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

Decided on: 07.04.2016

\+ LPA 1730/2006

MCD ..... Appellant

Through: Ms Amita Gupta, Adv.

versus

RAGHAV COLD STORAGE P.LTD. ..... Respondent

Through: Mr B.B. Jain, Adv.

\+ LPA 1731/2006

MCD ..... Appellant

Through: Ms Amita Gupta, Adv.

versus

RAGHAV COLD STORAGE P.LTD. ..... Respondent

Through: Mr B.B. Jain, Adv.

\+ LPA 1732/2006

MCD ..... Appellant

Through: Ms Amita Gupta, Adv.

versus

RAGHAV COLD STORAGE P.LTD. ..... Respondent

Through: Mr B.B. Jain, Adv.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MS. JUSTICE DEEPA SHARMA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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1. The Municipal Corporation of Delhi impugns a common order of the learned Single Judge, which has *inter alia* directed a remission in respect of issues which are subject matter of two of these appeals and are not really in controversy since they directed remission of a specific issue which are—the vacancy remission sought by the respondent/assessee and the remission on the issue of cost incurred by the assessee. The contentious issue requiring decision by this Court is whether the Appellate Authority acted correctly in holding that on the basis of a concession, rateable value fixed with effect from 01.08.1999 by the MCD could not have governed the assessee in the circumstances of the case. The MCD's writ petition was rejected almost summarily by the learned Single Judge.

2. The facts necessary to decide the case are that on 08.09.1999, the MCD issued a notice under Section 126(2) of the Delhi Municipal Corporation Act (hereinafter referred to as 'the Act') proposing to amend the assessment list, i.e., in respect of the assessee's rateable value of its commercial premises/plot from the existing value, to a higher one. The rateable value proposed was ₹67,11,600/- with effect from 01.04.1998. The existing rateable value was ₹26,10,040/- with effect from 15.10.1996 (to till the period the notice was issued, i.e., 08.03.1999). The notice, in short, proposed the revision with effect from 01.04.1998. It is not in dispute that the notice was received by the assessee within the assessment year 1998-99 in March, 1999; objections were filed on 24.03.1999. The assessor/officer deciding the

objections finally determined the rateable value at the proposed rate of ₹32,45,750/- with effect from 01.08.1999.

3. The assessee approached this Court directly under Article 226 (W.P.(C) No.4378/2002). That writ petition was disposed of on 24.07.2002 relegating the parties to the assistant Assessor before whom the contentions in all regards were kept open, including the question of vacancy remission which was agitated in the earlier writ petition. The Joint Assessor & Collector fixed the rateable value at ₹32,45,750/- with effect from 01.08.1999 and at ₹11,94,840/- *per annum* with effect from 22.06.2001. The Assessee was granted vacancy remission from 22.06.2001-31.03.2003 vide assessment order dated 05.06.2003. Against this order, Assessee preferred to appeal before the appellate authority. MCD's counsel, in the course of submissions before the Appellate Authority, stated that no notice of enhancement for the year 1999-2000 had been issued and that consequential rateable value could not have been assessed with effect from 01.08.1999 on the basis of the notices in this case, i.e., issued on 08.03.1999. The Appellate Authority, therefore, directed as follows:-

> *"8. Ld. counsel for respondent has conceded to the first contention raised on behalf of appellant regarding assessing of the property done by the respondent w.e.f. 1.8.99. The respondent's ld. counsel has very fairly conceded that since there was no notice of enhancement for the year 1999-2000, the rateable value could not have been assessed w.e.f. 1.8.99 on the basis of notice dated*

8.3.99. Hence, it is directed that the rateable value of appellant's property assessed by the respondent vide its order dated 14.03.2000 at ₹26,10,040/- shall continue till the property fell vacant."

Against the above order, MCD approached this Court through W.P.(C) No. 17122/2004.

4. The MCD's writ petition was dismissed by the learned Single Judge who *inter alia* observed as follows:-

"2. Finding in para 8 of the decision impugned is on the basis of concession given by counsel for MCD. Directions issued in para 9 and 10 requires the Assessing Officer to determine on the issue of vacancy remission. No conclusive finding has been arrived at. Additional, a decision of this Court inter se the parties has been noted in para 10 of the impugned order. In respect of directions issued vide para 11, since Assessing Officer relied upon CPWD rates and assessee was urging to the contrary, direction issued is to obtain a report from an independent valuer under Section 135 of the DMC Act."

5. Learned counsel for the MCD urges that a conjoint reading of Section 126(4) and 127 clearly establish that the assessor was not, in any manner, inhibited from fixing the rateable value with effect from 01.08.1999. Learned counsel submitted in this regard that limitation prescribed by law is in respect of the time within which the proposed enhancement of rateable value is to be issued. In other words, the three year time limit imposed by law applies only in respect of the making of the order and not the date from which the rateable value is to be fixed. She also highlighted that the notice itself recorded as

follows:

> *"As per proviso to sub-section (1) of Section 126 of the DMC Act, you shall not be liable to pay any tax or increase in tax, due to the amendment in the assessment list, for any period prior to the first day of the financial year in which notice is given. Thus if you receive this notice upto 31-3-99, please pay taxes from 1-4-98 and if you receive this notice on or after 1-4-99, please pay from 1-4-99."*

6. Learned counsel also relied upon the judgment of the Supreme Court reported as ***Municipal Corporation of Delhi vs. Qimat Rai Gupta & Ors.*** *(2007) 7 SCC 309*, especially the following observations:

> *"15. Indisputably, the Parliament did not intend to confer unbriddled power on the Commissioner to amend the assessment list. For that purpose only a period within which the jurisdiction is to be exercised was contemplated, namely, before the expiry of three years from the end of the year in which the notice is given, but the same would not mean that the restriction imposed should be given a restricted meaning so as to narrow down the scope thereof any further.*
>
> *16. In interpreting a provision dealing with limitation, a liberal interpretation in a situation of this nature should be given. Although an order passed after expiry of the period of limitation fixed under the statute would be a nullity, the same would not mean that a principle of interpretation applied thereto should not be such so as to mean that not only an order is required to be made but the same is also required to be communicated."*

7. Mr B.B. Jain, assessee's counsel submitted that concession in this case was justified and in accordance with law and that the MCD could not say that it was not bound by it. He urged that the Full Bench judgment of this Court in ***Lok Kalyan Samiti vs. Delhi Municipality*** *AIR 1978 Delhi 189*, especially dealt with this aspect. He particularly highlighted the following observations:

> *"55. What do we understand when it is said that the Commissioner may adopt the rateable values contained in the list for any year for the year following? This really refers to adopting the rateable values given in the previous year in respect of land or building. Once a notice under S. 126 proposing an increase has already been given in respect of the land or building by virtue of bye-law No.9, the assessment list in the year in which notice is given automatically gets amended and under S.127 it is that rateable value which is adopted for the following year. When the proceedings under S. 126(2) get finally determined, the assessment list gets amended with effect from the date as found in the assessment order and since the adoption of rateable value for any year was of the previous year in which the notice was given, as soon as, the assessment order for the previous year gets finalised, the demand is raised for the year in which the rateable value of the previous year was adopted for any year, on the basis of the finalisation of the assessment of the previous year."*

8. Learned counsel further submitted that there was implicit endorsement of this reasoning by the Supreme Court judgment in ***Shyam Kishore & Ors. vs. MCD & Ors.*** *48(1992) DLT 277 (SC)*. He relied upon the following observations:

"21. What do we understand when it is said that the Commissioner may adopt the rateable values contained in the list for any year for the year following? This really refers to adopting the rateable values given in the previous year in respect of land or building. Once a notice under Section 126 proposing an increase has already been given in respect of the land or building by virtue of bye-law No. 9, the assessment list in the year in which notice is given automatically gets amended and under Section 127 it is that rateable value which is adopted for the following year. When the proceedings under Section 126(2) get finally determined, the assessment list gets amended with effect from the date as found in the assessment order and since the adoption of rateable value for any year was of the previous year in which the notice was given, as soon as, the assessment order for the previous year gets finalised, the demand is raised for the year in which the rateable value of the previous year was adopted for any year, on the basis of the finalisation of the assessment of the previous year.

22. While adopting the assessment list of any previous year for any year, it was not necessary that the assessment list for the previous year must have become final in the sense that the proceedings for increasing the rateable value in the previous year must also come to an end and failing which the rateable value for the previous year cannot be adopted for the following year. All that Section 127 contemplates is that for any year the rateable value contained in the list for the previous year may be adopted.

23. To summarise -

(a) An assessment list has to be prepared in respect of each land and building which is liable to tax which list contains all the particulars including the rateable value of the property. The procedure for preparing such an

assessment list is contained in Sub-sections (3) to (7) of Section 124;

(b) Section 127 provides that every year the Commissioner should either prepare for the whole or any part of Delhi a new assessment list or "...adopt rateable values contained in the list for and year with such alterations as may in particular cases be deemed necessary...."

The procedure for exercise of either of these two options is by "giving the same public notice as well as individual notices to persons affected by such alterations to the rateable values as if a new list had been prepared...";

(c) Section 126 confers power to "...amend the assessment list..." in respect of any property or person after the issuance of a prior notice therefor. After the amendment of the laws by Act 42 of 1961, the only limitation on the retroactivity of such an amendment is that it cannot relate to a period prior to the commencement of the year in which the notice to amend is given;

(d) The legal consequences of an assessment list, as per Section 125, is that it is conclusive evidence of the rateable value of lands and buildings for the purpose of assessing any tax. However, this is subject to "...any alteration that may be made thereafter in the assessment list under Section 126 and to the result of any appeal made under the provisions of this Act...;

(e) That once the Commissioner exercises the option to "adopt" the assessment list of a particular year for subsequent years then any amendment of the original assessment list (either by virtue of powers exercised by the Commissioner under Section 126 or as a consequence of any appeal) constitutes ipso jure an amendment of the assessment list for the subsequent

years also for which the original assessment list had been adopted and it is not necessary to once again follow the procedure of Section 126 for a consequential modification of the assessment lists for the subsequent years to bring them in accord with the amended/modified initial assessment list.

26. Mr. Yogesh K. Jain, learned Counsel for the appellant, tried to submit that this proviso to Sub-section (1) of Section 156 indicates that the appellate court has the power to grant stay during the hearing of the appeal and that when the relief is finally granted, this proviso comes to the rescue. We do not agree with this view. The proviso deal with a case where assessments for one or more future years are made adopting the assessment or revision made for one year (which may be called the base year) which is under appeal. It ensures that demands for successive years cannot be enforced or recovered to the extent the appeal for the base year succeeds, even without the necessity for an appeal by the assessee for each of the successive years."

9. The relevant provisions which require consideration are Section 126(4) and 127 of the unamended Delhi Municipal Corporation Act, 1957. These are extracted below:-

*"**126. Amendment of assessment list***

(1) The Commissioner may, at any time, amend the assessment list—

(a) by inserting therein the name of any person whose name ought to be inserted; or

(b) by inserting therein any land or building previously omitted; or

(c) by striking out the name of any person not liable for the payment of property taxes; or

(d) by increasing or reducing for adequate reasons the amount of any rateable value and of the assessment thereupon; or

(e) by making or cancelling any entry exempting any land or building from liability to any property tax; or

(f) by altering the assessment on the land or building which has been erroneously valued or assessed through fraud, mistake or accident; or

(g) by inserting or altering any entry in respect of any building erected, re-erected, altered or added to, after the preparation of the assessment list:

Provided that no personal 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 (2) is given].

(2) Before making any amendment under sub-section (1) the Commissioner shall given to any person affected by the amendment, notice of not less than one month that he proposes to make the amendment and consider any objections which may be made by such person.

(3) XXX XXX XXX

(4) No amendment under sub-section (1) shall be made in the assessment list in relation to—

(a) any year prior to the year commencing on the 1st day of April, 1988 after the 31st day of March, 1991

(b) the year commencing on the 1st day of April, 1988, or any other year thereafter, after the expiry of three years from the end of the year in which the notice is given under sub-section (2) or sub-section (3), as the case may be:

Provided that nothing contained in this sub-section shall

apply to a case where the Commission has to amend the assessment list in consequence of or to give effect to any direction or order of any Court.

Explanation—In computing the period referred to in clause (a) or clause (b) any period or periods during which the proceedings for the assessment were held up on account of any stay or injunction by the order of any court, or the period of any delay attributable to the person to whom the notice has been given under sub-section (2) or sub-section (3), as the case may be, shall be excluded."

127. Preparation of new assessment list

*It shall be in the discretion of the Commissioner to prepare for the whole or any part of Delhi a new assessment list every year or to adopt the rateable value *** contained in the list for any year, with such alternations as may in particular cases be deemed necessary, as the rateable values *** for the year following, giving the same public notice as well as individual notices, to persons affected by such alternations, of the rateable values *** as if a new assessment list had been prepared."*

10. These two provisions, especially Section 126 has been the subject matter of considerable litigation both before this Court as well as Supreme Court. It is now well established that Section 126(4) deals with two periods, i.e., notice for an earlier period (introduced by mode by way of a transitional provision by virtue of the amendment of 1988-89) and a more enduring one (by way of Section 126(4)(b)). The emphasis in this latter provision is that amendments of the assessment list can be made for the year commencing from 01.04.1988 or any year thereafter within the period of 3 years from the end of the year

from which notice is given under Section 126(4). Now, it is not in dispute that the rateable value for every property assessed to municipal tax is entered in the 'assessment list' maintained by assessor/corporation by virtue of Section 124. The preparation of this list is more specifically indicated in Section 124. In terms of Section 127, a property can be assessed afresh in respect of a particular part of the year (i.e. alternation under Section) provided notice is earlier given to the concerned party likely to be affected.

11. The judgment in ***Lok Kalyan Samiti*** *(supra)*, particularly the passage relied upon by the assessee, highlights that it is open to an assessee to object to the adoption of the previous assessment list, but in the event it fails to avail the opportunity to object to the proposed amendment, it is foreclosed from contending that the assessment list cannot be amended. Facially, ***Lok Kalyan Samiti*** *(supra)* does not deal with the situation this Court intends to deal with. What we have in this case is the fixing of rateable value for a prospective period, i.e., after the expiry of the assessment year within which the notice was served. The notice was served (proposing re-fixation of assessment value with effect from 01.04.1998) on 08.03.1999. Essentially, what the assessee is urging is that without fixing rateable value or rather revising it from 01.04.1998, the assessment list could not have enhanced the existing rateable value from 01.08.1999. Given these facts, the Court does not perceive any impediment of the kind urged on behalf of the assessee, articulated in ***Lok Kalyan Samiti*** *(supra)*.

12. So far as the judgment in ***Shyam Kishore*** *(supra)*, it has to be immediately noticed that the Supreme Court was concerned with the validity of the provision requiring pre-deposit under Section 170(b) of the unamended Act, that mandated deposit of the disputed tax as a pre condition for the hearing of the appeal. Undoubtedly, the Court considered the extent and sweep of the enactment and in para 23 of its judgment, summarized the effect of various provisions. Under para 23(c), the Court highlighted that the limitation on the retroactivity of the amendment (to the assessment list, i.e., the amendment of the existing rateable value) *"is that it cannot relate to the period prior to the commencement of the year in which the notice amended is given"*. The Court clearly said that once the Commissioner exercised the option to adopt the assessment list of a particular year for subsequent years then any amendment to the original assessment list constitutes *ipso jure* an amendment of the assessment list for the subsequent years, till further revision is undertaken. The net result of this in our opinion is that the kind of impediment which the assessee is arguing, i.e., without amending the so-called 'base year' 01.04.1998, it was not open to the assessor to prospectively amended the assessment list, is insubstantial and untenable

13. On the other hand, ***Qimat Rai Gupta & Ors.*** *(supra)* spells out that the powers conferred by the assessor are to be construed in their terms—neither unduly restricting them nor overly broadening them. So viewed, it is quite apparent that the assessor in this case had discretion of fixing the rateable value with effect from a subsequent period and not merely with effect from 01.04.1998.

14. In view of the above conclusions, the impugned order is hereby modified to the extent that the rateable value fixed at ₹ 32,45,750/- is held to be validly fixed. However, the remission to the assessor/collector on the issue of vacancy remission, cost of construction and other issues are left open and are kept undisturbed.

The appeals are allowed to the above extent.

S. RAVINDRA BHAT
(JUDGE)

DEEPA SHARMA
(JUDGE)

APRIL 07, 2016
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