A MUNICIPAL CORPORATION OF DELHI

v.

QIMAT RAI GUPTA & ORS.

JULY 27, 2007

B [S.B. SINHA AND HARJIT SINGH BEDI, JJ.]

Delhi Municipal Corporation Act, 1957:

C *s.126(4)—Assessment order—Period of limitation—Computation of—Expression "no amendment under sub-s.(1) shall be made"—Connotation of—HELD: In the context, order would be said to have been made on the date the order is signed—A distinction exists in construction of word 'made' depending upon the question as to whether power was required to be exercised within period of limitation therefor or in order to provide the person aggrieved* D *to avail remedies—In construing a provision, as in the instant case, dealing with limitation, a liberal interpretation should be given—Interpretation of Statutes—Evidence Act, 1872—Presumption.*

Words and Phrases:

E *"Made" occurring in sub-sec. (4) of s.126 of Delhi Municipal Corporation Act, 1957—Connotation of.*

A notice purported to be u/s 126 of the Delhi Municipal Corporation Act, 1957 was issued to the respondents in the month of March 1997 proposing to revise the rateable value of their property w.e.f. 1.4. 1996. The F **assessing officer signed the assessment order on 31.3.2000. The order was communicated to the assesee on 17.4.2000. The assessee-respondents preferred an appeal in the court of the Additional District Judge on the ground, inter alia, that the order of assessment was barred by limitation. The appellate authority held that no amendment in terms of sub-section (1) of s.126 of the** G **Act could be made after lapse of a period of three years from the end of the year in which notice was given. The Corporation filed a writ petition. The Single Judge of the High Court directed the appellate authority to determine the question on merits. In the intra-court appeal filed by the respondents, the Division Bench of the High Court held that the date of order 'made' in terms of s.126(4) of the Act should be taken to be the date when the same was**

H

communicated to the assessee and not the one when it was signed. A

In the appeal filed by the Municipal Corporation, it was contended on behalf of the appellant that there is a distinction between 'communication' of the order and making thereof; whereas communication may be necessary for the purpose of filing an appeal, but as regards limitation prescribed for making an assessment order, only signing of the order would subserve the B purpose; and in that view of the matter, the period of three years prescribed under sub-section (4) of s.126 of the Act being the period of limitation, the expression 'no amendment under sub-section (1) shall be made' should be given a liberal interpretation.

Allowing the appeal, the Court C

HELD: 1.1. Appellant-Municipal Corporation has a statutory power to impose property tax. Section 126 of the Delhi Municipal Corporation Act, 1957 empowers the Commissioner, who is a statutory authority, to amend the assessment list in terms of one or the other modes provided for therein. A D proceeding initiated for the purpose of amending the assessment list is a quasi judicial one. Indisputably, the Parliament did not intend to confer unbriddled power on the Commissioner to amend the assessment list. For that purpose only a period within which the jurisdiction is to be exercised was contemplated, namely, before the expiry of three years from the end of the year in which the notice is given, but the same would not mean that the restriction imposed E should be given a restricted meaning so as to narrow down the scope thereof any further. In interpreting a provision dealing with limitation, a liberal interpretation in a situation of this nature should be given. The Parliament advisedly chose the word 'made' and not 'communicated'. They, in ordinary parlance, carry different meanings. F

[Paras 9, 10, 14, 15, 16, 17] [575-C-D; 576-F-H; 577-A, C]

Collector of Central Excise, Madras v. *M/s M.M. Rubber and Co., Tamil Nadu,* [1992] Supp. 1 SCC 471, relied on.

Raja Harish Chandra Raj Singh v. *The Deputy Land Acquisition Officer* G *and Anr.,* [1962] 1 SCR 676=AIR (1961) SC 1500, distinguished.

State of Punjab v. *Khemi Ram,* [1970] 2 SCR 657=AIR (1970) SC 214; *Collector of Central Excise, Madras* v. *M/s M.M. Rubber and Co., Tamil Nadu,* [1992] Supp. 1 SCC 471; *Surendra Singh and Ors.* v. *State of Uttar Pradesh,* [1954] SCR 330=AIR (1954) SC 194; *K. Bhaskaran* v. *Sankaran Vaidhyan* H

A *Balan and Anr.*, [1999] 3 Supp. SCR 271=[1999] 7 SCC 510; *C.C. Alavi Haji* v. *Palapetty Muhammed & Anr.*, (2007) 7 SCALE 380 and *State of Punjab* v. *Amar Singh Harika,* AIR (1966) SC 1313, referred to.

1.2. Even if a statute requires strict interpretation, words thereto would not be added. The word 'made' is past and past participle of the word 'make' B which means "cause to exist or come about; bring about or perform". The meaning of a word, it is trite, would depend upon its text and context. It will also depend upon the purport and object it seeks to achieve. A distinction, exists in the construction of the word 'made' depending upon the question as to whether the power was required to be exercised within the period of C limitation prescribed therefor or in order to provide the person aggrieved to avail remedies if he is aggrieved thereby or dissatisfied therewith. Ordinarily, the words 'given' and 'made' carries the same meaning.

[Paras 18, 19, 21 and 27] [577-C-E; 578-A-B; 580-G-H; 581-A]

Concise Oxford English Dictionary, 10th Edition; P. Ramanatha Aiyar's D *Advanced Law Lexicon, 3rd edition*, referred to.

1.3. An order ordinarily would be presumed to have been made when it is signed. Once it is signed and an entry in that regard is made in the requisite register kept and maintained in terms of the provisions of a statute, the same cannot be changed or altered. It, subject to the other provisions E contained in the Act, attains finality. Where, however, communication of an order is a necessary ingredient for bringing an end-result to a status or to provide a person an opportunity to take recourse of law if he is aggrieved thereby; the order is required to be communicated. [Para 28] [581-B-C]

1.4. The Division Bench of the High Court, proceeded on a wrong F premise insofar as it misconstrued and misinterpreted the word 'made' in the context of sub-section (4) of Section 126 of the Act opining that the power can be misused by the Commissioner. It failed to notice that there exists a presumption that the official act is presumed to have been done in regular course of business. There also exists a presumption that a statutory G functionary would act honestly and bona fide. The Division Bench of the High Court was not right in holding that unless the order is communicated, it should be deemed to have not been made. The judgment of the Division Bench is, therefore, set aside accordingly and that of the Single Judge is restored.

[Para 29, 30, 31] [581-D-G]

H

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3303 of 2007. A

From the Judgment & Order dated 25.08.2004 of the High Court of Delhi at New Delhi in LPA No. 162/03.

Amrendra Sharan, ASG., Sanjib Sen and Praveen Swarup for the Appellant. B

P. Narasimah and Sudhir Nandrajog for the Respondents.

The Judgment of the Court was delivered by

S.B. SINHA, J. 1. Leave granted. C

2. The meaning of the word 'made' occurring in sub-section (4) of Section 126 of the Delhi Municipal Corporation Act, 1957 (hereinafter called and referred to, for the sake of brevity, as 'the Act'), is in question in this appeal which arises out of a judgment and order dated 25.08.2004 passed by a Division Bench of the Delhi High Court in L.P.A. No. 162 of 2003, reversing D the judgment and order dated 21.10.2002 passed by a learned Single Judge of the said court.

3. Before adverting to the question involved in this appeal, we may notice the basic fact of the matter.

E

4. Respondents herein are the owners of a property bearing No. 1/2 of 1 (1&3) Part, Ram Kishore Road, Civil Lines, Delhi, which was proposed to be assessed for property taxes by the competent authority of Municipal Corporation of Delhi, a notice wherefor was issued in March 1997 purported to be under Section 126 of the Act to fix the rateable value thereof at Rs. 50,00,000/- with effect from 01.04.1996. Respondents herein objected to the F said proposal. They filed various documents in support of their case stating that the property in question had jointly been purchased by Anil Gupta, Qimat Rai Gupta and Vinod Gupta by four separate deeds of sale for a total consideration of Rs.32,00,000/-. The market value of the land was assessed by the assessee at Rs. 89,93,100/- comprising of the value of the land at Rs. G 42,19,000/- and cost of construction at Rs.51,00,000/-. The said market value disclosed by the assessee was not accepted by the assessing authority. The assessing officer upon hearing the respondents assessed the value at Rs. 1,40,90,100/- and determined the rateable value therefor at Rs. 11,97,660/- with effect from 01.04.1996. Aggrieved by and dissatisfied with the said order of H

A assessment, Respondents preferred an appeal in the Court of Additional District Judge, Delhi, in terms of Section 169 of the Act, *inter alia,* on the ground that the order of assessment was barred by limitation. By reason of an order dated 14.12.2000, the appellate authority opined that no amendment in terms of sub-section (1) of Section 126 of the Act could be made after lapse of period of three years from the end of the year in which the notice was given B and as the notice in the case had been issued in the period ending 31.03.1997, the order of assessment could be made only upto 31.03.2000.

It was further held :

C "Now coming to the questions what is meaning of word 'made' whether it has to be taken as a date of passing the order or the date when it was communicated to the party concerned. The dictionary meaning of word 'made' is built or formed. This is discussed in AIR 1956 Madras 79 wherein it has been held that term 'made' has to be liberally construed as the date on which the order is communicated D to the concerned parties and reaches them. Taking the same into consideration, the present order cannot be said to have been communicated to the assessee/appellants within three years which is illegal. Accordingly, I set aside the impugned order dated 31.3.2000 being time barred. The property be assessed on the RV already in existence prior to the passing of order dated 31.3.2000. No order as E to cost. File be consigned to R/R."

5. Appellant herein being aggrieved by and dissatisfied with the said order dated 14.12.2000 filed a writ petition before the Delhi High Court, which was marked as Writ Petition No. 3227 of 2002. A learned Single Judge of the said Court allowed the said writ petition remanding the matter to the appellate F authority directing it to determine the question on merits and in accordance with law.

6. Respondents field an intra-court appeal thereagainst. By reason of the impugned judgment and order dated 25.08.2004, a Division Bench of the G High Court reversed the said decision of the learned Single Judge opining that the date of the order 'made' in terms of Section 126(4) of the Act should be taken to be the date when the same was communicated to the assessee and not the one when it was signed.

7. Before embarking on the question involved in this appeal, we may H place on record that the order of assessment was signed on 31.3.2000 and the

same was communicated to the assessee on 17.4.2000. A

8. The said Act was enacted to consolidate and amend the law relating to the Municipal Government of Delhi. Chapter VIII of the said Act provides for taxation. Levy of property taxes is envisaged under sub-section (1) of Section 113 of the Act. Section 114 provides for the components of property tax. Section 114A provides for building tax. Section 114C provides for vacant land tax. Section 123A provides for submission of returns. Section 123B provides for self-assessment and submission of return. B

9. Appellant has, thus, a statutory power to impose property tax. Section 124 of the Act provided for assessment list, sub-section (1) whereof reads as under : C

> "(1) Save as otherwise provided in this Act, the Corporation shall cause an assessment list of all lands and buildings in Delhi to be prepared in such form and manner and containing such particulars with respect to each land and building as may be prescribed by bye-laws." D

10. Section 126 of the Act empowers the Commissioner to amend the assessment list in terms of one or the other modes provided for therein. Sub-section (2) thereof provids for giving an opportunity to the assessee of being heard before an order of amendment is made. Sub-section (3) of Section 126 obligats the Commissioner to consider the objections which may be made by such persons. Clause (b) of sub-section (4) of Section 126 reads as under: E

> "(4) No amendment under sub-section (1) shall be made in the assessment list in relation to –
>
> F
>
> xxx xxx xxx
>
> (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."
>
> G

11. Mr. Amarendra Sharan, learned Additional Solicitor General of India appearing on behalf of the appellant, submitted that the Division Bench of the High Court committed a manifest error in reversing the judgment of the learned Single Judge insofar as it proceeded on the premise that the expression 'made' occurring in sub-section (4) of Section 126 of the Act would necessitate H

A communication of the order.

12. It was urged that a distinction must be made between 'communication' of the order and making thereof inasmuch as whereas 'communication' may be necessary so as to enable an assessee to prefer an appeal against the order of assessment but only signing of the order would B subserve the purpose of saving the period of limitation prescribed therein and in that view of the matter the period of three years prescribed under sub-section (4) of Section 126 being the period of limitation, the expressions 'no amendment under sub-section (1) shall be made' should be given a liberal interpretation. Strong reliance in this behalf has been placed on *Collector of* C *Central Excise, Madras* v. *M/s M.M. Rubber and Co., Tamil Nadu,* [1992] Supp. 1 SCC 471.

13. Mr. P. Narasimha, learned counsel appearing on behalf of the respondents, on the other hand, contended that the said Act having been enacted for the purpose of controlling the abuse of power on the part of the D Commissioner, the same should be given a purposive meaning so as to fulfil the purport and object of the legislation. Reliance in this behalf has been placed on *Surendra Singh and Ors.* v. *State of Uttar Pradesh,* AIR (1954) SC 194, *Raja Harish Chandra Raj Singh* v. *The Deputy Land Acquisition Officer and Anr.,* AIR (1961) SC 1500 and *K. Bhaskaran* v. *Sankaran Vaidhyan Balan and Anr.,* [1999] 7 SCC 510.

E

14. Commissioner in terms of the provisions of the said Act exercises a statutory power. A proceeding initiated for the purpose of amending the assessment list is a quasi judicial one. Commissioner of the Municipal Corporation is a statutory authority. The terms and conditions of his F appointment are governed by Section 54 of the Act. He can be appointed only by the Central Government. The power of amendment can be exercised at any time, as would appear from sub-section (1) of Section 126 of the Act; the only limitation therefor being that a fresh order would not relate back to the end of the financial year in which the notice is issued.

G 15. Indisputably, the Parliament did not intend to confer unbriddled power on the Commissioner to amend the assessment list. For that purpose only a period within which the jurisdiction is to be exercised was contemplated, namely, before the expiry of three years from the end of the year in which the notice is given, but the same would not mean that the restriction imposed should be given a restricted meaning so as to narrow down the scope thereof H any further.

16. In interpreting a provision dealing with limitation, a liberal interpretation in a situation of this nature should be given. Although an order passed after expiry of the period of limitation fixed under the statute would be a nullity, the same would not mean that a principle of interpretation applied thereto should not be such so as to mean that not only an order is required to be made but the same is also required to be communicated.

17. When an order is passed by a high ranking authority appointed by the Central Government, the law presumes that he would act *bona fide.* Misuse of power in a situation of this nature, in our opinion, should not be readily inferred. It is difficult to comprehend that while fixing a period of limitation, the Parliament did not visualise the possibility of abuse of power on the part of the statutory authority. It advisedly chose the word 'made' and not 'communicated'. They, in ordinary parlance, carry different meanings.

18. Even if a statute requires strict interpretation, words thereto would not be added.

19. The word 'made' is past and past participle of the word 'make' which means "cause to exist or come about; bring about or perform" [See Concise Oxford English Dictionary, 10th Edition].

20. In P. Ramanatha Aiyar's Advanced Law Lexicon, 3rd edition, page 2822, it is stated:

> "Made. A receiving order or other order of Court is "made" on the day it is pronounced, not when it is drawn up. [In re Manning (1885) 30 Ch D 480. See also 4 All 278: 2 AWN 26.
>
> *** *** ***
>
> The word 'made' in this rule might refer to the proclamation of sale as well as the announcement of the sale, as it says that it shall be made and published in the manner provided by the Rule 54(1). The word 'made' cannot be taken to include the preparation of proclamation of sale. *Seshatiri Aiyar* v. *Valambal Ammal,* AIR (1952) Mad 377, 381 [O. XXI, R. 54(1). C.P.C. (5 of 1908)]
>
> *** *** ***
>
> An order by a Chancery judge in Chambers is "made" not when it is pronounced, but when it is signed and entered, or otherwise perfected

A (*Heatley* v. *Newton,* 19 Ch. D. 326)"

21. The meaning of a word, it is trite, would depend upon its text and context. It will also depend upon the purport and object it seeks to achieve. With a view to understand the proper meaning of the said word, we may notice the decisions cited at the Bar.

B

22. In *Surendra Singh* (supra), a three-Judge Bench of this Court while considering the provisions of Section 369 of the Code of Criminal Procedure, 1898 opining that a judgment being a declaration of the mind of the court as it is at the time of pronouncement, made a distinction between a civil case and a criminal case, stating :

C

> "10. In our opinion, a judgment within the meaning of these sections is the final decision of the court intimated to the parties and to the world at large by formal "pronouncement" or "delivery" in open court. It is a judicial act which must be performed in a judicial way.
>
> D Small irregularities in the manner of pronouncement or the mode of delivery do not matter but the substance of the thing must be there: that can neither be blurred nor left to inference and conjecture nor can it be vague. All the rest - the manner in which it is to be recorded, the way in which it is to be authenticated, the signing and the sealing, all the rules designed to secure certainty about its content and matter
>
> E - can be cured; but not the hard core, namely the formal intimation of the decision and its contents formally declared in a judicial way in open court. The exact way in which this is done does not matter. In some courts the judgment is delivered orally or read out, in some only the operative portion is pronounced, in some the judgment is merely
>
> F signed after giving notice to the parties and laying the draft on the table for a given number of days for inspection."

23. In view of the fact that in that case one of the judges expired before signing of the judgment prepared by the brother Judge, it was held therein that the same did not constitute a judgment of the Division Bench.

G

24. In *Raja Harish Chandra Raj Singh* (supra), the award of a Collector made under the Land Acquisition Act was treated to be fructified when the same was communicated on the premise opining that an award was an 'offer' made by the Collector on behalf of the Government to the owner of the property and, thus, the date of the award cannot be determined solely by

H reference to the time when the award was signed by the Collector or delivered

by him in his office, it must involve the consideration of the question as to when it was known to the party concerned either actually or constructively.

25. In *K. Bhaskaran* (supra), a notice required to be given in terms of Section 138 of the Negotiable Instruments Act, 1881 was construed liberally, stating :

> "19. In Black's Law Dictionary, 'giving of notice' is distinguished from 'receiving of the notice.' (vide page 621) "A person notifies or gives notice to another by taking such steps as may be reasonably required to inform the other in the ordinary course, whether or not such other actually comes to know of it." A person 'receives' a notice when it is duly delivered to him or at the place of his business.
>
> 20. If a strict interpretation is given that the drawer should have actually received the notice for the period of 15 days to start running no matter that the payee sent the notice on the correct address, a trickster cheque drawer would get the premium to avoid receiving the notice by different strategies and he could escape from the legal consequences of Section 138 of the Act. It must be borne in mind that the Court should not adopt an interpretation which helps a dishonest evader and clips an honest payee as that would defeat the very legislative measure.
>
> 21. In Maxwell's 'Interpretation of Statues' the learned author has emphasized that "provisions relating to giving of notice often receive liberal interpretation," (vide page 99 of the 12th edn.) The context envisaged in Section 138 of the Act invites a liberal interpretation for the person who has the statutory obligation to give notice because he is presumed to be the loser in the transaction and it is for his interest the very provision is made by the legislature. The words in Clause (b) of the proviso to Section 138 of the Act show that payee has the statutory obligation to 'make a demand' by giving notice. The thrust in the clause is on the need to 'make a demand'. It is only the mode for making such demand which the legislature has prescribed. A payee can send the notice for doing his part for giving the notice. Once it is despatched his part is over and the next depends on what the sendee does."

[See *C.C. Alavi Haji* v. *Palapetty Muhammed & Anr.*, (2007) 7 SCALE 380]

A 26. The question, however, in our opinion, stands concluded by a three-Judge Bench of this Court in *M/s M.M. Rubber and Co., Tamil Nadu* (supra), wherein Ramaswami, J. speaking for the Bench succinctly stated the law thus :

> B "12. It may be seen therefore, that, if an authority is authorised to exercise a power or do an act affecting the rights of parties, he shall exercise that power within the period of limitation prescribed therefor. The order or decision of such authority comes into force or, becomes operative or becomes an effective order or decision on and from the date when it is signed by him. The date of such order or decision is C the date on which the order or decision was passed or made: that is to say when he ceases to have any authority to tear it off and draft a different order and when he ceases to have any *locuspaetentiae*. Normally that happens when the order or decision is made public or notified in some form or when it can be said to have left his hand. The date of communication of the order to the party whose rights are D affected is not the relevant date for purposes of determining whether the power has been exercised within the prescribed time...."

It was further held :

> E "18. Thus if the intention or design of the statutory provision was to protect the interest of the person adversely affected, by providing a remedy against the order or decision any period of limitation prescribed with reference to invoking such remedy shall be read as commencing from the date of communication of the order. But if it is a limitation for a competent authority to make an order the date of exercise of that power and in the case of exercise of *suo moto* power F over the subordinate authorities' orders, the date on which such power was exercised by making an order are the relevant dates for determining the limitation. The ratio of this distinction may also be founded on the principle that the Government is bound by the proceedings of its officers but persons affected are not concluded by G the decision."

27. A distinction, thus, exists in the construction of the word 'made' depending upon the question as to whether the power was required to be exercised within the period of limitation prescribed therefor or in order to provide the person aggrieved to avail remedies if he is aggrieved thereby or H dissatisfied therewith. Ordinarily, the words 'given' and 'made' carries the

same meaning. A

28. An order passed by a competent authority dismissing a Government servant from services requires communication thereof as has been held in [See *State of Punjab* v. *Amar Singh Harika,* AIR (1966) SC 1313], but an order placing a Government servant on suspension does not require communication of that order. [See *State of Punjab* v. *Khemi Ram,* AIR (1970) SC 214]. What B is, therefore, necessary to be borne in mind is the knowledge leading to the making of the order. An order ordinarily would be presumed to have been made when it is signed. Once it is signed and an entry in that regard is made in the requisite register kept and maintained in terms of the provisions of a statute, the same cannot be changed or altered. It, subject to the other C provisions contained in the Act, attains finality. Where, however, communication of an order is a necessary ingredient for bringing an end-result to a status or to provide a person an opportunity to take recourse of law if he is aggrieved thereby; the order is required to be communicated.

29. The Division Bench of the High Court, in our opinion, proceeded D on a wrong premise insofar as it misconstrued and misinterpreted the word 'made' in the context of sub-section (4) of Section 126 of the Act opining that the power can be misused by the Commissioner. The Division Bench, with respect, failed to notice that there exists a presumption that the official act is presumed to have been done in regular course of business. There also exists a presumption that a statutory functionary would act honestly and E *bona fide.*

30. We therefore, are not in a position to persuade ourselves to follow the line of reasoning adopted by the Division Bench of the High Court that unless the order is communicated, it should be deemed to have not been F made.

31. For the reasons aforementioned, the impugned judgment cannot be sustained, which is set aside accordingly and that of the learned Single Judge is restored. The appeal is allowed. No costs.

G

R.P. Appeal allowed.