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

+ W.P.(C) 517/2013 & CM Appl. 988/2013
+ W.P.(C) 2360/2013 & CM Appl. 4454/2013
+ W.P.(C) 2364/2013 & CM Appl. 4464/2013
+ W.P.(C) 2426/2013 & CM Appl. 4613/2013
+ W.P.(C) 2445/2013 & CM Appl. 4640/2013
+ W.P.(C) 2446/2013 & CM Appl. 4641/2013
+ W.P.(C) 2447/2013 & CM Appl. 4642/2013
+ W.P.(C) 2663/2013 & CM Appl. 5038/2013

INDIAN OIL CORPORATION LTD Petitioner
Through: Mr. R.P. Sharma with Mr. Vaibhav
Mehra, Advs.

versus

EAST DELHI MUNICIPAL CORPORATION Respondent
Through: Ms. Biji Rajesh, Adv. for Mr Gaurang
Kanth, Adv.

% Date of Decision : 4th September, 2014.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

1. Present batch of writ petitions has been filed challenging the property tax demand notices and attachment orders issued by respondent-Corporation. Petitioner has also prayed for a direction to

the respondent-Corporation to determine the assessment of property tax in accordance with provisions of Section 6(1) of the Delhi Rent Control Act, 1958 (for short 'Act, 1958') after hearing the parties.

2. Mr. R.P. Sharma, learned counsel for the petitioner states that demand notices have been issued in pursuance to ex-parte assessment orders. He also contends that petrol pumps are being run on licence basis and not on lease and, therefore, the amount paid could not have been made the basis for passing the assessment orders.

3. Mr. Sharma submits that the property is owner occupied and cannot be assessed on a principle other than the standard rent determinable under Section 6 of the Act, 1958 as has been held by the Supreme Court in the cases of ***Dewan Daulat Rai v. New Delhi Municipal Committee, 17 DLT (1980) 88*** and ***Dr. Balbir Singh & Anr. vs. M/s. MCD & Ors., AIR 1985 SC 339***. He points out that in WP(C) 56/1999 which was decided on 04th December, 2002, a Coordinate Bench of this Court has passed the following order:-

“The petitioner is Indian Oil Corporation and is aggrieved by the liability imposed on it to pay property tax in view of the fact that the cost of land had been included in the determination of rateable value. The contention of the learned counsel for the petitioner is that the petrol pumps in question are located on sites which have been granted by the Government to the petitioner only for purposes of setting up of the petrol pump and thus in view of the provisions of Section 119 of the Delhi Municipal Corporation Act, 1957, the same would not be subject to property tax in so far as the land is concerned. Learned counsel further contends that this issue is no more integra in view of the judgment of the Full Bench of this court in Municipal Corporation of Delhi v Pradeep Oil Corporation & Anr, 100 (2002) DLT

442.

The aforesaid position is not disputed by learned counsel for the respondent. However, the issue remains whether the document in question relating to the different petrol pumps in issue are lease or licence. This issue arises from the fact that in Pradeep Oil Corporation case (supra), the full bench held that if there is a lease, then the land value has to be taken into account but if there is a mere licence and the grantee has to pay merely occupation fee and no rent without any clause requiring prior notice for termination of tenancy, then the same would not be liable to pay property tax. The detailed criteria for the same has been set out in the judgement itself.

In view of the aforesaid, the impugned orders are set aside and the matter is remanded back to the assessing authority to determine the question whether the particular site is liable to property tax which would depend on whether the particular site has been leased or licensed. This would require the document in question to be scrutinized in terms of the parameters laid down in Pradeep Oil Corporation case (supra).

The petitioner shall appear before Deputy Assessor and Collector on 6th January 2002 at 3.00 PM. It will be open to the petitioner to file all the necessary documents and the petitioner shall be granted a hearing. Assessing authority shall pass a speaking order within a period of two months thereafter.

Writ petition is allowed with the aforesaid directions.”

4. Mr. Sharma contends that the aforesaid directions passed by this Court were never implemented and consequently, demand raised is not legally due and payable. He also states that the petitioner has

paid Rs.Sixty Five lacs in accordance with the interim order dated 29th January, 2013 passed by this Court.

5. On the other hand, Ms. Biji Rajesh, learned counsel for the respondent-Corporation states that the petitioner today cannot challenge demand notices based on assessment orders passed in the year 2002. She submits that the assessment orders have attained finality.

6. Ms. Rajesh also states that the petitioner was given an opportunity of hearing on various occasions and in some cases, petitioner's officials had even attended those hearings.

7. Ms. Rajesh lastly submits that the petitioner has an alternative effective remedy by way of an appeal under Section 169 of the Delhi Municipal Corporation Act, 1957.

8. In rejoinder, Mr. Sharma submits that the remedy of appeal under Section 169 of the Delhi Municipal Corporation Act, 1957 is neither adequate nor efficacious as no appeal can be heard unless the entire amount demanded is deposited. In support of his submission, he relies upon a judgment of the Supreme Court in ***Himmatlal Harilal Mehta v. State of Madhya Pradesh & Ors AIR 1954 SC 403*** wherein it has been held as under:-

“9.In our opinion, the contentions raised by the learned Advocate-General are not well founded.

It is plain that the State evinced an intention that it could certainly proceed to apply the penal provisions of the Act against the appellant if it failed to make the return or to meet the demand and in order to escape from such serious consequences threatened without authority of law, and

infringing fundamental rights, relief by way of a writ of mandamus was clearly the appropriate relief.

In Mohd. Yasin v. Town Area Committee AIR 1952 SC 115(D), it was held by this court that a licence fee on a business not only takes away the property of the licensee but also operates as a restriction on his fundamental right to carry on his business and therefore if the imposition of a licence fee is without authority of law it can be challenged by way of an application under Art. 32, 'a fortiori' also under Art. 226. These observations have apposite application to the circumstances of the present case.

Explanation II to section 2(g) of the Act having been declared 'ultra vires', any imposition of sales tax on the appellant in Madhya Pradesh is without the authority of law, and that being so a threat by the State by using the coercive machinery of the impugned Act to realize it from the appellant is a sufficient infringement of his fundamental right under Art. 19(1)(g) and it was clearly entitled to relief under Art. 226 of the Constitution. The contention that because a remedy under the impugned Act was available to the appellant it was disentitled to relief under Art. 226 stands negated by the decision of this court in – AIR 1953 SC 252 (B), above referred to.

There it was held that the principle that a court will not issue a prerogative writ when an adequate alternative remedy was available could not apply where a party came to the court with an allegation that his fundamental right had been infringed and sought relief under Art. 226. Moreover, the remedy provided by the Act is of an onerous and burdensome character. Before the appellant can avail of it he has to deposit the whole amount of the tax. Such a provision can hardly be described as an adequate alternative remedy.

10. For the reasons given above, we are of the opinion that the High Court, having held that Explanation II to section 2(g) of the Act was 'ultra vires', was in error in

dismissing the application on the ground that it was not entitled to relief under the provisions of Art. 226 of the Constitution.”

9. Having heard learned counsel for the parties, this Court finds that in WP(C) 56/1999, the demand, assessment and attachment orders impugned in the present writ petitions have not been quashed. In fact, WP(C) 56/1999 does not pertain to the present petrol pumps' sites. Consequently, at this stage, it cannot be said that in view of alleged non-compliance of this Court's order dated 04th December, 2002 in WP(C)56/1999, the present writ petitions are maintainable.

10. However, this Court is of the view that the issue whether the document is a lease or licence must be decided on merits at the first instance by the Municipal Taxation Tribunal.

11. Consequently, the present writ petitions are disposed of with liberty to the petitioner to raise all issues before the Municipal Taxation Tribunal after deposit of the principal sum. It is clarified that interest and penalty amounts need not be paid at this stage. Further, the previous payment of Rs. 65 lakhs and any other payment made by the petitioner shall be adjusted against the principal sum that is due and payable by the petitioner in the present batch of petitions.

12. It is also clarified that in the event the appeals are filed and the principal sum is deposited within six weeks, then the Municipal Taxation Tribunal shall hear and decide the petitioner's appeals as expeditiously as possible preferably within a period of six months. Municipal Taxation Tribunal is directed to decide the matter on merits by way of a reasoned order and not on the ground of limitation. In the

event the Municipal Taxation Tribunal is of the opinion that the assessment orders need to be set aside, it shall be at liberty to remand the matters back to the Assessor and Collector.

13. With the aforesaid observations, the present writ petitions and pending applications stand disposed of.

MANMOHAN, J

SEPTEMBER 04, 2014
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