

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

+ **WP(C) 1065/2010**

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Date of decision: 1st July, 2010

B.S. VERMA

..... Petitioner

Through: Petitioner-in-person.

Versus

MCD & ANR.

..... Respondents

Through: Ms. Mini Pushkarna, Standing Counsel
MCD with Mr. Parmanand, Area Inspector,
Central Zone.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | No |
| 2. | To be referred to the reporter or not? | No |
| 3. | Whether the judgment should be reported in the Digest? | No |

RAJIV SAHAI ENDLAW, J.

1. The petitioner, by this writ petition impugns the order dated 29th April, 2009 of the Municipal Taxation Tribunal dismissing the appeal preferred by the petitioner against the order dated 6th January, 2006 of the Assessor and Collector of the respondent MCD assessing the rateable value of property E-305, East of Kailash, New Delhi of the petitioner, w.e.f. 1st April, 1999 at Rs.1,07,700/- and w.e.f. 1st April, 2002 to 31st March, 2004 at Rs.1,21,780/-. The rateable value of the said property of the petitioner, was vide earlier order dated 14th August, 2002 of the Assessor and Collector of

the respondent MCD assessed at Rs.1,50,000/- w.e.f. 1st April, 1999. The said assessment was pursuant to the notice under Section 126 of the DMC Act issued to the petitioner for enhancement of rateable value on account of the petitioner having let out the ground floor of the property at a rent of Rs.10,000/- per month. It was the contention of the petitioner that there was no tenant on the ground floor of the house and the Assessor and Collector had wrongly passed the order dated 14th August, 2002 on the basis of the property being so let out. It was also his contention that even if the version of the respondent MCD of the ground floor being let out at the rent of Rs.10,000/- per month was to be believed, the rateable value of the entire property could still not be Rs.1,50,000/-. The petitioner had thus applied for rectification and which was allowed and resulted in the order dated 6th January, 2006 assessing the rateable value w.e.f. 1st April, 1999 at Rs.1,07,700/- instead of Rs.1,50,000/-. The rateable value w.e.f. 1st April, 2002 was increased owing to the construction on the second floor.

2. There is no dispute with respect to the construction on the second floor. The challenge by the petitioner in the appeal before the Tribunal was only on the ground of the Assessor and Collector having held the property to have been let out. It was the contention of the petitioner that the property was never let out and thus the assessment on the premise of the ground floor being let out at a rent of Rs.10,000/- per month is wrong.

3. The rectification order dated 6th January, 2006 of the Assessor and Collector which was in appeal before the Tribunal proceeds on the premise

that the petitioner had at that stage admitted that the ground floor was let out at Rs.10,000/- per month. It was the contention of the petitioner before the Tribunal that he had not made any such concession. The Tribunal however, on the basis of the proceedings dated 26th December, 2005 before the Assessor and Collector, purportedly signed by the petitioner and purported to contain an admission of the petitioner of the ground floor being so let out and holding that the petitioner had not placed any material for the Tribunal for it to disbelieve the proceedings dated 26th December, 2005, dismissed the appeal.

4. The petitioner appearing in person before this Court on 22nd February, 2010 *inter alia* contended that it had always been his stand that he had never rented out the property and further stated that his son, son's family and unmarried daughter reside with him in the property. On the said contention of the petitioner this Court issued notice of the petition and also restrained the respondent MCD from recovering any arrears of the property tax on the basis of the property being let out from the petitioner.

5. The counsel for the respondent MCD without filing any counter affidavit to the petition has placed before this Court the file of the assessment and contends that the petitioner appearing in person before the Assessor and Collector on 26th December, 2005 had confined his grievance to rectification of assessment treating the ground floor to be let out at Rs.10,000/- per month; she contends that there is thus nothing wrong in the order of the Tribunal.

6. *Per contra* the petitioner appearing in person contends that the entire dispute arose when he applied for mutation of the property from the name of his mother to whom it originally belonged, to his name. He states that one Mr. Ahuja, Inspector of the MCD had visited the property and had left a message with his wife for the petitioner to meet him and had demanded bribe from the petitioner; that upon the petitioner refusing to so bribe him, a false case of inspection of the property and the ground floor having been found to be tenanted was made out.

7. This Court in exercise of jurisdiction under Article 226 of the Constitution of India does not sit in appeal over the orders of the Tribunal. Section 171 of the Act confers finality on the orders of the Tribunal, whether confirming or setting aside or modifying the order in respect of rateable value or assessment or liability of assessment. The matter has thus to be viewed in the said light.

8. I have perused the entire file of the Assessor and Collector of the respondent MCD relating to the property in question, produced before this Court. There is no document therein showing the letting out of the ground floor of the property. However, there is on record an inspection report dated 21st January, 2000 in which one half of the ground floor is shown to be in possession of a tenant Mr. Vijay and the other half of the ground floor is in possession of another tenant Smt. Neeru Singh, at a rent of Rs.5000/- each and the first floor shown to be in the self occupation of the petitioner. It is not the case of the petitioner that no such inspection was carried out. He also

agrees that the Inspector of the MCD had visited the property. The record further reveals that it was the wife of the petitioner who was met at the time of inspection and who admitted to the tenancy and that subsequently the petitioner refused inspection.

9. The Inspectors of the Assessment Department of the respondent MCD in the normal course of their duties are expected to inspect the properties to ensure that the information furnished by the owner for the purposes of the house tax is correct and proper and due house tax is being paid with respect to the properties. There is thus nothing out of the ordinary in the said inspection.

10. As far as the averments of the petitioner of the report of letting being the vindictive act of the Inspector Mr. Ahuja of the respondent MCD is concerned, though undoubtedly the petitioner has been writing to the MCD since then in this regard but the vindictiveness of Mr. Ahuja cannot be presumed to run through the entire department. Neither the first assessment of 2002 nor the rectification order of 2006 was of Mr. Ahuja. It was of the other officials of the respondent MCD. It is difficult to believe that the entire department would be vindictive towards the petitioner for the reason of the petitioner having refused the alleged bribe of Rs.15,000/- to one of the Inspectors. In the absence of any cogent material, the Court has to presume that the actions of the officials who otherwise are expected to work without any malice are in the regular course of their duties; else the entire functioning would come to a naught.

11. A perusal of the file produced by the respondent MCD reveals another interesting facet. The petitioner during the hearing on 15th November, 2002 is reported to have admitted that one portion of the ground floor was in occupation of Mrs. Neeru Singh but claimed that she was his niece; he on the same day also admitted the occupation of the other portion of the ground floor by Shri Vijay but claimed that he was his nephew. Though the proceedings dated 15th November, 2002 also record that the petitioner had refused to sign the same but I have again no reason to disbelieve the same. The petitioner also neither before the Tribunal nor in the present proceeding has challenged the same. The presence of the two persons claimed by the respondent MCD to be the tenants, in the property thus stands established and the only question which remained was whether they were niece and nephew of the petitioner or tenants. It was upto the petitioner to produce the affidavits of the said persons stating that they had been permitted to reside on the ground floor on account of the relationship and not as tenants. Nothing of this sort was done.

12. During the course of hearing, the inconsistency in the stand of the petitioner on 15th November, 2002 of his niece and nephew residing with him and the statement made before this Court on 22nd February, 2010 of his son, son's family and unmarried daughter residing with him was also put to the petitioner. The petitioner then disowned his statement as recorded in the order dated 22nd February, 2010 also and stated that he had not stated before the Court on 22nd February, 2010 that his son, son's family and unmarried

daughter were residing with him and the said fact was recorded by the Court on its own.

13. The respondent MCD cannot be expected to always dig out the documentary proof of letting. Often to avoid payment of higher property tax on account of letting, such agreements of letting are concealed from the MCD. In the facts of the present case, I am satisfied from the record of the respondent MCD that the case of the MCD of letting out of the ground floor by the petitioner on the basis of inspection and the statements made by the petitioner was not such which can be said to be perverse requiring interference by this Court. It is significant that the rectification order dated 6th January, 2006 impugned before the Tribunal had been made long after the threat, if any, meted out by the MCD Inspector Mr. Ahuja. There is presumption of correctness of the rectification order in which the petitioner did not challenge letting. The Tribunal was right in holding that the petitioner has not placed any material for it to disbelieve the correctness of the rectification order. The petitioner is found to be in the habit of disowning his statements.

14. There is therefore no merit in the petition. The same is dismissed. However, considering the fact that the petitioner is a senior citizen and has filed and argued the case himself, no order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

**1st July, 2010
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