IN THE HIGH COURT OF DELHI

CIVIL REVISION NO. 311 OF 2001

Judgment Reserved on January 8, 2003

Date of decision : February 7, 2003

M/s. Ansal Hotels Limited ... ... Petitioner
through : Mr. H.L. Narula with
Mr. D.R. Bhatia,
Advocates

- VERSUS -

Municipal Corporation of Delhi ... ...Respondent
through : Ms. Amita Gupta,
Advocate.

CORAM:

HON'BLE MR.JUSTICE SANJAY KISHAN KAUL

1. Whether the Reporters of local papers may be allowed to see the judgment? Y
2. To be referred to Reporter or not? Y
3. Whether the judgment should be reported in the Digest? Y

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

1. A company under the name and style of M/s. Ganapati Ansal Hotel Pvt. Ltd. purchased a hotel plot in District Centre, Saket, New Delhi in pursuance to a perpetual lease deed executed on 16.04.1996 in its favour by the Delhi Development Authority (DDA) for a consideration of Rs.36 crores. The possession of the plot was handed over on 12.04.1996.

2. The name of M/s. Ganapati Hotel Pvt. Ltd. was changed to M/s. Chancellor Club Pvt. Ltd. and thereafter to M/s. Ansals Hotels Ltd., the present petitioner.

3. The respondent Corporation issued a notice of assessment dated 15.03.1995 to M/s. Chancellor Club Pvt. Ltd. under Section 126 of the Delhi Municipal Corporation Act, 1957 (hereinafter to be referred as, 'the said Act') proposing a rateable value of Rs.1.8 crores for the year 1995-96. The petitioner filed objections thereto on 26.04.1995 and the petitioner was called upon to furnish certain documents by the respondent Corporation.

4. The petitioner claims that it received a notice of demand dated 30.12.1999 without receipt of any bill of demand. This notice of demand was received on 10.01.2000 and it is stated that the petitioner did not receive a copy of the assessment order prior to the said date. The petitioner filed an appeal before the appellate authority against the said notice of demand and obtained a copy of the assessment order dated 10.03.1998 during the pendency of the appeal before the appellate authority.

5. The appellate authority dismissed the appeal of the petitioner on 18.11.2000 and the petitioner aggrieved by the same has preferred the present writ petition.

6. The petitioner before the appellate authority had contended that the said notice of demand dated 15.03.1995 was illegal since the petitioner at that stage of time had no right, title or interest in the property in question. It was further contended before the appellate authority that no notice had been issued under Section 124 or

126 of the said Act for the year 1996-97. The petitioner also made a grievance about the non-receipt of any assessment order or bill of demand.

7. The appellate authority considered the order of the assessing authority and noted that the assessing authority had applied the rateable value to the plot in question @ 5% on the basis of the consideration paid for the plot amounting to Rs.1.8 crores w.e.f. 12.04.1996, i.e., the date of handing over of the possession of the plot. The rateable value was subsequently sought to be enhanced in pursuance to the notice dated 19.03.1998 to Rs.2.7 crores w.e.f. 01.04.1997. The receipt of this notice was not disputed by the petitioner and, thus, the Appellate Tribunal found it difficult to believe that the petitioner was unaware of the assessment order fixing the rateable value of the property at Rs.1.8 crores.

8. The appellate authority noted that the petitioner had challenged the very basis of the said assessment order since the initial assessment proceeded on the basis of the notice dated 15.03.1995. The appellate authority was of the view that there was no difference between the provisions of Sections 124 and 126 of the said Act insofar as a newly-acquired plot was concerned and the real difference was in the consequences of the notices. A notice under Section 124 of the said Act imposes liability to pay the property tax from the beginning of the following financial year, while a notice under Section 126 thereof imposes liability to pay the property tax from the beginning of the current year in which the notice is issued. The appellate authority, thus, construed the notice dated 15.03.1995 to be a notice under Section 124 of the said Act, though purported to be issued under Section 126 of the said act. It was noted that the assessing authority had accepted the plea of the petitioner

for determining the rateable value of the land on the undisputed cost of land w.e.f. 12.04.1996 only. The appellate authority was of the view that the notice dated 15.03.1995 was only a proposal for the first assessment of the plot and dismissed the appeal.

9. Learned counsel for the petitioner has contended that the said order of the appellate authority is contrary to law and liable to be quashed.

10. Learned counsel has referred to the judgment of the learned Single Judge of this Court in *Aggarwal Juneja Associates v. Municipal Corporation of Delhi & Ors.* reported as *89 (2001) DLT 623* and contended that the notice issued for the previous year under Section 126 of the said Act could not form the basis of the assessment for the subsequent year. Learned counsel has assailed the findings of the appellate authority while dealing with the provisions of Sections 124 and 126 of the said Act where the Tribunal was of the view that the difference between the two is only of consequences in respect of the assessment of a newly-acquired plot. It was contended that since the Legislature had drawn a distinction between the two provisions, the same could not be obliterated. Learned counsel for the petitioner placed reliance on the judgment of the Supreme Court in *Municipal Corporation of Delhi v. Children Book Trust* reported as *AIR 1992 SC 1456* and contended that in para 46 of the said judgment, the Supreme Court had laid down that the local authorities do not act as Legislature when they impose a tax, but they do so as the agent of the State Legislature and the powers and the extent of these powers must be found in the Statute, which creates them with such powers.

11.Learned counsel for the petitioner referred to the judgment of the Division Bench of this Court in *M/s. Tin Can Manufacturing Co., Delhi* v. *Municipal Corporation of Delhi* reported as *AIR 1981 DELHI 179* to contend that once the assessment year has gone bye, no demand can be raised for the said assessment year in the absence of a notice, since assessment is a matter of year-to-year.

12.Learned counsel for the petitioner referred to the judgment of the Karnataka High Court in *N.S. Mankale & Ors.* v. *The Town Municipal Council, Sagar* reported as *1975 TAX. L.R. 1613*, which dealt with the provisions of Sections 103 and 106 of the Karnataka Municipalities Act, 1964, which has the same effect as Sections 124 and 126 of the said Act respectively. It was held that an enhanced demand would be invalid if the procedure under these Sections had not been followed.

13.Learned counsel also referred to the Full Bench judgment of this Court in *Shyam Kishore & Ors.* v. *Municipal Corporation of Delhi & Anr.* reported as *48 (1992) DLT 277 (SC)* to contend that an assessee cannot be called upon to pay a demand disputed by the assessee before an appeal is heard, if no demand has been made for the said assessment year and the notice of demand has only been received in respect of the previous assessment year. This judgment was also relied upon by the learned Single Judge of this Court in *Aggarwal Juneja Associates's case (Supra)*.

14.Learned counsel also referred to another Full Bench judgment of this Court in *Lok Kalyan Samiti, New Delhi* v. *Municipal Corporation of Delhi* reported as *AIR 1978 DELHI 189 (FB)*. In the said judgment while dealing with the provisions of

Section 126 of the said Act, it was held that the liability to pay any property tax or increase of such property tax would accrue in the year in which the notice for proposal was issued. It was held that even if a notice is given during the currency of a financial year, but the amendment in fact is completed later on after the expiry of the financial year, the amended list will still have the effect retrospectively for the financial year during which the notice of increase was given and the liability for property tax, according to the amended list, will accrue in the year in which the notice for proposal was issued.

15. Learned counsel also referred to another judgment of the Full Bench of this Court in *Municipal Corporation of Delhi v. Shashank Steel Industries (P) Ltd.* reported as *100 (2002) DLT 66 (FB)*, where it was held that property tax is leviable in respect of land, which is otherwise capable of being built upon and where construction is permissible. The primary liability in respect of the vacant land was of the lessor in a case where possession was not handed over and the land was not capable of being built upon.

16. I have considered the submissions advanced by the learned counsel for the parties.

17. The factual matrix of the case is limited inasmuch as the matter in dispute relates to the assessment year of 1996-97, but the notice was initially issued for the assessment year 1994-95. The contention of the learned counsel for the petitioner flows from the plea that the notice, which was issued, was for the assessment year 1994-95 and was dated 15.03.1995. At the stage of issuance of the said notice, the property was not capable of being built upon in view of the fact that the possession

of the plot was handed over to the petitioner on 12.04.1996 and the perpetual lease deed was executed on 16.12.1996 only. It was the contention on behalf of the petitioner that the said notice dated 15.03.1995 issued under Section 126 of the said Act was applicable only for the said assessment year and since the said assessment year expired on 31.03.1995, till that date there was no liability to pay the property tax and the respondent could not have recovered any property tax without issuing a fresh notice in accordance with law. The further contention is that the subsequent notice seeking to revise the rateable value from Rs.1.8 crores to Rs.2.7 crores was based on the earlier notice dated 15.03.1995 and since that notice, which is the substratum of the subsequent notice, was not in accordance with law, the subsequent order of assessment could not have been passed.

18. The assessment order dated 10.03.1998 took into account the objections of the petitioner and in fact granted relief to the petitioner by accepting the contention that the liability to pay property tax would arise from 12.04.1996. Subsequently, the rateable value was sought to be enhanced in terms of the notice dated 19.03.1998 w.e.f. 01.04.1997.

19. There is no doubt that the Legislature had provided a distinction between the provisions of Sections 124 and 126 of the said Act dealing with the issue of '*Assessment List*' and '*Amendment of the Assessment List*'. There is, however, no doubt also about the proposition that the difference between the two provisions is really in respect of the consequences of the notices issued under the said two sections. A notice issued under Section 124 of the said Act can result in a liability to pay property tax only from the following financial year, while in the case of a

notice issued under Section 126 of the said Act the liability arises from the currency of the year in question. The appellate authority has sought to treat the notice under Section 126 of the said Act as a notice under Section 124 of the said Act. Normally, the respondent Corporation should issue an appropriate notice to an assessee. In the present case, the notice was for a newly-acquired plot, which was sought to be included in the assessment list. The actual effect of the property not being subject to tax when the notice issued dated 15.03.1995 should result in a situation where the petitioner should not be held liable for that year in question. That is what has happened in the present case and the plea of the petitioner was accepted by the assessing authority. The assessing authority in fact accepted the objections of the petitioner that the liability to pay property tax would arise only from 12.04.1996. This liability was never impugned or challenged.

20. The subsequent notice and liability is sought to be challenged only on the basis that the earlier notice dated 15.03.1995 was not in accordance with law.

21. The numerous judgments cited by the learned counsel for the petitioner only seek to bring forth the principles of imposition of liability in a case of an assessee and that a notice is mandatory. The present case has to be dealt with taking into consideration the general principal, but applicable to its own facts being a case of initial assessment of a plot in question. I am of the considered view that the petitioner cannot be permitted to evade liability to pay the property tax from the date when the petitioner himself admits the liability to pay such tax. The plea of the petitioner, in fact, was that the liability would arise only from 12.04.1996. Merely because the notice was issued purportedly under Section 126 of the said

Act on 15.03.1995 while the liability to pay property tax arise from 12.04.1996 cannot the basis to defeat the liability of the petitioner for payment of such tax as also for the subsequent years, which is sought to be denied only on the ground that the notice was issued in the previous year. I am unable to accept the contention of the learned counsel for the petitioner that the effect of issuance of the notice dated 15.03.1995 and the subsequent order is that for the said assessment year, there would be 'nil' liability and, thus, for the subsequent assessment years also, in the absence of any proper notice, the same liability is liable to be adopted, which would be 'nil'.

22. In fact, in *Smt. Santosh Chandiok v. Municipal Corporation of Delhi*, *1972 R.L.R. (N) 98*, it was held that so far an assessment of a newly-erected building is concerned, there is no difference between the provisions of Sections 124 and 126 governing the issue of notice, but the real difference lies in the legal consequences flowing from it; if a notice is issued under Section 124, the liability to pay the tax arises with effect from the beginning of the following financial year, while in the case of a notice issued under Section 126, the liability to pay the tax arises with effect from beginning of the current year. Though the notice was stated to be a notice under Section 126 of the said Act, the effect of not treating it as so would be that the liability would not arise from the current year, which in any case the petitioner was not liable to pay in view of the fact that the liability was applicable only from 12.04.1996. The effect of the notice under Section 124 of the said Act is to apply it only from the next financial year. This is what is sought to be done in the present case.

23.In view of the aforesaid position, I am of the considered view that the petitioner is liable to pay the property tax, as demanded from the petitioner and the impugned orders of the assessing authority and the appellate authority are not liable to be quashed.

24.The revision petition is dismissed leaving the parties to bear their own costs.

February 7, 2003
am

SANJAY KISHAN KAUL, J