

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

% Judgment reserved on : 31.01.2013
Judgment pronounced on : 08.02.2013

+ **LPA No. 1097/2007 & CM No. 9918/2007**

N.D.M.C. Appellant

Through: Mr. Asutosh Lohia, Addl. Standing
Counsel for NDMC.

versus

ANIL KUMAR KHANNA Respondent

Through: Nemo.

CORAM:

**HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE V.K. JAIN**

V.K. JAIN, J.

1. The respondent before us is assessed to property tax in the record of the appellant in respect of property No. 9, Jor Bagh, New Delhi. With effect from 01.06.1995, the respondent permitted M/s Bharti Cellular Ltd. to install a cellular antenna on the terrace of the aforesaid property at the rent of Rs 36,000/- per month. A notice, purporting to be under Section 77 of NDMC Act was issued by the appellant to the respondent on 15.12.1998, asking him to provide the following information:-

“10. Occupancy and rent (Portion-wise) with documents proof.

11. Similar information as given in Sr. No. 3 to 7 above in respect of addition alterations proposed/carried out in the premises from time to time.”

Vide reply dated 21.12.1998, the respondent stated that property No. 9, Jor Bagh, New Delhi, was self-occupied property and there had been no addition or alternation in the said property. A notice under Section 77 of NDMC Act was also sent to the respondent on 21.07.1999 which was replied by the respondent on 18.08.1999. It was stated in the reply that the status of the property had not been changed, it was a self-acquired property, was used for residential purpose only and no additions or alterations had been made therein. A letter was then sent by the appellant to the respondent on 02.08.2000, requesting him to state the monthly rent being charged by him for the cellular installed on the roof of the said property. The respondent sent a reply dated 20.09.2000, disclosing the rent he was receiving from M/s Bharti Cellular Ltd. as licence fee, alongwith a certificate issued by the said company. A notice under Section 72 of NDMC Act was also issued by the appellant to the respondent on 31.10.2000, proposing enhancement of rateable value of

Rs 4,32,000/- for the assessment year 2000-01, seeking to amend the assessment list for the year 2000-01, on account of receipt of rent in respect of the aforesaid cellular antenna.

2. Vide order dated 05.08.2004, the annual value of the aforesaid property was increased with effect from 01.06.1995, taking into consideration the rent received by the respondent from M/s Bharti Cellular Limited for the cellular antenna fixed on the roof of the aforesaid property. It was further revised with effect from 01.09.2002 on account of enhancement in the rent/licence fee received by the respondent from another operator in respect of the cellular antenna installed by the said company. Probably, another notice was issued under Section 72 of NDMC Act, proposing rateable value of Rs 29,50,568/- less 10% with effect from 01.04.2003. The respondent filed an appeal, challenging the assessment order dated 05.08.2004 and the consequent bill dated 25.08.2004, issued by the appellant, *inter alia*, on the ground that notice under Section 72 of NDMC Act given to him by the appellant proposed enhancement of rateable value only with effect from 01.04.2003. The learned Additional District Judge vide order dated 07.12.2004 set aside the assessment order dated 05.08.2004. He, however, confirmed the

enhancement of rateable value with effect from 01.04.2003. Being aggrieved, the appellant filed a writ petition which came to be dismissed vide order dated 18.04.2007. The aforesaid order of the learned Single Judge is under challenge by way of this appeal.

3. Section 72 of NDMC Act, to the extent it is relevant, provides that the Chairperson may, at any time, amend the assessment list by increasing or reducing, for adequate reasons, the amount of any rateable value and of the assessment thereupon, provided that no person shall by reason of any such amendment become liable to pay any tax or increase of tax in respect of any period prior to the commencement of the year in which the notice under sub-section is given. Sub-section (2) of the aforesaid Section provides for giving of notice to the person affected by the assessment, whereby he is informed of the proposed amendment and is given an opportunity to file objections, if any, against the proposed amendment.

It would thus be seen that the rateable value can be increased only with effect from the commencement of the year in which the requisite notice under Section 77(1) of NDMC Act is given to the person affected by the amendment of the assessment list. The provisions being

mandatory, neither the list can be amended nor the demand of property tax can be enhanced in respect of a period prior to the year in which such a notice is given. This is not the case of the appellant that it had served notice under Section 72(2) of the Act upon the respondent before the rateable value for the period in question was revised by it.

4. The contention of the appellant to justify the enhancement of rateable value is that in reply to notice under Section 77 of the Act, the respondent did not disclose that it had installed an antenna on the roof of the house and was receiving rent/licence fee from the cellular operator for permitting installation of the antenna.

Section 77 of NDMC Act reads as under:-

“77. Power of Chairperson to call for information and returns and to enter and inspect premises. (1) To enable him to determine the rateable value of any land or building and the person primarily liable for the payment of property tax leviable in respect thereof, the Chairperson may require the owner or occupier of such land or building, or of any person thereof to furnish him within such reasonable period as the Chairperson fixes in this behalf, with information or with a written return signed by such owner or occupier—

(a) as to the name and place of residence of the owner or occupier, or of both the owner and occupier of such land or building;

(b) as to the measurements of dimensions of such land or building or of any portion thereof and the rent, if any, obtained for such land or building or any portion thereof, and

(c) as to the actual cost or other specified details connected with the determination of the value of such land or building.

(2) Every owner or occupier on whom any such requisition is made shall be bound to comply with the same and to give true information or to make a true return to the best of his knowledge or belief.

(3) Whoever omits to comply with any such requisition or fails to give true information or to make a true return to the best of his knowledge or belief, shall, in addition to any penalty to which he may be liable, be precluded from objecting to any assessment made by the Chairperson in respect of such land or building of which he is the owner or occupier.”

It would thus be seen that the appellant can call for information as regards the rent being received from the property subject matter of levy of property tax by it and the owner or the occupier, as the case may be, is required to furnish true and correct information to the appellant in this regard. The failure of the owner or occupier to furnish information or in case he furnishes information which is not correct, renders him liable to penalty as prescribed in the Act. The penalty envisaged in sub-section (3) of the Act is provided in Section 369 of the Act and is fine amounting to Rs 50/-. In addition thereto, he is also precluded from objecting to the

assessment made by the appellant in respect of the land or building for which information is sought.

5. The next question which comes up for consideration is as to whether any false information was furnished by the respondent in reply to the notice received from the appellant under Section 77(1) of the Act and if so, what are the consequences of his furnishing a false information. A perusal of the reply sent by the respondent on 21.12.1998 would show that no specific information with respect to the rent being realized by him was provided by the respondent. The case of the respondent appears to be that he had not let out any part of property in question to the cellular operator and he had, by way of a licence, permitted installation of cellular antenna, for which licence fee and not rent was being paid to him. However, we need not go into the question as to whether the amount which the respondent was receiving from the cellular operator can be said to be rent or not because, in our opinion, assuming that rent was being received by the respondent and information in this regard was not disclosed in reply to the notice under Section 77 of the Act, the appellant had no authority in law to revise the rateable value, without giving notice under Section 72 of the Act, merely on account of the information

furnished in reply to the notice under Section 77 of the Act being incorrect or being withheld. In our view, the only consequence which flows from non-compliance of the notice issued under Section 77 of the Act or furnishing of false information in response to the said notice is that the person responsible for payment of property tax cannot object to the assessment made by the appellant for the year in which notice under Section 77 of the Act is issued by it. The purpose of issuing notice under Section 77 of the Act is to elicit such information, as would help the appellant in making assessment of property tax, in respect of the property subject matter of the notice and in case no information required by the appellant is furnished or a wrong information is furnished, the appellant can make such assessment as it may deem appropriate on the basis of information available to it. The assessee would in such a case be precluded from objecting to such an assessment for the year in which the information is sought. But, this Section, does not, in our view, permit retrospective revision of rateable value, without issuing notice under Section 72 of the Act.

6. It was contended by the learned counsel for the appellant that in reply to the notice dated 21.12.1998 under Section 77 of the Act, the

respondent claimed that the property was self-occupied property, whereas, in fact, the terrace of the property had been let out to M/s Bharti Cellular Limited for installation of a cellular antenna. We, however, find no merit in the contention. There is no material on record to show that any lease with respect to the terrace of property in question was executed between respondent and M/s Bharti Cellular Limited. Mere permission to install cellular antenna on the roof of a house, in our opinion, would ordinarily be a licence to use a particular portion of the house for installation of such an antenna and would not amount to creating a lease in favour of the cellular company. The vital distinction between a lease and a licence is that in case of a licence, the legal possession of the property subject matter of the licence continues to vest in the licensor, whereas in case of lease, the legal possession of the premises is transferred to the lessee. Ordinarily, legal possession of the roof continues to remain with the owner of the building in case permission is granted to a cellular company to install a cellular antenna on the roof of the building. Therefore, it would not be correct to say that the respondent made a false statement when he claimed in the reply dated 21.12.1998 that property No. 9, Jor Bagh, New Delhi was self-occupied property and

there was no addition/alteration in the said property. The same is the position with respect to the reply dated 18.08.1999, where the respondent reiterated that the said property was self-acquired property and no additions or alterations had been made therein. Therefore, it appears to us that no false statement was made by the respondent in claiming that the property in question was his self-acquired property. In any case, as noted earlier by us, even if a wrong information is furnished or material information is withheld in reply to a notice under Section 77 of the Act, the only consequence would be that besides being liable to pay prescribed penalty, the person primarily responsible for payment of property tax is precluded from objecting to the assessment made by NDMC for the year in which the notice was issued. But, no revision of the rateable value of the property is permissible in the absence of notice under Section 72 of the Act.

For the reasons stated hereinabove, we find no merit in the appeal and the same is hereby dismissed.

V.K.JAIN, J

FEBRUARY 08, 2013/bg

CHIEF JUSTICE