

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

Date of decision: 25th January, 2011.

+ W.P.(C) 5771/2007

% CINERAMA PRIVATE LTD. Petitioner
Through: Mr. Abhinav Vasisht, Advocate with
Ms. Harshita Priyanka & Mr. Raman
Kumar, Advocates

Versus

NEW DELHI MUNICIPAL COUNCIL Respondent
Through: Mr. P.C. Sen, Advocate

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

- | | | |
|----|---|-----|
| 1. | Whether reporters of Local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to the reporter or not? | Yes |
| 3. | Whether the judgment should be reported in the Digest? | Yes |

RAJIV SAHAI ENDLAW, J.

1. The question for consideration is whether the respondent NDMC, for the purposes of assessment of rateable value / property tax, amalgamate more than one adjoining flats owned by the same assessee in a multi-storeyed building, resulting in a higher taxation burden on the assessee than if the flats had been assessed separately. The petitioner having failed in convincing the Assessor & Collector of the respondent NDMC and the Additional District Judge in appeal has preferred this petition. Notice of the petition was issued and the petitioner granted time to deposit the differential

in tax. The same stands deposited. The counsel for the petitioner has informed that the excess liability owing to amalgamation so effected by the respondent NDMC is of approximately ₹6,00,000/- and which amount would be refundable to the petitioner in the event of this petition succeeding.

2. The factual matrix in which the controversy has arisen is that the petitioner vide separate Flat Buyer Agreements executed by the builder of the multi-storeyed building known as Statesman House at Barakhamba Road, New Delhi, acquired six adjoining flats and two car parking spaces in the said building. The petitioner along with the owners of other adjoining flats on the same floor, let out all the flats to the same tenant. However, the said two car parking spaces remained with the petitioner. The respondent NDMC upon letting aforesaid issued separate notices for assessment of the rateable value of each of the flats; separate objections qua each of the flats were filed by the petitioner; the petitioner in the meanwhile sold one of the six flats with one car parking space and notified the respondent NDMC of the same; however the respondent NDMC while passing the assessment order in pursuance of the notices aforesaid, amalgamated the six flats for the purposes of property tax and issued a common bill to the petitioner; that upon the petitioner objecting and also on the ground that one flat with car parking space had already been sold, the respondent NDMC excluded the said flat and car parking space from assessment but continued with common assessment of the remaining five flats and the car parking space. The tax

burden upon such common tax assessment being more than what it would have been upon each of the flat being assessed separately, the petitioner objected and upon not meeting with any success, earlier preferred W.P.(C) No.225/2004 in this Court averring *inter alia* that it had not even been heard before the flats were amalgamated as a single assessable unit. This Court vide order dated 12th January, 2004 disposed of the earlier writ petition by directing the respondent NDMC to hear the petitioner and to then decide whether the flats could be so amalgamated or not. In pursuance thereto, an order dated 31st January, 2004 came to be made by the respondent NDMC in which it reiterated its decision of amalgamation on the basis of Sections 78 & 79 of the New Delhi Municipal Council Act, 1994.

3. Aggrieved therefrom the petitioner preferred statutory appeal to the Additional District Judge. The said appeal was dismissed *inter alia* on the ground of the respondent NDMC, vide Resolution No.12 (Q-5) dated 21st January, 2004 , having decided that “if a person has more than one flat / space in a building then for calculation of property tax, the rateable value of such flats / spaces shall be amalgamated”.

4. The present petition has been filed impugning the order aforesaid of the Additional District Judge.

5. The counsels have been heard.

6. The counsel for the petitioner has contended that in the relevant years,

the rate of taxation for rateable value less than ₹5,00,000/- was 20% and more than ₹5,00,000/- was 30%; that if rateable value of each of the flats were to be assessed separately, the rateable value of each would be less than ₹5,00,000/-. He has argued that Sections 78 & 79 of the NDMC Act have no application. With respect to the Resolution of the respondent NDMC, it was the contention of the counsel for the petitioner in the petition that no reliance had been placed thereon, neither during the hearing before the respondent NDMC nor before the Additional District Judge and had been sprung as a surprise on the petitioner in the order of the Additional District Judge and had not even been produced before this Court. However the respondent NDMC since then, has filed before this Court a copy of the Resolution No.12(Q-5) dated 21st January, 2004 deciding as noted by the Additional District Judge. The counsel for the petitioner has contended that the said Resolution is contrary to the Act. Reliance is placed on ***Bal Mukand Vs. MCD*** 65 (1997) DLT 713 and ***Notified Area Committee Nangal Township Vs. Bhakra Management Board, Chandigarh*** (1999) 6 SCC 372.

7. Per contra, the counsel for the respondent NDMC has invited attention to Section 66(3) of the Act which is as under:

“(3) The liability of the several owners of any building which is, or purports to be, severally owned in parts or flats or rooms, for payment of property tax or any

installment thereof payable during the period of such ownership shall be joint and several.”

and proviso to Sections 78 & 79 of the Act and which Sections 78 & 79 for ready reference are reproduced herein below:

“78. Premises owned by or let to two or more persons in severalty to be ordinarily assessed as one property – Notwithstanding that any land or building is owned by, or let to, two or more persons in severalty, the Chairperson shall for the purpose of assessing such land or building to property tax treat the whole of it as one property:

Provided that the Chairperson may, in respect of any land or building which was originally treated as one property but which subsequently passes on by transfer, succession or in any other manner to two or more persons who divide the same into several parts and occupy them in severalty, treat, subject to any bye-law made in this behalf, each such several part, or two or more of such several parts together, as a separate property and assess such part or parts to property tax accordingly.

79. Assessment in case of amalgamation of premises– If any land or building, bearing two or more municipal numbers, or portions thereof, be amalgamated into one or more new premises, the Chairperson shall on such amalgamation assign to them one or more number and assess them to property tax accordingly.

Provided that the total assessment on amalgamation

shall not be greater than the sum of the previous assessments of the several premises except when there is any re-valuation of any of the said premises.”

He has contended that upon amalgamation though the tax may go up but rateable value does not go up; it is contended that what the proviso to Section 79 of the Act refers, is the rateable value and not the tax. Attention is also invited to Section 2(42) of the Act which is as under:

“Section 2 Definitions - In this Act, unless the context otherwise requires:

(42) "rateable value" means the value of any land or building fixed in accordance with the provisions of this Act and the bye-laws made thereunder for the purpose of assessment to property taxes.”

He has also informed that the provisions *pari materia* to Sections 78 & 79 of the NDMC Act, being Sections 132 & 133 of the Delhi Municipal Corporation Act, 1957 have since been repealed.

8. The counsel for the petitioner in rejoinder has contended that it is the property tax which is “assessed” and not the rateable value. Attention in this regard is invited to Section 60(3), Section 61, Section 63 & Section 72 of the Act.

9. The question which arises is on what property tax is to be levied, or what is to be the subject matter of or unit of assessment. The Supreme

Court in *Delhi Golf Club Ltd. Vs. NDMC* (2001) 2 SCC 633 has held that property tax is a tax on ownership of property. Thus, whatever is capable of separate ownership should be the “unit” of or capable of separate assessment for purposes of property tax. The Supreme Court in *Bhakra Management Board* (supra) held that “building” as defined in the Punjab Municipal Act, 1911 (which incidentally applied to NDMC areas also, prior to the promulgation of NDMC Act, 1994) meant a house intended for independent human habitation and simply because the quarter / bungalow had a common wall with another quarter / bungalow would not cease to make it an independent house. I have examined the various provisions of the Act to decipher as to what has been made the “subject” or “unit” of assessment. Chapter VIII of the Act deals with “Taxation”. Section 60 of the Act prescribes “property tax” as one of the taxes which respondent NDMC is entitled to levy. Section 61 of the Act, found to be relevant is also quoted herein below:

“61. Rates of Property Tax. - (1) Save as otherwise provided in this Act, the property tax shall be levied on lands and buildings in New Delhi and shall consist of not less than ten and not more than thirty per cent of the rateable value of lands and buildings:

Provided that the Council may, when fixing the rate at which the property tax shall be levied during any year, determine that the rate leviable in respect of lands and buildings or portions of lands and buildings in which any particular class

of trade or business is carried on shall be higher than the rate determined in respect of other lands and buildings or portions of other lands and buildings by an amount not exceeding one-half of the rate so fixed:

Provided further that the tax may be levied on graduated scale, if the Council so determines.

Explanation - Where any portion of a land or building is liable to a higher rate of the tax such portion shall be deemed to be a separate property for the purpose of municipal taxation.

(2) The Council may exempt from the tax lands and buildings of which the rateable value does not exceed one thousand rupees.”

10. Section 62 of the Act with the heading “Premises in respect of which property tax is to be levied” again provides that the same shall be levied in respect of all lands and buildings in New Delhi. Section 63 of the Act providing for “determination of rateable value of lands and buildings assessable to property tax”, provides that the same shall be the annual rent at which “such land or building might reasonably be expected to let from year to year”. Section 74 of the Act providing for “Notice of Transfers”, notwithstanding the transfer, continues to make the transferor of any land or building liable for property tax, liable for the said tax, if fails to intimate the respondent NDMC of the transfer.

11. Thus what emerges is that the “unit” of assessment of property tax

under the Act is the “land” or “building” which is capable of being let or being transferred. The definition of land in Section 2(21) of the Act is an inclusive one and not of any help. The meaning ascribed in Section 2(4) to “building” *inter alia* is “a house”. Similarly “premises” is defined in Section 2(33) as “any land or building or part of land and building”.

12. The multi-storeyed buildings such as the Statesman House in Connaught Place area have been constructed / built where earlier single or maximum double-storeyed bungalows with out-house, servant quarter etc. existed. Each of such bungalows was an independent land / building and land whereunder was lease-hold. However, with the passage of time, the said residential bungalows were demolished and multi-storeyed commercial buildings constructed. The said buildings were generally constructed in collaboration between the original lessee / owner of the bungalow and the builder with each getting part of the built up space in the multi-storeyed building. The six flats aforesaid were sold by the builder of the multi-storeyed building known as Statesman House to the petitioner out of his share of built up space in the building. Besides the six flats of the petitioner, the said building comprises of a large number of other flats, now owned by different persons.

13. The question which arises is whether inspite of such construction of multi-storeyed buildings in place of erstwhile bungalows, the different flats in the said building can be said to be independent land or building for

independent assessment or their assessment has to be done together as was being done of the bungalow which earlier existed at the said address. The Municipal number of the entire Statesman House remains as 29, Barakhamba Road, New Delhi. I have no doubt in my mind that prior to construction of the multi-storeyed building, the entire property known as 29, Barakhamba Road, New Delhi must have been assessed as one.

14. The respondent NDMC has not contended that it will assess the entire built up space of the building even if sold to different persons as one and the liability for property tax of the entire building shall be joint and several, as it appears to be entitled to contend under Section 66(3) supra. The respondent NDMC has no objection to assessment of separate flats in the building in the name of different owners thereof and rightly so, the other option being not only highly impractical but also inequitable. However, its case is that if a person owns more than one flat then it would amalgamate the same. The real question then is whether it is so entitled.

15. The conversion as aforesaid of erstwhile single unit properties into multi-storeyed buildings comprising of separate owners of separate built up portions / flats was posing a problem in other fields also. The said concept was somehow alien to the understanding of law as it existed till then. The Legislature brought the Delhi Apartment Ownership Act, 1986 in this regard. The Preamble thereof provides that the same is to provide for the ownership of an individual apartment in a multi-storeyed building and of an

undivided interest in the common areas and facilities appurtenant to such apartment and to make such apartment and interest heritable and transferable and for matters connected therewith or incidental thereto. The said Act as per Section 2 thereof applies to every apartment in a multi-storeyed building which was constructed mainly for residential or commercial purposes. The Statesman House is a multi-storeyed building and hence the Apartment Act is applicable thereto.

16. Section 3(c) of the Apartment Act defines an “apartment” as part of any property intended for any type of independent use, to be used for residence or office etc. and with a direct exit to a public street, road or highway, or to a common area leading to such street, road or highway. Thus each of the flats of the petitioner qualifies as an “apartment”. Section 4 of the Act provides for ownership of such apartments and Section 6 for heritability and transferability of such apartments.

17. It would thus be seen that each apartment / flat aforesaid of the petitioner is capable of being let out separately, capable of earning an annual rent and capable of being transferred. In my view, an “apartment” would thus be a “building” within the meaning of the NDMC Act and thus a unit of assessment of property tax. Section 66(3) of the NDMC Act will have no application inasmuch as the same contemplates several owners of a single unit of assessment.

18. The Resolution (supra) of the respondent NDMC also recognizes each flat of the petitioner as a separate unit for assessment of property tax.

However respondent NDMC still decided to amalgamate the rateable value thereof for the reason of the same being owned by the same person. The next question which thus arises is, whether the respondent NDMC is entitled to do so. Section 66(3) on which reliance was placed does not confer power of amalgamation. Section 78 also contemplates a situation of a unit of assessment being owned by two or more persons in severalty. Here, each apartment is a separate unit of assessment as aforesaid. Thus, Section 78 also would have no application.

19. Section 79 of the NDMC Act does provide for amalgamation of two or more units of assessment into one. However, for the respondent NDMC to exercise powers under Section 79 of the Act, there has to be first an amalgamation by the owners of two or more units of assessment into one. It is not the case of the respondent NDMC that the petitioner herein has amalgamated its six / five flats into one or that the petitioner called upon the respondent NDMC to assess them as one. NDMC under Section 79 is not empowered to of its own, amalgamate two or more independent units of assessment, as has been done vide Resolution aforesaid. This is further made clear from Section 80, dealing with the converse situation of “separation”, and which is as under:

“80. Power of Chairperson to assess separately outhouses and portions of buildings. – The Chairperson may in his discretion assess any outhouse appurtenant to a building, or any portion of a land or building separately from such building or as the case may be, from the rest of such land or building.”

20. The language of Section 80 is in stark contrast to that of Section 79. While under Section 79, the Chairperson is required to implement amalgamation already effected, under Section 80, the Chairperson has been vested with discretion to separate out of a unit of assessment, a portion thereof. No such discretion has been vested in the Chairperson to amalgamate two or more separate units of assessment without the owner/s thereof amalgamating the same themselves or amalgamation being otherwise effected.

21. That being so, the Resolution of the respondent NDMC is clearly contrary to the Act and cannot entitle the respondent NDMC to of its own amalgamate two or more independent units of assessment. I may record that a Division Bench of the Calcutta High Court in *Sree Sridhar Jieu Vs. Corporation of Calcutta* AIR 1959 Cal. 320 though in the context of a slightly different provision had taken the same view.

22. The petition therefore succeeds. The order of the Additional District Judge and the action of the respondent NDMC of amalgamating the flats of the petitioner is declared illegal and contrary to law and is set aside. It is declared that the flats and / or the car parking spaces are independent assessable units for the purpose of property tax and liable to tax in accordance therewith only. The respondent NDMC is not found entitled to the excess tax recovered from the petitioner on the basis of the said amalgamation and is liable to refund the same. Since the respondent NDMC

itself charges interest and penalties on late payment of tax, there is no reason for not making it liable for interest on excess tax recovered. It is directed to refund the excess tax recovered from the petitioner together with interest at 9% per annum from the date of payment till the date of refund. The petitioner having been compensated with interest, no order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

JANUARY 25, 2011
'gsr'