

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 2204/2008**

KARTAR SINGH Petitioner
Through Mr. S P Jha, Adv.

versus

M.C.D. & ORS. Respondents
Through Ms. Anita Gupta, Adv. for MCD

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA

% **ORDER**
19.03.2008

1. The petitioner had purchased flat no.E-8, Sarita Vihar, New Delhi-76 from DDA for total consideration of Rs.6,73,100/- and had taken possession of the said flat on 23/8/1993.
2. Respondent/MCD issued two notices under the Delhi Municipal Corporation Act, 1957 (hereinafter referred to as Act) proposing to fix the rateable value of the flat at Rs.81,000/- w.e.f. 1/4/1992 and Rs.1,00,000/- w.e.f. 1/4/1997. The second notice was served as the petitioner had made additions by making further construction in the flat. The rateable values mentioned in the two notices were confirmed by ex-parte assessment orders passed on 23/2/1996 and 29/8/2000. The said

orders became final and binding, with the petitioner not filing any appeal. The petitioner has, however, failed to make payment in terms of the said ex-parte assessment orders. The petitioner at his own calculations has been making payment of property tax @ Rs.2,200/- per year to the MCD.

3. After the ex-parte assessment orders were passed, on 17/1/2000 a letter was written to the petitioner informing him that a sum of Rs.1,18,255/- was due and payable towards property tax for the period ending 31/3/2000. The said demand was calculated after excluding and giving benefit of the payments already made by the petitioner. The petitioner was also told that in case he does not agree with the above rateable value he should attend the office of the Deputy Assessor and Collector on 27/1/2000 at 3 p.m. along with the relevant papers.
4. As per the stand taken by the petitioner he had written a letter dated 24/1/2000 to MCD. The said letter has been enclosed as Annexure P-2. I have examined the said letter. In the letter the petitioner has stated that Lok Adalat was held in the locality on 12/9/99 but after some discussion nothing was finalized. It is also stated in the letter that the house owners in the colony have been making payment of house tax on self-assessment basis. It is also alleged that in the letter there were inherent flaws in the rateable value fixed but he said letter does not

indicate what were the inherent flaws and how and why the rateable value fixed by MCD was incorrect. In any case, the petitioner did not follow up and did not file any rectification application at that time.

5. On 3/3/2007 and 12/3/2007 the petitioner filed rectification applications for amendment/correction of the ex-parte assessment orders dated 23/2/1996 and 29/8/2000. The rectification applications have been considered and disposed of by an order dated 10/5/2007.
6. On the basis and as per the decision in the case of Dr. Balbir Singh Vs. MCD reported in AIR 1985 SC 339 the Assessor and Collector has fixed the rateable value w.e.f. 1/4/1994 as per the new bye laws i.e. the cost paid by petitioner to DDA of Rs.6,73,100/-. Statutory rebate has also been given while fixing the rateable value w.e.f. 1/4/1994, which has been fixed at Rs.57,213/-.
7. Rateable value for the period between 23/8/1993 (i.e. the date on which the possession was taken from DDA) till 31/3/1993 has been taken on the basis of cost of construction and cost of land and has been fixed at Rs.47,522/-. This action is as per the decision in the case of Dr. Balbir Singh's case (Supra).
8. Rateable value w.e.f. 1/4/1997 has been increased to Rs.63,588/- on account of additions of 2 rooms made by the petitioner by adding and increasing the coverage area by 20.21 sq.mts. Cost of carrying out the

additions was not disclosed and stated by the petitioner and in these circumstances the Assessor and Collector has estimated the cost at Rs.75,000/-. The rateable value fixed are as per law and no error has been pointed out.

9. Learned counsel for the petitioner submitted that in view of section 116 G (2) of the Act, the Assessor and Collector should have calculated the annual value by applying unit area method. Unit area method is applicable w.e.f. 1/4/2004. Section 116 G (2) of the Act provides that where assessment has not been finalized in respect of vacant land or covered space of building or both on the date of commencement of the Delhi Municipal Corporation (Amendment) Act, 2003, an assessee may have such land, building or both assessed under the unit area method. This is clear from a bare reading of the said section which is as under :

“ 116 G. Transitory provisions -

(2) Notwithstanding anything contained in sub-section (1), where assessment has not been finalized in respect of a vacant land or covered space of a building or both, on the date of the commencement of the Delhi Municipal Corporation (Amendment) Act, 2003 the assessee may have such land or building or both, as the case may be, assessed on the basis of the annual value.”

10. In the present case the assessment was finalized, after notices under the Act were issued in 1992 and 1997 and ex-parte assessment

orders were passed on 23/2/1996 and 29/8/2000. These were allowed to become final. It cannot be said that the assessments were not finalized in the present case. Rectification application and order is not relevant for the purpose of deciding applicability of Section 116G(2) of the Act. Therefore, section 116 G (2) will not apply to the present case. Any other interpretation will lead to absurd consequences. It is well known fact that the unit area method is beneficial and results in reduction of annual value/rateable value for properties constructed in the 1990's and thereafter. Assessments in several such cases have been finalized and have not been challenged. In such cases land owners cannot after 1/4/2003 file applications for rectification and claim that they should be given benefit of unit area method under section 116 G (2) of the Act. This will result in reopening of all cases where assessment have been finalized with rectification applications being filed and accordingly MCD will be required to refund or repay substantial amounts to the owners on account of reduction of rateable value with annual value.

In view of the above I do not find any merit in the present writ petition and the same is accordingly dismissed.

SANJIV KHANNA,J

MARCH 19, 2008
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