

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

+ W.P.(C) 8606/2005

N.D.M.C. Petitioner
Through Mr.P.C.Sen, Adv.

versus

KRISHNA KANTA JAIN & ANR. Respondent
Through Mr.G.L.N.Murthy, Adv.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA

ORDER
01.04.2008

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1. The respondents Mrs.Krishna Kanta Jain and M/s Mahindra Ugine Steel Co. Ltd. had earlier filed a WP(C) No.1525/1992, which was disposed of vide order dated 08.11.1993 holding as under:-

“Since the point involved in the writ petition is very short, we proceed to dispose of the same.

This petition concerns levy of property tax by the respondent-NDMC under the provisions of Punjab Municipal Act as extended to Delhi. The assessment years involved are 1989-90, 1990-91 and 1991-92. Mr. Rao say that for the assessment years 1989-90 and 1990-91 the respondent/NDMC had re-heard the matter and the decision is awaited. In this view of the matter, we do not propose to pass any order in respect of two assessment years, i.e. 1989-90 and 1990-91.

Answer to show cause notice has been filed by the NDMC and which this it has filed an order levying the property tax assessing the rateable value of the property on the basis of comparable rent in the locality. The premises are self occupied and the act of the NDMC is against the law laid down in Delhi Paints and Chemicals Vs. NDMC and Anr. 1993 (2) Delhi Lawyer 18 and Government Servants Co-

operativer House Building Society Ltd. Vs. Union of India and Ors. 1993 III AD(Dr) 629. In this view of the matter, the assessment orders for the year 1991-92 are set aside and the matter is remanded back to NDMC to fix the rateable value in accordance with law. There will be no order as to costs. Rule is made absolute.”

2. Division Bench of High Court while disposing of the said writ petition has specifically recorded in the said order that the premise is self-occupied. The respondent/NDMC has accepted the said order and the said findings and observations made in the said order have attained finality.

3. In spite of the above order, the remand assessment order dated 18.2.1997 has proceeded on the basis that the property in question is not mutated in the name of M/s Mahindra Ugin Steel Co. Ltd. and, therefore, the said property cannot be treated as self-occupied, as legal title of the property and occupancy should both vest in the same person. The said finding recorded in the assessment order dated 18.2.1997 is contrary to the directions and findings given by Delhi High Court in order dated 08.11.1993 passed in WP (C) No.1525/1992. Besides the said finding, it is also contrary to law. Mutation is not ownership. It is only evidence of ownership. The property is self-occupied when it is in occupation of the owner.

4. The term ‘owner’ has been defined in The New Delhi Municipal Council Act, 1994 in Section 2(32). The said definition is an inclusive definition and specifically includes a person who is entitled to rent out a property and receive rent. The Section, nowhere stipulates that an owner of a property, must also have mutation in his name. The said Section reads as under :-

“(37) “owner” includes a person who for the time being is receiving or is entitled to receive, the rent of any land or

building whether on his own account or on account of himself and others or as an agent, trustee, guardian or receiver for any other person or who should so receive the rent or be entitled to receive it if the land or building or part thereof were let to a tenant and also includes—

- (a) The custodian of evacuee property in respect of evacuee property vested in him under the Administration of Evacuee Property Act, 1950 (31 of 1950); and
- (b) The estate officer to the Government of India, the Secretary of the Delhi Development Authority, constituted under the Delhi Development Act, 1957 (61 of 1957), the General Manager of a railway and the head of a Government department, in respect of properties under their respective control;”

5. Reference in this regard can be made to decision of this Court in case of H.P.S. Chawala Vs. Municipal Corporation of Delhi (2006) 1 AD (Delhi) 581, wherein, learned Single Judge has held that mutation is only for purpose of recording the name of person liable to pay tax and the said mutation is not proof of title. Reference can also be made to the judgment of the Supreme Court in the case of ***Suman Verma v. Union of India***, (2004) 12 SCC 58, at page 63 :

1. In our considered opinion, however, the learned counsel for Respondent 6 is right in submitting that Respondent 6 had become owner of agricultural land in October 1996. The relevant date for consideration was 12-11-1996 and before that date she possessed such property. *Rekha Chaturvedi* in our view, supports Respondent 6 rather than the appellant. When Respondent 6 became the owner of the property in October 1996 before the last date of submission of application, she could be said to be

possessing agricultural land and, hence, she was eligible. In our opinion, owning of agricultural property and getting the name entered in revenue record are two different and distinct things. Mutation entry does not confer right or title to the property. Though the law is very well settled, in our opinion, CAT was right in relying upon the decision of this Court in *Sawarni v. Inder Kaur* wherein this Court held that mutation entry neither creates nor extinguishes title or ownership.

6. In these circumstances, I do not find any merit in the present writ petition impugning order dated 05.4.2004 passed by the Additional District Judge allowing the appeal and setting aside of order dated 18.2.1997.

The writ petition is accordingly dismissed. No costs.

SANJIV KHANNA, J.

APRIL 01, 2008.

RN/P