessee herself, who came into picture only after execution of the sale deed on 13.11.2002.

13. In view of the aforesaid position, it has to be held that no notice u/s 126 of the DMC Act was ever served by the petitioner/MCD for the

relevant assessment years in question, either on the previous recorded owner of the subject premises, or on the respondent/assessee herein and in

such circumstances, this Court finds no reason to interfere in the findings returned in the impugned order dated 11.07.2003, passed by the learned

ADJ in the two connected appeals preferred by the respondent/assessee. As a result, the present petitions fail and the same are dismissed, while

maintaining the impugned order dated 11.07.2003 and leaving the parties to bear their own costs. As learned counsel for the respondent/assessee

states that at the time of filing the appeals, the respondent/assessee had deposited the entire disputed amount with the petitioner/MCD, the

petitioner/MCD is directed to refund the said amount to the respondent/assessee within a period of eight weeks from today. In case the amount is

not refunded to the respondent/assessee within the time granted, the said amount shall carry simple interest payable @ 9% per annum from the

date of expiry of eight weeks granted by this order, till the amount is ultimately refunded to the respondent/assessee. The trial court record be

released forthwith.